



**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Special Appeal Writ No. 1121/2022
CNR: RJHC020761172022 | URN: SAW / 2000U / 2022

Antima Jain D/o Shri Hukum Chand Jain, Aged About 23 Years,
R/o Rang Bhariyo Ki Gali, Saraf Bazar, Alwar (Raj.)

-----Appellant

Versus

1. The State Of Rajasthan, Through Principal Secretary,
Department Of Public Health And Engineering,
Government Secretariat, Jaipur (Raj.)
2. Chief Engineer (Administration), Department Of Public
Health And Engineering, 2-Jal Bhawan, Jacob Road, Civil
Lines, Jaipur.
3. Miss Akansha Asthana D/o Late Shri R.P. Asthana, Aged
About 23 Years, Resident Of 15, Avas Vikas Colony,
Chhota Choraha, Hardaui, U.P.

-----Respondents

For Appellant(s)	:	Mr. Akshit Gupta, Adv. with Mr. Pallav Pancholi, Adv.
For Respondent(s)	:	Ms. Mahi Yadav, AAG with Ms. Chelshi Agarwal, AAAG Mr. Kuldeep Singh Rathore, Adv.

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR
Order(Oral)

Reportable

05/08/2026

Per: Arun Monga, J.

1. Instant intra court appeal is directed against the judgment and
order dated 19.07.2022 passed by the learned Single Judge in S.B. Civil
Writ Petition No. 11635/2015, whereby the writ petition assailing an
order dated 20.10.2015 rejecting the appellant's candidature for the

post of Junior Engineer (Civil), on the ground that she failed to produce the requisite OBC (Non-Creamy Layer) certificate at the stage of document verification, despite having applied under the OBC (Non-Creamy Layer) category, was dismissed.

2. Briefly stated, the facts of the case are that the appellant applied for the post of Junior Engineer (Civil) (Diploma) pursuant to the recruitment advertisement dated 30.09.2014. In the absence of any valid proof, although she belonged to the General (Female) category, but her online application form reflected her category as OBC (Non-Creamy Layer) (Female). She participated in the selection process and secured 35.77 marks, which was above the cut-off prescribed for the General (Female) category, i.e., 35.40 marks. At the stage of document verification, the respondents required her to produce an OBC (Non-Creamy Layer) certificate. The appellant informed the respondents that the category had been incorrectly entered in the online application and requested that her candidature be considered under the General (Female) category. However, by order dated 20.10.2015, the respondents rejected her candidature for failure to produce the requisite OBC (Non-Creamy Layer) certificate.

2.2 Aggrieved thereby, the appellant filed S.B. Civil Writ Petition No. 11635/2015, challenging the rejection of her candidature and seeking consideration for appointment under the General (Female) category. During the pendency of the writ petition, by interim order dated 20.08.2015, the respondents were directed to keep one post in the General category vacant for the appellant. By judgment dated 19.07.2022, the learned Single Judge dismissed the writ petition, holding that the appellant had applied under the OBC (Non-Creamy Layer) category, had failed to avail the opportunity provided under the

recruitment advertisement to correct the particulars in her application form, and was therefore not entitled to seek a change of category after conclusion of the selection process.

2.3 Hence, the instant appeal.

3. Learned counsel for the appellant submits that the mention of OBC (Non-Creamy Layer) in the online application was a bona fide clerical error. That the appellant had, at the first available opportunity during document verification, disclosed her correct status. And that, having secured marks above the General (Female) cut-off, she was entitled to be considered on her own merit in the General category. In support of the proposition that a candidate cannot be confined to a reserved category and denied consideration in the open category on merit, reliance was placed upon the judgment of the Hon'ble Supreme Court in Ramnaresh @ Rinku Kushwah & Ors. v. State of Madhya Pradesh & Ors.

4. Per contra, learned counsel for the respondents vehemently opposes the appeal. He urges that a candidate is bound by the declarations made in her application form, and the appellant, having consciously applied under the OBC (Non-Creamy Layer) category, participated in the selection process on that footing throughout. It is further submitted that the recruitment advertisement itself afforded a specific window to all candidates to correct the particulars furnished in their application forms, which the appellant admittedly failed to avail. That a change of category cannot be countenanced after the selection process has concluded, as it would unsettle the select list and prejudice other candidates. And that, the rejection of her candidature for non-production of the requisite certificate was, therefore, strictly in accordance with the terms of the advertisement. It was accordingly

urged that the learned Single Judge rightly dismissed the writ petition and the judgment warrants no interference.

