



2024:DHC:5100



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 4th July, 2024

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W.P.(C) 4545/2024

SRINIVASA

.....Petitioner

Through: Mr. Shiv Nath, Mr. Rajeev Kumar
Deora and Mr. Mohan Singh, Advocates.

versus

THE CHAIRMAN CUM MANAGING DIRECTOR,
AGRICULTURE INSURANCE COMPANY OF INDIA
& ORS.

.....Respondents

Through: Mr. Madan Gera, Advocate

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“(i) writ order or direction in the nature of mandamus for directing the respondents to quash and set aside the impugned final result and consider the selection/appointing of the petitioner against the notification CIN:U7499L2002 PLC 8123 Ref. No. AIC/Rect/MT (30) 2023-2024 dated 24.06.2023.

(ii) To issue writ, order or direction in the nature of mandamus directing the respondents to redraw the final result list and to prepare a fresh selection list on the basis of consolidated marks in written and interview including the candidature of the Petitioner.

(iii) And or to pass such other and further order which this Hon'ble Court may deem fit and proper for the fact and circumstances of the case.”

2. Factual matrix to the extent necessary is that Respondent No.1/Agriculture Insurance Company of India (hereinafter referred to as ‘the Company’) initiated a recruitment process vide Recruitment Notice dated



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24.06.2023 for filling 30 vacancies of Management Trainees in the discipline of Rural Management, both under the Unreserved and Reserved categories. The selection process was a two-tier process based on an Online Examination carrying 150 marks followed by interview for which the maximum marks were 50, as stipulated in the Recruitment Notice. Minimum qualifying marks in the Online Examination were 60% for General/OBC and EWS categories and 55% for SC/ST candidates. It was further stipulated in the Recruitment Notice that the Company reserved the right to fix eligibility standards in order to restrict/enhance the number of candidates to be called for interview commensurate to the number of vacancies. It was also stipulated that the Company reserved the right to fix the minimum marks to qualify in the interview.

3. As per the case of the Petitioner set out in the petition, Petitioner applied for the post of Management Trainee (Rural Management) under EWS category on 07.07.2023. The online written examination was held on 02.09.2023 at different Regional Centres in India and on 26.10.2023, list of successful candidates shortlisted for interview was published, in which Petitioner was at 4th Rank. Call letter was issued to the Petitioner for interview, scheduled on 20.11.2023. Final result of the selected candidates was published on 07.12.2023, wherein the name of the Petitioner did not figure.

4. Petitioner sought information through online portal for consolidated marks as also cut-off marks in each category. As per information supplied, Petitioner had secured 124 marks in the written examination and 24.75 marks in the interview and his aggregate was 148.75 marks out of 200, which was above the cut-off marks of 147.25 in the EWS category.



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Petitioner sent an application/representation to consider his case for selection but the response received was not favourable and Petitioner has thus approached this Court seeking quashing of the final result as well as for a direction to the Respondents to re-draw the final result list on the basis of consolidated marks and appoint him.

5. Learned counsel for the Petitioner submits that action of the Respondents in not selecting the Petitioner to the post of Management Trainee (Rural Management) is wholly illegal and arbitrary. The consolidated marks of the Petitioner are above the cut-off marks in the EWS category and as learnt later, he has not been selected as he failed to secure minimum qualifying marks in the interview i.e. 25 marks out of 50. The argument is that the Recruitment Notice detailed the selection procedure in paragraph 7(C) providing that selection would be based on the pre-fixed criteria of performance in the online examination and interview and the final merit list shall be prepared in descending order of the consolidated marks secured by the candidates. Respondents had not mentioned in the Recruitment Notice that a candidate would have to secure 50% minimum qualifying marks in the interview and therefore, after commencement of the selection process, rules of the game cannot be changed. Learned counsel relies on the judgment of the Supreme Court in ***Maharashtra State Road Transport Corpn. and Others v. Rajendra Bhimrao Mandve and Others, (2001) 10 SCC 51***, wherein the Supreme Court observed that rules of the game, meaning thereby, criteria for selection cannot be altered by the concerned authorities in the middle or after the process of selection has commenced. For the same proposition, reliance is also placed on the judgment of the Supreme Court in ***K. Manjusree v. State of Andhra***



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Pradesh and Another, (2008) 3 SCC 512.

