

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No.1296 of 2020**  
**Decided on: 28.09.2026**

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Aman Thakur

...Petitioner

Versus

State of H.P. and others

...Respondents

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*Coram*

**Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge**

*Whether approved for reporting?*<sup>1</sup>

For the petitioner:

Mr. Onkar Jairath, Senior Advocate  
with Mr. Piyush Mehta, Advocate.

For the respondents:

Mr. Hemant Kumar Verma, Deputy  
Advocate General, for respondents  
No.1 to 4-State.

Mr. Dhiraj Thakur and Ms. Priyanka  
Chandel, Advocates, for respondent  
No.5.

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**Jiya Lal Bhardwaj, Judge (Oral)**

The petitioner by way of present petition has  
prayed for the following substantive reliefs:-

- “(i) *That writ in the nature of certiorari may kindly be issued, quashing the selection of Respondent No. 5 to the post of Police Constable under General IRDP/BPL category made vide impugned consolidated final result (Annexure P-5) and list of provisionally selected candidates for recruitment of Constable (Male), 2019 District Solan (Annexure P-6).*

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

- (ii) *That writ in the nature of mandamus may kindly be issued, directing the respondents to award 2 marks for his height i.e. 5.8" as provided in Annexure P-4 and as per prescription slip (Annexure P-7).*
- (iii) *That writ in the nature of mandamus may kindly be issued, directing the respondents to give appointment to the petitioner to the post of Police Constable under General IRDP/BPL category."*

2. Shorn of unnecessary details, the key facts of the case are that the petitioner did his matriculation in the year 2014 and thereafter 10+2 in the year 2016 from Himachal Pradesh Board of School Education, Dharamshala. He belongs to Below Poverty Line (in short 'BPL') family. The petitioner as per the recruitment notice dated 08.03.2019 (Annexure P-3) had applied for the post of Constable (Male) General duty under General category. The recruitment was to be done as per the conditions postulated in the Notification dated 11.03.2011 (Annexure P-4). The petitioner had appeared for physically efficiency test conducted by the respondents-Department on 05.05.2019. His height was measured as 5'.7", whereas his actual height was 5'.8". Since the petitioner had qualified the physical efficiency test, he was directed to appear in the written test,

scheduled to be held on 08.09.2019 which he successfully qualified and thereafter he was issued the call letter dated 26.09.2019 for personality test scheduled to be held on 04.10.2019. The petitioner appeared in the personality test conducted on 04.10.2019. After completion of the entire recruitment process, the respondents-Department circulated consolidated final result, in which the name of the petitioner found mention at serial No.134 and he was shown to have scored 54 marks i.e. 44 marks in written test, 1 mark for height and 9 marks in interview. It has been averred that private respondent No.5 was shown at serial No.131, who had scored 54.67 marks, as evident from consolidated final result dated 05.10.2019 (Annexure P-5).

3. After declaration of the result, the respondents-Department issued provisional list of selected candidates for recruitment of Constable (Male), and respondent No.5 was selected and the petitioner was though fully eligible, but was left out. It has been averred that though the petitioner was having 5'.8" height, but he was wrongly measured/assessed as 5'.7".

4. It has been averred that as per the criteria laid down by the respondents-Department, more particularly

clause No.8.1 clearly mentions that in case of height for male candidate who is 5'.8", but less than 5'.9", two marks will be awarded to him, whereas, the petitioner whose height was wrongly measured as 5'.7", he was given one mark. Had the height of the petitioner been correctly measured as 5'.8", he would have been selected for the post of Constable (Male) under General category.

5. The petitioner feeling aggrieved and dissatisfied with the action on the part of the respondents-Department has approached this Court *inter alia* on the grounds that the action on the part of the respondents-Department in measuring the height of the petitioner as 5'.7" and awarding him 1 mark is wrong, whereas his actual height was 5'.8" and he ought to have been given two marks for height, which has resulted in declaring him unsuccessful. As per clause 8.1 of the Notification dated 11.03.2011 (Annexure P-4), wherein the eligibility criteria is prescribed, the petitioner ought to have been granted two marks of his height and as such prayed for quashing the appointment of private respondent and sought direction to the respondents to offer him appointment to the post of Police Constable under General IRDP/BPL category. The petitioner has also

placed on record the measurement of his height as per the certificate dated 20.11.2019 (Annexure P-7) issued by the Community Health Center Ramshehar, District Solan, HP.

