



W.A.(MD)No.827 of 2022 and batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.07.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN****

**W.A(MD)Nos.827 and 838 of 2022 and 146 of 2024 and
W.P.(MD)No.7413 of 2023
and
C.M.P.(MD)No.6898 and 6976 of 2022
and
W.M.P.(MD)No.6949 of 2023**

W.A.(MD)No.827 of 2022:-

V.Vennila

... Appellant

vs

**1.Government of India,
represented by Deputy Educational Adviser,
Ministry of Human Resources Development,
Government of India, New Delhi.**

**2.State of Tamil Nadu,
represented by its Principal Secretary,
Department of School Education,
Fort St.George, Chennai – 9.**

**3.The Director of School Education,
O/o.The Director of School Education,
DPI Campus, Chennai – 6.**



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4.The Joint Director of School Education (Personnel),
O/o the Joint Director of School Education (Personnel),
DPI Campus, Chennai -6.

5.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Theni, Theni District.

6.The District Educational Officer,
O/o.The District Educational Officer,
Periyakulam, Theni District.

7.The Headmaster,
Government Higher Secondary School,
Theppampatti – 625 512.

8.The Regional Accounts Officer (Audit).
School Education, Tallakulam, Madurai – 625 002. ...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside
the order of this Court dated 05.07.2022 passed in W.P(MD)No.20988 of
2021.

For Appellants	: Mr.T.Lajapathy Roy Senior Counsel for Mr.S.Rajasekar
For R1	: Mr.K.Govindarajan Deputy Solicitor General of India
For R2 to R8	:Mr.S.Shaji Bino Special Government Pleader



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W.A.(MD)No.838 of 2022:-

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Seenithangam

... Appellant

VS

1.Government of India,
represented by Deputy Educational Adviser,
Ministry of Human Resources Development,
Government of India, New Delhi.

2.State of Tamil Nadu,
represented by its Principal Secretary,
Department of School Education,
Fort St.George, Chennai – 9.

3.The Director of School Education,
O/o.The Director of School Education,
DPI Campus, Chennai – 6.

4.The Joint Director of School Education (Personnel),
O/o the Joint Director of School Education (Personnel),
DPI Campus, Chennai -6.

5.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Ramanathapuram, Ramanathapuram District.

6.The District Educational Officer,
O/o.The District Educational Officer,
Paramakudi, Ramanathapuram District.

7.The Secretary cum Correspondent,
Kshatriya Nadar Girl Higher Secondary School,
Kamuthi, Ramanathapuram District.



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8.The Regional Accounts Officer (Audit).
School Education, Tallakulam, Madurai – 625 002. ...Respondents

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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 05.07.2022 passed in W.P(MD)No.13322 of 2021.

For Appellant	: Mr.T.Lajapathy Roy Senior Counsel for Mr.S.Rajasekar
For R1	: Mr.K.Govindarajan Deputy Solicitor General of India
For R2 to R8	:Mr.S.Shaji Bino Special Government Pleader

W.A.(MD)No.146 of 2024:-

S.Kameswari ... Appellant

vs

1.The Director of School Education,
College Road, Nungampakka, Chennai-6.

2.The Chief Educational Officer,
Theni, Theni District.

3.The District Educational Officer,
Uthamapalayam, Theni District.

4.Kanakku Velayee Amaravathi
Ammal (KVA) Girls Higher Secondary School,
represented by its Secretary,
Chinnamanur, Theni District. ...Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 05.07.2022 passed in W.P(MD)No.18000 of 2020.

For Appellant : Mr.S.Rajasekar
M/s.T.Lajapathiroy Associates
For R1 to R3 :Mr.S.Shaji Bino
Special Government Pleader

W.P.(MD)No.7413 of 2023:-

T.Vanaja ... Petitioner

vs

1.The Chief Educational Officer,
Nagerkovil, Kanyakumari District.

2.The District Educational Officer (Secondary),
Nagerkovil, Kanyakumari District.

