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W.P.No.42865 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.42865 of 2025 and
WMP.Nos.47927 & 47929 of 2025

M.Dhamotharan

... Petitioner

Vs.

1.THE DIRECTOR OF SCHOOL EDUCATION (SERVICE DIVISION),
DIRECTORATE OF SCHOOL EDUCATION, DPI CAMPUS,
COLLEGE ROAD, CHENNAI-600 006.

2.THE DIVISIONAL ACCOUNTS OFFICER (AUDIT),
SCHOOL EDUCATION DEPARTMENT, LLA BUILDING,
3RD FLOOR, BIG BAZAAR STREET,
TOWN HALL, COIMBATORE- 641 001.

3.THE CHIEF EDUCATIONAL OFFICER,
KRISHNAGIRI DISTRICT.

4.THE HEADMASTER,
GOVERNMENT HR.SEC. SCHOOL,
ATTHIPADI, KRISHNAGIRI DISTRICT.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, Calling for the records of the 4th respondent in proceedings dated 16.09.2025 in Na.Ka.NO.75/ 2025 following the audit objection with respect to grant of incentive to the petitioner, working as postgraduate teacher, Atthipadi Government Hr.Sec., School, quash the same and consequently direct the

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respondents to continue to pay the incentive amount to the petitioner for having acquired M.Phil Degree through part time

For Petitioner : Mr.S.N.Subramani

For Respondents : Mrs.S.Mythreye Chandru,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the fourth respondent dated 16.09.2025 thereby informing the audit objection to grant incentive to the petitioner.

2. The petitioner was appointed as Block Resource Teacher Educator(BRTE) on 27.03.2003. He was promoted as postgraduate teacher on 25.08.2015 and he completed M.A. History during October 2007 in Madras University and he completed M.A., English during 2009 in Annamalai University and also completed M.Phil degree (History) from Vinayaka Mission University during December 2009. Therefore, the petitioner sought for such additional incentive increment which was considered and granted by the respondent for the year 2017-2018 and 2018-2019. However, the impugned order has been passed by the fourth respondent dated 16.09.2025 thereby informing the audit objection to

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grant incentive to the petitioner.

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3. GO.Ms.No.91 Higher Education (K2) Department dated 03.04.2009 was issued, which qualifies any person who have obtained their degree through distance mode / open university / part time etc to be appointed in Government service. It was dealt with by this Court in WA.No.2328 of 2018, etc. and by order dated 04.08.2025 this Court observed 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



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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."

4. Following the above decision of this Court, the Hon'ble Division Bench of Madurai High Court has observed in W.A. (MD) No.518 of 2024 vide order dated 01.04.2024 while dismissing the Writ Appeal preferred by the Department as follows:-

"11. Therefore, the said consideration which was made by the Division Bench in Sivan-s case (cited supra) is pertaining to the degree secured by many candidates from Vinayaga Mission University during the relevant point of time through correspondence education whether would be entitled to seek for advance incentive increment or not.



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Therefore, the declaration what has been made under G.O(Ms). No.91 cannot be applied to the case of advance incentive increment seekers like the writ petitioner/1st respondent. Therefore, such an argument advanced by the learned Additional Government Pleader is to be rejected and accordingly rejected..

12. Resultantly, since the issue is covered by the said Division Bench judgment in Sivan's case, the order passed by the Writ Court which is impugned herein dated 22.11.2023 made in W.P(MD)No. 18350 of 2020 is to be sustained. Accordingly, this Writ Appeal is to be rejected and hence it is dismissed. No costs. In view of the dismissal of the writ appeal, the direction given by the Writ Court through the impugned order shall be complied with by the appellants within a period of three months from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petition is closed".

5. Further, in WA (MD) 686 of 2024 following the above decision of this Court, the Hon'ble Division Bench of Madurai Bench of this Court has observed vide order dated 16.04.2024 dismissing the Writ Appeal preferred by the Department as follows:



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4. *Therefore, the issue that has been raised in this appeal, has already reached finality. Therefore, it is no more res integra.*

6. *Therefore, this Writ appeal fails and accordingly it is dismissed. The order of the learned Judge shall be complied with. within a period of two months from the date of receipt of the copy of this Judgment. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.*

6. The SLP No.34679/2024 was preferred against WA MD No. 686/2024 by the Government of Tamil Nadu. The Apex Court vide its order 11.11.2024 passed the following order:

“We are not inclined to interfere with the impugned judgment and order of the High Court, hence, the special leave petitions are dismissed.

7. Thus it is clear that GO.Ms.No.91 Higher Education (K2) Department dated 03.04.2009 cannot be applied to the case of advance incentive increment like the petitioner herein. Hence, the order of the second respondent to recover the incentive increment is illegal and



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arbitrary.

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8. In view of the above, the petitioner is entitled for grant of incentive increment for M.Phil degree. Further, as per GO.286 dated 28.08.2018 issued by the Finance Pension Department, the authorities are restrained from recovering excess payment which have been made for a period in excess five years before the order of recovery. It is also required to issue show cause notice to the concerned employee to enable the employee to represent against the recovery. However, the above procedure has not been followed in the case of the petitioner before passing order of recovery.

9. In view of the above, the impugned order cannot be sustained and the same is liable to be set aside. Accordingly, the impugned order dated 16.09.2025 is set aside and this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

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