6. The respondents-Department filed reply to the petition and averred that as per physical measurement recorded by the Medical Officer, the height of the petitioner was 5'.7" and as such he was awarded 1 mark as per Notification dated 11.03.2011. The petitioner had qualified the physical efficiency test, written examination and thereafter he was called for personality test/interview held w.e.f. 03.10.2019 to 05.10.2019 and he scored total 54 marks in General category, but he could not be selected to the post of Police Constable, being lowest in merit. It has further been averred that the Medical Officer deployed by the Chief Medical Officer Solan, who was a member of District Recruitment Committee and was specially engaged/deployed for measurement of height and chest event of the candidates by the Chairman and, therefore, it is wrong to say that respondent No.3 being Chairman of the Recruitment Committee, considered the height of petitioner as 5'.7" instead of 5'.8" as the height of petitioner is actually 5'.7" and awarded 1 mark as per criteria. It has also

been averred that full transparency was adopted to measure height and every event. The videography was also done. Those candidates who had raised the objections were given second opportunity by the District Recruitment Committee and respondent No.5 had scored 46 marks in written examination whereas, the petitioner scored only 44 marks in written examination. District Recruitment Committee has awarded 9 marks to the petitioner in personality test/interview, whereas respondent No.5 has been awarded only 7.67 marks. The petitioner in total scored 54 marks i.e. 1 mark for height, 44 marks in written and 9 marks in interview, whereas respondent No.5 scored 54.67 marks i.e. 1 mark in height, 46 marks in written and 7.67 marks in interview and thus, respondent No.5 has been selected against the post of Constable on merit basis in General category/IRDP sub-category and thus prayed for dismissal of the writ petition.

7. Learned counsel for the respondent No.5 stated that reply to the petition has been filed, but the same is not on record, though rejoinder to the reply has been filed by the petitioner, which is on record.

8. I have heard the learned counsel for the parties

and also perused the record carefully.

9. Learned senior counsel representing the petitioner has vehemently argued that the height of the petitioner was wrongly measured as 5'.7", whereas his actual height was 5'.8". He further submitted that since he had cleared the physical efficiency test conducted by respondents-Department and thereafter called for the written test to be scheduled on 08.09.2019, he had no occasion to come to the Court at that juncture and it is only after the result was declared and he was shown to be awarded only 1 mark, whereas, as per the actual height, he ought to have been awarded 2 marks. The petitioner immediately thereafter got his height measured, as evident from certificate dated 20.11.2019 (Annexure P-7), issued by the Community Health Center Ramshehar, District Solan, H.P. and thus prayed for allowing his petition.

10. Learned senior counsel further argued that the petitioner belongs to BPL family and in case he ought to have been granted 2 marks for his height taking 5'.8", he would have made mark in the selection list and ought to have been offered the appointment.

11. On the other hand, learned Deputy Advocate

General has vehemently opposed the prayer made by the learned senior counsel representing the petitioner. He argued that since the petitioner did not raise the issue with respect to his height, when the same was measured on 05.05.2019, he at this stage cannot rake up the issue. He further argued that in other cases where the persons had raised the objection about measurement of height and chest, second opportunity was granted to them by the District Recruitment Committee and since the petitioner did not raise the issue at the relevant time, at this stage, this Court may not like to interfere with the selection undertaken by respondents-Department.

12. I have given my thoughtful consideration to the submissions made at the Bar. No doubt, the petitioner when appeared before the Recruitment Committee for physical efficiency test conducted on 05.05.2019 did not raise the issue with respect to his height, which was measured as 5'.7", but admittedly the petitioner was called for the written test, which was scheduled on 08.09.2019, in which he was found successful. Thereafter he was called for the personality test scheduled to be held on 04.10.2019. The result of the selection process was declared on 05.10.2019

and the name of the petitioner was not found in the select list for the reason that he had scored 54 marks and respondent No.5 had scored 54.67 marks. The petitioner thereafter had got measured his height on 20.11.2019 (Annexure P-7), in which it was mentioned that his height is 5'.8" and thereafter he had come before this Court by way of instituting the present writ petition on 25.02.2020.

13. This Court had issued the notices to the respondents on 16.07.2020, when the petitioner had placed on record the certificates dated 24.06.2020, issued by the various Medical Officers of Community Health Center, Ramshehar, Medical Officer PHC, Kwarani, Solan, Medical Officer Incharge, Primary Health Center, Nand, Tehsil Nalagarh, District Solan, HP and Medical Officer Incharge PHC, Swarghat, District Bilaspur, HP (Annexure P-8 colly), wherein the height of petitioner was shown as 5'.8". The Court had issued the notices to the respondents-Department only after perusal of these certificates.

14. This Court instead of placing reliance upon the medical certificate placed on record by the petitioner as Annexure P-7 and other certificates Annexure P-8 (Colly.) had passed an order on 29.07.2026, when a direction was

given to constitute a Medical Board to measure the height of the petitioner, since the controversy revolved around only with respect to the height of the petitioner and the report has been submitted by the Medical Board, wherein, the height of the petitioner was measured and recorded as 172.80 cm, which in terms of feet, comes out to be 5'.8".

