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W.P.No.22535 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2025

**CORAM
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

**W.P.No.22535 of 2025
and
W.M.P.Nos.25357 & 25361 of 2025**

J.Ezhilarasan

... Petitioner

Vs.

1. The Director of School Education (Personnel),
Directorate of School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Divisional Accounts Officer (Audit),
Directorate of School Education,
School Education Department,
LLA Building, 3rd Floor,
Big Bazaar Street, Town Hall,
Coimbatore - 641 001.
3. The District Educational Officer,
Office of the District Educational Office,
Cheyyar, Thiruvannamalai District - 604 407.
4. The Headmaster,
Government High School,
Alliyandal,
Thiruvannamalai District - 604 503.

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking for an issuance of writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in proceedings having Ref.Na.Ka.3235/E18/2019 dated 29.01.2019, raising audit objection to the grant of incentive to the petitioner who is working as B.T.Assistant in the Government High School, Alliyandal, Thiruvannamalai District, for the M.Phil Degree obtained through distance mode and ordering recovery of the incentive granted to the petitioner from the salary of the petitioner from 13.09.2016 and quash the same as arbitrary and consequently direct the respondents to continue to pay the incentive amount to the petitioner for having acquired M.Phil Degree through part time mode along with petitioner's salary.

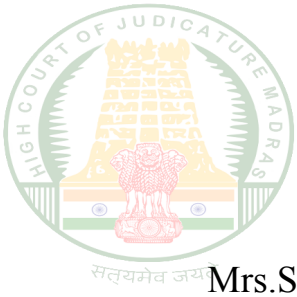
For Petitioner : M/s.C.Uma

For Respondents : Mrs.S.Mythreye Chandru

Special Government Pleader for R1 to R4

ORDER

The instant writ petition is filed challenging the proceedings of the second respondent dated 29.01.2019, raising audit objection to the grant of incentive to the petitioner, who is working as B.T.Assistant in the fourth respondent School, for obtaining M.Phil degree through distance mode and quash the same as arbitrary and consequently direct the respondents to continue to pay the incentive amount to the petitioner for having acquired M.Phil Degree through part time along with petitioner's salary.



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2. Heard Mrs.C.Uma, learned Counsel for the petitioner and Mrs.S.Mythreye Chandru, learned Special Government Pleader appearing for the respondents.

3. The learned Counsel for the petitioner would submit that the petitioner have obtained M.Phil Degree and entitled for an incentive. However, by following a wrong Government Order, the Auditing Authority has ordered to revise the incentive to the petitioner and also directed the School Authorities to recover the excess amount from the petitioner. It is the submission of the petitioner that the applicable Government Order is G.O.Ms.No.18, School Education (E2) Department dated 18.01.2013, wherein the procedures have been provided to grant second incentive to M.Phil., and Ph.D. holders.

4. The said contention was fairly conceded by the learned Special Government Pleader and would further submit that this Court already in WP.No.8015 of 2025, decided the similar issues, by setting aside the recovery order. For ready reference, the same is extracted hereunder:-



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“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:

“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.

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



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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.”

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.

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



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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.”

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 obtained prior permission of the authorities for undergoing higher



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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 res integra 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 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



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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 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.

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.”



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5. Since the issue of granting incentive for M.Phil holders becomes no longer *res integra* in view of the above judgement and the petitioner is entitled for an increment, which has already been granted in his favour.

Accordingly, the Writ Petition is allowed by setting aside the impugned order in Ref.Na.Ka.3235/E18/2019 dated 29.01.2019. There shall be no order as to costs. Consequently, connected WMPs are also closed.

25.06.2025

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Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

1. The Director of School Education (Personnel),
Directorate of School Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Divisional Accounts Officer (Audit),
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C.KUMARAPPAN, J.

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3. The District Educational Officer,
Office of the District Educational Office,
Cheyyar, Thiruvannamalai District - 604 407.
4. The Headmaster,
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