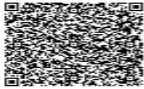


2024:PHHC:153334



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP- 22114-2023 (O&M)
Date of Decision:18.11.2024

Lalit Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

2.

CWP-23085-2023 (O&M)

Jyoti Nagil

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Rajat Mor, Advocate for the petitioner
in CWP-22114-2023.

Mr. Parveen Kaushik, Advocate for the petitioner
in CWP-23085-2023.

Ms. Dimple Jain, DAG, Haryana.

Mr. Balwinder Sangwan, Advocate for respondent-HPSC.

Mr. Piyush Bansal, Advocate for respondent No.3.

JASGURPREET SINGH PURI J.(Oral)

1. Both the petitions are taken up together for final disposal with the consent of all the learned counsel for the parties as the issue involved in both the petitions is same.

2024:PHHC:153334



2. For the sake of convenience, the facts are taken from CWP-
22114-2023 titled as ***Lalit Kumar Vs. State of Haryana and others***

3. Brief facts of present case are that both the petitioners applied for the post of Manager (Utility) which was advertised by respondent-Haryana Public Service Commission (hereinafter to be referred as 'Commission) vide Annexure P-1 in the year 2018. For the purpose of recruitment to the post of Manager (Utility) total seven posts were advertised vide Advt.No.1(8) of 2018, out of which six posts were meant for General Category and one post was meant for Scheduled Caste (SC) Category. After the selection process, the candidates were to be appointed in the Haryana State Industrial and Infrastructure Development Corporation Ltd. (Industries & Commerce Department, Haryana) and both the petitioners had applied for the aforesaid post under the General Category. Although the advertisement was of the year 2018 but for the first time, respondent-Commission, announced the selection criteria on 16.03.2021 vide Annexure P-3 in which the 'syllabus of the written test' and 'scheme/pattern of written test' were prescribed. Additionally, it was specified that no candidate would be called for the interview/viva-voce unless the candidate had secured at least 50% qualifying marks in the written test. For candidates of the reserved categories, the qualifying marks for the written examination were 45%. Both the petitioners being in the General Category were required to pass the written examination in order to qualify for the viva-voce and they both qualified the written test and obtained more than 50% marks and, therefore, they were called for interview. Result of the aforesaid written test was declared on 11.11.2021 vide Annexure P-4 and petitioner-

2024:PHHC:153334



Lalit Kumar in CWP No.22114-2023 with roll No.4735 and petitioner-Jyoti Nagil in CWP No.23085-2023 with roll No.4535 were shown as 'pass' in the aforesaid result. After declaration of the aforesaid result, not only the present two petitioners were called for interview on 25.08.2023 but all the other candidates were also called for interview. This happened approximately two years after the declaration of the result of written examination. Thereafter when both the petitioners were interviewed on the aforesaid date i.e.25.08.2023, the final result was declared vide Annexure P-9 wherein although there were total 06 posts for General Category but only 05 candidates were shown to have been selected under the General Category and no candidate was shown to have been selected under the Reserved Category and neither of the petitioners was shown as selected in the final result. Consequently, the present petition has been filed.

4. Learned counsel appearing on behalf of petitioner-Lalit Kumar in CWP No.22114-2023 submitted that it is a case where the respondent-Commission had started the recruitment process and an advertisement in pursuance of the same was issued in the year 2018 vide Annexure P-1 but it did not contain any selection criteria. After about 03 years vide Annexure P-3, an announcement was made by respondent-Commission, declaring the selection criteria which included a detailed syllabus of the written test, the scheme/pattern of the written test, and the requirement of obtaining 50% marks for candidates in the General Category to qualify for the interview. He submitted that when the petitioner was called for interview on 25.08.2023, he appeared before the interview committee but he was rendered disqualified by

