



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 516/2025

Anita Devi W/o Karmpal, Aged About 34 Years, Resident Of Aam Chok, Bas Chanani, Churu, Rajasthan - 331023.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Medical And Health Science (Group-Ii), Government Of Rajasthan, Jaipur.
2. Director (Non-Gazetted), Medical Health And Family Welfare, Rajasthan, Jaipur.
3. The Director, State Institute Of Health And Family Welfare (Sihfw), Department Of Health, Jaipur.

----Respondents

For Petitioner(s) : Mr. Rajat Arora.

For Respondent(s) : Mr. Mukesh Dave, Govt. Counsel.

HON'BLE MR. JUSTICE ARUN MONGA
Order

15/01/2025

1. Petitioner herein is before this Court, aggrieved by an undated decision (Annex.17), rejecting her candidature in the EWS category instead treating her in the General category for the selection process on the post of Nursing Officer.

2. Briefly speaking relevant facts of the case are as follows:

2.1. The petitioner was born in the state of Haryana and later migrated to the state of Rajasthan after her marriage. She belongs to the EWS category, as her gross family income is below the prescribed limit. The respondents issued an advertisement dated 05.05.2023 (Annex.5) for the post of Nursing Officer. The petitioner, being eligible, applied for the position. However, as a migrant candidate, she was forced to submit the application in the

unreserved category, despite belonging to the EWS category. The petitioner approached the respondents to change her category vide representation dated 13.09.2023 (Annex.11).

2.2. Subsequently, the respondents issued a list for document verification (Annex.12) after changing the categories of candidates who had submitted representations which were accepted. However, the petitioner was inexplicably not called for verification in EWS category.

2.3. The respondents then issued a provisional list dated 07.10.2023 (Annex.13), but despite the petitioner having secured marks higher than the cutoff in the EWS-Female category, she was excluded from the recruitment process. Aggrieved, the petitioner submitted another representation (Annex.14) requesting that her candidature be considered in the EWS category. Despite this, when the final list dated 06.10.2024 (Annex.16) was issued, the petitioner's name was not included, even though she had obtained marks higher than the cutoff for the EWS category, and no valid reason was provided.

2.4. Subsequently, the respondents gave an undated decision (Annex.17) rejecting her representations. Hence, this petition.

3. In the aforesaid backdrop, I have heard learned counsel for the petitioner as well as learned counsel for the respondents.

4. First and foremost, the status of the petitioner of belonging to Economically Weaker Section ('EWS') category is not in dispute herein. Her candidature in the said category was rejected on the ground that the EWS certificate provided to her was after the cut-off date of advertisement.

5. In this context reference may be had to a Circular dated 17.10.2022 (Annex.15), English translation (as provided by counsel) of which reads as under:

“This department had issued the following in Circular No. 7 (1) Personnel/K-2/2019, dated 20.01.2022:

'Reservation provisions for Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC), Extremely Backward Classes (EBC), and Economically Weaker Sections (EWS) candidates are included in all service rules for the recruitment to posts under the state government. Candidates seeking the benefit of reservation in recruitment to Central and State government posts must submit a certificate of the relevant category, based on which their eligibility in the respective category is assessed. Candidates are entitled to the benefit of reservation from the date the certificate is issued, and it is mandatory for the candidate to possess a certificate issued by the competent authority before the last date of application. The certificate held by candidates must be issued before the last date of application, so that there is no dispute regarding the date of the certificate when providing the reserved category benefits after the recruitment process begins.'

At the end of the above circular, the following addition is made:

'If, for any reason, the candidate does not submit the certificate issued by the last date of application, and instead submits a certificate issued after the last date, such candidates must submit an affidavit stating that they were eligible for the respective category on the last date of application, and that if this information is found to be incorrect, their appointment may be canceled.'

Therefore, all concerned are directed to take action accordingly as per the above instructions.”

