

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.13657 and 14840 of 2024
and W.M.P.Nos.14824, 14825, 14827,
16084, 16087 and 16089 of 2024

M.M.Karthikeyan

.. **Petitioner in
both the W.P's.**

Vs.

1.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.

2.The Controller of Examination
Tamil Nadu Public Service Commission
O/o The Tamil Nadu Public Service Commission
Chennai – 600 003.

3.The Principal Secretary
to Government of Tamil Nadu
Environment and Forest Department
Secretariat, Chennai – 600 009.

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

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

.. **Respondents in
both the W.P's.**

Prayer in W.P.No.13657 of 2024: Writ Petition filed under Article 226 of the Constitution of India seeking a 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 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 Hon'ble Court within a time frame.

Prayer in W.P.No.14840 of 2024: Writ Petition filed under Article 226 of the Constitution of India seeking a 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.

In both the Writ Petitions:-

For the Petitioner : Mrs.Narmadha Sampath
for Mrs.Gayathri Vasudevan

For the Respondents : Mr.I.Abrar Md Abdullah
for RR1 & 2
Mr.Kumaresan
Additional Advocate General
Assisted by
Dr.T.Srinivasan
Special Government Pleader
for RR3 to 5

COMMON ORDER

A. Prelude:

The conundrum as to whether height of the human beings can be accurately pronounced has re-surfaced in the instant case.

B. The Facts :

2. By a notification dated 13.12.2022 bearing Advertisement No.36/2022 the respondents invited applications for filling up of 9

vacancies to the post of Assistant Conservator of Forest in Group IA service of the respondents. As per the addendum issued to the said notification, 4 posts were earmarked for the candidates of General Turn, of which one post was reserved for the persons with *Hard of Hearing*.

2.1. Apart from the educational qualifications, minimum physical standards have also been prescribed for the applicants. The male candidates should be of a minimum height of 163 cm and chest girth of 84 cm with an expansion of 5 cm.

2.2. The petitioner considering himself to satisfy all the eligible criteria applied in respect of the said post. Upon being successful in the written examination, the petitioner was called for physical test. When the physical test was conducted on 06.05.2024, the measurements which were taken through the digital equipment (Stadiometer) revealed the measurements as follows:-

“Height	:	162.5 cm
Chest N	:	92.5 cm
Chest E	:	98.0 cm”

2.3. Since the petitioner did not possess the minimum requirement of 163 cm height, the impugned disqualification slip was issued to the petitioner and he was not considered for further process of selection.

2.4. Aggrieved by the same, the petitioner approached this Court by way of W.P.No.13657 of 2024. Pending the Writ Petition, the respondents proceeded with the shortlisting of the names for oral test and therefore, challenging the said action, the petitioner also filed another Writ Petition in W.P.No.14840 of 2024.

2.5. When the first writ petition in W.P.No.13657 of 2024 came up for admission, an interim order was passed on 16.05.2024 by this Court, holding that the respondents are willing to re-measure the height of the petitioner, for which purpose, the petitioner was directed to appear before the 5th respondent on 17.05.2024 at 11.00 am.. Further, this Court directed that the measurement to be carried out and shall be furnished under a report to the Court in the next hearing. Accordingly, the petitioner appeared. In the presence of two witnesses as well the learned counsel for the petitioner,

measurement was again taken out thrice by using the Digital Equipment and the reading showed the following results:-

<i>Sl.No.</i>	<i>Name of the Candidate</i>	<i>No.of opportunity and time (24 Hrs)</i>	<i>Height Measurement</i>
1.	Thiru M.M.Karthikeyan	1 st at 13.48.34	161.9 cm
2.	Thiru M.M.Karthikeyan	2 nd at 13.51.24	161.8 cm
3.	Thiru M.M.Karthikeyan	3 rd at 13.53.20	161.6 cm

Thereafter, a status report was also filed.

C. The Submissions:

3. Heard *Mrs.Narmadha Sampath and Mrs.Gayathri Vasudevan*, learned counsel for the petitioner; *Mr.Kumaresan*, learned Additional Advocate General and *Dr.T.Srinivasan*, Special Government Pleader appearing for the respondents 3to 5 and *Mr.I. Abrar Md Abdullah* for Respondents 1 and 2.