2024:PHHC:153334



the respondent-Commission on the ground that he did not obtain 50% marks in the interview/viva-voce. He further submitted that the selection criteria (Annexure P-3) did not specify any minimum percentage of passing marks for interview/viva-voce but it only provided minimum 50% marks as qualifying marks for the written examination and, therefore, there was no occasion for the respondent-Commission to have disqualified the petitioner on the ground of non-obtaining of 50% marks in the interview/viva-voce. He submitted that it was only after he moved an application under the Right to Information Act, 2005, that he was provided with information indicating that, on the very date of the interview, i.e., 25.08.2023, the respondent-Commission changed the criteria and stated that to qualify, a candidate must obtain 50% marks in the interview/viva-voce as well. He submitted that vide Annexure A-1 which is the aforesaid changed selection criteria, it has been so provided that the candidate has to obtain 50% marks in the interview/viva-voce. Additionally, the distribution of marks has been set at 87.5 marks for the written test and 12.5 marks for the interview. However, as per the result, petitioner did not secure 50% marks in the interview i.e. 6.25 marks and details regarding the same is so provided vide Annexure P-10 which shows that the petitioner Lalit Kumar obtained 66.96 marks in the written test and 4.54 marks in the interview. His cumulative total marks came out to be 71.50 but since he secured less than 6.25 marks in the interview, he was declared disqualified. Learned counsel submitted that the proposition of law pertaining to the recruitment process once started, the selection criteria for the same cannot be changed midway or even after the selection process is over is no longer *res-*

2024:PHHC:153334



integra. He submitted that Hon'ble Supreme Court in ***K. Manjushree v. State of Andhra Pradesh, 2008 (3) SCC 512*** held that once the selection process starts, thereafter the selection criteria cannot be changed midway. He further submitted that in the present case vide Annexure P-3 in the year 2021, the selection criteria was announced in which requirement of 50% marks in the written examination were mentioned as qualifying marks but there was no mention of qualifying marks for the interview. He also submitted that there are no statutory rules pertaining to the aforesaid aspect and there are neither any statutory rules nor any bye-laws or instructions regarding the same, rather they are silent on the aforesaid issue as to whether any qualifying marks should be prescribed for the interview/viva-voce or not and therefore the respondent-Commission has violated the law laid down by Hon'ble Supreme Court in the aforesaid judgment of ***K.Manjushree(supra)***.

5. He further submitted that thereafter the aforesaid judgment passed by Hon'ble Supreme Court in the case of ***K.Manjushree(supra)*** was referred to a larger bench. Recently, Hon'ble Supreme Court, in a judgment delivered by a Constitutional Bench of five judges in ***Tej Prakash Pathak and Others v. Rajasthan High Court and Others, Civil Appeal No.2634 of 2013 with Civil Appeal No.2635 of 2013, Civil Appeal No.2636 of 2013 decided on 07.11.2024***, upheld the law laid down in ***K. Manjushree (supra)*** as good law and it has been categorically held that the selection criteria cannot be changed midway unless the rules permit so, whereas in the present case admittedly the rules are silent on this issue. He submitted that after the announcement of the selection criteria in 2021, there was a gap of about two

2024:PHHC:153334



years before the interview was conducted on 25.08.2023. On the same date, the criteria was unilaterally changed by the respondent-Commission on their own without giving any notice to the petitioner or any other candidate, and without even publishing the same, which is also an admitted fact. He submitted that this action of the respondent-Commission is totally contrary to the law laid down by Hon'ble Supreme Court.

6. He further submitted that as per the final result if his total cumulative marks of 71.50 are considered, he would stand at number 2 in the merit list and he should have been selected for appointment to the aforesaid post but because of the aforesaid illegal action on the part of the respondent-Commission, he was disqualified without any justifiable reason.

7. Learned counsel appearing on behalf of the petitioner-Jyoti Nagil submitted that the petitioner has been disqualified because of the aforesaid reason and she stood at Sr. No.9 on the merit list. He also submitted that after the aforesaid final result was declared, two candidates who were selected in the General Category did not even join and one candidate had left afterwards and in this way immediately three vacancies for the aforesaid post were created. The petitioner, therefore, had the right to be considered for appointment to the aforesaid post. The petitioner could not have been disqualified solely on the ground that 50% marks were required for the interview in view of the submissions which have been advanced by learned counsel for the petitioner in CWP-22114-2023 and in light of the judgment of Hon'ble Supreme Court in *K.Manjushree's case (supra)* which has now been

2024:PHHC:153334



upheld by a Constitutional Bench of Hon'ble Supreme Court in *Tej Prakash Pathak's* case (supra).