6. It is further urged that Petitioner is a meritorious candidate belonging to the weaker section of the society and it would be a travesty of justice if he is not offered appointment to the post in question despite having a good score of 124 marks, which is admittedly above the cut-off in the EWS category.

7. Learned counsel for the Respondents, relying on the counter affidavit, does not dispute that Petitioner qualified the online examination and secured aggregate 124 marks out of total 200 and his total marks i.e. 148.75 were above the cut-off marks i.e. 147.25 in the EWS category. It is, however, urged that Petitioner was not offered appointment as he failed to secure the minimum qualifying marks in the interview, which were required to be 25 out of 50 marks. It is argued that rules of the game have not been changed by the Company, contrary to the allegations of the Petitioner. The selection procedure was elaborately detailed in the Recruitment Notice dated 24.06.2023. It was stipulated that the online examination would carry a total of 150 marks while the interview was for 50 marks. With respect to the online written examination, it was provided that the minimum qualifying marks would be 60% for General/OBC and EWS categories and 55% for SC/ST Candidates. With respect to the interview marks, it was provided that the maximum marks would be 50 and the Company reserved the right to fix minimum marks to qualify in the interview. Petitioner was well aware of this stipulation in the Recruitment Notice and is estopped from challenging the selection criteria, having participated in the same, without any objection. Only because Petitioner has been unsuccessful, he cannot challenge the selection process as per the settled law. Reliance is placed on the judgments



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of the Supreme Court in *Madan Lal and Others v. State of J&K and Others*, (1995) 3 SCC 486; *Manish Kumar Shahi v. State of Bihar and Others*, (2010) 12 SCC 576; and *Ramesh Chandra Shah and Others v. Anil Joshi and Others*, (2013) 11 SCC 309.

8. It is further argued that the judgments relied upon by the Petitioner are distinguishable on facts and have no application to the present case. In *K. Manjusree (supra)*, minimum qualifying marks for interview were introduced after the process of written test and interview was completed and in this context, the Supreme Court observed that rules of the game cannot be changed after commencement of the game. In *Maharashtra State Road Transport Corpn. (supra)*, the grievance of the writ petitioners before the High Court was that the Selection Committee conducting the personal interview, exercised power of allotment of 25% marks arbitrarily and in such a manner that the marks obtained in the driving test lost significance. The other grievance was that wrong circulars were applied to the process of selection. In this context, the Supreme Court observed that wrong circulars had been applied for the selection of drivers and the procedure adopted for recruitment of drivers with respect to the weightage to be given between marks obtained in the written test and those in the interview with no reference to trade test or driving test was erroneous, and therefore, the rules of the game had been changed by altering the selection process after it had commenced.

9. I have heard learned counsels for the parties and examined their rival contentions.

10. Indisputably, Recruitment Notice dated 24.06.2023 was published by the Company for recruitment of 30 Management Trainees in the discipline



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of Rural Management, both in the Reserved and Unreserved categories. The selection process was a two-tier process with an Online Examination, for which 150 marks were allocated and an interview of 50 marks. The Online Examination was both objective and descriptive and it was stipulated in the notice that the minimum qualifying marks would be 60% for General/OBC and EWS categories and 55% for SC/ST candidates. Insofar as the interview was concerned, it was provided in the notice that candidates who qualified in the Online Examination will be ranked in the order of merit and will be called for interview to be conducted by the Company. It was further stipulated that the Company reserved the right to fix the eligibility standards in order to restrict/enhance the candidates to be called for interview, commensurate to the number of vacancies. The number of candidates to be called were to be three times the number of vacancies to be filled, subject to availability of successful candidates in the Online Examination. Significantly, it was also provided that '*Maximum interview marks were 50. Company reserves the right to fix the minimum marks to qualify in the interview*'. Relevant part of the Recruitment Notice is extracted hereunder for ready reference:-

"7. Selection Procedure:

The selection shall be on the basis of the shortlisting of the candidates based on online examination and interview for which the total marks will be 200.