15. Learned Deputy Advocate General has vehemently opposed the prayer of the petitioner that since he did not approach the Court at the relevant time, the height of the petitioner, which was measured on the date of physical efficiency test conducted on 05.05.2019 has to be believed. However, the said contention cannot be accepted for the reason that the petitioner, even before approaching this Court, had got his height measured on 20.11.2019 (Annexure P-7), wherein his height was shown as 5'.8". The petitioner could have come to the Court at that juncture in case he had not qualified for the written test to be conducted by the respondents-Department subsequently on 08.09.2019. The petitioner cleared the written test on 08.09.2019 and thereafter was called for the personality test/interview held on 04.10.2019 and when the result was declared, he could not make his mark in the select list, only

for the reason that he was short of less than one mark. In case the height of the petitioner was correctly measured as 5'.8", he ought to have been awarded 2 marks instead of 1 mark, since his height was measured as 5'.7" and thus he has been deprived of his selection and once this Court had also constituted the Medical Board, which has given the report that the height of petitioner is 5'.8", the claim put forth by the petitioner, cannot be rejected on the ground that why did he not come to the Court at the juncture when his height was wrongly measured as 5'.7" feet.

16. Learned Deputy Advocate General has placed reliance upon the judgments passed by the Punjab and Haryana High Court in CWP No.2233 of 2025, titled, ***Jaswinder Kumar vs. Union of India and Ors.*** and a coordinate Bench of this Court in CWP No. 4028 of 2015, titled, ***Sunny Sharma vs. State of Himachal Pradesh & Ors.*** and contended that this Court cannot substitute the view taken by the expert board during recruitment and the same is binding unless the same is perverse, illegal or motivated by malafide.

17. It is true that this Court cannot take upon the task of expert bodies for the purpose of ascertaining the

assessment of a candidate and also cannot tinker with the measurement of height or chest, but in the present case, the petitioner even before filing the petition had placed on record the certificate, wherein his height was shown as 5'.8' feet. Even when the petition was instituted by the petitioner, this Court was not initially inclined to issue the notice and only after placing on record the certificates issued by various Medical Officers, wherein the height of the petitioner had been shown as 5'.8", this Court was inclined to issue notice to the respondents on 02.07.2020. Again when the matter was listed before this Court on 29.07.2026, before adjudicating the claim of the petitioner on merits, this Court had constituted a Medical Board to ascertain the height of the petitioner and once the height of the petitioner has been found to be 5'.8" i.e. exactly 5.8.03 inches, he cannot be ousted only on the account that why did he not come to the Court initially when his height was assessed as 5'.7" in the physical efficiency test held on 05.05.2019. This Court is not substituting the view of the expert body, but considering the opinion of the duly constituted Medical Board, who has given its opinion. Once the Medical Board has given its opinion, this Court cannot ignore the said

opinion. It is settled law that the Courts are meant to impart substantial justice. Since the Medical Board has given the expert opinion that the height of the petitioner is 5'.8" he is entitled to 2 marks.

18. The second judgment on which reliance has been placed by the learned Deputy Advocate General is also not applicable to the facts of the present case for the reason that this Court had come to the conclusion that since the petitioner is not entitled to any additional marks for questions 20, 76 and 104, the claim of the petitioner for not awarding marks to him is misleading and without any basis. However, in the present case, the petitioner is not challenging the questions. His entire case is based on the fact that his height was 5'.8", whereas, he was wrongly measured as 5'.7". The petitioner who has been deprived of one mark is entitled to get the same and in case one mark is added in the total marks obtained by the petitioner, he definitely scores more marks than private respondent, who had scored 54.67 marks and the petitioner had scored 54 marks and in case one mark is added, his score is 55 marks, which is more than private respondent.

19. Learned counsel representing respondent No.5

submits that since there is no fault on the part of the private respondent No.5, his appointment cannot be set at naught at this stage. The said submission deserves to be accepted in view of the judgment passed by the Hon'ble Supreme Court in ***Vikas Pratap Singh and others vs. State of Chhattisgarh and others*** (2013) 14 SCC 494, wherein it has been held that in case the person who did not make any misrepresentation or played fraud at the time of securing the appointment, after few years, the appointment so made, cannot be quashed, just to offer the appointment to the person who had approached the Court and denied appointment. Since, respondent No.5 has not made any misrepresentation and further his selection was made on the basis of the marks awarded to him by the respondents-Department, without disturbing the selection of respondent No.5, the petitioner, who admittedly has now scored more marks than private respondent, is entitled for the relief of only his appointment without disturbing the appointment of respondent 5.

20. The learned senior counsel for the petitioner has not placed on record any material suggestive of the fact that during the pendency of the petition, the petitioner was

not gainfully employed anywhere. Therefore, the petitioner is held entitled for appointment as Constable with all consequential benefits, except monetary benefits.

21. Consequently, the present petition is allowed and the respondents No.1 to 4 are directed to offer appointment to the petitioner to the post of Police Constable under General IRDP/BPL category with all consequential benefits such as seniority, increments promotion etc., but he shall not be paid any monetary benefits. However, it is made clear that respondent No.5 shall be assigned seniority above the petitioner. No order as to costs. Pending application(s), if any, also stand disposed of.

**28<sup>th</sup> September, 2026**

*(Anurag)*

**( Jiya Lal Bhardwaj )  
Judge**