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W.P.No.8015 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2025

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

W.P.No.8015 of 2025
and
W.M.P.No.8985 & 8986 of 2025

S.Ponnusamy

.. Petitioner

Vs.

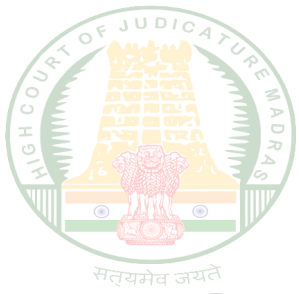
1.The Director General of Police,
Directorate of School Education,
College Road, DPI Campus,
Chennai 600 006.

2.The Regional Accounts (Audit) Officer.
School Education Department,
LLA Building 3rd Floor,
Big Bazaar Street, Town Hall,
Coimbatore 641 001.

3.The Chief Educational Officer,
Tirupur District,
Tirupur – 641 604.

4.The Headmaster,
Government High School,
Pandian Nagar, Tirupur 641 602.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in proceedings having Ref.No.Na.Ka.No.2002/E5/2020, dated 24.04.2021 raising audit objection to the grant of incentive to the petitioner who is working as B.T.Assistant in Government High School, Pandian Nagar, Tirupur for the M.Phil Degree obtained through correspondence mode and ordering recovery of the incentive granted to the petitioner from the salary of the petitioner from 18.01.2013 and quash the same as arbitrary and consequently direct the 1st respondent to continue to pay the incentive amount to the petitioner for having acquired M.Phil Degree through correspondence mode along with petitioner's salary.

For Petitioner : Ms.C.Uma

For Respondents : Ms.S.Mythreye Chandru
Special Government Pleader

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records of the second respondent's proceeding dated 24.04.2021 raising audit objection to the grant of incentive to the petitioner, who is working as B.T.Assistant in Government High School, Pandian



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Nagar, Tirupur for the M.Phil Degree obtained by the petitioner through correspondence from Periyar University.

2.In the affidavit filed in support of the writ petition, it had been contended that the petitioner had initially joined as B.T.Assistant in Panchayat Union Middle School in N.Kancheepuram, Tirupur. The petitioner's services were regularised on 01.06.2006. The petitioner was granted selection grade on and from 31.05.2016. Thereafter, petitioner obtained permission to pursue M.Phil degree from Periyar University in correspondence. She also acquired M.Phil and she had been granted second incentive. Later, audit objections had been raised since the petitioner had studied M.Phil through correspondence and not through regular system. Questioning that particular objection, the writ petition has been filed.

3.The issue is no longer res integra. The issue has been examined by a Division Bench of this Court, wherein, by an order dated 04.08.2023, in W.A.No.2328 of 2018 and batch of cases, the Division Bench 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



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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*



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*calculated and be paid to the teachers/appellants.
To that extent, all these writ appeals are allowed.
No costs. Connected miscellaneous petitions are
closed.”*

Following the judgment of the Division Bench, a learned Single Judge of this Court, by an order dated 30.01.2025, in W.P.No.37180 of 2024 had held as follows:

6. Recording the W.A.No.2328 of 2018 batch wherein the Hon'ble Division Bench held which as follows:

“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.



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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



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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.”

7. In similar matter in W.A(MD).No.1124 of 2023 the Division Bench of this Hon'ble Court by order dated 24.07.2023, the Hon'ble Court has held that:-

“2. The application for incentive was rejected only on the ground that the first respondent had not



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obtained prior permission of the authorities for undergoing higher education. Therefore, the learned Single Judge of this Court, allowed the Writ Petition, following the view taken by this Court by another Judge of this Court in J.Tamilrajan .vs. Department of School Education and others passed in W.P(MD)No.4019 of 2018. It is now admitted before this Court the same view of this Court was affirmed in W.A(MD)No.813 of 2021 in the case of the Director of School Education, DPI Campus, College Road, Chennai -6 .vs. G.Anandhi, dated 16.4.2021.

3. This Court find that the issue is no-more resintegra in view of the several judgments on this issue holding that the claim of teachers for incentive increment cannot be rejected on the ground that the concerned teacher had not obtained prior permission of the authorities for undergoing higher education. Since the issue has been settled by precedents, this Court is unable to countenance the arguments advanced by the learned counsel for the appellants.

It is true that there are several Government Order which have insisted the requirement of permission of the educational authorities for a teacher to undergo higher education. It is to be noted that the payment of



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incentive increment for acquiring higher qualification is to encourage the teachers to acquire higher qualification so that the quality of education will be higher. It may be true that the teacher while in service will have to obtain prior permission as per the Government Orders. Further it is to be noted that acquiring higher qualification while in service is not prohibited and it is only regulated. In such circumstances, acquiring higher qualification while in service without the permission is only an irregularity and that will not entitle the respondents to reject the benefit to the teachers.

4. Considering the overall policy of the Government, there is no reason to take a different view as expressed by the learned Single Judge. The decision relied upon by the learned Single Judge in the subject-matter in issue has been subsequently affirmed by the learned Division Bench of this Court. Hence this Court finds no merit in the Writ Appeal and the same is liable to be dismissed.

5. Accordingly, the Writ Appeal stands dismissed. No costs. The appellants are directed to comply with the direction of the learned Single Judge within a period of twelve weeks from the date of



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receipt of a copy of this judgment. Consequently connected Miscellaneous Petition is dismissed.”

8. In view of the aforesaid decision as well as various decisions rendered by the Hon'ble Apex Court and Hon'ble Division Bench, this Court is of the view that the petitioners is entitled for incentive increment who had acquired M.Phil degree and the same to be paid. It is also to be noted that the incentive increment cannot be rejected on the ground that they have not obtained prior permission of the authorities for undergoing higher education and also regarding the M.Phil degree through distance mode / part time mode is not eligible for incentive increment. Further, the fourth respondent till date has not made any recovery and hence no other issue to the effect regarding the eligibility. Hence, the petitioner is eligible for incentive from the date of 18.01.2013.

9. Accordingly, this writ petition is disposed of on the above terms. No costs. Consequently, the connected writ miscellaneous petitions are closed.



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C.V.KARTHIKEYAN,J.

sli

4.In view of the reasons stated which also enures to the writ petitioner, it is held that the writ petitioner is entitled for second incentive increment as originally granted. The writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are also closed.

sli

19.03.2025

Index:Yes/No

Internet:Yes/No

To

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College Road, DPI Campus,
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