A. ONLINE EXAMINATION : *The candidates have to appear for Online Examination (Objective & Descriptive) of total 150 marks of 2 hours 15 mins (135 minutes) duration. The Minimum qualifying marks in the online examination is 60% for General, OBC & EWS and 55% for SC/ST. The online examination is likely to be held in the month of July/Aug 2023. The date of examination date will be notified separately on the website of the Company. The details of online test is as follows:*



Sl. No.	Name of Test	Type of test	Maximum Marks	No. of Questions	Medium of Exam	Duration
1.	Test of Reasoning	Objective	10	10	Eng/Hindi	50 Minutes
2.	Test of English Language	Objective	10	10	English	
3.	Test of General Awareness	Objective	10	10	Eng/Hindi	
4.	Test of Quantitative aptitude	Objective	10	10	Eng/Hindi	
5.	Professional Knowledge Test	Objective	100	50	Eng/Hindi	70 Minutes
6.	Descriptive English Test-Essay	Descriptive	10	1	English only	15 Minutes

Note:

• **Negative Marks for Wrong Answers:** There will be negative marks for wrong answer, $1/4^{\text{th}}$ of the allotted marks (in objective tests) will be deducted for each wrong answer. If a question is left blank i.e. no answer is marked by the candidate, there will be no penalty for that question.

• Candidates will have to appear for the online examination at their own expenses.

• The Company reserves the right to relax/enhance the requirement of minimum qualifying marks in Online examination, in order to enhance / restrict the number of candidates to be called for interview, based on performance in the Online examination and to commensurate with the number of vacancies.

• The Company also reserves the right to modify the structure of the examination which will be intimated through its website. The applicants are advised to visit the Company's website www.aicofindia.com regularly for any update on the recruitment process. No separate individual intimation shall be given.

Pre-exam training (ONLINE) for SC/ST/OBC- Non-creamy/PwBD candidates :

SC/ST/OBC- Non-creamy /PwBD candidates who wish to avail the benefit of pre-examination Online training may indicate the same while applying online. Candidates are required to refer to Career Section of AIC website regularly for details. Candidates who have opted for training will also be



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informed through registered email / mobile. Please note that merely attending the pre-examination training, no candidate acquires any right in employment with the Company.

B. INTERVIEW:

Candidates who have been qualified in the Online examination will be ranked in the order of the merit and will be called for an interview to be conducted by the Company. Company reserves the right to fix the eligibility standards in order to restrict/enhance the candidates to be called for interview commensurate to the number of vacancies. The number of candidates to be called for interview will be three times to 5 times the number of vacancies to be filled in subject to availability of successful candidates in the Online examination and will be as per their ranking. All the candidates having same cut-off score as the last shortlisted candidate shall be called for Interview. Maximum Interview marks are 50. Company reserves the right to fix the minimum marks to qualify in the interview.

The center, address of the venue, time & date of interview will be informed to the shortlisted candidates in the interview call letter. Please note that any request regarding change in date, Centre etc. of interview will not be entertained.

However, the Company reserves the right to change the date/ venue/ time / Centre etc. of interview or hold supplementary process for particular date/ session/ venue/ Centre / set of candidates at its discretion, under unforeseen circumstances, if any.

Candidates called for interview are entitled to AC III Tier to & fro railway fare / bus fare by shortest routes, from their place of residence, on production of evidence of travel (rail/bus ticket/ receipt etc.).

