



W.P.No.38383 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.38383 of 2024
and W.M.P.No.41567 of 2024

D.Subagar

... Petitioner

-VS-

1.The Director of School Education (Personnel),
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.

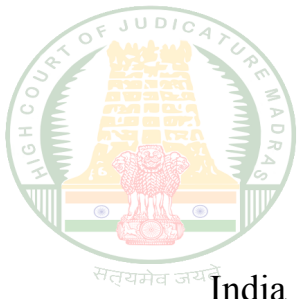
2.Financial Advisor & The Principal Accounts Officer,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Vellore District,
Vellore – 631 001.

4.The Headmaster,
Government Higher Secondary School,
Thattapparai, Gudiyatham Taluk,
Vellore District – 635 601.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of



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India to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in proceedings having Ref.No.Na.Ka.No.053130/AaKaTha/2023 dated 16.05.2024 raising audit objection to the grant of incentive to the petitioner who is working as B.T Assistant in the Government Higher Secondary School, Thattapparai, Gudiyatham Taluk, Vellore 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 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 part time along with the petitioner's salary.

For Petitioner : Ms.C.Uma

For Respondents : Mrs.S.Mythreye Chandru,
1 to 3 Special Government Pleader
(Education)

For Respondent 4 : No Appearance

ORDER

This petition is filed seeking to issue a Writ of Certiorarified

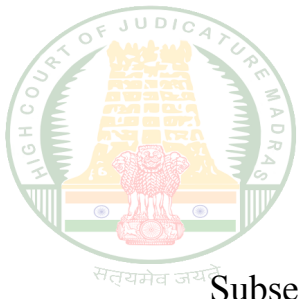


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Mandamus, calling for the records of the 2nd respondent in proceedings having Ref.No.Na.Ka.No.053130/AaKaTha/2023 dated 16.05.2024 raising audit objection to the grant of incentive to the petitioner who is working as B.T Assistant in the Government Higher Secondary School, Thattapparai, Gudiyatham Taluk, Vellore 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 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 part time along with the petitioner's salary.

2. The case of the petitioner is that, he was appointed as a B.T Assistant in Government High School, Jangalapuram, Thirupathur District, now he is working in Government Higher Secondary School, Thattapparai, Vellore District on 07.10.2005. The petitioner was granted permission by the first respondent to pursue M.Phil degree and completed M.Phil in the year 2010. For the same the fourth respondent sanctioned salary increment in his proceedings Na.Ka.No.55/2009 dated 30.03.2009.



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Subsequently, second incentive for M.Phil degree was given to the petitioner with effect from 18.01.2013. The second respondent issued proceedings vide Ref.No.Na.Ka.No.053130/AaKaTha/2023 dated 16.05.2024 raising audit objections for the grant of incentive for M.Phil degree which was obtained through part time mode. Further the audit department directed the fourth respondent to compute the loss suffered by the Government for the grant of salary incentive to the petitioner and ordered to recover the said loss from the salary of the petitioner. Challenging the same the petitioner came up with the present writ petition.

3. The learned counsel for the petitioner submits that the Alagappa University, Karaikudi is State University Accredited with A grade by NAAC and duly recognized by UGC. Further, the learned counsel for the petitioner relied upon the Judgment of this Court in supporting their contentions in W.A.No.2328 of 2018, wherein the Division Bench allowed writ appeal not to cancel or stop the increment already given. The petitioners are entitled for the said incentive and prayed to allow the writ petition.



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4. The learned Special Government Pleader contends that the Internal audit wing of the school education department took the view that the Government Letter No.268/Higher Education (K2) Department dated 29.08.2006 and GO No.91 Higher Education (K2) Department dated 03.04.2009 and the proceedings of the Director of School Education in reference No.Na.Ka.No.081477/KE/2014 dated 27.10.2014 from the academic year 2007-08 the degrees by Correspondence / Distance Education Mode / Open University / Part time are ineligible for appointment in Government service. Hence the Government of Tamil Nadu has not granted permission to obtain the M.Phil / Ph.D degree in correspondence / Part Time mode and having obtained the higher education degree through unrecognised mode the petitioner's incentive increments from 18.01.2013 is withdrawn. In this case, the petitioner has obtained the M.Phil which cannot be accepted as an appropriate degree and prayed for dismissal of the writ petition.

5. The learned counsel for the respondents would contends that the petitioner also cannot ask for quashing the impugned order on the basis of



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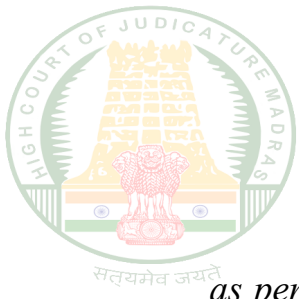
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Government G.O.(1D) No.18 dated 18.01.2013 the petitioners should not be entitled to even a grade for appearing in the said courses, but only from the date of the G.O passed in the year 2013 that is 18.01.2013 onwards. Further, it was submitted by the respondent's counsel that the authorities have taken the matter up to Supreme Court in SLP and that SLP is dismissed.

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,



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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*



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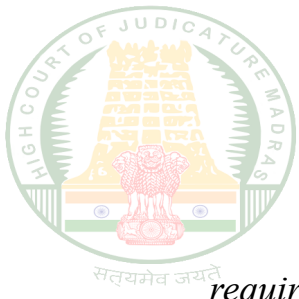
allowed. No costs. Connected miscellaneous petitions are closed.”

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 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



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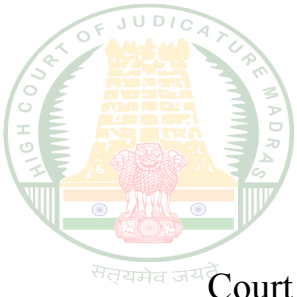
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requirement of permission of the educational authorities for a teacher to undergo higher education. It is to be noted that the payment of incentive increment for acquiring higher qualification is to encourage the teachers to acquire higher qualification 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 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



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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.

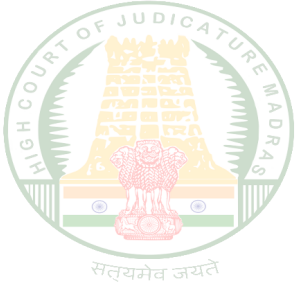
9. Accordingly, this writ petition is disposed of on the above terms.

No costs. Consequently, the connected writ miscellaneous petitions are closed.

30.01.2025
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Index: Yes/No
Speaking order/Non-speaking order
rna

To



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V.BHAVANI SUBBAROYAN,J.

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