



W.A.No.3445 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2024

Coram:

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE C.SARAVANAN**

**W.A.No.3445 of 2024
and C.M.P.No.26741 of 2024**

T.Sathiskumar

...Appellant

Versus

- 1.M.Karthikeyan
- 2.The Tamil Nadu Public Service Commission,
O/o. The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, Park Town,
Chennai – 600 003.
- 3.The Controller of Examination,
Tamil Nadu Public Service Commission,
O/o. The Tamil Nadu Public Service Commission,
Chennai – 600 003.
- 4.The Principal Secretary,
To Government of Tamil Nadu,
Environment and Forest Department,
Secretariat, Chennai – 600 009.



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5.The Principal Chief Conservator of Forests,
Head of Department,
Forest Head Quarters Building,
Guindy, Velachery Road,
Chennai – 600 032.

6.The Additional Principal Chief Conservator
of Forests & Director,
Arignar Anna Zoological Park,
Vandalur, Chennai – 600 048.

...Respondents

Prayer:

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 11.06.2004 passed in W.P.No.13657 of 2024 and to allow the above Writ Appeal.

For Appellant	:	Mr.C.Prabakaran
For Respondents – 2 & 3	:	Mr.I.Abrar Mohammed Abdullah
For Respondents – 4 to 6:		Mr.P.Kumaresan, Additional Advocate General Assisted by Mr.T.Sreenivas, Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This intra Court Appeal is directed against the impugned order dated 11.06.2004 passed by the Writ Court in W.P.No.13657 of 2024.



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2. By impugned order, the Writ Court has allowed the above writ petition. The operative portion of the impugned order reads as under:

“5. Therefore, by following the dictum of the Full Bench of this Court, the Writ Petitions deserve to be allowed. Accordingly, the Writ Petitions are allowed on the following terms:-

(i) The impugned disqualification slip dated 06.05.2024 issued by the 5th respondent shall stand quashed;

(ii) The petitioner's height has to be rounded off and declared as 163 cm and the respondents have to consider the petitioner as having qualified with the minimum physical standards as far as the height is concerned. The petitioner qualifies in the other physical standards;

(iii) Then the respondents therefore shall include the petitioner for oral test scheduled to be held on 13.06.2024 and depending on the further selection process, if the petitioner is successful, include him in the select list as per merit, in accordance with law;

(iv) No costs. Consequently, the connected miscellaneous petitions are closed.”

3. The 1st respondent herein had filed the writ petitions in W.P.Nos.13657 & 14840 of 2024 for the following reliefs:

(i) W.P.No.13657 of 2024 filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus to call for the records relating to the impugned disqualification slip dated 06.05.2024 issued by the 5th respondent and quash the same and consequently, direct the 5th respondent to re-measure the height of the petitioner for the eligibility in the physical examination as a candidate to the post of Assistant Conservator



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of Forests (Group-IA Services) pursuant to the recruitment notification No.36/2022 dated 13.12.2022 issued by the 1st respondent in the presence of a Government Doctor or any other person appointed by this Court within a time frame stipulated by this Court.

(ii) W.P.No.14840 of 2024 filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus to call for the records relating to the impugned List-OT (Oral Test) dated 30.05.2024 issued by the 2nd respondent and quash the same and consequently, direct the 2nd respondent to reserve a post vacant pursuant to the impugned notification vide No.36/2022 dated 13.12.2022 issued by the 1st respondent.

4. The appellant herein is the 3rd party to the proceedings who has stated that by virtue of impugned order, he has been ousted from the selection course to the post of Assistant Conservator of Forests (Group – IA Services) of the respondent 4 & 5 Department herein. The dispute arises purely on account of difference in the measurement of the height of the 1st respondent who initially measured 162.5 cm at the time of Physical Test conducted on **06.05.2024**. Later, the 1st respondent pleaded for revision of



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the measurement of his height using Digital Equipment (Stadiometer) which has culminated in the following reading:-

No. of Opportunity and time (24 Hrs.)	Height Measurement
1 st at 13.48.34	161.9 cm
2 nd at 13.51.24	161.8 cm
3 rd at 13.53.20	161.6 cm

5. It is the case of the appellant that the 1st respondent has failed to qualify as the 1st respondent's height was below the required minimum height of 163 cm as per Recruitment Notification No.36/2022 dated 13.12.2022.

6. At this juncture, it is pertinent to state that the Full Bench of this Court has dealt with an issue arising out of variation in the height in the case of *A.Parthiban & Ors. Vs. Tamil Nadu Uniformed Service Recruitment Board & Ors. (W.A.Nos.8 to 12, 14 to 16, 23 & 24 of 2020 dated 29.01.2020)*, wherein, the Court had considered the said issue taking note of the observation of the Gujarat High Court while dealing with a similar situation in respect of measurement of height in the case of *Kundanben Dhirubhai Jadav Vs. State of Gujarat & Anr. (Special Civil Application*



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No.16596 of 2015 with Special Civil Application No.16351 of 2015 dated 14.10.2015).