6. A perusal of the above clearly leaves no manner of doubt that although all candidates are required to submit their requisite certificates as of the cut-off date, but the proviso, which is an integral part of the main provision, clearly states that if, for certain reasons, a candidate is unable to provide the certificate as of the

cut-off date, the same can be submitted after the cut-off date has gone past. Provided, that an undertaking/affidavit is submitted by the candidate stating that, as of the cut-off date, he/she belonged to the category for which the certificate has been submitted.

7. In order to avoid misuse of the said proviso, a clear warning has also been given in the proviso that in case the affidavit/undertaking given by the candidate is found to be wrong, the appointment obtained on that basis can be terminated summarily.

8. A perusal of advertisement dated 05.05.2023 (Annex.5) under the column (घ) (अन्य विवरण) in category (ऑनलाइन आवेदन त्रुटि संशोधन अवधि) clearly states in as many words (translated in english) that "Applicants from Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC), Extremely Backward Classes (EBC), and Economically Weaker Sections (EWS) will be allowed to submit the prescribed certificate and affidavit as per Personnel (K-2) Department Circular No. 7(1) Personnel/K-2/2019, dated 17.10.2022."

9. Thus the aforesaid circular dated 17.10.2022 is applicable to the advertisement in question is a conceded position herein.

10. As regards the rejection of the petitioner on the ground that she had obtained fewer marks in the general category since her candidature was not accepted in the EWS category, I am unable to find any substance in view of the circular dated 12.09.2023 (Annex. 10), which was issued after the advertisement. According to this circular, candidates were allowed to make changes to their original application forms, including a change in category, as is

evident from Clause-7 of the circular dated 12.09.2023 (Annex. 10), which reads as follows:

"7. प्रार्थना पत्र में निम्नानुसार जानकारी देनी है:-

1. आपका नाम
2. आवेदित पद का नाम
3. आई.डी. संख्या
4. मोबाईल संख्या
5. विषयवस्तु (एक या अधिक भी हो सकती है):-

- नाम में संशोधन
- **जातिगत श्रेणी में परिवर्तन**
- Horizontal श्रेणी में परिवर्तन
- 10 वीं/ 12 वीं की अंकतालिका के अंको में संशोधन
- व्यावसायिक योग्यता के अंको में संशोधन
- बच्चों की संख्या
- रजिस्ट्रेशन क्रमांक / दिनांक में संशोधन
- अनुभव में संशोधन
- अन्य"

11. Pursuant to the aforesaid circular, which provided a window for a limited period from 13.09.2023 to 19.09.2023, the petitioner requested a change in her category from General to EWS based on the subsequent certificate provided to her. Even though she belonged to the EWS category as of the cut-off date, she could not submit the certificate online as she was not in physical possession of it.

12. There is an admission on part of the respondents regarding the petitioner not being given the benefit of the change in category after the window was provided for all candidates to modify their online application forms. This amounts to tacit acknowledgment, as the absence of any denial of the petitioner's request for a change of category indicates that it was rejected.

13. In fact, the representation (Annex.17) submitted by the petitioner for redressal of her grievance was kept pending without

any speaking order being passed regarding the same. Though her name was placed in the list of candidates whose candidature was rejected due to the change of category, it was stated that since she had already applied in the general category, her subsequent request for a category change could not be treated as valid in light of the judgment rendered in **Sonal Tyagi Vs. State of Rajasthan: DBSAW No. 7840/2019**.

14. Having perused the judgment in Sonal Tyagi's case, it becomes clear that its application in the petitioner's case is misplaced, as in that case no opportunity was provided to any candidate to change their category after the filing of online applications. Therefore, this Court held that the cut-off date must be strictly adhered to. Whereas, in the case in hand, the respondents themselves allowed candidates to change their category after submitting the online application, effectively extending the cut-off date.

15. As for the change of location from Haryana to Rajasthan, it does not render the petitioner ineligible to seek the benefit of the EWS certificate issued by the competent authority.