5. We have heard learned counsel for the parties and perused the record.

6. Two questions arise for our consideration, i.e., :-

- (i). Whether the appellant was entitled to claim the benefit of the OBC (Non-Creamy Layer) category ?
- (ii). If the answer to above question is in the negative, whether her candidature ought nonetheless to have been considered in the General (Female) category on the strength of her own merit ?

7. On the first question, what emerges from the record is that the appellant had indeed opted for the OBC (Non-Creamy Layer) category in her application but failed to produce the supporting certificate to claim the benefit thereof. She further failed to avail the opportunity of correction provided under the advertisement. To that extent, we are in complete agreement with the reasoning of the learned Single Judge, and the finding that the appellant could not claim the benefit of the OBC (Non-Creamy Layer) category calls for no interference.

8. However, what appears to have escaped the notice of the learned Single Judge is the necessary corollary of that very finding viz. once the appellant was held not entitled to the benefit of the OBC (Non-Creamy Layer) category, she did not stand ousted from the selection process altogether. Rather, she ought to have been treated as a General category candidate and her candidature ought to have been tested against the General (Female) cut-off.

9. It is not in dispute that the appellant secured 35.77 marks, which is above the cut-off of 35.40 marks prescribed for the General (Female)

category. The rejection of her candidature thus proceeded on an erroneous compartmentalization of categories, treating reservation as a rigid slot foreclosing consideration on merit in the open category.

10. The legal position in this regard is no longer res integra. Reference may be had to the cited judgement by learned counsel for the appellant rendered by hon'ble Supreme Court in **Ramnaresh@ Rinku Khushwah and others v/s State of Madhya Pradesh and others**¹.

Relevant extract of the same is reproduced herein below:-

"10. By now, it is a well-settled principle of law that a candidate belonging to any of the vertical reservation categories who on the basis of his own merit is entitled to be selected in the open or general category, will be selected against the general category and his selection would not be counted against the quota reserved for such vertical reservation categories. Reliance in this respect could be placed on the 9-Judge Bench judgment of this Court in the case of Indra Sawhney and Others v. Union of India and Others, and in the cases of R.K. Sabharwal and Others v. State of Punjab and Others and Ritesh R. Sah v. Dr. Y.L. Yamul and Others.

x-x-x-x-x

13. It will also be apposite to refer to the following observations made by S. Ravindra Bhat, J. in his concurring judgment:

"66. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the State's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him."

14. It could thus be seen that the learned Judge clearly observed that the horizontal as well as the vertical reservation would not be seen as rigid "slots", where a candidate's merit, which otherwise entitles her or him to be shown in the open general category, is foreclosed. It was observed that by doing so, it would result in communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. It was observed that the open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him."

11. Applying the aforesaid principles to the facts at hand, the open/General category was open to the appellant on her own merit,

irrespective of the category mentioned in her application form or her failure to substantiate the claim to OBC (Non-Creamy Layer) status.

12. The submission of the respondents that the appellant stands bound by her application, while attractive at first blush, cannot be stretched to defeat her consideration in the open category on merit, for merit alone is the criterion for the open category. The failure to produce a reserved-category certificate, at the most, disentitles a candidate to the benefit of reservation. It does not disentitle her to compete in the open category.

13. In view of the aforesaid legal position, the impugned judgment dated 19.07.2022 is modified to the following extent:-

13.1 While the dismissal of the writ petition insofar as it sought the benefit of the OBC (Non-Creamy Layer) category is upheld;

13.2 The appellant's claim for consideration as a General category candidate shall be examined in accordance with law;

13.3 If, on the basis of the marks secured by her in the selection process, the appellant is found entitled to appointment in the General (Female) category, the Competent Authority shall consider her candidature and pass appropriate orders expeditiously, preferably within a period of three months from the date of receipt of a certified copy of this judgment.

14. Since, by the interim order dated 01.11.2024 passed by the Coordinate Bench of this Court, then seized of the matter, one post was directed to be kept reserved, the appellant shall be entitled to the benefit of the said post if she falls within the merit of the General (Female) category.

15. In the event of her appointment, she shall be granted all consequential notional benefits, including seniority, from the date on

which similarly situated candidates were appointed. However, she shall not be entitled to any arrears of salary or other monetary benefits for the period she remained out of service, on the principle of "no work, no pay."

16. The appeal stands disposed of in the aforesaid terms. Pending application(s), if any, also stand disposed of. No order as to costs.

(ASHUTOSH KUMAR),J

(ARUN MONGA),J

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