The candidates are advised to ensure that they fulfill the requirements of age and qualification (as on respective crucial dates mentioned earlier) before they apply. If a candidate is found ineligible, his/her candidature will be cancelled at any stage of recruitment. Appearing in the ONLINE EXAMINATION & INTERVIEW will not automatically confer any right of being selected for the said posts."

11. A plain reading of the Recruitment Notice leaves no doubt that while publishing the Recruitment Notice, Company had reserved the right to fix the minimum marks to qualify in the interview and the threshold was 50% of the total of 50 marks. Therefore, it cannot be argued that the rules of the game were changed after the selection process commenced as it was well



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known to the candidates including the Petitioner that during the selection process, minimum qualifying marks could be fixed for the interview. Therefore, no illegality or arbitrariness can be found in the action of the Company in fixing the minimum qualifying marks for the interview. Since the minimum qualifying marks required to be obtained by a candidate were 25 out of 50, Company cannot be faulted for not selecting the Petitioner, who admittedly secured 24.75 marks. This criteria has been uniformly applied to all candidates and there are no allegations of any discrimination or *malafides*. Moreover, the Supreme Court in ***State of Uttar Pradesh v. Karunesh Kumar and Others, 2022 SCC OnLine SC 1706***, considered the judgment in the case of ***K. Manjusree (supra)***, relied upon by the Respondents therein and observed as under:-

“32. The respondents have also placed reliance on the decision of this Court in the case of K. Manjusree (supra). However, in our considered view, the facts of the aforesaid decision are quite different from the present case. A change was introduced for the first time after the entire process was over, based on the decision made by the Full Court qua the cut off. Secondly, it is not as if the private respondents were nonsuited from participating in the recruitment process. The principle governing changing the rules of game would not have any application when the change is with respect to selection process but not the qualification or eligibility. In other words, after the advertisement is made followed by an application by a candidate with further progress, a rule cannot be brought in, disqualifying him to participate in the selection process. It is only in such cases, the principle aforesaid will have an application or else it will hamper the power of the employer to recruit a person suitable for a job.”

12. In the present case, admittedly, there is no change with respect to the eligibility conditions and therefore, applying the judgment of the Supreme Court in ***Karunesh Kumar (supra)***, Petitioner cannot have any grievance with the selection process. Learned counsel for the Respondents is also correct in his submission that having taken a calculated chance of appearing in the interview, with full knowledge that Company reserved the right to fix



the minimum qualifying marks for the interview, Petitioner cannot challenge the process of selection as being unfair only because the result of the interview is not palatable to him. In this context, I may again allude to the judgment of the Supreme Court in **Karunesh Kumar (supra)**, where the Supreme Court, re-stated and re-affirmed the proposition of law that a candidate who participates in the selection process is estopped from challenging the same after being unsuccessful for appointment. Relevant passages from the judgment are as follows:-

“21. A candidate who has participated in the selection process adopted under the 2015 Rules is estopped and has acquiesced himself from questioning it thereafter, as held by this Court in the case of Anupal Singh (supra):

“55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12-10-2014 and the private respondents are estopped from challenging the selection process. It is a settled law that a person having consciously participated in the interview cannot turn around and challenge the selection process.

56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview and ultimately, finds himself to be unsuccessful, in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712], it was held as under : (SCC p. 493, para 9)

“9. ... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he



cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.”

57. *In K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395 : 2006 SCC (L&S) 1345], it was held as under : (SCC p. 426, para 73)*

“73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper.”

58. *In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792], it was held as under : (SCC p. 107, para 19)*

“19. In Chandra Prakash Tiwari v. Shakuntala Shukla [(2002) 6 SCC 127 : 2002 SCC (L&S) 830]

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It was further observed : (SCC p. 149, para 34)

‘34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not “palatable” to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.”

59. *Same principle was reiterated in Sadananda Halo v. Momtaz Ali Sheikh [(2008) 4 SCC 619 : (2008) 2 SCC (L&S) 9] wherein, it was held as under : (SCC pp. 645-46, para 59)*

“59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644], where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise.”