3.The Secretary,
S.M.S.M. Higher Secondary School,
Suseendran, Kanyakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent in his proceedings in Na.Ka.No. 5948/E4/2022, dated 28.12.2022 and the order passed by the third respondent in his proceedings in Ref.No.114/2022-2023, dated 14.02.2023 and quash the same and to direct the respondents to sanction the retirement benefits including incentive increment for M.Phil, qualification with interest will and consequential benefits.



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For Petitioner : Mr.V.Panneer Selvam
For R1 and R2 :Mr.S.Shaji Bino
Special Government Pleader
For R3 :Mr.K.P.Narayanakumar

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

Since all the Writ Appeals arise out of a common order, dated 05.07.2022, in a batch of Writ Petitions in W.P(MD)No.5540 of 2021 and others and also the Writ Petition is clubbed with these appeals, which also arises out of a common issue, by consent of all the learned Counsels appearing for the parties, all these Writ Appeals and the Writ Petition are heard together and disposed of by this common order.

2.The appellants in all the Writ Appeals and the petitioner in the Writ Petitioner are all Teachers either working or retired at different Schools in the Education Department. In view of the additional incentive increment scheme extended by the Government to encourage the Teachers for acquiring higher qualification, these Teachers, during their employment, in order to qualify themselves, after obtaining necessary permission, had



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joined the M.Phil degree course in the Vinayaga Mission University invariably during the year 2007-2008 and have completed the course in the year 2008-2009. As per the scheme, that was in vogue, the Teachers, who had acquired higher qualification, are entitled for additional incentive increment, which would be allowed by the State Government and the Teachers are entitled to a maximum of two such additional increment during their career.

3.The Teachers, who had, thus, acquired M.Phil degree from the Vinayaga Mission University during the above period, had applied and they were also granted with additional incentive increment by the Department. However, later during the internal audit conducted in the Department, the audit team had raised objections through orders, that were directly addressed to the Headmasters of the Schools concerned, where the Teachers are working, particularly, in respect of the fact that these Teachers have joined the course either in the year 2007 or 2008 in the Vinayaga Mission University at Salem, which is deemed to be University under Section 3 of University Grants Commission Act, 1956. It was the objection that since the said University is a deemed to be University, the distance education



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course conducted by them, whether was approved by the Distance Education Council and if they had not obtained such approval, then the degree acquired by these Teachers from such University cannot be an approved degree, which can be considered for awarding any additional incentive increment.

4. Based on the objections raised by the audit team, the Headmasters of the Schools concerned have passed individual orders, based on which, the additional incentive increment granted and paid to them was stopped and also was sought to be recovered. Facing the recovery proceedings, the Teachers had filed individual Writ Petitions. The learned Judge after taking note of the orders passed in the similar issue before the Principal Seat of this Court in ***W.P.No.42675 of 2016 etc.***, batch in the case of ***S.Sivan and others vs Regional Accounts Officer and others***, came to the conclusion that the M.Phil degree obtained from the Vinayaga Mission University, which is not approved, is not a valid degree and therefore, they are not entitled for the grant of any additional incentive increment for the qualification of M.Phil degree. By the impugned order, the learned Judge dismissed all the Writ Petitions and held that the additional incentive



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increment paid to them is liable to be recovered. The learned Judge further directed the official respondents to pass appropriate orders with regard to the recovery based on the decision arrived at. Challenging the common order passed in the Writ Petition, the individual Teachers have preferred the above appeals.

5.In so far as the Writ Petition is concerned, the petitioner, who had superannuated from service, was also issued with an order of recovery by the proceedings of the second respondent in the Writ Petition. Based on which, the third respondent/Headmaster by order, dated 14.02.2023, had directed the petitioner to remit the payments made and challenging the same, the above Writ Petition is preferred.

6.Heard Mr.T.Lajapathy Roy, learned Senior Counsel appearing for the appellants in W.A(MD)Nos.827 and 838 of 2022, Mr.S.Rajasekar, learned Counsel appearing for the appellant in W.A(MD)No.146 of 2024, Mr.V.Panneer Selvam, learned Counsel appearing for the petitioner in W.P(MD)No.7413 of 2023, Mr.K.Govindarajan, learned Deputy Solicitor General of India appearing for the first respondent in W.A(MD)Nos.827 and



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838 of 2022, Mr.S.Shaji Bino, learned Special Government Pleader appearing for the respondents 2 to 8 in W.A.(MD)Nos.827 and 838 of 2022, respondents 1 to 3 in W.A(MD)No.146 of 2024 and respondents 1 and 2 in W.P.(MD)No.7413 of 2023 and Mr.K.P.Narayana Kumar, learned Counsel appearing for the third respondent in W.P(MD)No.7413 of 2023 and perused the materials available on record.

