



W.A.(MD) No.820 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD) No.820 of 2024

and

C.M.P.(MD) No.6087 of 2024

- 1.The Government of Tamilnadu,
Rep., by Secretary to Government,
School Education Department,
Fort St. George, Chennai-09.
- 2.The Director of School Education,
College Road, Chennai-06.
- 3.The Regional Accounts Officer,
Office of the Regional Accounts Office (Audit),
School Education Department,
Madurai-625 002.
- 4.The District Educational Officer (Secondary),
Office of the District Educational Office,
Theni District.
- 5.The Headmaster,
Nadar Saraswathi Girls Higher Secondary School,
Theni District-625 531.

... Appellants/
Respondents 1 to 5

-Vs-



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1.A.Vijayalakshmi

... 1st Respondent/
Writ Petitioner

2.The Assistant Controller of Examinations,
Vinayaka Missions University,
Salem.

... 2nd Respondent/
6th Respondent

Prayer: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 28.11.2023 made in W.P.(MD) No.28041 of 2023.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by ***R.Suresh Kumar, J.***]

This intra-Court appeal has been directed against an order passed by the Writ Court dated 28.11.2023 made in W.P.(MD) No.28041 of 2023.

2. The issue involved in this appeal is covered by the decision of a Division Bench dated 04.08.2023 in the matter of ***S.Sivan vs. The Regional Accounts Officer (Audit), Coimbatore and others*** in W.A.No.2328 of 2018 etc., batch.

3. In fact, the said judgment has been followed by the learned Judge in the order impugned dated 28.11.2023.



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4. When similar intra-Court appeal has been moved before us in W.A.(MD) No.686 of 2024, by our judgment dated 16.04.2024, we have passed the following order:

“2. That, the issue raised in this writ petition, as to whether the advance incentive increment which had already been allowed in favour of the 1st respondent, for having acquired the higher qualification by him from Vinayaga Mission University, is permissible or not and in that case, if such advance incentive increment paid to him, has to be recovered or not.

*3. The entitlement of the 1st respondent to get such advance incentive increment for having acquired the higher qualification from Vinayaga Mission University during a particular point of time, where, the University had enjoyed the recognition or approval from IGNOU or University Grants Commission and that issue had been decided by a Division Bench of this Court in **S.Sivan vs. The Regional Accounts Officer, Coimbatore and others in a batch of writ appeals W.A.No.2328 of 2018 etc., batch., dated 04.08.2023**, where one of us (**R.SURESH KUMAR, J.**) is a party, and that judgment has been followed by the learned Judge in the order impugned and therefore, he allowed the Mandamus sought for by the 1st respondent, for refund of the withheld incentive increment of Rs.7,26,651/-, as against which, though this writ appeal has been filed, we feel that, the issue has already been covered by the said*



*Division Bench judgment in **Sivan's case** (cited supra) and similar order passed by the Writ Court having been challenged in W.A(MD)No.518 of 2024, we passed an order on 01.04.2024, in the matter of **Director of School Education, Chennai and others vs. P.Sarumathi and another**, where, we have passed the following order:-*

*9. Relying upon the import of the G.O(Ms).No.91, Higher Education Department, dated 03.04.2009, learned Additional Government Pleader would submit that even though G.O(Ms).No. 91 was issued mainly declaring that the M.Phil and Ph.D degrees obtained through the Correspondence / Distance Education / Open University System are ineligible for Government appointments, that covers not only the particular University from where the teacher secured the M.Phil degree, but also all other Universities where such degrees are awarded through correspondence education. Therefore, it should have a universal application to all the candidates like the writ petitioner. Therefore, to that extent, he wants to distinguish the said judgment of the Division Bench judgment in **Sivan's case** (cited supra).*

*10. We are not impressed with the said submission made by the learned Additional Government Pleader appearing for the appellants for the simple reason that the Division Bench has specifically considered the import of G.O(Ms).No.91, Higher Education Department, dated 03.04.2009 at paragraphs 33 and 34 of the judgment in **Sivan's case** (cited supra) and has held as follows:-*



