



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

S.B. Civil Writ Petition No. 2105/2018

Kirti Chowdhary D/o Shri Ramesh Chowdhary, R/o Khasra No.
36, Near Sangaria Dharam Kanta, Village Sangaria, Jodhpur Raj

----Petitioner

Versus

1. The State Of Rajasthan Through The Director, Ground Water Department, Government Of Rajasthan, Jodhpur Raj..
2. The Rajasthan Public Service Commission Through Its Secretary, Ajmer.
3. Shobha Rakhecha D/o Shri Kishore Kumar Through The Secretary, Rajasthan Public Service Commission, Ajmer.

----Respondents

For Petitioner(s) : Mr. Lokesh Mathur
For Respondent(s) : Mr. Mahesh Thanvi
Ms. Pragya Thanvi
Mr. Kailash Jangid
Mr. L.K. Purohit

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable-

Order reserved on : 06/11/2025

Order pronounced on : 03/12/2025

1. The present writ petition, filed under Article 226 of the Constitution of India is preferred seeking a direction for the respondents to grant appointment to the petitioner under the OBC (Women) category, by shifting/migrating the appointment of one Ms. Deepti Kalal from the OBC (Women) category to the General (Women) category.



2. Briefly stated, facts of the case that the respondent RPSC issued an advertisement dated 27.11.2014 for filling up certain vacancies which included the posts Junior Hydro Geologist in Ground Water Department governed by the Rajasthan Ground Water Service Rules, 1969 (in short- the Rules of 1969). The petitioner fulfilling the requisite eligibility criteria submitted an application form pursuant to the advertisement for the purpose of seeking appointment as Junior Hydro Geologist and participated in the selection process. After following the due process prescribed under the Rules of 1969, a select list governing the appointments to the post of Junior Hydro Geologist was declared on 18.01.2018 (Annex.7), which contained names of 13 persons, who were recommended to the Government for appointment. In the said merit list, the name of one Ms. Deepti Kalal was mentioned at S.No.12 in the BC, WE category. Alongwith the said merit list, a reserve list (Annex.8) was also declared on 18.01.2018, wherein the name of the present petitioner (Ms. Kirti Chowdhary) was included at S.No.6 and she is the only candidate belonging to BC, WE category in that list. The respondent RPSC also notified categorywise cut off marks of interviews (main merit list) for the post of Junior Hydro Geologist (Annex.9), wherein for the BC, WE category, the cut off marks were declared to be 61 and the date of birth of the selected candidate was 11.01.1992. The said candidate was Ms. Deepti Kalal and she was the only candidate selected in that





category. The document Annex.9 also reveals that for the General Woman category, the cut off marks have been declared to be 58 and the date of birth of the selected candidate is 22.10.1991, who happens to be Ms. Shobha Rakhecha, respondent No.3 herein. The petitioner has secured 56 marks and she has been kept in the reserve list and she is the only candidate belonging to BC, WE category in that list.

3. Learned counsel for the petitioner contended that merit list prepared by the respondents stands vitiated inasmuch as though an BC, WE category candidate (Ms Deepti Kalal) has secured higher marks (61 marks) than the General Woman category candidate (Ms. Shobha Rakhecha) (58 marks) and the said BC, WE category candidate (Ms Deepti Kalal) has not availed any concession in age or qualification (except concession in fees), therefore, she ought to have been declared selected in General Woman Category and not as BC, WE category and consequently, the present petitioner having secured 56 marks and being the only BC, WE category candidate in the reserve list, ought to have been accorded appointment in BC, WE category. Learned counsel for the petitioner submitted that the action of the respondents is in contravention of the settled legal principles and violative of Articles 14 and 16 of the Constitution of India.





4. In support of his contentions, learned counsel for the petitioner has placed reliance on the following judgments of Hon'ble Apex Court :-

- (i) Deepa E.V. Vs. Union of India [(2017) 12 SCC 680]
- (ii) Bharat Sanchar Nigam Limited & Ors. Vs. Sandeep Choudhary & Ors. [(2022) 22 SCC 779].

5. Per contra, learned counsel for the respondents has vehemently opposed the submissions advanced by learned counsel for the petitioner. He contended that the RPSC has prepared the merit list strictly in accordance with the guidelines laid down by the State Government vide circular dated 26.07.2017 (Annex.R.2/1). Since Ms Deepti Kalal secured lesser marks than the cut off marks of General category in the written examination (Screening Test), therefore, her candidature was considered in the reserved category irrespective of securing higher marks in the interview and as such, no fault can be found with the action of the respondents. He further submitted that all the posts have now been filled up and there is no vacancy to accommodate the petitioner. He, thus, prayed for dismissal of the writ petition.

6. Rebutting the submissions advanced by the learned counsel for the respondents, learned counsel for the petitioner submitted that the circular dated 26.07.2017, referred to by the respondents, nowhere mentions that a reserved category





candidate securing lesser marks than General category candidate in the screening test shall be placed in his/her respective reserved category irrespective of the final marks. Regarding no vacancies remaining, it is contended that firstly, this court vide order dated 09.02.2018 had made any appointment made thereafter subject to final outcome of the writ petition and secondly, since during the pendency of this writ petition, Ms. Deepti Kalal has already joined as Assistant Professor (Geology) in March 2023, therefore, the post of BC, WE category has been rendered vacant.