8. On the other hand, learned counsel appearing on behalf of the respondent-Commission submitted that the law with regard to the aforesaid changing of criteria is well settled now after the judgement of Constitutional Bench of Hon'ble Supreme Court in *Tej Prakash (Supra)* but in the present case the facts are distinguishable. In this regard, he submitted that in the present case the criteria was not changed after declaration of the final result but it was changed on the date of interview and, therefore, the proposition of law as in the aforesaid judgment will not apply to the present case. He also submitted that the selection criteria has not been challenged by the petitioners after participating in the selection process and therefore the petitioners are not entitled for any relief. So far as the rules on the subject are concerned, he also submitted that as to whether interview marks are to be assigned as qualifying marks or not, the rules are silent on the same and hence the respondent-Commission may formulate the same. He also submitted that so far as the submission made by learned counsel for the petitioner that neither the changed criteria of 25.08.2023 was published, nor was it put to notice to the petitioners or any other candidate is concerned, the same is an admitted position.

9. Mr. Piyush Bansal, learned counsel appearing on behalf of respondent No.3 submitted that as per his instructions the factual position is that out of the 5 candidates who were selected, 2 candidates did not join and 1 candidate had left. In this way, 3 posts under the General Category remain vacant.

2024:PHHC:153334



10. I have heard the learned counsels for the parties.

11. The core issue involved in the present case is as to whether after the selection process was initiated and the selection criteria was announced vide Annexure P-3 in 2021, which introduced minimum qualifying marks for the written examination and provided a detailed procedure for the selection process then whether the respondent-Commission could have on the very date of interview changed the criteria and introduced new qualifying marks for interview/viva-voce without putting the same to notice of the candidates or without publishing the changes to any of the candidates was in accordance with law or not.

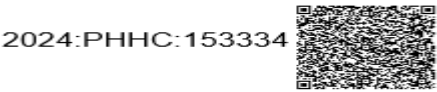
12. The entire proposition of law in this regard is now no longer *res-integra*. A Constitutional Bench of Hon'ble Supreme Court in ***Tej Prakash Pathak (supra)*** has recently observed that the law which has been laid down in the judgment of ***K. Manjusree's case (supra)*** is a good law. The conclusion contained in para No.42 of the aforesaid judgement of Hon'ble Supreme Court in ***Tej Prakash Pathak's case (supra)*** is reproduced as under:-

“42. We, therefore, answer the reference in the following terms:

(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article [14](#) of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra). Subash Chander Marwaha (supra) deals with the right to be appointed from the



Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non-arbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.”

13. In the present case the advertisement is of the year 2018 and after 03 years, the respondent-Commission introduced a selection criteria in the year 2021 vide Annexure P-3 and the same is reproduced as under:-

“Annexure P-3

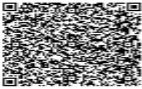
Haryana Public Service Commission
Bays No. 1-10, Block-B, Sector-4, Panchkula

ANNOUNCEMENT

It is hereby announced for the general information of the candidates who have applied against the advertised posts mentioned below that the Commission has decided to conduct the Written Test tentatively on 22.05.2021. The details of the advertised Posts, Advertisement Nos., syllabus of the Written Test and Scheme/Pattern of Written Test are as-under:-

<i>Sr. No.</i>	<i>Name of Post</i>	<i>Department</i>	<i>Advt.No.</i>
<i>1.</i>	<i>Senior Manager (Estate)</i>	<i>Haryana State Industrial and Infrastructure Development</i>	<i>1(10) of 2018 & Corrigendum</i>

