



W.P(MD)No.22955 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2024

CORAM

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P(MD)No.22955 of 2022
and
W.M.P(MD)No.17055 of 2022

T.Vasuki

... Petitioner

Vs.

1.The Chief Educational Officer,
Theni District.

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

3.The Regional Accounts Officer,
School Education Department,
Madurai-625 002.

4.The Headmaster,
Government Higher Secondary School,
Jeyamangalam,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders of the fourth respondent in Na.Ka.No.



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261/2020, dated 19.05.2020 served on 23.09.2022, quash the same and consequently forbearing the respondents herein from making any recovery without following the guidelines issued by the Hon'ble Supreme Court in C.A.No.11527 of 2014 SLP(C)No.11684 of 2012, dated 18.12.2014 as well as G.O(Ms)No.286, dated 28.08.2018 and pass such further or other orders as this Court.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

This writ petition has been filed to quash the order, dated 23.09.2022 passed by the fourth respondent and consequently forbearing the respondents herein from making any recovery without following the guidelines issued by the Hon'ble Supreme Court in C.A.No.11527 of 2014 SLP(C)No.11684 of 2012, dated 18.12.2014 as well as G.O(Ms)No.286, dated 28.08.2018.

2. The case of the petitioner is that she was working in the fourth respondent School as B.T (Science) and she joined the said post in the fourth respondent School on 17.12.2012. She is qualified in M.Phil., degree and



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completed the same in Vinayaka Missions University, Salem in the year 2008-2009.

3. The said University is approved by the UGC and Institution deemed to be Universities under Section 3 of the UGC Act, 1956. The Government of India through Ministry of Human Resource Development [Department of Education] published a notification (44), dated 01.03.1995 in the Gazette of India in Part-I Section-1 as follows:

“On the recommendation of the Board of Assessment for Educational Qualifications, the Government of India has decided that all the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature, Institutions Deemed to be Universities under Section 3 of the UGC Act, 1956 and Institutions of National Importance declared under an Act of Parliament stand automatically recognised for the purpose of employment to posts and services under the Central Government, provided it has been approved by Distance Education Council, Indira Gandhi National Open University, K 76, Hauz Khas, New Delhi 110 016 and wherever necessary by All India Council for Technical Education, I.G. Sports Complex, I.P. Estate, New Delhi-110 002.”



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4. Pursuant to the above Gazette notifications, Vinayaka Missions University, India conducted Distance Education Council vide approval No.DEC/VMRF/07/255, dated 28.02.2007, issuing publication referring the above notification issued by the Government of India through Ministry of Human Resource Development [Department of Education], thereby declaring that Vinayaka Missions University degree / diploma / certificates are eligible for higher studies, public and private sector employment and service promotions. In the year 2010, the School Education Department has also sanctioned grant of incentive increment to a candidate for acquiring higher qualification of M.Phil., degree from Vinayaka deemed University, Salem and directed the Headmaster of the Government Higher Secondary School, Kamayagoundenpatti, Theni District in O.Mu.No.B2/7518/2010, dated 02.12.2020 observing that the said University has obtained approval for five years from 28.02.2007 to 27.02.2012 and prior to that, the Joint Director of Collegiate Education has also furnished information in his reply Na.Ka.No. 39225/J4/2009, dated 07.12.2009 that Salem Vinayaka Mission Open University being recognized by the UGC, New Delhi, all the courses offered by them are eligible for public employment. Thereafter, Vinayaka Mission also issued a public notice in reference No.VMRF/DDE/GEN/451, dated



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20.09.2021 that all the approved programs through distance education are eligible and stand automatically recognized for employment. Thereafter, the Government also issued G.O(Ms)No.39 PR & A.R(S) Department, dated 30.04.2014, making amendments to the Tamil Nadu State and Subordinate Services, General Rules in Rule-19 showing eligible Universities to get incentive increment for offering higher education. In the schedule thereto, Vinayaka Mission's Reserach Foundation, Salem-636 308 [deemed University] is shown as Sl.No.523.

