IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1008 OF 2018

DISTRICT: SATARA
SUBJECT : SELECTION

Ms. Nilam Bhanudas Madane,)
Aged 21 Yrs, Occ. Nil,)
R/at. Shivade, Post Umbraj,)
Tal. Karad,Dist. Satara.) ... **Applicant**

Versus

1) The Commissioner of Police, Mumbai,)
Having Office at)
Mumbai Police Commissionarate,)
L.T. Marg, Opp. Crawford Market, Fort,)
Mumbai 400 001.)

2) The State of Maharashtra,)
Through Principal Secretary,)
Home Department,)
Having Office at Mantralaya, Mumbai -32.)... **Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : M.A. LOVEKAR, MEMBER (J)
DEBASHISH CHAKRABARTY, MEMBER (A)

PER : M.A. LOVEKAR, MEMBER (J)

DATE : 07.01.2025.

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. Undisputed chronology is as follows:-

On 12.02.2016 the Applicant submitted Application online for the post of Police Constable from female category and also through sports category. In selection process she secured 147 marks. On 26.4.2016 her original documents were verified. During the physical measurement her height was found to be 154.00 cm. She protested that her height was more than the prescribed height of 155.00 cm. She received letter of selection dated 23.06.2016 from VJ(A) Female Category. By letter dated 15.12.2016 the Applicant was informed that she was not eligible for being considered from VJ(A) Sports Category considering her marks and she could not be considered from VJ(A) Female Category because her height fell short of minimum prescribed height of 155.00 cm. Her representations dated 31.01.2017 and 07.03.2017 to again measure her height were rejected by order dated 13.04.2017. In selection process of the year 2017 her height was found to be 155.50 cm (Exhibit H). However, she did not succeed in this process. In O.A. No.642/2017 (Exhibit H-1) liberty was granted to her to withdraw the O.A. and make a representation. She made a representation dated 06.09.2017. She was called for hearing. She answered in writing various questions which were put to her. In selection process in the year 2018 her height was found to be 155.40 cm (Exhibit M). By the impugned order dated 20.11.2018 (Exhibit- M-1) her request for re-measurement of her height was rejected by observing *inter-alia* as follows:- अर्हतेची

> "पोलीस शिपाई सेवाप्रवेश नियम २०११. नियम ३ (१) (क) मधील तरतुदीनुसार महिला उमेदवारांकरीता कमीत कमी उंची १५५ से. मी. असणे ही पोलीस शिपाई पदाच्या भरतीची अर्हता आहे. आपले शारिरिक मोजमाप दिनांक २६/४/२०१६ रोजी घेण्यात आले. आपल्या शारिरिक मोजमाप विवरण पत्रावर संबंधीत अधिकाऱ्यानी आपले मोजमाप घेतल्यानंतर आपली उंची १५४ से. मी. नोंदविलेली आहे. आपण आपला ऑनलाईन अर्ज दिनांक ३:२ २०१६ रोजी वि.जा. अ (खेळाडू) प्रवर्गातून सादर केलेला आहे. खेळाडू समांतर आरक्षणासाठी महाराष्ट्र पोलीस शिपाई सेवाप्रवेश नियम २०११, नियम ३ तरतुदीनुसार आवश्यक पात्रतेची व शर्तीस पुर्ण करणाऱ्या पुरुष व महिला खेळाडूमा किमान उंचीच्या अटीमध्ये २.५ से. मी. इतकी (२) (क) सुट देय आहे. त्यामुळे आपली उंची १५४ से. मी. असुन सुध्दा सदरहू सवलतीमुळे आपणास भरती प्रक्रियेमध्ये प्रवेश मिळाला.

आपण लिहून दिलेल्या दिनांक २१/१/२०१७ मुद्देनिहाय पत्रिकेनुसार आपणास शारिरिक नोजमापाच्या दिवाशी म्हणजेच दिनांक २६/४/२०१६ रोजी शारिरिक मोजमाप पत्रावर आपल्या उचीची नोंद १५४ से मी नोंदवल्याची माहिती होती असे स्पष्ट होते. तसेच सदरहू उंचीबाबत आपण त्यावेळी तोंडी तक्रार केल्याचे नमुद केले आहे वास्तविक आपणाला आपल्या कमी मोजलेल्या उंचीच्या तक्रारीच्या अनुषंगाने त्याचवेळी पोलीस उप आयुक्त तथा मैदान प्रमुख यांच्याकडे लेखी तक्रार करण्यावी संधी होती परंतु दिनांक २६/४/२०१६ रोजी अथवा त्यानंतर अंतिम निवड यादी दिनाक १०/६/२०१६ रोजी प्रसिध्द झाल्यानंतर सुध्दा त्याबाबत लेखी तक्रार भरती प्रधिकाऱ्यांकडे केलेली नाही अथवा भेटून गा-हाणे मांडलेले नाही. परंतु आपण उंचीच्या निकषात बसत नसल्यामुळे निवड रद्द केल्याबाबत या कार्यालयाचे पत्र दिनाक १५/१२/२०१६ अन्वये केल्यानंतर सदरहू नविन मुद्दा आपण उपस्थित केलेला आहे. आपण उपस्थित केलेल्या सदरहू मुद्दयामध्ये कोणतेही तथ्य दिसून येत नाही. व आपले म्हणणे संयुक्तीक नाही. त्यामुळे आपले म्हणणे मान्य करता येत नाही