2024:PHHC:153334



		Corporation Ltd. (Industries & Commerce Department, Haryana)	Dated:12.08.2019
2.	Deputy Director (Projects) (Group-A)	Industries & Commerce Department, Haryana	2(1) of 2019
3.	Deputy Director of Agriculture and equivalent (Class-I)	Agriculture & Farmers Welfare Department, Haryana	5(xi) of 2018
4.	Assistant Statistician/Statistical Officer/Agriculture Statistical Officer/Field Officer (Statistics)/ Assistant Statistical Officer/Research Officer (Statistics) (Class-II)	Agriculture & Farmers Welfare Department, Haryana	5(viii) of 2018
5.	Manager (Utility)	Haryana State Industrial and Infrastructure Development Corporation Ltd. (Industries & Commerce Department, Haryana)	1(8) of 2018
6.	Deputy Director (Statistics)	Industries & Commerce Department, Haryana	3(1) of 2019
7.	Assistant Agriculture Engineer (Class-II)	Agriculture & Farmers Welfare Department, Haryana	5(xii) of 2018
8.	Manager (P&A)	Haryana State Industrial and Infrastructure Development Corporation Ltd. (Industries & Commerce Department, Haryana)	1(6) of 2018 & Corrigendum dated 15.05.2019
9.	Manager (Estate)	Haryana State Industrial and Infrastructure Development Corporation Ltd. (Industries & Commerce Department, Haryana)	1(13) of 2018 & Corrigendum dated 10.05.2019
10.	Deputy Director (Industrial Promotion) (Group-A)	Industries & Commerce Department, Haryana	2(2) of 2019
11.	Assistant Engineer (Agri.) (Class-II)	Haryana Seed Development Corporation	5(1) of 2019

Syllabus of Written Test:

- 1. Quantitative Aptitude including Data Interpretation.*
- 2. Logical Reasoning and Analytical Ability.*
- 3. General Science, Current events of National & International Importance, History of India and Indian National Movement, Indian and World Geography, Indian Culture, Indian Polity and Indian Economy.*

2024:PHHC:153334



4. History, Geography, Culture, Polity, Economy and Society of Haryana.

Scheme/Pattern of Written Test:

- i. Objective Type Paper with Multiple Choice Questions.
- ii. Number of Questions: 100
- iii. Maximum Marks: 100
- iv. Duration of Paper: Two Hours.
- v. All Questions carry equal marks.
- vi. For each wrong answer, one-fourth (0.25) mark shall be deducted.

No candidate shall be called for the interview/viva-voce unless he/she obtains at least fifty percent qualifying marks in the Written Test. However, for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes-A, Backward Classes B, Economically Weaker Sections, Persons with Benchmarks Disabilities, Eligible Sports Persons and Ex-servicemen (but not Dependents of ESM) Categories, the qualifying marks for this purpose shall be forty five percent.

Dated: 16.03.2021

Sd/-
Secretary”

14. The petitioners had qualified the aforesaid written test by attaining more than 50% marks and therefore they were called for interview on 25.08.2023. The final result was declared on 29.08.2023 vide Annexure P-9, which is also reproduced as under:-

“Annexure P-9

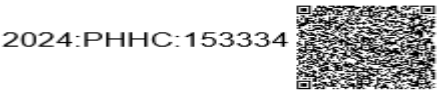
HARYANA PUBLIC SERVICE COMMISSION

BAYS NO. 1-10, BLOCK-B, SECTOR 4, PANCHKULA

RESULT

The Haryana Public Service Commission has finalized the result for the

following posts:-



- i. Senior Manager (Estate) in HSIIDC Advt. No. 1(10) of 2018 & Corrigendum Dated: 12.08.2019
- ii. Deputy Director (Projects) (Group-A) In Industries & Commerce Deptt. Advt. No. 2(1) of 2019
- iii. Manager (Utility) in HSIIDC Advt. No. 1 (8) of 2018
- iv. Deputy Director (Statistics) in Industries & Commerce Deptt. Advt. No. 3(1) of 2019
- V. Deputy Director (Industrial Promotion) (Group-A) in Industries & Commerce Deptt: Advt. No. 2 (2) of 2019

The result shown below roll number wise not in order of merit.

1. Senior Manager (Estate) in HSIIDC

General	1517 2301
SC of Haryana	No candidate qualified.
BCA of Haryana	2361
BCB of Haryana	1611 1907
ESM (General) of Hry.	No candidate found.