5. The learned Counsel appearing for the petitioner would submit that the fourth respondent herein issued impugned order in Na.Ka.No.261/2020, dated 19.05.2020 and served on the petitioner on 23.09.2022 for recovery of incentive increment of Rs.54,856/- granted to her from the date of joining on 07.12.2012 for acquiring higher qualification of M.Phil in the Vinayaka Mission University, Salem during 2008-2009. The said impugned order of recovery has been issued without any show cause notice to the petitioner or providing reasonable opportunity to submit her explanation.



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6. The learned Counsel appearing for the petitioner relied on the judgment of the Hon'ble Division Bench of this Court in a batch of writ appeals in W.A.Nos.2328 of 2018 etc., dated 04.08.2023, wherein it is held that M.Phil., degree awarded by the Vinayaka Mission University between 2007 and 2012 were given institution wise recognition by the UGC and also to another writ petition in W.P(MD)No.18350 of 2020, the learned Single Judge of this Court after following the judgment of the said writ appeal, had allowed the writ petition on 22.11.2023.

7. The learned Counsel appearing for the petitioner also submitted that at the time of admission, this Court has granted interim order, dated 30.09.2022 staying the impugned order of recovery and the same is still in force. Hence, no recovery was made by the respondents.

8. The learned Government Advocate appearing for the respondents has submitted that the impugned order has been passed since the M.Phil., degree obtained by the petitioner is not from a recognised University and the Vinayaka Mission University, which is not recognised by the UGC. Hence, the order of recovery issued by proceedings of the Headmaster vide Na.Ka.No.52/17, dated



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20.09.2017 by which the amount which was paid as incentive increment for the period from 17.12.2012 has to be recovered from the petitioner.

9. Heard both sides and perused the materials available on record.

10. In the case on hand, it is admitted fact that the petitioner has completed M.Phil., degree in Vinayaka Missions University in the year 2008-2009. The learned Counsel appearing for the petitioner also drew the attention of this Court to refer notification, dated 09.03.2021 in reference No.VMRF/DDE/GEN/335 and the same is extracted hereunder:

“All our distance education programs offered including M.PHIL (CHE) were approved by the Distance Education Council, then the apex body for Distance education programs, as an Institutional Permission for running Distance Education Programs vide letter no. F.NO DEC/VMRF/07/2553, dated 28.02.2007 for the period 2007-2012.”

11. As per the above notification, the courses which were completed during the year 2007-2012 were regularised by UGC. The Hon'ble Division Bench of this Court in the judgment in a batch of writ appeals in W.A.Nos.2328 of 2018 etc., dated 04.08.2023, wherein it has been held that the persons, who



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have obtained degree from Vinayaka Mission University during the period 2007-2012 which has been recognised by the UGC are entitled for incentive increment and no recovery orders could be issued and the relevant para of the judgment is extracted hereunder and the same reads as follows:

“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



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the teachers / appellants. To that extent, all these writ appeals are allowed.”

12. It is also brought to the notice of this Court that following the Hon'ble Division Bench of this Court, the learned Single Judge has also passed an order in W.P(MD)No.18350 of 2020, dated 22.11.2023 following the judgment of the Hon'ble Division Bench of this Court and quashed the order passed by the respondent and directed the respondents to pay incentive increment for the petitioner and even if any amount has been recovered from the petitioner, the same shall be refunded to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

13. In view of the above facts and circumstances of the case and the ratio laid down by the Hon'ble Division Bench of this Court in a batch of writ appeals in W.A.Nos.2328 of 2018 etc., followed by the order of the learned Single Judge, the impugned orders of the fourth respondent in Na.Ka.No. 261/2020, dated 19.05.2020 served on 23.09.2022 is liable to be quashed. Accordingly, the same is hereby quashed.



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14. In the result, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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

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