7.The main issue, that arises for consideration in these batch of Writ Appeals and the Writ Petition, is as to whether the Teachers, who had obtained permission and have acquired the M.Phil degree through distance education course from the Vinayaga Mission University, particularly, who joined in the course either in the year 2007 or 2008 and completed in the year 2008 or 2009, are entitled for the additional incentive increment based on the scheme of the Government, that was in vogue.

8.Even though the appellants and the petitioner had acquired M.Phil degree after obtaining necessary permission and obtained incentive increment within the limit of two additional incentive increment, but, however, in view of the audit objection raised that since these Teachers



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have acquired M.Phil degree in distance education course from the Vinayaga Mission University, which is a deemed to be University and therefore, unless the distance education mode was approved by the Distance Education Council, which was the part of Indra Gandhi National Open University and if they have not obtained any approval, then the degree acquired by the Teachers is not an approved degree and thereby, they are not entitled for awarding additional incentive increment.

9. Based on the audit objection, the recovery was sought to be made from the Teachers by the Headmaster or the Chief Educational Officer, as the case may be. When the orders passed were put to challenge, the Writ Court by placing reliance on the decision arrived at by a Writ Court in the case of S.Sivan, referred supra, came to the conclusion that the M.Phil degree awarded by the Vinayaga Mission University is not a valid degree and therefore, the Teachers are not entitled for award of the additional incentive increment.

10. However, the order passed in the case of S.Sivan, referred supra, was challenged before the Division Bench in a batch of cases in W.A.No.



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2328 of 2018 and batch and the Division Bench, in which one of us (Justice **R.SURESH KUMAR**) was a party, by a common order, dated 04.08.2023, was pleased to set aside the orders passed by the Writ Court, dated 06.09.2018 in S.Sivan's case and allowed the Writ Appeals holding that the Teachers, who had studied in the Vinayaga Mission University during the relevant point of time, ie., from 2007 to 2009, in which period the University had enjoyed the approval or recognition from the Distance Education Council, Indra Gandhi National Open University, the audit objection raised by the department cannot be sustained. The Department was directed to restore the additional incentive increment to the Teachers, if they had been cancelled or stopped and also to repay the recovery, if any made.

11.Before the Division Bench, the appellants therein have relied on the notification issued by the Government of India, dated 19.08.2004, which reads as follows:

“In exercise of the powers conferred by Section 3 of the University Grants Commission 1956, the Central Government of the advice of the University Grants Commission, to declare that the following institutions are included under the ambit of Vinayaka Mission's Research Foundation, Salem (Tamil Nadu), a



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Deemed to be University for the... of the aforesaid Act with immediate effect.

- 1. Vinayaka Mission's Kirupananda Variyar Engineering College, Salem.*
- 2. Vinayaka Mission's College of Physiotherapy, Salem.*
- 3. Vinayaka Mission's Kirupananda Variya Arts and Science College, Salem.*
- 4. Vinayaka Mission's College of Pharmacy, Salem.*
- 5. Aarupadai Veedu Institute of Technology, Paiyanoor, Kanchipuram.”*

12.The order passed by the Indra Gandhi National Open University, dated 28.02.2007, was also relied on by the appellants therein before the Division Bench, which as follows:

“This has reference to your letter No.VMRF/SEC/FDE/2006 dated 30 th November, 2006 regarding approval of programmes offered through distance mode by Faculty of Distance Education, Vinayaka Mission's University. I am pleased to inform you that the Hon'ble Chairman, Distance Education Council, based on the recommendations made by the Expert Committee which visited the university on 4 th February, 2007, has granted recognition to the courses under offer by Faculty of Distance Education of your University through the distance mode for a period of 5 years w.e.f. the date of issue of this letter.”

