



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.17807 of 2021

W.M.P (MD) .Nos.14682, 14683 and 14685 of 2021

D.Sunil

... Petitioner

Vs.

1.The Chairman/Member Secretary,
The Tamil Nadu Uniformed Services,
Recruitment Board,
No.807, Sengalvarayan Naicker Building,
Anna Salai,
Chennai-600 002.

2.The Superintendent of Police,
(Recruitment Sub-Committee Chairman, Thoothukudi Centre),
Thoothukudi,
Thoothukudi District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent dated 29.07.2021 with respect to the petitioner Enrolment No.3705269 and quash the same and consequently direct the respondents to conduct fresh physical measurement test to measure the height of the petitioner and also direct the respondents to conduct the remaining other physical efficiency test and further direct the respondents to permit the petitioner to participate in the subsequent stage of selection for the post of Grade II Police Constables (Men, Women and Third Gender) Grade -II Jail Wardens (Men, Women and Third Gender) and the Firemen for the year 2020.

For Petitioner : Mr.C.Prithviraj

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.A.K.Manikkam,
Special Government Pleader



O R D E R

This Writ Petition has been filed to call for the records relating to the impugned order passed by the 2nd respondent dated 29.07.2021 with respect to the petitioner Enrolment No.3705269 and quash the same and consequently direct the respondents to conduct fresh physical measurement test to measure the height of the petitioner and conduct the remaining other physical efficiency test and permit the petitioner to participate in the subsequent stage of selection for the post of Grade II Police Constables (Men, Women and Third Gender) Grade -II Jail Wardens (Men, Women and Third Gender) and the Firemen for the year 2020.

2. Pursuant to the recruitment notification issued for selection to the post of Grade-II Police Constable, the petitioner participated in the process of selection and he was successful in the written examination. During the physical efficiency test, the petitioner was not having the physical measurement test. The physical measurement test comprises of Height Measurement for Men and Women. The minimum eligibility as mandated by Rule 14 of Tamil Nadu Police Sub-ordinate Service is as follows:-

Community	Minimum Height	
	Men	Women
OC, BC, MBC-DNC, BC (M)	170cms	159 cms
SC/ST	167cms	157cms

3. The tests were conducted by the Competent Authorities and they found that the height of the petitioner was 169.2 cm. The learned Additional Advocate General made a submission that the Sub Committee during measurement found that the petitioner's height was 170.4 cm. In view of incorrectness in manual measurement, the Board decided to measure the height with Digital Equipment and accordingly, the Digital Height Measurement Device was pressed into service and the Committee found that the actual height of the petitioner is 169.2 cm. Since the petitioner did not possess the required height measurement of 170 cm for BC Category, he was disqualified and accordingly, the disqualification slip was issued to the petitioner.

4. This Court is of the considered opinion that though initial measurement was doubted, the Committee has provided an opportunity to the petitioner to measure his height through Digital Measurement Equipment. When the height was digitally measured, it was found that the petitioner was not having the required height measurement. Thus, his candidature was rejected.



5. This Court considered the issue in W.P(MD).No.14166 of 2020 and the relevant paragraphs are extracted hereunder:-

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:

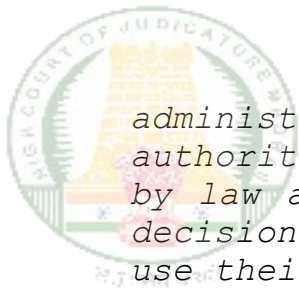
"2. Whether the High Court in exercise of its powers under Article 226 of the Constitution of India, can step into the shoes of the Appointing Authority and determine as to whether the person concerned is fit for appointment or whether the High Court on finding that the Authority concerned has wrongly 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, quasijudicial, 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.**

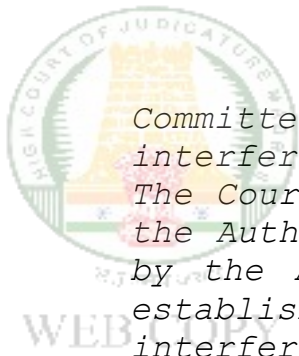
(iii) **Procedural impropriety.**

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:

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 cases 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.

6. In view of the facts and circumstances, the petitioner has not established any acceptable ground for the purpose of interfering with the decision of non-selection. Accordingly, this Writ Petition is dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS I)

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/ /2022
Sub Assistant Registrar (CS)

To

1. The Chairman/Member Secretary,
The Tamil Nadu Uniformed Services,
Recruitment Board,
No.807, Sengalvarayan Naicker Building,
Anna Salai,
Chennai-600 002.
2. The Superintendent of Police,
(Recruitment Sub-Committee Chairman, Thoothukudi Centre),
Thoothukudi,
Thoothukudi District.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.SPL.GP. (SR-18359[F] dated 12/04/2022)

W.P. (MD) No.17807 of 2021

11.04.2022

MK/27.04.2022/6P/5C