16. Reference in this regard may be had to a Single Bench judgment of this Court in **Aman Kumari Vs. State of Rajasthan & Ors.: S.B. Civil Writ Petition No. 7512/2022**, decided on 21.09.2022, wherein it was held as follows:

"I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The respondents, in the stipulation, made reference to the judgment in the case of Ranjana Kumari v. State of Uttarakhand & Ors. : (2019)15 SCC 664 and thereafter has observed that those married into the State, would not be entitled to the benefit of OBC, SC, ST & EWS category. The

said stipulation made by the respondents in the advertisement is ex facie contrary to the very scheme of EWS reservation as compared to the reservation provided to OBC, SC & ST and the dictum of the Hon'ble Supreme Court in the case of Ranjana Kumari (supra), which apparently has no application to reservation meant for EWS category.

The circulars of the State, inter-alia, after observing that the Central Government has provided for reservation in educational institution and services to the extent of 10% for EWS category candidates and for issuance of certificate to the woman married within the State, it was stipulated as under :-

"दूसरा यदि विवाहित महिला की उसके मूल राज्य में उसकी पैतृक जाति सामान्य वर्ग में है तथा उसका विवाह राजस्थान राज्य के किसी आरक्षित वर्ग के व्यक्ति से हुआ है तो भी वह राजस्थान राज्य में सामान्य वर्ग (अर्थात् अनुसूचित जाति, जनजाति व अन्य पिछड़ा वर्ग के अतिरिक्त) में मानी जायेगी, एवं ऐसे आर्थिक कमजोर वर्ग EWS के व्यक्ति को निर्धारित मापदण्डों के अनुसार Income & Asset Certificate पाने के हकदार होंगे।"

The stipulation is specific, wherein they have been held entitled to issuance of EWS certificate.

Once, the State itself in its Circular dated 16.08.2021 has ordered for issuance of EWS certificate to eligible woman married within the State, the stipulation in the advertisement dated 31.12.2021 essentially is contrary to the said circular and cannot debar the candidates like petitioners, who are otherwise entitled to the benefit of reservation provided to the EWS category candidates.

The submissions made in the reply pertaining to estoppel and the fact that the Circulars dated 10.02.2020 & 16.08.2021 (Annex.11 to CWP No.7512/2022) are general in nature, have no substance, inasmuch as, once it is found that the stipulation in the advertisement is ex facie contrary to the scheme of EWS reservation and the respondents' own circular, the petitioners cannot be debarred from claiming the benefits based on the plea of estoppel.

Further as noticed herein-before the Circular dated 16.08.2021 is very specific, wherein the same starts with reference to the benefits available to the EWS category candidates for employment / services etc. and therefore, it cannot be said that the circular is general in nature and does not apply to recruitments.

In view of the above, the writ petitions are allowed. The respondents are directed to consider the candidature of the petitioners in EWS category and in case, they are otherwise

eligible and fall within the cut-off meant for EWS category candidates, they be accorded appointment on the post of Teacher Grade-III (Level-I).”

17. In view of the aforesaid judgment, the objection that the petitioner obtained a certificate from Haryana and cannot be given the benefit in Rajasthan is being noted only to be rejected.

18. It also transpires that the aforesaid judgment passed by the learned Single Judge has attained finality, as neither any intra-court appeal nor any SLP was filed against it by the State.

19. As an upshot, the petition is allowed. The respondents are directed to consider the candidature of the petitioner in the EWS category in terms of the circular dated 17.10.2022 (Annex. 15) by taking an undertaking/affidavit from the petitioner that as of the cut-off date, she belonged to the EWS category. Upon subsequent verification, if the information is found to be false, it goes without saying that the petitioner shall face the consequences.

20. Needful necessary exercise should be completed within 30 days from the date the petitioner approaches the respondents with a web print of the instant order.

21. Pending application(s), if any, stand disposed of.

(ARUN MONGA),J

30-/Sumit - Jitender//-

Whether Fit for Reporting:

Yes / No