3.1. *Mrs.Narmadha Sampath*, the learned counsel appearing on behalf of the petitioner would submit that as per the original measurement undertaken on behalf of the respondents themselves, the petitioner's height was 162.5 cm. According to her, this matter is no longer *res integra*, in view

of the different views taken, the issue was referred to a Full Bench of this Court in W.A.No.8 of 2020 etc., and by Judgment dated 29.01.2020 the Full Bench had already dealt with the matter in extenso. Therefore, according to her, the measurement has to be carried out by the Digital Mode(Stadiometer) and the height in respect of relevant categories can be rounded off by 0.5cm.

3.2. Accordingly, when the respondents measured the petitioner's height as 162.5 cm, it should have been rounded off to 163 cm and the petitioner would be treated to be acquired the minimum physical standards and the respondents should have included his name for the further selection process including the oral test and if the petitioner being successful, ought to have been selected and appointed him.

3.3. Per contra, the learned Additional Advocate General appearing on behalf of the respondents would submit that it is true that the Full Bench of this Court has held that the margin of 0.5 cm has to be rounded off, but it is only on the petitioner's own application, this Court directed fresh

measurement. In the fresh measurement, the petitioner was measured thrice and all three measurements showed less than 162 cm and therefore, even by adopting the principle of rounding off, the petitioner cannot be considered for selection. When the measurement is taken by virtue of the interim order of this Court, then the petitioner as well as the respondents would be bound by the said measurement and going by the said measurement, the petitioner is not qualified.

3.4. In reply thereof, *Mrs.Narmadha Sampath*, the learned counsel for the petitioner would submit that the measurement of height and all the scientific factors relating thereto have been dealt with by the Full Bench of this Court in detail and as a matter of fact sought time to produce the relevant materials to show that there cannot be an exact measurement of an individual's height, even if the measurement is done by using digital/electronic equipment, still it would vary by virtue of time of taking the measurement etc.. She would submit that when the respondents insisted, the petitioner had appeared before a Government Physician and he had measured the height as 163 cm.

3.5. In continuation of the said arguments, when the matter was further heard today, *Mrs. Gayathri Vasudevan*, produced the relevant materials. She would firstly rely upon an article published in the International Journal of Anatomy and Research, titled as “Diurnal variation of height in South Indian Adolescent Subjects” to contend that the height of any individual will vary even with reference to the time of measurement. The relevant portion in the said article reads as follows:-

“The mean height difference in male taken between 0900 hrs and 1600 hrs is 10.43mm and the mean height difference in female 6.13mm. (Table 3)”

3.6. Ultimately, the following conclusion was arrived at the said article, which reads as follows:-

“Diurnal variation in linear height of an individual may substantially affect the reliability of height data and careful consideration should be given to the time of measurement and also take in to account of the gender difference.”

3.7. She would rely upon yet another scientific material in the form of

“A study of the Diurnal Height Changes Among Sample of Adults Aged Thirty Years and above in Ghana” which is published in the ARC Journal of Diabetes and Endocrinology and the relevant portion reads as under:-

“The male respondents recorded a mean evening and morning height of 174.68 cm and 176.31 cm respectively, while the females recorded 165.01 cm and 166.60 cm for mean evening and morning heights respectively. Now, it is evident from the results that, the stature of an individual shows a variation at different times of the day (morning and evening). The variations which were observed to be losses in height were found to be a mean loss of 1.63 cm for males and 1.59 cm for females. These variations ranged from 0.70 cm to 2.70 cm. (Buckler, 1978), also recorded a similar range from 0.80 cm to 2.80 cm in his study and further explained that, the decline in height was not always continuous throughout the day nor are measurements necessarily identical at similar times on consecutive days. This may imply that the pattern of activity during the course of the day, affects diurnal height to some extent.”

3.8. In reply thereof, *Dr. T.Srinivasan*, learned Special Government Pleader would submit that even if there are differences between the three measurements taken, even though they differ, all the three measurements were less than 162. Therefore, the petitioner is not entitled to the relief prayed for.

3.9. *Mr. Abrar Md. Abdullah*, the learned counsel appearing on behalf the respondents 1 and 2 would reiterate that when the petitioner has been

disqualified for not meeting the minimum physical standards, the respondents have no other option than to disqualify the petitioner. There is no malafide alleged against the measurements. The second measurement was taken in the presence of witnesses and there is no way the petitioner can find fault of the same.

