



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	05.01.2021
DELIVERED ON:	20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.14177 of 2020

and W.M.P. (MD) No.11837 of 2020

(Through Video Conference)

G.Vinoth

... Petitioner

Vs

The Chairman,
Sub committee,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road,
Egmore, Chennai 600 008

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 01.10.2020 in C.No.R2/860/2019 and quash the same as illegal and consequently direct the respondent to conduct a fresh physical measurement test to the petitioner(Enrolment No.2410144) for the Post of Sub Inspector of Police in the Tamil Nadu Uniformed Services Recruitment Board 2019.

For Petitioner : Mr.R.Venkatesan

For Respondent : Mr.K.Chellapandian,
Additional Advocate General

O R D E R

After qualifying in the written examination held in the recruitment process for the post of Sub Inspector of Police in the Tamil Nadu Uniformed Services Recruitment Board, under the open category for the year 2019, the petitioner was subjected to physical measurement test, which included height measurement. As against the required height of 170 cms, the petitioner's height was measured at 169.5 cms and consequently, his candidature was rejected vide the impugned disqualification slip dated 01.10.2020. Challenging the rejection, the petitioner has filed the present writ petition.

2. Learned counsel for the petitioner submitted that the petitioner's actual height is 170 cms. Earlier, when he had



participated in the common recruitment for Grade-II Police Constables conducted in the year 2012, he had qualified himself in the physical measurement norms, including the height of 170 cms, but was disqualified in the physical efficiency test. Since the respondent had properly measured his height in the earlier selection process, it is obvious that they have committed an error in the present selection process. It is his further submission that in the original physical measurement conducted on 01.10.2020, his height was measured at 169.5 cms and on appeal to the Higher Authorities, the height was re-measured at 169.0 cms. In view of this discrepancy, the learned counsel for the petitioner submitted that the physical test itself is unreliable and therefore, sought for a fresh physical measurement.

3. Learned counsel for the petitioner also placed reliance on the Hon'ble Full Bench decision of this Court in **A.Parthiban and others vs. Tamil Nadu Uniformed Service Recruitment Board and others** in W.A.Nos.8 to 12, 14 to 16, 23 and 24 of 2020 etc., and submitted that the parameters held by the Full Bench was to relax an extent of 0.5 cm in the height measurement test by 'rounding-off', which has not been followed during the recruitment process. Learned counsel also placed reliance on the medical certificate issued by a Government Doctor, dated 05.10.2020, that certifies his height as 170 cms.

4. Per contra, the learned Additional Advocate General placed reliance on the Full Bench decision and stated that there was no specific direction by the Hon'ble Full Bench to 'round-off' the height measurement by 0.5 cms and that, the Hon'ble Division Benches of this Court, on various occasions, had declined to interfere with the questions of fact, which consideration was within the purview of the Authorities concerned.

5. I have given careful considerations to the submissions made by the respective counsels.

6. As rightly pointed out by the learned Additional Advocate General, the Hon'ble Full Bench in **A.Parthiban's case** (cited supra) had addressed the principle of 'rounding-off' adopted by the respondent in the physical height measurement test and had suggested for amendment of the Tamil Nadu Police Special Rules, to enable 'rounding-off' the measurement by 0.5 cm, to eliminate discrepancies. There were no positive directions by the Hon'ble Full Bench for 'rounding-off' the height measurement by 0.5 cms for the present recruitment process in the present 2019 notification. As such, I am unable to agree with the submissions of the learned counsel for the petitioner in this regard.

7. For the sake of convenience, the relevant portion of the Hon'ble Full Bench judgment in **A.Parthiban's case** (cited supra) is

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extracted hereunder:

"41. Coming to the third question of the principle of rounding off adopted by the respondents, even though the amendments are in force since 2015 and are not under challenge before us, we otherwise do not find any such error in the implementation thereof keeping in view Clause 6(2) of the norms contained in the Compendium of Instructions extracted herein above. However, the same can be reconsidered in order to avoid any miscalculation or computation risks by making a provision of a minimum relaxation in the height requirement inclusive in the rule itself, and as an illustration we can only suggest that if the minimum height for a male candidate of general category is 170 cms, then relaxation of 0.5 cm may be prescribed in the rule itself without giving any further relaxation in any manner whatsoever either by rounding off or otherwise. This would, in our opinion, eliminate any scope for further doubts or suspects of either a miscalculation or deliberate calculation. The Courts therefore would be reduced from the burden of unnecessary litigation on any such suspected or detected mistakes.

