

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

D.B. Spl. Appl. Writ No. 273/2021

1. State Of Rajasthan, Through The Secretary, Department Of Rural Development And Panchayati Raj, Secretariat, Govt. Of Rajasthan, Jaipur.
2. The Chief Executive Officer, Zila Parishad, Sriganganagar District Sriganganagar (Raj.).
3. The Vikas Adhikari, Panchayat Samiti, Padampur, District Sriganganagar.

----Appellants

Versus

Satdev S/o Shri Leeladhar, Aged About 30 Years, R/o Chak 49J, Lnp, Post 83 Lnp Tehsil Padampur, District Sriganganagar (Raj.).

----Respondent

Connected With

D.B. Spl. Appl. Writ No. 1105/2025

1. The State Of Rajasthan, Through The Secretary, Department Of Rural Development And Panchayati Raj, Government Of Rajasthan, Secretariat, Jaipur.
2. The Chief Executive Officer, Zila Parishad Jodhpur. District Jodhpur (Raj.).
3. The Vikas Adhikari, Panchayat Samiti Shergarh, District Jodhpur (Raj.).

----Appellants

Versus

Ugam Singh Rathore S/o Shri Khushal Singh, Aged About 49 Years, R/o Devrajgarh, Teh. Shergarh, Jodhpur (Raj.).

----Respondent

For Appellant(s)	:	Mr. Pawan Bharti for Mr. I.R. Choudhary, AAG
For Respondent(s)	:	Mr. Pawan Singh

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE SANDEEP SHAH**

Judgment

27/03/2026

IN D.B. Spl. Appl. Writ No. 273/2021:-

1. The matter comes upon an application (IA No. 01/22) filed under Section 5 of the Limitation Act, seeking condonation of a delay of 506 days in filing the present appeal.
2. For the reasons indicated in the application (IA No. 01/22), the same is allowed. The delay in filing the present appeal is hereby condoned.

IN D.B. Spl. Appl. Writ No. 1105/2025:-

1. The matter comes upon an application (IA. No.01/2025) filed under Section 5 of the Limitation Act, seeking condonation of a delay of 1098 days in filing the present appeal.
2. For the reasons indicated in the application (IA. No.01/2025), the same is allowed. The delay in filing the present appeal is hereby condoned.
3. Learned counsel for the parties submit that the petition has been decided and similarly situated person as given the present appeals are disposed of in the same terms. The order reads as follows:

This Special Appeal is directed against the order dated 24th September 2018 passed in S.B. Civil Writ Petition No.14428 of 2018.

2. *The writ Court made the following observations while disposing of the Civil Writ Petition No.14428 of 2018 titled as "Mahendra Jangid v. State of Rajasthan & Ors":-*

"It is submitted by learned counsel for the petitioner that for the same recruitment, similarly situated petitioners had approached Jaipur Bench of this Court in Om Prakash & Ors. v. State of Rajasthan & Ors. : S.B. Civil Writ Petition No.21214/2017, which writ petition has been decided on 21.11.2017 granting relief to the petitioners in light of judgment in the case of Hemlata Shrimali & Ors. v. State of Rajasthan & Ors. : S.B. Civil Writ Petition

No.3247/2015, decided on 1.4.2015 and relying upon the adjudication in the case of Suman Bai & Anr. v. State of Rajasthan & Ors. : 2009 (1) WLC (Raj.) 381 and, therefore, the present writ petition may also be decided in light of judgment in the case of Om Prakash (supra).

In the case of Om Prakash (supra), the Bench at Jaipur after noticing orders in the case of Hemlata Shrimali (supra) and Suman Bai (supra) observed as under:-

"Learned counsel for the petitioners, at the very outset, submits that the controversy raised in the instant writ application stands resolved in view of the adjudication made by a Coordinate Bench of this Court in a batch of writ applications lead case being S.B. Civil Writ Petition Number 3247/2015: Hemlata Shrimali & Ors. Versus State of Rajasthan & Ors., decided on 1st April, 2015, relying upon the adjudication in the case of Suman Bai & Anr. Versus State of Rajasthan & Ors.: 2009 (1) WLC (Raj.) 381, observing thus:

"5. Upon consideration of the arguments aforesaid and the judgment of the Division Bench in Hari Ram and the subsequent order dated 21.7.2001 whereby clarification application of the State Government was dismissed, I find that the entitlement of the petitioner for appointment on the basis of originally prepared merit list cannot be denied. If admittedly the candidates, who are lower in merit, have been granted appointment, those who are above them in the merit cannot be denied such right of appointment. Seniority as per the rules in the case of direct recruitment on the post in question is required to be assigned on the basis of placement of candidates in the select list and when the selection is common and the merit list on the basis of which appointments were made is also common, right to secure appointment to both the set of employees thus flows from their selection which in turn is based on merit. Regard being had to all these facts, merely because one batch of employee approached this Court later and another earlier, and both of them having been appointed, the candidates who appeared 6 lower in merit cannot certainly be placed at a higher place in seniority. It was on this legal analogy that Division Bench of this Court in Niyaz Mohd.Khan (supra) held that the petitioner therein entitled to be placed

in seniority in order of merit of common selection amongst persons appointed in pursuance of the same selection with effect from the date person lower in order of merit than the petitioner was appointed with consequential benefits.