13.Considering the above proceedings, the Division Bench, by order, dated 04.08.2023, had allowed the Writ Appeal. The relevant portion of the order is extracted hereunder for easy reference:

“23. In this context, it is to be noted that the stand of the



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UGC counsel was that, insofar as the approval that has been given by the DEC, IGNO in respect of the University or deemed to be University are concerned to have such Distance Education Course only at the head quarters and not beyond which, which means, the study centres that had been run by various Universities like the present University were not approved or recognized by the UGC.

24. During the relevant period i.e., from 2007 to 2012, the University was given institution wise recognition as stated by the learned counsel appearing for the UGC and from 2011 - 2012 , 2013-2014, the program wise recognition was given by the UGC.

25. Therefore, insofar as these teachers are concerned, they joined in the course either in the year 2007 or in the year 2008 and they completed either in the year 2008 or 2009 respectively. Since the course is one year duration they joined in 2007 and completed in 2008 and those who joined in 2008 had completed in 2009.

26. These two academic years or calendar years, the University had been enjoying the institution recognition and there is no contra materials produced before this Court that these teachers had been admitted only in study centres beyond the main campus of the University and completed the course only in the study centres and not at the main campus, therefore, to that extent the stand taken by the University that all these courses especially the M.Phil degree course during the relevant years were conducted by the University only at the main campus have to be accepted.

27. If we look at the impugned order, which was challenged before the Writ Court is concerned, the audit team has raised the objection to the following effect:

□1)திரு.சு.சிவன், முதுகலை ஆசிரியர்

இவர் எம்.பில் உயர்கல்வி பெற்றமைக்கு 30.12.09 முதல் ஒரு ஊக்க ஊதிய உயர்வு ரூ.530+530 திருமல்வாடி அ.மே.நி.பள்ளி தலைமை ஆசிரியரது ஆணை எண்.09/11/10 நாள் 20.12.10ன் படி அனுமதிக்கப்பட்டு அடிப்படை ஊதியம் ரூ.17670 லிருந்து ரூ.18730/-க்கு உயர்த்தப்பட்டுள்ளது. இவர் எம்.பில் உயர்கல்வியை சேலம் விநாயக மிஷன் தன்னாட்சி பல்கலைக்கழகத்தில் அஞ்சல் வழியில் பயின்றுள்ளார். இப்பல்கலைக்கழகம் அஞ்சல் வழியில் உயர்கல்வி வழங்க புதுடில்லி அஞ்சல் வழிக்கல்வி ஆணையத்தால் அங்கீகரிக்கப்பட்ட தணிகைக்கு முன்னிலைபடுத்தப்பட வேண்டும்.



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இயலாத நிலையில் அனுமதிக்கப்பட்ட ஊக்க ஊதியம் இரத்து செய்யப்பட வேண்டும். கிகையாக வழங்கப்பட்ட ரூ.30808 + படிகள் அரசுக் கணக்கில் திரும்ப செலுத்தப்பட வேண்டும்.”

28. *The audit team has stated that, the teachers concerned has been given the advanced incentive increment for having acquired the M.Phil higher qualification but whether the teacher has completed the said course and acquired the qualification in Vinayaka Missions University, if so, whether the said University was recognized or approved by the DEC, New Delhi and if so, the said order should be produced before the audit team and if no such order is produced then the Department has to cancel the advanced incentive increment allowed to these teachers.*

29. *Therefore, it was a condition imposed by the audit team that, if the DEC's order recognizing or approving the University viz., Vinayaka Missions University to conduct Distance Education Courses is made available, the advance incentive increment given to the teachers need not be interfered, provided if no such orders are produced, it should be cancelled.*

30. *Here, the fact remains that, insofar as the Vinayaka Mission's University is concerned, it has been given the recognition or approval by the DEC, IGNO by order dated 28.02.2007.*

31. *When that being so, even according to the audit team, since these teachers are entitled to get their advance incentive increment as their increment has been ordered already and was enjoyed by them it need not be stopped or cancelled.*

32. *This position, even though had been projected, the learned single Judge has rejected the writ petitions, where the learned Judge has considered the counter affidavit filed by the Government as well as the deemed to be University and ultimately concluded that these teachers are not entitled to get the advance incentive increment as allowed to them earlier in view of the stand taken by the Government that they are not entitled to get such incentive increment because the degree obtained by them through Distance Education Mode of the Vinayaka Missions University cannot be an approved or recognized or accepted.*

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*



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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.

