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W.P.No.44349 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2025

CORAM :

THE HONOURABLE MR JUSTICE G.K.ILANTHIRAIYAN

W.P.No.44349 of 2025

and

W.M.P.Nos.49476 & 49481 of 2025

P.Vetriselvan

... Petitioner

Vs.

1.The Director of School Education (Service Division)
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 Regional Accounts Officer (Audit)
School Education Department,
LLA Building 3rd Floor,
Big Bazaar Street, Town Hall,
Coimbatore-641 001.

4.The Chief Educational Officer
O/O.The Chief Educational Office,
Salem District,
Salem-636 001.

5.The Headmaster,
Government Girls Higher Secondary School,
Thalaivasal,
Salem District-636 122.

... Respondents



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Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings 2nd respondent in proceedings having Ref. No. Na.Ka. No.053130/ Aa.Ka. Tha/ 2023 dated 16.10.2023 and proceedings of the 3rd respondent having Ref. No. Na.Ka. No.436/ E9/ 2019 dated 03.03.2020 raising audit objection to the grant of incentive to the petitioner who is working as Headmaster in Government Higher Secondary School, Unathur, Salem District for the M.Phil Degree obtained and ordering recovery of the incentive granted to the petitioner from the salary of the petitioner from 01.10.2007 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 distance mode along with petitioner's salary.

For Petitioner : M/s.C.Uma

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

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 03.03.2020 and of the second respondent 16.10.2023, thereby raising audit objection to grant incentive to the petitioner and also ordering for recovery of incentive increment from the salary of the petitioner.



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2. The petitioner was appointed as PG Assistant and subsequently promoted to Headmaster. Thereafter, the petitioner had completed M.Phil degree in the year 2007 from Periyar University, Salem after obtaining necessary permission from the 5th respondent dated 08.08.2006. When the petitioner was promoted as Headmaster, he was sanctioned salary incentive increment for obtaining M.phil degree by the proceedings dated 10.10.2006. While being so, by the proceedings dated 03.03.2020, the third respondent addressed the fifth respondent on the subject related to audit report for the years 2017 to 2019 and had observed that in view of Government Order and letter from the academic year 2007 to 2008, degrees obtained by correspondence / distance education mode /open university / part time mode are ineligible for appointment in Government service. Therefore, the Government of Tamilnadu did not grant any permission to obtain M.phil / P.hd degree in correspondence / part time mode. Therefore, the petitioner's increment was withdrawn from 01.10.2007 and the fifth respondent was directed to compute the loss suffered by the Government for grant of salary incentive for M.phil degree to the petitioner. However, the fifth respondent did not make any recovery. Thereafter the second respondent issued proceedings dated 16.10.2023 with related to audit report for the year 2021-2022 to 2022-2023 and the Audit Department raised objection that the petitioner has not obtained any



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permission from the Head of the Department to pursue his M.phil degree.

Therefore, the fifth respondent ordered for recovery of incentive increment from the petitioner's salary.

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 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 because, the



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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. 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



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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 High Court has observed vide order dated 16.04.2024 dismissing the Writ Appeal preferred by the Department as follows:

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



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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. Therefore, the issue is no more *res integra* and the petitioner is entitled for grant of second incentive increment for his M.Phil qualification which was acquired after due permission. Hence, the order of the second respondent to recover the incentive increment is illegal and arbitrary. Insofar as obtaining permission for higher education, the Hon’ble Division Bench of this Court held in WA.No.1124 of 2023 by an order dated 24.07.2023 as follows:

"2. The application for incentive increment was rejected only on the ground that the first respondent had not obtained prior permission of the authorities for undergoing



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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 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



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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 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 order of recovery. It also requires 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.



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9. At this juncture, it is the submission of the learned Special Government Pleader appearing for the respondents that as per GO.(1D) No.18 School Education Department dated 18.01.2013, the petitioner is entitled for incentive increment only from 18.01.2013. In this regard, it is relevant to rely upon the judgment of this Court rendered in WP.No.22412 of 2013, etc batch dated 27.07.2023, wherein it is held as follows:

“13. I find some force in the submissions made by the learned counsel for the petitioner. F.R.26 Ruling 2 reads as follows:-

“(2) In cases where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed”.

14. What has been ordered in G.O.(1D).No.18, cannot be given a go-by by way of clarification and the object of the Government Order, cannot be watered down through a letter. As a matter of fact, G.O.(1D).No.18 is in the mode of an amendment to an earlier G.O.Ms.No.1024



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School Education Department dated 09.12.1993 wherein, the higher educational qualification of M.Phil and Ph.D were inserted along with M.Ed. Thus, the very reasoning given by the respondents in the impugned order that G.O. (1D).No.18 will have only a prospective effect, cannot be sustained, in view of the fact that this Government Order is only an expansion of the earlier existing G.O.Ms.No.1024 dated 09.12.1993. Even otherwise, as pointed out by the learned counsel for the petitioners, a Government Letter cannot overrule the Government Order.

10. In view of the above, the impugned orders cannot be sustained and the same are liable to be set aside. Accordingly, impugned orders dated 03.03.2020 and 16.10.2023 are 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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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes / No
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G.K.ILANTHIRAIYAN.,J.

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To:

1.The Director of School Education (Service Division)

Directorate of School Education,
DPI Campus, College Road,
Chennai-600 006.

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

3.The Regional Accounts Officer (Audit)

School Education Department,
LLA Building 3rd Floor,
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