7. I have considered the rival submissions and perused the material available on record. The foundational facts are undisputed. Only one post was available in the BC, WE category and the same came to be filled by Ms. Deepti Kalal, who secured 61 marks. The petitioner, having secured 56 marks, was placed in the reserve list. It is also not in dispute that the cut-off marks for the General Women category were 58 and that the candidate selected therein, namely Ms. Shobha Rakhecha, secured marks lower than those secured by Ms. Deepti Kalal. The question, therefore, that arises for adjudication is whether a reserved category candidate, who has not availed of any relaxation except fee relaxation and who has secured higher marks than the last selected candidate of the General category, is mandatorily required to be migrated to the general category.





8. The legal position on this issue is now settled beyond cavil.

In *Deepa E.V. v. Union of India (supra)*, the Hon'ble Supreme Court held that a candidate belonging to a reserved category, who has not taken any benefit of reservation except fee concession and who secures marks higher than the cut-off of the General category, cannot be denied selection in the General category. The ratio has been reiterated in *Bharat Sanchar Nigam Limited v. Sandeep Choudhary (supra)*, wherein the Hon'ble Apex Court clarified that merit migration is mandatory once the reserved category candidate secures marks higher than the General category cut-off and has not availed relaxations relating to age, qualification or other substantive criteria. The principle underlying these decisions is that the General category is a category of open merit and any candidate, irrespective of community, is entitled to compete therein. The Hon'ble Supreme Court in *BSNL Vs. Sandeep Choudhary* (decided on 28.04.2022) emphasised that administrative lapses cannot defeat constitutional equality. The same principle must govern the present writ.

9. In light of these authoritative pronouncements, the explanation furnished by the respondents that Ms. Deepti Kalal had secured fewer marks than the General category cut-off in the screening test cannot be sustained. The respondents rely on a Government circular dated





26.07.2017; however, the said circular has neither been shown to contain any provision restricting merit migration nor can an executive circular override constitutional principles or binding precedent. What is relevant is the final merit, and once the final merit position demonstrates that the BC, WE candidate secured higher marks (61) than the General Woman candidate (58), the respondents were duty-bound to place her in the General Woman category. The failure to do so vitiates the selection process insofar as it concerns the BC, WE category.

10. The contention of the respondents that no vacancy is available also lacks substance. By order dated 09.02.2018, this Court had made all subsequent appointments subject to the outcome of this writ petition, thereby protecting the petitioner's rights. Additionally, it is an admitted position that during the pendency of the writ petition, Ms. Deepti Kalal joined as Assistant Professor (Geology) in March 2023. Consequently, she has abandoned the post of Junior Hydro Geologist, rendering the BC, WE category post vacant. The subsequent vacancy is not fortuitous but directly connected to the rights asserted by the petitioner, and the petitioner cannot be deprived of relief on technical grounds when her claim is otherwise meritorious.





11. It is further clarified that the migration of Ms. Deepti Kalal to the General Woman category, as required under law, does not in any manner prejudice the rights of respondent No. 3, Ms. Shobha Rakhecha. This is for the reason that Ms. Kalal has already accepted appointment as Assistant Professor (Geology) in March 2023 and has thereby voluntarily relinquished the post of Junior Hydro Geologist. Consequently, the migration operates only for the limited purpose of determining the correct placement in the merit list and has no adverse bearing on the subsisting appointment of respondent No. 3. The vacancy that has arisen in the BC, WE category is thus a consequential vacancy and its availability for consideration of the petitioner does not disturb the position of respondent No. 3 in any manner.

12. Having considered the facts and the governing law, this Court finds that the respondents erred in not migrating/moving Ms. Deepti Kalal to the General Woman category. The petitioner, being the only candidate in the reserve list for BC, WE category and having secured the next highest marks, was entitled to be considered for appointment against the BC, WE vacancy.

13. As an upshot of the above discussion, the writ petition deserves to be and is hereby allowed. The action of the respondents in treating Ms. Deepti Kalal as a candidate





selected under the BC, WE category is declared illegal and contrary to the settled principles of law. The respondents are directed to treat the consequential vacancy in the OBC Woman category as available to be filled from the reserve list. Since the petitioner is the only candidate in the BC, WE reserve list and is next in merit, the respondents shall accordingly consider and appoint the petitioner, Ms. Kirti Chowdhary, to the post of Junior Hydro Geologist in the BC, WE category. The necessary formalities shall be completed within six weeks from the date of receipt of this order.

14. The petitioner shall be entitled to all consequential benefits flowing from this order, except back wages. However, her seniority shall be fixed with reference to the date on which her immediate junior in the selection list was appointed.

15. All pending applications are disposed of.

16. No order as to costs.

(FARJAND ALI),J

Pramod/-