22. *In the case at hand, the un-selected candidates want to press into service a part of the 1978 Rules while accepting the 2015 Rules. Such a selective adoption is not permissible under law, as no party can be allowed to approbate or reprobate, as held by this Court in Union of India*



v. N. Murugesan, (2022) 2 SCC 25:

“Approbate and reprobate

26. *These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.*

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27.2. *State of Punjab v. Dhanjit Singh Sandhu [(2014) 15 SCC 144] : (SCC pp. 153-54, paras 22-23 & 25-26)*

“22. The doctrine of “approbate and reprobate” is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. MR. P. Firm Muar [AIR 1965 SC 1216].)

23. *It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service [AIR 1969 SC 329].) In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683] this Court has observed as under : (R.N. Gosain case [(1992) 4 SCC 683], SCC pp. 687-88, para 10)*

‘10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that ‘a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage’.



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25. *The Supreme Court in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. [(2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153], made an observation that a party cannot be permitted to “blow hot and cold”, “fast and loose” or “approve and reprobate”. Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.*

26. *It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approve and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had.”*

23. *The aforesaid principle of law applies to the present case. It is not open to the candidate to contend to the contrary so that he can have the best of both sets of rules. Not only is there a difference in the mode of selection, but also in the constitution of recruiting authority as well. It is pertinent to note, that under the 2015 Rules, there is no such procedure for preparing a waiting-list, as the Respondents seek to contend.”*

13. Learned counsel for the Respondents is correct in his submission that the facts of the case before the Supreme Court in ***Maharashtra State Road Transport Corpn. (supra)***, are completely distinguishable from the present case and therefore, the judgment will have no application. The said case related to an advertisement inviting applications for the posts of drivers and conductors. Writ petitioners had applied for the post of drivers and were called for driving test after they were found possessing the requisite qualifications and experience. After clearing the driving test, writ petitioners were called for a personal interview but were not offered appointment. The grievance was that Selection Committee conducting the interview had arbitrarily allocated 25% marks for the personal interview in such a manner



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that marks obtained in the driving test lost significance. Questions were also raised on the applicability of circular dated 24.06.1996, which according to the Appellant/Corporation was only a clarification. The writ petitioners asserted that it was the circular dated 04.04.1995, which should govern the selection and consequently, 87½% marks should have been assigned for written/trade test and 12½% for personal interview. The Supreme Court observed that procedure for recruitment of drivers was separate from other categories and circular dated 24.06.1996 will have no relevance to the selection in question and circular dated 04.04.1995 would apply only in cases where selection had to be finalized on the basis of written examination and interview. There being no written examination for drivers, selection process has to be on the basis of earlier circulars. These aspects were left to lie in a nebulous state leaving much for assumptions on either side. The Corporation should have adverted to these aspects at the appropriate stage before setting the selection process in motion and the rules of the game cannot be changed in the midst of the selection process. Insofar as the judgment in *K. Manjusree (supra)* is concerned, reliance by the Petitioner is equally misconceived, as in the said case, minimum qualifying marks for interview were introduced after the process of written test and interview was concluded and moreover, in *Karunesh Kumar (supra)*, the Supreme Court has observed that the principle that rules of the game cannot be changed after the selection process has commenced will be applicable to the qualifications or eligibility conditions. Clearly, in the present case, Respondents had notified that the Company reserved the right to fix the minimum qualifying marks for the interview and this Court is, therefore, unable to agree with the Petitioner even on a factual note that fixing of the



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minimum qualifying marks for the interview was a change in the rules of the game, post the commencement of the selection process.

14. There is no merit in the writ petition and the same is accordingly dismissed.

JYOTI SINGH, J

JULY 4, 2024

B.S. Rohella/kks

Signature Not Verified

Digitally Signed
By: KAMAL KUMAR
Signing Date: 12.07.2024
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