35. In the result, the following orders are passed in these writ appeals:

That the impugned order passed by the writ Court dated 06.09.2018 is set aside. As a sequel, the impugned order that was challenged before the Writ Court in the respective petitions is also set aside to the extent that those teachers who had studied in the Vinayaka Mission's University during the relevant point of time i.e., 2007 to 2009 since had acquired the qualification during the period which the University also enjoyed the approval or recognition from the DEC, IGNO, the said objection raised by the audit Department would not be sustained. Therefore, on that ground, the incentive increment already allowed to these teachers need not be disturbed. If the increment already been allowed to these teachers have been cancelled or stopped by virtue of the order, which is impugned herein, the same shall be restored and the arrears to that effect shall be calculated and be paid to the teachers/appellants. To that extent, all these writ appeals are allowed. No costs. Connected miscellaneous petitions are closed.”



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14. In all the instant Writ Appeals and the Writ Petition, the Teachers, after obtaining prior permission, had joined the M.Phil degree course in the Vinayaga Mission University either in the year 2007 or in the year 2008 and they had completed the M.Phil degree course in the year 2008 or 2009, respectively and the additional incentive increment granted and paid to them was within the two incentive increment. In view of the orders passed by the Division Bench in S.Sivan case, referred supra, the impugned order passed by the Writ Court by placing reliance on the orders passed W.P.No. 42675 of 2016 and batch of cases, which were ultimately set aside, cannot be sustained and liable to be interfered with.

15. In view of the above discussion and the decision referred above, the impugned order passed by the Writ Court, dated 05.07.2022, in W.P(MD)Nos.20988 of 2021, 13322 of 2021 and 18000 of 2020 and also, the impugned order passed in W.P.(MD)No.7413 of 2023 are set aside. The incentive increment already allowed to these Teachers need not be disturbed and if the incentive increment already allowed to these Teachers have been cancelled or stopped, based on the impugned orders passed in the Writ



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Petition or by the order of the first respondent in the Writ Petition, the same shall stand restored and the arrears, if any, shall be calculated and be paid and in case if any recovery had been effected, the same shall also be repaid to the Teachers. The needful, as indicated above, shall be done by the respondents concerned within a period of six weeks from the date of receipt of a copy of this order.

16. With the directions, the Writ Appeals and the Writ Petition stand allowed to the extent indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**[R.S.K., J] & [G.A.M., J]
10.07.2024**

Internet : Yes/No
Index : Yes/No
NCC : Yes/No

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To

- 1.The Principal Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai – 9.
- 2.The Director of School Education,
O/o.The Director of School Education,
DPI Campus, Chennai – 6.
- 3.The Joint Director of School Education (Personnel),
O/o the Joint Director of School Education (Personnel),
DPI Campus, Chennai -6.
- 4.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Theni, Theni District.
- 5.The District Educational Officer,
O/o.The District Educational Officer,
Periyakulam, Theni District.
- 6.The Headmaster,
Government Higher Secondary School,
Theppampatti – 625 512.
- 7.The Regional Accounts Officer (Audit).
School Education, Tallakulam, Madurai – 625 002.
- 8.The Chief Educational Officer,
O/o.The Chief Educational Officer,
Ramanathapuram, Ramanathapuram District.
- 9.The District Educational Officer,
O/o.The District Educational Officer,
Paramakudi, Ramanathapuram District.

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10.The District Educational Officer,
Uthamapalayam, Theni District.

11.The Chief Educational Officer,
Nagerkovil, Kanyakumari District.

12.The District Educational Officer (Secondary),
Nagerkovil, Kanyakumari District.



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W.A.(MD)No.827 of 2022 and batch

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Common judgment made in
W.A(MD)Nos.827 and 838 of 2022 and 146 of 2024
and W.P.(MD)No.7413 of 2023

10.07.2024