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"33. In this context, the learned Government Pleader appearing for the State has relied upon the G.O.Ms.No.91, Higher Education Department, dated 03.04.2009 and has stated that the Government by the said G.O, declared that the M.Phil and Ph.D degree obtained through the correspondence or Distance Education or Open University system are ineligible for Government appointments and appointment as lecturers in colleges or Universities including self-financing colleges, therefore the import of the said G.O.Ms.No.91, dated 03.04.2009 if it is implemented that will stand in the way for extending the benefit of advance incentive increment to the teachers.

34. However, the said submission made by the learned Government Pleader is liable to be rejected because, the said G.O has only mentioned about the eligibility for a person to get employment. Here, the teachers, as per earlier qualification acquired already, been appointed as teachers or lecturers and the benefit now questioned is only the grant of advance incentive increment for having acquired the higher qualification. Therefore, the G.O.Ms.No.91 dated 03.04.2009 issued by the Higher Education Department does not deal with anything about the allowing of advance incentive increment to the teachers, who acquired higher qualification, therefore, that argument made by the learned Government Pleader also is to be rejected and accordingly, it is rejected."

11. Therefore, the said consideration which was made by the Division Bench in **Sivan's case** (cited supra) is pertaining to



the degree secured by many candidates from Vinayaga Mission University during the relevant point of time through correspondence education whether would be entitled to seek for advance incentive increment or not. Therefore, the declaration what has been made under G.O(Ms).No.91 cannot be applied to the case of advance incentive increment seekers like the writ petitioner/1st respondent. Therefore, such an argument advanced by the learned Additional Government Pleader is to be rejected and accordingly rejected.

*12. Resultantly, since the issue is covered by the said Division Bench judgment in **Sivan's case**, the order passed by the Writ Court which is impugned herein dated 22.11.2023 made in W.P(MD)No.18350 of 2020 is to be sustained. Accordingly, this Writ Appeal is to be rejected and hence it is dismissed. No costs. In view of the dismissal of the writ appeal, the direction given by the Writ Court through the impugned order shall be complied with by the appellants within a period of three months from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petition is closed."*

4. Therefore, the issue that has been raised in this appeal, has already reached finality. Therefore, it is no more res integra.

5. However, the learned Additional Government Pleader appearing for the appellants has made a point that, at the time of retirement, the 1st respondent had given an undertaking on 05.07.2023, that, the excess amount of Rs.17,37,967/- can be retained from out of the DCRG amount payable to the 1st respondent. After having given such written undertaking, whether



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he is entitled to seek for such a Mandamus is a question which has not been gone into by the learned Judge before allowing the said writ petition in the impugned order.

6. In respect of the said point raised by the learned Additional Government Pleader, the answer would be that, the entitlement of the 1st respondent to get advance incentive increment for having acquired the higher qualification from Vinayaga Mission University, from a particular point of time, since has been found in favour of the 1st respondent, and number of orders have been passed by the Division Bench already, including the one in Sivan's case (cited supra). When the entitlement has been found in favour of the 1st respondent, the question of retaining any amount by showing a written undertaking given by the 1st respondent, does not arise. At the time of retirement, any retiring employee will be in a position to give such undertaking, otherwise, the employee would not even be permitted to retire peacefully. Therefore, that cannot be used as a weapon against the employee, even for getting the lawful entitlement, which has already been found in his favour. Therefore, the said point raised by the learned Additional Government Pleader appearing for the appellants also, cannot be sustained to have a successful challenge against the impugned judgment of the learned Judge. Therefore, this Writ Appeal fails and accordingly it is dismissed. The order of the learned Judge shall be complied with, within a period of two months from the date of receipt of a copy of this judgment. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.”



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5. In the present appeal also, the issue is one and the same. Therefore, it is covered by the said decisions. In view of the same, this appeal deserves to be dismissed. Accordingly, it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.]

[G.A.M., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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