42. Having reasoned out the issues raised before us, we accordingly answer the questions as follows:-

(i) A Writ Petition under Article 226 of the Constitution of India for correcting any error may ordinarily be not maintainable involving factual disputes, but, on the establishment of a patent factual error leading to prejudice and resulting in violation of legal or fundamental rights or otherwise involving malafides, a writ petition can be entertained under Article 226 of the Constitution of India, in order to avoid or otherwise rectify a denial of opportunity in matters of employment;

(ii) The exercise of height measurement may be resorted to through scientifically approved electronic or such other devices, such as Digital Measurement Device (Sensor Machine) and the same deserves to be undertaken at all stages of height measurement to establish a standardised procedure of measurement, in order to avoid any variation either in appeal or to avoid any future litigation;

(iii) The Rules prescribing rounding off as amended and contained in Rule 14 of the Special Rules for Tamil Nadu Police Subordinate Service being not under challenge, the same can be implemented, but, in



order to ensure any dispute of calculation, miscalculation or any suspected marginal error, it would be appropriate that instead of rounding off principle, a relaxation to the extent of 0.5 centimeter in the respective categories be introduced as a matter of rule that may possibly avoid any future litigation or dispute relating to discrepancy of measurement".

8. Mr.R.Venkatesan, learned counsel for the petitioner raised yet another point, questioning the height evaluation test conducted by the Board and pointed out the discrepancies therein. According to the learned counsel, the petitioner had earlier participated in the recruitment process conducted by the same Board in the year 2012 for the posts of Grade - II Police Constables / Grade -II Jail Wardens / Firemen and while he had fulfilled the physical measurement norms, he was disqualified in the physical efficiency test. According to him, the Board had not conducted the height measurement test properly in the present recruitment for the year 2019. The respondent has not filed a counter controverting such a submission nor were oral submissions made with regard to such a discrepancy between the recruitment process of the years 2012 and 2019, in respect of the height measurement test.

9. I find some force in the contentions made by the learned counsel for the petitioner. The disqualification slip dated 29.08.2012 produced by the petitioner, pertaining to the recruitment process of Grade - II Police Constables, evidences that the petitioner had qualified in the physical measurement norms, but was disqualified in the physical efficiency test. The minimum required height for Grade - II Police Constables in the recruitment held in the year 2012 was 170 cms. In other words, the Board had measured the petitioner's height to be at 170 cms in the year 2012. Subsequently, when the Board had measured the petitioner's height for the recruitment process in the year 2019 on 01.10.2020, his height was determined at 169.5 cms. In response to the petitioner's appeal before the higher authorities, his height was re-measured and was found to be 169 cms tall. Thus, the discrepancies in the measurements can be summed up as follows:

- (a) **170 cms** in the 2012 recruitment process;
- (b) **169.5 cms** in the first measurement conducted in the 2019 selection; and
- (c) **169 cms** determined by the Higher Authorities the appeal made by the petitioner.

10. The petitioner has sworn in his affidavit that he is 170 cms tall. In view of the aforesaid discrepancies consistently found in the aforesaid three measurements, there arises a doubt in the method adopted by the Board while measuring the petitioner's height. These discrepancies establish a patent factual error, which could cause prejudice to the petitioner. In my view, the benefit of this doubt can allure to the petitioner and in view of his claim that he



is actually 170 cms tall, it would be appropriate to have his height re-measured.

