



W.P.(MD).Nos.15651 of 2022 and 17007 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 08.03.2024**

**CORAM**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD).Nos.15651 of 2022 and 17007 of 2023**  
**and WMP(MD)Nos.11260, 11261 of 2022**

Dr.S.Jeyashri

... Petitioner in both petitions

**Vs**

1. Mother Teresa Womens University,  
Rep by its Vice Chancellor,  
Kodaikanal, Dindigul District.
2. Mother Teresa Womens University,  
Rep by its Registrar,  
Kodaikanal, Dindigul District.

... Respondents in both petitions

**Prayer in WP(MD)No.15651 of 2022:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Order in Letter No. 1G/WU/RR/Estt/2022 dated 7.3.2022 and the Impugned Order in Letter No. 1G/WU/RR/Estt/2022 dated 8.4.2022 and the consequential Impugned Order in Letter No. 1G/WU/RR/Estt/2022 dated 31.5.2022 on the file of the Respondent no. 2 and quash the same as illegal and consequently for a direction, directing the respondents to provide protection to the petitioner guaranteed Under Section 20(4) of the Rights of Persons With Disabilities Act



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2016 by keeping the Petitioner in supernumerary post and disburse the monthly salary from August 2021 to till date along with other consequential benefits within the time stipulated by this Court.

**Prayer in WP(MD)No.15651 of 2022:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to provide the arrears of subsistence allowance for the period of suspension i.e. from August 2021 to March 2022 to the petitioner within the time stipulated by this Court.

For Petitioner : Mr. Aswin Rajasimman

For Respondents : Mr.N.Shanmuga Selvam  
Standing Counsel

### **ORDER**

The present writ petitions have been filed challenging the impugned Order in Letter No. 1G/WU/RR/Estt/2022, dated 7.3.2022 and the impugned Order in Letter No. 1G/WU/RR/Estt/2022, dated 8.4.2022 and the consequential impugned Order in Letter No. 1G/WU/RR/Estt/2022, dated 31.5.2022 on the file of the Respondent no. 2 and consequently directing the respondents to provide protection to the petitioner guaranteed under Section 20(4) of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act') by keeping the Petitioner in supernumerary post and disburse the monthly salary from August 2021 to till date along with other consequential



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benefits and also seeking a direction to the respondents to provide the arrears of subsistence allowance for the period of suspension i.e. from August 2021 to March 2022 to the petitioner within the period stipulated by this Court.

2.Heard, the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents. Perused the materials on record.

3.(i).On 27.03.2015, the petitioner was appointed as Assistant Professor in the Mother Teresa Women's University, Department of Mathematics. Due to fracture in her right toe, from 15.06.2020 she was not able to go to the University. Thereafter, her health condition got deteriorated and she had also developed lot of medical problems such as hypertension, dilated cardiomyopathy, diabetic nephropathy etc.

(ii).Under such circumstances, the second respondent had visited the petitioner with a charge memo, dated 04.08.2021 and initiated disciplinary proceedings against her for her unauthorised absence from 15.06.2020 and the same is still pending. Despite the petitioner having submitted her medical leave letter along with medical certificate, the second respondent without accepting



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the same, referred her to the Medical Board, vide letter, dated 08.12.2020.

Pursuant to the same, the petitioner appeared before the Medical Board and after examining her, the Medical Board certified that she is a person with 100% visual impairment and 15% locomotor disability. On receipt of the same, her medical leave application was accepted by the second respondent and provided her with medical leave.

(iii). While so, vide order, dated 04.08.2021, the second respondent had passed an order of suspension. Despite the petitioner had submitted a detailed representation on 18.09.2021 requesting to drop the disciplinary proceedings initiated against her, by invoking protection under Section 20(4) of the Rights of Persons with Disabilities Act, 2016 and the same was rejected by the second respondent, vide order, dated 08.04.2022. However, the suspension order was revoked by the second respondent and she was asked to join duty vide impugned orders, dated 07.03.2022 and 31.05.2022. Since the petitioner is in a bed ridden condition, she could not join the duty. Challenging the impugned orders, dated 07.03.2022 and 31.05.2022 and rejection order, dated 08.04.2022, the writ petition in WP(MD) No.15651 of 2022 came to be filed. Subsequent to the same, the petitioner has also filed WP(MD) No.17707 of



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2023 seeking to direct the respondents to provide arrears of subsistence allowance for the period of suspension from August 2021 to March 2022.

4.The learned counsel for the petitioner submitted that the Medical Board has already examined the petitioner and certified her disability. Therefore, she is entitled to get protection under Section 20(4) of the Act. Considering the same, the respondents ought not to have passed the impugned order of suspension, dated 04.08.2021. The respondents ought to have positively considered the representation of the petitioner seeking protection under Section 20(4) of the Act. Elaborating the mandates of Section 20 of the Act, the learned counsel for the petitioner insisted to allow the writ petition.

5.Per contra, the learned Standing Counsel appearing for the respondents filed a counter affidavit and submitted that the petitioner was suspended on 04.08.2021, due to unauthorised absence from 15.06.2020, since the same amounts to grievous misconduct. That apart, her absence caused inconvenience to the administration of the University and the petitioner has also failed to attend the Medical Board for medical examination. The representation of the petitioner seeking protection under Section 20(4) of the



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Act came to be rejected by the second respondent for the reason that the post of Assistant Professor itself is now allowed to 100% visually disabled person and as per Section 20 of the Act. Further, if it is not possible to adjust against the employee against any post, she may be kept on a supernumerary post until a suitable post is available or till the date of superannuation. That apart, seeking protection under Section 20 of the Act cannot be considered and on that basis, pressed for dismissal of the writ petition.

6.The learned counsel for the petitioner responded by saying that 100% visual impairment sustained by the petitioner is due to chronic renal failure, for which, right jugular catheterisation and hemodialysis were done. That apart, she is completely in a bed ridden condition and her movement is almost fully paralysed. In view of the same, she could not take up the post of Assistant Professor any more.

7.Section 20(4) of the Act reads as follows:

***“20.Non-discrimination in employment:***

...

*(4).No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service.*



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*Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits.*

*Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.”*

On a careful reading of the said provision would mandate that no Government establishment shall dispense with or reduce in rank, an employee, who acquires a disability during his or her service. Even in the instant case, due to various ailments, the petitioner has succumbed to gradual illness, resulting in 100% visual impairment and 15% locomotor disability preventing her from attending the job.

8. In view of the same, this Court hereby quash the impugned orders, dated 07.03.2022, 31.05.2022 and 08.04.2022 and direct the petitioner to appear before the Medical Board in Rajaji Government Hospital, Madurai within a period of two weeks, from the date of receipt of copy of this order. On receipt of the Medical Report of the Board, the respondents University is directed to pass appropriate orders by following the mandates of Section 20 of the Act within a period of four weeks, thereafter. In the meanwhile, the



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respondents University is directed forthwith to release the subsistence allowance to the petitioner from August, 2021 to March, 2022.

9. With the above directions, these writ petitions stand allowed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are allowed.

**08.03.2024**

NCC : Yes / No

Index : Yes / No

Internet : Yes

**PNM**

To

1. The Vice Chancellor, Mother Teresa Womens University,  
Kodaikanal, Dindigul District.
2. The Registrar, Mother Teresa Womens University,  
Kodaikanal, Dindigul District.



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**L.VICTORIA GOWRI, J.**

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**ORDER IN**  
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