D. Discussion & Findings:

4. I have considered the rival submissions made on either side and perused the material records of the case. Though at the first blush, measuring the height of the individual appears to be a simple matter, when it comes of minor difference of 1 or 2 cm, it varies due to several factors including the chin up position, way of standing, etc.,. In the instant case, the Government Physician has measured the height of the petitioner as 163 cm. The respondents at the time of selection have measured at 162.5 cm. After interim direction of the Court the measurement was taken thrice on the same day with interval of few minutes and it measured as 161.9 cm, 161.8 cm, 161.6 cm. No malafide is alleged or proved or can be alleged against

any of the measurement. Therefore, whether all of the above can be true?

The answer seems to be 'yes'.

4.1. Though it can be seen that there is no specific study with reference to Indian conditions, the measurements taken in this case itself demonstrate that there can be a variation of height even if it is meticulously measured using a standard digital equipment. It is because of two factors as one advances in age on account of its changes in linear dimensions of the skull, vertebral column, pelvis and the legs, height of an individual varies. Second, on account of diurnal variations, even depending on the time in which the measurement is taken, the height may differ.

4.2. The Full Bench of this Court considered the issue in detail and it is essential to reproduce the relevant portion of W.A.No.8 of 2020 etc., dated 21.09.2020, which reads as follows :-

“33.

“Another important bioanthropological aspect demonstrating the weakness of the definition of minimum height standards for policemen is the fact that the individual body height is a composite of the liner

dimensions of the skull, the vertebral column, the pelvis and the legs. However, with age, body height decreases. Between the age of 30 and the age of 60, body height decreases by between 3 cm and 5 cm for all healthy individuals. This is mainly due to a compression of the inter-vertebral discs. On the other hand, a diurnal variation in stature height is described. According to these studies, stature is maximum in the morning and less by 1.5 cm to 3.00 cm in the evening. This circadian decrease in stature is also caused by a reduction of the intervertebral discs, a consequence of human biped locomotion.”

emphasis supplied.

4.3. Thus, it can be seen that measurement of height of an individual also depends on the timing of measurement. Therefore, the rules of the respondents only provide for minimum standard and there is no provision as to time, manner of measurement etc., and the difficulty arises in these cases of minor differences. As far as the interim order of this Court is concerned, this Court directed to measure the height of the petitioner at 11.00 am on 17.05.2024. However, as per the status report, it can be seen that the measurements were taken thrice i.e., at 13.48 hrs, 13.51 hrs and 13.53 hrs. Therefore, as the day progresses, it is now scientifically proven that a person's height is bound to reduce/vary, on account of diurnal variation.

4.4. It is relevant to note here that in the past, in number of cases this Court directed that the measurement of height should be carried out in the

presence of Registrars of this Court or in the presence of Advocates, etc., however, there were different orders passed leading to the reference of the matter to the Full Bench. The height of a person is to be resolved by standards and principles are laid down by the Full Bench rather than the output which is given by the digital equipment.

4.5. Therefore, in this case, this Court cannot now go with the measurements which are obtained pursuant to the interim order. As per the original notification, the measurement of height was conducted on a particular date i.e., on 06.05.2024. That measurement was also conducted through digital equipment. The measurement revealed 162.5 cm. Therefore, following the very same principle which as enunciated by the Full Bench of this Court in respect of the Police Department, the Forest Department has also to consider and round off the height as 163 cm. If the question as to height cannot be resolved on Physical/Electronic basis, or simply by one's vision, it has to be decided advertent to the set of principles. While considering the principles, the attendant circumstances are also taken into account. They are :

- (a) The petitioner is a Differently abled (Hard of Hearing) candidate;
- (b) He has successfully cleared the written examination;
- (c) He is aged 41 years;
- (d) The recruitment process is not yet completed and the oral test is scheduled on 13.06.2024.

E. The Result:

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;

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

11.06.2024

Neutral Citation : Yes

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Note:Issue order copy on 12.06.2024

To

1.The Secretary
Tamil Nadu Public Service Commission
TNPSC Road, Park Town
Chennai – 600 003.

2.The Controller of Examination
Tamil Nadu Public Service Commission
O/o The Tamil Nadu Public Service Commission
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