2. Deputy Director (Projects) (Group-A) in Industries & Commerce

General	2215
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3. Manager (Utility) in HSIIDC

General	4451 4769 4816 5435 5571
SC of Haryana	No candidate qualified.

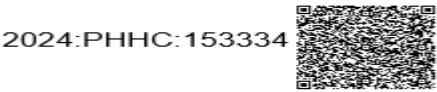
4. Deputy Director (Statistics) in Industries & Commerce Deptt.

General	4247 4498 5051
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5. Deputy Director (Industrial Promotion) (Group-A) in Industries & Commerce Deptt.

General	8115 8217 8550 8615
SC of Haryana	No candidate qualified.

Note:-



1. The above result is subject to final outcome of the CWP No. 16431/2023, 18537/2023 & 7387/2023 for the posts of Senior Manager (Estate) in HSIIDC, CWP No. 18764/2023, 13932/2023 & 4616/2023 for the posts of Manager (Utility) in HSIIDC, CWP No. 20360/2022, 22877/2022 for the posts of Deputy Director (Industrial Promotion) in Industries & Commerce Deptt. & CWP No. 18792/2022 for the posts of Deputy Director (Projects) in Industries & Commerce Deptt.
2. While preparing the result due care has been taken. However, any inadvertent error cannot be ruled out. The Commission reserves its right to rectify any error at a later stage:-

Dated: 29.08.2023

Secretary
Haryana Public Service Commission
Panchkula”

15. A perusal of the aforesaid result would show that 05 candidates under the General Category were selected although there were total 06 posts. The break-up of the marks of the petitioner namely Lalit Kumar is depicted in Annexure P-10 and the relevant portion of the same on page No.44 of the petition is reproduced as under:-

Sr. No.	Roll No.	Name of the Candidate	Cat	Marks awarded for Rectt.Test (out of 87.5)	Marks awarded in interview (out of 12.5)	Total marks personal achievements & Interview (out of 100)
2.	4735	Lalit Kumar	General	66.96	4.54	71.50

16. A perusal of the aforesaid result would show that the petitioner Lalit Kumar had secured 66.96 marks in the written test and total marks obtained in the interview were 4.54 which brings his total marks to 71.50. He was placed at Serial No.2 in the merit list but was disqualified only because of the reason that in the interview he had obtained 4.54 marks and as per the

2024:PHHC:153334



changed selection criteria vide Annexure A-1, he was required to obtain 6.25 marks in the interview being 50%. Had the aforesaid criteria not been changed then he would have been selected and appointed on the aforesaid post because he was at Sr. No.2 in the merit list. So far as second petitioner namely Jyoti Nagil is concerned, she was placed at Sr. No.9 in the merit list.

17. After the selection criteria was introduced vide Annexure P-3 in the year 2021 then after two years when the interview was conducted on 25.08.2023 on the same date which is clear from the aforesaid Annexure A-1 the selection criteria was changed and after four days the result was declared. The changed selection criteria (Annexure A-1) is also reproduced as under:-

SELECTION CRITERIA

1 Deputy Director (Project) (Group-A) in Industries & Commerce Department Advt. No. 2(1) of 2019 published on 24.05.2019

Posts:- 01 (General)

2. Manager (Utility) in HSIIDC Advt. No. 1(8)/2018 published on 21.07.2018

Posts:- 07 (06-General & 01-SC)

3. Senior Manager (Estate) in HSIIDC Advt. No. 1(10)/2018 published on 21.07.2018 Corrigendum Dated: 12.08.2019

Posts: 08 (02-General, 02-SC, 01-BCA, 02-BCB & 01-ESM-Gen)

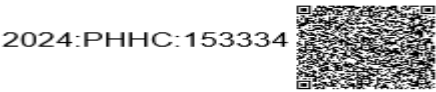
4 Deputy Director (Statistics) in Industries & Commerce Department Advt. No. 3(1)/2019 published on 29.05.2019

Posts 03 (General)

5. Deputy Director (Industrial Promotion) (Group-A) in Industries & Commerce Department Advt. No. 2(2)/2019 published on 24.05.2019

Posts: 05 (04-General & 01-SC)

The Commission has considered the matter regarding the selection criteria to be followed for recruitment to the above posts and fixes the criteria is as under