6. I am not inclined to accept the argument of the learned counsel for the respondents No.4 to 8 that the judgment of the learned Single Judge should be so read so as to infer therefrom that though the petitioners would be entitled to claim appointment but not seniority above the candidates who are already appointed even though they admittedly are above them in the merit list. Infact, the judgment of the learned Single Judge merely reiterated the direction of the Division Bench in Hari Ram (supra) in favour of the petitioners. But construction of that judgment in the manner in which the respondents want this Court to do, would negat the mandate of the Rules 20 and 21 of the Rajasthan Education Subordinate Service Rules, 1971, which requires seniority to be assigned as per the inter-se merit of 7th candidates in the merit list based on common selection. Even otherwise, no such intention of the Court is discernible from reading of that judgment. Mere appointment of the petitioner was a sufficient compliance of the judgment and not total compliance was the view taken by this Court also when contempt petition filed by the petitioners was dismissed. Question with regard to correct and wrong assignment of seniority having arisen subsequent to appointment of the petitioners would obviously give rise to a afresh cause of action. The writ petition filed by the petitioners, therefore, cannot be thrown either barred by resjudicata or otherwise improperly constituted.

7. In the result, this writ petition is allowed and the respondents are directed to treat the petitioners senior to respondents No.4 to 8 as per their placement in the merit list."

Learned counsel for the petitioners further submits that instant writ application be also disposed off in terms of the order dated 24th May, 2017, as extracted herein above. Ordered accordingly."

In view of the submissions made, the present writ petition filed by the petitioner is also

disposed of in light of order passed in the case of Om Prakash (supra)."

3. Mr. I. R. Choudhary, the learned Additional Advocate General has raised manifold contentions and one of such contentions is that after lapse of six months no appointment can be granted from the waiting list. In the first place, no such plea seems to have been raised before the writ Court. In this Special Appeal also, there is no pleadings on the aforementioned issue sought to be canvassed by the learned Additional Advocate General. What is pleaded by the appellant-State of Rajasthan is that in the main case being in "Suman Bai and Anr. v. State of Rajasthan and Ors" 2009 (1) WLC (Raj.) 381 the affected parties were made respondents whereas Mahendra Jangid who is the writ petitioner in the present case did not add the other appointees who had tendered joining prior to him. The learned Additional Advocate General has also relied on a decision in S.B. Civil Writ Petition No. 144 of 2015 titled "Babu Lal Meena v. State of Rajasthan" but, in that case also, the writ Court held that the petitioners therein shall be entitled to notional benefit from the date of the appointment order till the date of their joining.

4. Mr. Pawan Singh the learned counsel for the respondent has submitted that this Special Appeal may be disposed of in the light of the decision in "State of Rajasthan & Ors. v. Praveen Singh" with a direction to the State respondents to take a decision on the representation made by the respondent.

5. In D.B. Special Appeal No. 350 of 2023, this Court made the following observations while disposing of the Special Appeal filed by the State of Rajasthan:-

"The another aspect which has come to light is that the judgment which has been passed by the learned Single Judge relying upon the judgment of a Coordinate Single Bench in Om Prakash Sharma Vs. The State of Rajasthan & Ors. (S.B. Civil Writ Petition No.21214/2017) pertained to the selection for the year 1986 to the post of Lower Division Clerk. In those matters, appeals have been preferred by the Director, Secondary Education, Rajasthan, Bikaner and the Division Bench of this Court was pleased to dispose of the said appeals by observing as follows:-

"Learned counsel for the petitioners, however, submitted that the issue is arising in large number of cases and in several departments, the Government has accepted the stand and granted the benefits. If the petitioners are not granted similar benefits, it would amount to discriminatory treatment. Whatever be the grievance of the petitioners they can be resolved at the

level of the administration or by the Court through bipartite hearing.

In view of the peculiar circumstances, these appeals are disposed of by permitting the Government to take into account the representations already made or to be filed by any of the petitioners within one month. In the process, the authorities will bear in mind the stand taken by the department in similar cases. Such representations would be decided in accordance with law unmindful of the observations and directions issued by the learned Single Judge in the impugned orders. Eventually, if the grievances of the petitioners still survive after the Government decision, it is open for the petitioners to seek redressal thereafter in accordance with law. The appeals are disposed of accordingly."

In the light of the above, we dispose of the present appeal in same terms as above."

6. *D.B. Special Appeal Writ No. 609 of 2022 is disposed of in the light of the order passed in "State of Rajasthan v. Praveen Singh". The respondent authority shall take a decision on the representation made by the respondent, having regard to the stand taken by the Department in similar cases on previous occasions and without being influenced by the observations of the writ Court.*

7. Accordingly, the present Special Appeals (Writ) are disposed of in the same terms.

8. The respondents shall take into consideration the submissions already made.

(SANDEEP SHAH),J

(DR. PUSHPENDRA SINGH BHATI),J

80 & 81-raoof khan/-