



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.14629 of 2020

and W.M.P.(MD) Nos.12284, 12285 & 12287 of 2020
(Through Video Conference)

K.Kalidoss

... Petitioner

Vs.

1) The Tamil Nadu Uniformed Services Recruitment Board,
Rep. By its Member Secretary,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai 600 008

2) The Chairman,
Sub Committee,
Tamil Nadu Uniform Services Recruitment Board,
Pantheon Road,
Egmore, Chennai 600 008

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records related to the impugned proceedings of the 2nd respondent dated 30.09.2020 made in C.No.R2/860/2019 and quash the same and consequently direct the respondents to select and appoint the petitioner to the post of Sub-Inspector of Police (Taluk, Armed Reserve & Tamil Nadu Special Police Service) pursuant to the recruitment notification of the 1st respondent in Notification (No.2/2019) dated 08.03.2019 within a reasonable time period to be fixed by this Court.

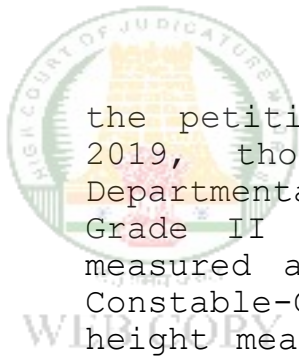
For Petitioner : Mr.N.Dilip Kumar
For Mr.R.Tamilvannan

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

O R D E R

The petitioner is a Grade-II Police Constable, having been recruited in the year 2011. In the recruitment process called for the posts of Sub Inspector of Police in the Tamil Nadu Uniformed Services Recruitment Board (hereinafter referred as the 'Board'),

<https://hcservices.ecourts.gov.in/hcservices/>



the petitioner has applied under the open category for the year 2019, though there was an option for him to choose under Departmental Quota. In the earlier selection for Police Constable-Grade II held in the year 2011, the petitioner's height was measured at 171 cms and accordingly, he was recruited as Police Constable-Grade II. In the present recruitment process of 2019, his height measurement was recorded at 169.5 cms and consequently, his candidature was rejected vide the impugned disqualification slip dated 30.09.2020. 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 171 cms and that the Board had wrongly measured his height at 169.5 cms instead of 171 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 01.10.2020, that certifies his height as 171 cms.

4. Today, I had an occasion to deal with the aforesaid ground raised by the petitioner in an identical case in **G.Vinoth vs., the Chairman, Tamil Nadu Uniformed Services Recruitment Board** passed in W.P.(MD) No.14177 of 2020, wherein such submissions were overruled in the following manner:-

" 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 respondents 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**



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case (cited supra) is 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 mis-calculation 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



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:-

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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;"

9. 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 re-measurement 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."

10. Learned counsel for the petitioner also raised a supplemental ground that in the recruitment notification for the year 2019, there was an exemption from physical measurement test for the departmental candidates as well as for Ex-servicemen, Ex-CPMF (Central Para Military Force) and serving persons and therefore, the petitioner, being a serving person, is also exempted from the physical measurement test.

11. I am not in agreement with the submission made by the learned counsel for the petitioner. The notification, when read as a whole, indicates the 'serving person', to include only the military personnel and CPMF personnel alone. Clause 12(A)(vi) and Clause 15 (B)(i) makes this amply clear. Clause 17(D) also clarifies that the exemption would be only for departmental quota candidates. Since the petitioner had chosen to appear in the open category, he may not



have the benefit of such exemption.

12. Nevertheless, in view of the discrepancies in the height measurements between the recruitment process held in the years 2011 and 2019, I deem it appropriate to subject the petitioner to one more physical measurement. Accordingly, the impugned disqualification slip dated 30.09.2020 is quashed. Consequently, the respondents are 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 respondents shall endeavour to conduct the height measurement test atleast within a week from the date of receipt of a copy of this order.

13. With these directions, the writ petition stands thus allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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:

1) The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road, Egmore,
Chennai 600 008

2) The Chairman,
Sub Committee,
Tamil Nadu Uniform Services Recruitment Board,
Pantheon Road, Egmore, Chennai 600 008

+1 CC to M/s.R.TAMILVANAN, Advocate (SR-1903[F] dated 22/01/2021)

+1 CC to M/s.GP (SR-1601[F] dated 21/01/2021)

W.P. (MD)No.14629 of 2020

20.01.2021

STS (CO)

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