उपरोक्त नमुद केल्यानुसार, पोलीस शिपाई २०१५-१६ ची भरती प्रक्रिया महाराष्ट्र पोलीस शिपाई (सेवाप्रवेश नियम) २०११ नियम ३ (१) (क), नियम ४ (१), ४(२) मधील तरतुदीनुसार पुर्तता करून पार पाडण्यात आलेली आहे. अंतिम निवड यादी दिनांक १०/६/२०१६ रोजी जाहिर करण्यात आलेली आहे. महाराष्ट्र पोलीस शिपाई नियम २०११ मध्ये अंतिम निवड यादी जाहिर झाल्यानंतर एखादया उमेदवाराच्या विनंतीनुसार फेर शारिरिक मोजमाप, फेर मैदानी चाचणी, फेर लेखी परिक्षा घेण्याची तरतुद नाही व तसे अधिकार नियुक्ती प्राधिका-यास अथवा निवड समितीला नाहोत. भरती प्रक्रिया हा सुरळीतपणे पार पाडण्यासाठी कालबध्द वेळेत व नि:पक्षपातीपणे राबविणे आवश्यक आहे आपण पोलीस शिपाई नियमानुसार कमीत कमी उंचीच्या अर्हतेची पुर्तता करीत नसल्यामुळे उपरोक्त संदर्भ ५ पत्रान्वये निवड रद्द केल्यानंतर आपल्या उंचीचे फेर मोजमाप घ्यावे अशी विनंती केलेली आहे.

उपरोक्त सर्व बाबी साकल्याने विचारात घेता आपण संदर्भ ५ मध्ये नमुद अर्जान्वये आपल्या उंचीचे फेर मोजमाप घेणेबाबत केलेली निवंती नियमानुसार अनुज्ञेय नसल्यामुळे अमान्य करण्यात येत आहे. "

"Hence, this O.A.'

3. Stand of Respondent Nos.1 & 2, in short, is as follows:-

> "(v) It is further submitted that the Merit List for the D.T.(A) (Sports person) category was closed on 163 marks and so the applicant was not selected under D.T.(A) (Sports person) category. However the merit list of 30% Women Horizontal Reservation candidate of DT-(A) category closed on 141 and applicant obtained

> 147marks. Hence her name was provisionally included in final merit list as per computerised data/software.
>
> (vi) It is further submitted that after verifying concerned hard copy of documents it was found that the applicant's height was measured as 154 cm. which was less than the eligibility rules framed under the Maharashtra Police Constable (Recruitment) Rules 2011 under Rule 3(1)(c). It is submitted that in view of this the candidature of applicant was cancelled vide this office letter O.W. No. CP/Desk 9(1)/PR/2351/2016 dated 15/12/2016. The said order of rejection is just, proper and legal.
>
> (i) It is further submitted that at the time of physical measurement candidates were instructed to record their objections about their physical measurement if any, in writing to the concerned authority on the same day. The rank of Deputy Commissioner was appointed as in-charge of the ground. It is submitted that the applicant did not submit any grievance about her measurement of height to concerned authority as per available record. Therefore, it is clear that Applicant admitted her height 154 cm, as measured by concerned authority."

4. Keeping in view rival submission, question for consideration is whether re-measurement of height as prayed for by the Applicant can be directed. We have set out the undisputed facts in the opening para of this order.

5. In support of her prayer for re-measurement of height, the Applicant has relied on the orders of The Hon'ble Bombay High Court dated 13.07.2021 and 30.07.2021 in Writ Petition No.199/2020 (Secretary, MPSC V/s. Sandeepkumar S. Nalavade). In this case also height of the Petitioner was found to be less and keeping in view facts of the case as well as principles of fairness and transparency re-measurement of height was ordered.

6. In the instant case on subsequent two occasions height of the applicant was found to be 155.50 cm and 155.40 cm, respectively. This measurement was carried out during the process of selection of the years 2017 and 2018 for the post of police constable. This factual aspect, coupled with principles of fairness and transparency, lead us to conclude that case is made out to direct re-measurement of height of the

Applicant with respect to police recruitment of the year 2016 when she had otherwise been eligible for appointment to the post of Police Constable from VJ(A) Female Category. We make it clear that by this order we have only dealt with prayer of the applicant in respect of re-measurement of her height. Hence, the order.

ORDER

1. The Original Application is allowed.

2. The impugned orders dated 15.12.2016, 13.04.2017 and 20.11.2018 are quashed and set-side.

3. Respondents are directed to again get height of the Applicant measured. Date, Time and Venue where height of the Applicant is to be re-measured shall be informed to the Applicant at least 10 days in advance.

4. Depending upon result of such re-measurement of height, necessary orders shall be passed and communicated to the Applicant. This entire exercise shall be completed within 6 weeks from today.

5. No Order as to costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(M.A. Lovekar)
Member (J)

Place: Mumbai
Date: 07.01.2025
Dictation taken by: N.M. Naik.

Uploaded on:_____

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