IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.34208 of 2019 and
W.M.P.No.34840 of 2019 and
W.M.P.No.2627 of 2024

K.P.Umamaheswari ... Petitioner

Vs.

1.The Joint Director of School Education,
Government of Tamil Nadu,
DPI Complex,
Nungambakkam, Chennai.

2.The Chief Educational Officer,
Government of Tamil Nadu,
Krishnagiri,
Krishnagiri District.

3.The Head Master,
Government Boys Higher Secondary School,
Uthangarai, Krishnagiri District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in connection with the impugned recovery notice dated 30.10.2019 of the third respondent and quash the same.

For Petitioner : Mr.K.Thiruvengadam

For Respondents : Mrs.P.Rajarajeswari, GA

ORDER

This Writ Petition has been filed to call for the impugned recovery order dated 30.10.2019 of the third respondent and quash the same.

2. Heard Mr.K.Thiruvengadam, learned counsel for the petitioner, Mrs.P.Rajarajeswari, learned Government Advocate for the respondents and perused the materials available on record.

3. The petitioner joined as Computer Instructor in the third respondent School in the year 2008. She has also completed M.Phil., B.Ed. with the base of B.E. graduation in Computer Science and Engineering.

4. As per the Government Orders issued in G.O.Ms.No.23, Finance (Pay Cell) Department dated 12.01.2011 and G.O.Ms.No.263, Finance

(Pay Cell) Department dated 22.07.2013, she has been given with the benefit of a hike in the salary and incentive for acquiring M.Phil degree. However, the impugned notice has been given for recovery of the incentive increment paid to her citing the audit report. Hence, the petitioner has filed this Writ Petition to quash the same.

5. The learned counsel for the petitioner submitted that the petitioner is entitled to get incentive benefit for her M.Phil degree as per G.O.Ms.No.23 dated 12.01.2011 and G.O.Ms.No.263 dated 22.07.2013.

6. The learned Government Advocate for the respondents submitted that as per the Government Order in G.O.Ms.No.91 dated 03.04.2009, the Government of Tamil Nadu issued orders declaring that M.Phil and Ph.D degrees obtained through Correspondence Education / Distance Education / Open University System are not eligible for Government appointments and appointments of lecturers in Colleges/Universities including Self Financing Colleges. As the petitioner had obtained M.Phil degree through Open University System in Vinayaka Missions Deemed University, the impugned notice has been given for recovery. The said degree has not got the approval or recognition from the Joint Committee of UGC, AICTE and DEC. Hence, the petitioner cannot be given with the benefit of incentive increment. As the audit has raised objection with regard to the sanction of increment for M.Phil degree which was not recognised, the recovery notice has been issued by citing reference to G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018.

7. The petitioner did not suppress the fact that she has acquired M.Phil degree from Vinayaka Missions Deemed University and has been allowed to get incentive increment from 18.08.2010. But, the notice of recovery has been issued only on 30.10.2019.

8. The learned counsel for the petitioner submitted that similar issue has already been dealt in the judgment of the Division Bench of this Court held in ***W.A.No.2328 of 2018 etc. batch dated 04.08.2023 (S.Sivan Vs. The Regional Accounts Officer (Audit), Department of***

School Education, Coimbatore and Others) and it is held that the Government Order in G.O.Ms.No.91 dated 03.04.2009 is applicable only for Government appointments and not for acquiring higher qualification by the teachers for getting equal incentive. In this regard, it is appropriate to extract the relevant part of the judgment in ***W.P.No.22645 of 2023 dated 13.09.2023 (K.Sumithra Vs. The Regional Accounts Officer (Audit), Coimbatore and Others)***.

> *"5.This issue is no longer res integra. A similar issue involving the same 5th respondent University with regard to an Audit Objection, was earlier dealt with by the Division Bench of this Court elaborately in a batch of Writ Appeals in W.A.Nos.2328 of 2018, etc. batch [S.Sivan v.The Regional Accounts Officer (Audit), Department of School Education, Coimbatore and others], wherein, the Division Bench, by judgment dated 04.08.2023, has held as follows :*
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> *"17.Mr.B.Rabu Manohar, learned Standing Counsel appearing for the UGC, on instructions would submit that, initially the DEC, IGNO was the authority to grant approval or recognition to deemed to be Universities or any other University to conduct Distance*

Education programs. Subsequently, that has been taken at the hands of the University Grant Commission i.e., UGC.

18.He would also submit that, so far as the relevant period of time since it was in the realm of DEC, IGNO, the order passed by the IGNO dated 28.02.2007 granting such recognition/approval to the Vinayaka Missions University to run the Distance Education Courses for five years period is institution based approval or recognition.

...

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

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."

6.On a reading of the above judgment, it is seen that the Division Bench has clearly held that 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, since the said Government Order is only applicable for Government appointments.

7.In the light of the judgment of the Division Bench of this Court cited supra, when the petitioner has obtained her M.Phil Degree from the 5th respondent/Vinayaga Missions University during the relevant point of time, i.e., 2007 to 2009, the time during which the University had approval and recognition as per the said judgment of the Division Bench, the impugned order passed by the 1st respondent raising Audit Objection to the grant of second incentive to the petitioner based on G.O.(Ms) No.91, Higher Education (K2) Department, dated 03.04.2009, and also seeking consequential recovery of incentive already granted to the petitioner, cannot be sustained and therefore, the impugned order stands quashed."

9. In the judgment of the Division Bench (cited supra), it is made clear that UGC has given institution wise recognition between the year 2007 and 2012 and the petitioner had obtained degree in the year 2009.

The M.Phil degree obtained by the petitioner should be deemed to be a degree offered by an approved institution, because the Vinayaka Mission University which is a deemed University should also be considered as recognised institution under UGC. In the above order, it is made clear that programme wise recognition was given by UGC only from the year 2011-12, 2013-14. As the petitioner has completed her course in the year 2009 itself and she was sanctioned with the incentive in the year 2010, it is not fair on the part of the third respondent to issue notice calling for explanation with regard to recovery of incentive increment already granted. As stated already, the Government Order in G.O.Ms.No.91 dated 03.04.2009 is applicable only for Government appointments and not for allowing incentive increment for teachers who have acquired higher qualification.

10. In view of the above observation, **this Writ Petition is allowed** and the impugned recovery notice dated 30.10.2019 issued by the third respondent is set aside. In the event of recovery, if any, already made, the same shall be refunded to the petitioner and it is needless to state that the petitioner should be continued to be given with incentive increment without any break. No costs. Consequently, connected miscellaneous petitions are closed.

17.03.2025

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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