



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.14166 of 2020
and
W.M.P. (MD) No.11824 of 2020

M.Sathish

... Petitioner

vs.

1. The Member Secretary,
Tamilnadu Uniformed Services Recruitment Board,
Chennai-8.

2. The Chairman,
Sub Committee,
Tamilnadu Uniformed Services Recruitment Board,
Chennai-8.

3. The Officer-in-Charge,
Sub Committee,
Tamilnadu Uniformed Services Recruitment Board,
Chennai-8.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned disqualification slip vide C.No.R2/860/2019, dated 01.10.2020 on the file of the 2nd and 3rd respondents in connection with the direct recruitment for the post of Sub-Inspector of Police (Taluk Armed Reserve and Tamilnadu Special Police) (Men, Women and Transgender)-2019 and consequently direct the respondents to re-measure the petitioner's height and proceed with the same in accordance with law.

For Petitioner	:	No appearance
For Respondents	:	Mr.Veera Kathiravan Additional Advocate General assisted by Mr.A.K.Manikkam Special Government Pleader

O R D E R

The disqualification slip, dated 01.10.2020, issued by the respondents, in connection with the direct recruitment to the post of Sub Inspector of Police, is under challenge in this writ



2. The Tamil Nadu Uniformed Services Recruitment Board issued a notification for direct recruitment to the post of Sub Inspector of Police (Taluk Armed Reserve and Tamilnadu Special Police) (Men, Women and Transgender)-2019, on 08.03.2019. The petitioner submitted application and participated in the selection process. The petitioner was successful in the written examination and allowed to participate in the physical verification test and endurance test. During height measurement, the Authorities Competent found that the height of the petitioner is 169.5 Centimeter which is less than the required height of 170 Centimeter. The petitioner claims that his height is 170.5 Centimeter.

3. There is a provision for filing appeal to the Appeal Committee and the petitioner submitted his appeal before the Appeal Committee and by entertaining the said appeal, re-measurement was taken by the Selection Committee and even during the second measurement, the Authorities found that the petitioner has not satisfied the required height and therefore, the candidature was rejected.

4. A question arises whether High Court can interfere with the selection process, more specifically regarding measurement of height taken by the Authorities Competent, which was affirmed by the Appellate Authority.

5. The power of judicial review under Article 226 of the Constitution of India is to ensure the process during which a decision is taken in consonance with the rules in force, but not the decision itself.

6. Regarding the scope of judicial review in the matter of selection, the Full Bench of Madhya Pradesh formulated questions of laws in respect of such selections in the case of **Ashutosh Pawar vs. High Court of Madhya Pradesh and others**, reported in **2018 (1) CTC 353** and question Nos.2 and 3 are relevant, which are extracted hereunder:

"2. Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the Authority concerned has wrongly exercised its discretion in holding the candidate to be ineligible should, after quashing the order, remit the matter back to the authority concerned for reconsideration or for fresh consideration as to the eligibility of the person?"



3. Whether the High Court while allowing such a petition in exercise of its powers under Article 226 of the Constitution of India can issue a further direction to the authority to appoint the person concerned on the post from the date his batchmates were appointed and to grant him back dated seniority and all other benefits or whether the High Court should simply remit the matter back to the authority for taking a decision in this regard?"

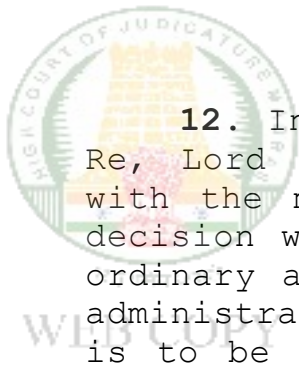
7. The Full Bench further considered the scope of judicial review under Article 226 of the Constitution of India by the High Courts.

8. In the case of **Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141, 154]**, Lord Brightman said that judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.

9. In the same case, Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 that this remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner.

10. In **R. v. Panel on Takeovers and Mergers, exp Datafin plc (1987) 1 All ER 564**, Sir John Donaldson, M.R. Commented that an application for judicial review is not an appeal.

11. In **Lonrho plc v. Secretary of State for Trade and Industry [(1989) 2 All ER 609]** Lord Keith said that judicial review is a protection and not a weapon. It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal.



12. In ***Amin v. Entry Clearance Officer [(1983) 2 All ER 864]***, Re, Lord Fraser observed that judicial review is concerned not with the merits of a decision but with the manner in which the decision was made... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.

13. In ***R. v. Panel on Take-overs and Mergers, exp in Guinness plc [(1989) 1 All ER 509]***, Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

14. The duty of the Court is to confine itself to the question of legality. It's concern should be:

- (i) Whether a decision-making authority exceeded its powers?
- (ii) Committed an error of law,
- (iii) Committed a breach of the rules of natural justice,
- (iv) Reached a decision which no reasonable tribunal would have reached or,
- (v) Abused its powers.

15. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) **Irrationality,** namely, **Wednesbury unreasonableness.**
- (iii) **Procedural impropriety.**

16. The learned Additional Advocate General appearing for the respondents drew the attention of this Court with reference to the Full Bench Judgment of our High Court, dated 29.01.2020 in W.A.Nos.8 to 12 of 2020 etc., batch ***[A.Parthiban vs. Tamil Nadu Uniformed Services Recruitment Board and another]***. The reference made before the Full Bench was answered as follows:

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



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."

17. The learned Additional Advocate General clarified by stating that the Selection Committee had taken re-measurement through digital measurement device (censor machine) and therefore, the measurement taken during the selection process is in consonance with the directions issued by the Honourable Full Bench in the case cited supra.

18. When the measurement was taken by the Original Authority and on appeal, it was re-measured by the Appellate Committee through digital method, there is no reason to interfere with the decision taken by the Selection Committee. The Court cannot interfere with such factual decision taken by the Authorities Competent more so, on appeal it was reaffirmed by the Appellate Committee and thus, the petitioner has not established any acceptable legal ground for the purpose of interfering with the decision of non-selection.



19. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar (CS)

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To:

1. The Member Secretary,
Tamilnadu Uniformed Services Recruitment Board,
Chennai-8.
2. The Chairman,
Sub Committee,
Tamilnadu Uniformed Services Recruitment Board,
Chennai-8.
3. The Officer-in-Charge,
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+1 CC to M/s.SPL GP (SR-14218[F] dated 24/03/2022)

W.P.(MD) No.14166 of 2020

and

W.M.P.(MD) No.11824 of 2020

22.03.2022

USK/30.03.2022/6P/5C