11. The issue with regard to a fresh exercise to redetermine the height of the candidate for selection to the posts called for by the Board, came to be dealt with by the Hon'ble Full Bench of this Court in the case of **A.Parthiban** (cited supra), and while answering the issue of reference, the Hon'ble Full Bench had observed as follows and remanded the writ appeals before the concerned Benches for consideration:-

"22.Thus, what can be inferred from the facts as disclosed by the Government itself and discussed herein above is that variations did occur and it has resulted in a substantial rate of success in favour of some of those candidates who had approached the Court, the ratio whereof is almost one-third, as 9 candidates out of 28 who have been re-measured have succeeded. This variation therefore does lead to a valid inference that errors in measurement, either due to human or otherwise, had crept in that resulted in prejudice to candidates. Such prejudice directly affects the rights of such candidates to seek an opportunity of employment, which, therefore attracts a scrutiny of any such error on the anvil of Articles 14 and 21 of the Constitution of India. We are, therefore, on the facts that have emerged, unable to deny the right of judicial review to such candidates in exercise of the jurisdiction under Article 226 of the Constitution of India, on the basis of the errors that have been displayed before us which have been asserted by the candidates and virtually accepted by the State Government in the status report.

23.The question of entertainability of a writ petition, in our opinion, would depend upon such impelling facts that are brought to the notice of the Court and are demonstrated on the basis of the material, which compel the Court to exercise the jurisdiction under Article 226 of the Constitution of India, in as much as to err is human. Therefore, the error having been established and vital issues of fundamental rights and legal rights of an individual involved, this Court cannot deny the accessibility to justice to such of these individuals who have been actually prejudiced on account of the absence of a standardized method of measurement that has resulted in the discrepancy giving rise to the litigation before us."

....

42. Having reasoned out the issues raised before us, we accordingly answer the questions as follows:-

(i) A Writ Petition under Article 226 of the



Constitution of India for correcting any error may ordinarily be not maintainable involving factual disputes, but, on the establishment of a patent factual error leading to prejudice and resulting in violation of legal or fundamental rights or otherwise involving malafides, a writ petition can be entertained under Article 226 of the Constitution of India, in order to avoid or otherwise rectify a denial of opportunity in matters of employment;"

12. In consequence to the ratio laid down by the Hon'ble Full Bench, a Division Bench of this Court in the same case of **A.Parthiban** (cited supra) had also interfered in the height measurement test already conducted by the Board and directed the Board to conduct remeasurement of the height of the candidate. The relevant portion of the order of the Hon'ble Division Bench reads as follows:

"4. In view of what has been discussed by the Full Bench in the judgment dated 29.01.2020 relying on the facts stated in the status report filed by the State therein, and in the light of the findings arrived at, all these appeals deserve to be allowed and disposed of with a direction to the first respondent to re-measure the heights of the appellants.

5. We, accordingly, allow these appeals to the extent as indicated in the Full Bench judgment dated 29.01.2020 and direct the first respondent, Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai 600 008, to carry out the physical examination tests of all the appellants, as indicated in the Full Bench judgment dated 29.01.2020, within a period of fifteen days from today and accordingly proceed with the selections. In the event, the appellants clear the said physical examination tests, they shall be treated as eligible for further consideration. The measurement shall be carried out by the Digitized Electronic Device, the reference whereof has been made in the Full Bench judgment dated 29.01.2020. No costs. Consequently, all the connected miscellaneous petitions are closed."

13. Accordingly, the impugned disqualification slip dated 01.10.2020 is quashed. Consequently, the respondent is called upon to conduct a fresh height measurement test on the petitioner by taking into account the observations made in this order and take further course in the selection process, subject to the outcome of the test results. The respondent shall endeavour to conduct the height measurement test atleast within a week from the date of receipt of a copy of this order.

14. With these directions, the writ petition stands thus



allowed. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.11837 of 2020 is closed.

Sd/-

Assistant Registrar (Records)

WEB COPY

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/ /2021

Sub Assistant Registrar(CS)

sts

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

The Chairman,
Sub committee,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai 600 008

+1 CC to M/s.R.VENKATESAN, Advocate (SR-1529[F] dated 21/01/2021)

+1 CC to M/s.GP (SR-1602[F] dated 21/01/2021)

W.P.(MD)No.14177 of 2020

Dated:

20.01.2021

sts(CO)

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