7. In the case of ***Kundanben Dhirubhai Jadav Vs. State of Gujarat & Anr. (Special Civil Application No.16596 of 2015 with Special Civil Application No.16351 of 2015 dated 14.10.2015)***, the Gujarat High Court has referred to a study report viz., **“Diurnal Variation of Stature in Three Adults and One Child”** by Kewal Krishnan and Krishan Vij of the Department of Anthropology, Punjab University, Chandigarh, wherein, it has been observed as follows:

1. Now, it is possible to say that the stature of a person shows diurnal variation whether the person is a child, adult or old one in both the sexes. The amount and extent of variation depends upon the time of measuring the stature and varies from individual to individual. Diurnal stature loss can be a problem in short term longitudinal studies, in which apparent changes might simply reflect variations in the time of the day at which the measurement was taken (Malina and Beunen, 1996). The diurnal loss in stature may be attributed to the compression of fibrous discs of cartilage that separate the vertebrae. With the forces of gravity imposed by standing, walking and involving in physical activity, the discs are gradually compressed (Malina, 1995). The greater proportion of the change occurs in the vertebral column than in any other part of the body. Some agree that this is due not only to intervertebral shortening but also to bending of the vertebral column during the daytime (Hattori and Nishio, 1982) and still others say the diurnal variation in height is mainly due to loss of fluid from the inter-vertebral discs rather than postural changes (Fairbank, 1998).

CONCLUSION

It has been concluded that intraindividual variation in stature may



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substantially affect the reliability of height data and careful consideration should to be given to the time at which the measurements are to be recorded. Therefore, in view of the accountable and significant variations in stature of an individual at different times of the day, the investigation alarms the scientists, researchers and clinicians engaged in conducting community based surveys involving stature as a measurement and for making reference data pertaining to growth, development and nutritional studies as well as for personal identification in forensic examinations."

8. Similarly, in the case of ***Kundanben Dhirubhai Jadav Vs. State of Gujarat & Anr.*** referred to *supra*, the Gujarat High Court has also referred to a book titled **"The Essentials of Forensic Medicine and Toxicology"** (17th Edition – 1998) written by Dr.K.S.Narayan Reddy. In the said book, in page no.65, the Chapter IV of "Identification" under the heading of "Stature" it is stated as under:-

"Stature varies at different times of the day by 1.5 to 2 cm. It is less in the afternoon and evening due to the reduced elasticity of the intervertebral discs and the longitudinal vertebral muscles. Both malnutrition and advancing years reduce stature. After the age of thirty, the natural processes of senile degeneration cause gradual decrease in stature by about 0.6 mm. per year on an average. The stature is greater by one to three cm, on lying."

9. Taking note of the above, the Full Bench of this Court in the case of ***A.Parthiban & Ors. Vs. Tamil Nadu Uniformed Service Recruitment Board & Ors. (W.A.Nos.8 to 12, 14 to 16, 23 & 24 of 2020 dated 29.01.2020)***, has observed as under:-



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“40. We are, therefore, of the opinion that the adoption of such scientific measuring device may almost be perfect, minimizing the possibility of errors and therefore, should be adopted and standardized as a measuring device at every stage of the measurement of heights of a candidate. A standard procedure with the same instrument before different authorities will reduce the possibility of any disproportionate variation that may ultimately give rise to any further dispute or litigation. To this extent, the method and procedure of measuring heights deserves rectification that will eliminate any adverse possibilities as indicated or complained of in the various writ petitions, the judgments whereof have been cited at the bar.”

10. Therefore, the Full Bench of this Court has concluded that a 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.

11. Ultimately, the Full Bench of this Court has arrived at a following conclusion:

“42. Having reasoned out the issues raised before us, we accordingly answered 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



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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, mis-calculation 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.

The questions have been answered, let all the appeals be placed before the respective Benches dealing with the matter for appropriate orders.”

12. As far as the 1st respondent/writ petitioner is concerned, at the time of first measurement, his height was 162.5 cm. During the subsequent measurement, his height is lesser as tabulated in Paragraph No.4 of this order.

13. If the ratio of the Full Bench is applied, the height of the 1st respondent will stand increased to 163 cm by addition of 0.5 centimeter. Therefore, we find no reasons to interfere with the impugned order at the behest of the appellant/3rd party merely because the appellant/3rd party possessed the height which is above the minimum prescribed in the above Recruitment Notification referred to *supra*.



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14. That apart, the machines will have some element of error and thus, under the provisions of the Legal Metrology Act, 2009 r/w. Legal Metrology (General) Rules, 2011, some element of tolerance is prescribed as the machines have inherent defects while calibrating the required measurements either in weight or in volume etc. There is an element of error in the devices and therefore, statutorily there is tolerance prescribed.

15. We find no reasons to interfere with the conclusion arrived by the learned Single Judge in the impugned order. Hence, this Writ Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.)

(C.S.N., J.)

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Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

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To
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- 1.The Tamil Nadu Public Service Commission,
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- 2.The Controller of Examination,
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- 5.The Additional Principal Chief Conservator
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R.SURESH KUMAR, J.
and
C.SARAVANAN, J.



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