1 Written Test (CBT)	87.5 Marks
2 Interview	12.5 Marks

Interview:

The interview will be conducted through oral discussion and questioning which will be the touchstone to ascertain personal qualities i.e. Knowledge, awareness, intelligence, outlook towards social & national Issue, Poise bearing, expression, articulation, ethics & values, presentation, alertness & other related qualities

A combined test for various posts in different department was held on 14.09.2021. Since it was a generic test and the subject knowledge of the candidate was not tested, hence no candidate shall be considered to have qualified the interview unless she/he obtains at least 50% marks (UR category) and 45% marks (All reserved categories) of the total marks allotted for the interview.

<i>Sd/- Mandita Yadav Member</i>	<i>Sd/- Rajender Kumar Member</i>	<i>Sd/- Jyoti Baidya Member</i>	<i>Sd/- Anand Sharma Member</i>
<i>Sd/- Dr. Pawan Kumar Member</i>	<i>Sd/- Alok Verma Chairman</i>		

18. A perusal of the aforesaid would show that on the date of interview, it was so provided that the candidate had to obtain 50% marks in the interview. It is, therefore, very clear that the selection criteria which was introduced vide Annexure P-3 in the year 2021 did not provide for the cut-off marks/qualifying marks for the interview but it was changed subsequently on the very date of interview and in view of the changed criteria the petitioners have been rendered disqualified. Admittedly, there are no rules pertaining to

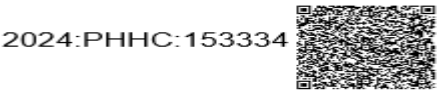
2024:PHHC:153334



whether any marks could be fixed for the interview or not and they are silent on the same.

19. Therefore, *ex-facie* the rules had been changed midway and not only this the same had been changed on the date of interview itself which was the final stage which could not have been done in the absence of any statutory rule governing the same. The net result of the same was that the petitioner, Lalit Kumar, although was placed at Sr. No. 2 in the merit list, had been rendered disqualified by virtue of the changed selection criteria on the very date of the interview. Therefore, this is completely contrary to the settled law as aforesaid. Learned counsel for the respondent-Commission also argued that the petitioners, without challenging the selection criteria and after participating in the selection process, could not have filed the present petitions. However, this Court is unable to accept the argument of learned counsel for the respondent-Commission, as it is a case where the action of the respondent is totally contrary to the settled law as aforesaid.

20. This Court is of the considered view that case of both the petitioners is squarely covered by the judgment of a Constitutional Bench of Hon'ble Supreme Court in ***Tej Prakash Pathak and Others v. Rajasthan High Court and Others's case (supra)***. Therefore, both the petitions deserve to be allowed. The respondent-Commission is now directed to ignore the aforesaid eligibility qualification of securing 50% marks in the interview/viva-voce and therefore to consider the candidature of both the petitioners on their own merits. In case they are found to be eligible the respondent-Commission shall further process the cases of both the petitioners for the purpose of their



appointment to the aforesaid post in accordance with law. So far as the petitioner-Lalit Kumar is concerned, apparently he was at Sr. No.2 in the merit list and therefore necessary process be made by ignoring the aforesaid 50% marks in the interview. Since as per learned counsel for respondent-HSIIDC, three posts are still vacant, then further measures be taken by the respondent-HPSC to consider appointment of the petitioner-Lalit Kumar. So far as the petitioner namely Jyoti Nagil, is concerned, she was stated to be at Sr. No.9 in the merit list. Her case be also processed after ignoring her disqualification because of the aforesaid reason and in case she falls within the zone of consideration then her case be also processed and sent to the concerned HSIIDC. The entire exercise be completed within a period of two months from today. In case the petitioners are appointed to the aforesaid post then they shall be entitled for all consequential benefits including seniority etc. and will be given deemed date of appointment on the date when the other candidates were selected according to the merit *inter-se* between the petitioners and the other persons who were selected. However the petitioners will not be entitled for the salary for the period they have not worked.

(JASGURPREET SINGH PURI)
JUDGE

18.11.2024

shweta

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No