



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



D.B. Spl. Appl. Writ No. 365/2025

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.
4. Chief Medical And Health Officer, Jalore.

----Appellants

Versus

Uganta Kanwar W/o Shri Mukesh Singh, Aged About 34 Years, R/o Ward No. 17, Bissau, District Jhunjhunu Presently Working At Phc Bhavrani Bcmo Aahore, District Jalore, Rajasthan.

----Respondent

Connected With

D.B. Spl. Appl. Writ No. 1248/2024

1. State Of Rajasthan, Through The Its Additional Chief Secretary, Medical And Health Services, Government Secretariat, Jaipur.
2. The Director (Non Gazetted), Medical, Health And Family Welfare Department, Health Bhawan, Rajasthan, Jaipur.
3. The Director, State Institute Of Health And Family Welfare (Sihfw), Jhalana Doongri, Ghat Ki Guni, Jaipur 302004

----Appellants

Versus

Punita Rani D/o Shri Bhagirath Sharma, W/o Shri Ram Sharma, Resident Of Lalji Ki Bawari, Gangori Chawk, Tehsil Deedwana, District Deedwana Kuchaman (Raj.)

----Respondent

D.B. Spl. Appl. Writ No. 485/2025

1. State Of Rajasthan, Through Secretary Medical And Health Department, Government Of Rajasthan, Secretariat, Jaipur.
2. The Director, State Institute Of Health And Family Welfare Jhalna Institutional Area, Near Doordarshan Kendra,





Jaipur.

----Appellants

Versus

Parmila D/o Shri Rajbir W/o Shri Kuldeep, Aged About 43 Years,  
R/o Vpo Dhanothi Bari, Tehsil Sidhmukh District Churu,  
Rajasthan.

----Respondent

D.B. Spl. Appl. Writ No. 489/2025

1. State Of Rajasthan, Through Secretary Medical And Health Department Government Of Rajasthan, Secretariat, Jaipur.
2. The Director, State Institute Of Health And Family Welfare Jhalana Institutional Area, Near Doordarshan Kendra, Jaipur.

----Appellants

Versus

Seema Rani D/o Shri Jeet Singh W/o Shri Pravin Kumar, Aged About 38 Years, R/o Vpo Deengli Post Thirpali Bari, Tehsil Rajgarh, District Churu, Rajasthan.

----Respondent

D.B. Spl. Appl. Writ No. 508/2025

1. State Of Rajasthan, Through Secretary Medical And Health Department, Government Of Rajasthan, Secretariat, Jaipur.
2. The Director, State Institute Of Health And Family Welfare Jhalna Institutional Area, Near Doordarshan Kendra, Jaipur

----Appellants

Versus

Babita Kumari D/o Shri Rajpal, W/o Shri Pardeep, Aged About 36 Years, R/o Vpo Suratpura, Tehsil Rajgarh, District Churu, Rajasthan.

----Respondent

D.B. Spl. Appl. Writ No. 646/2025

1. State Of Rajasthan, Through Secretary Medical And Health Department, Government Of Rajasthan, Secretariat, Jaipur.





2. The Director, State Institute Of Health And Family Welfare Jhalana Institutional Area, Near Doordarshan Kendra, Jaipur

----Appellants

Versus

Babli Kumari D/o Ram Kumar W/o Ashok Kumar Saharan, Aged About 33 Years, Vpo Paharsar, Tehsil Rajasthan, District Churu, Rajasthan.

----Respondent

D.B. Spl. Appl. Writ No. 705/2025

1. State Of Rajasthan, Through Secretary Medical And Health Department Government Of Rajasthan Secretariat Jaipur.
2. The Director, State Institute Of Health And Family Welfare Jhalana Institutional Area Near Doordarshan Kandra Jaipur

----Appellants

Versus

Vijay Laxmi D/o Shri Hari Kishan W/o Shri Sunil Kumar, Aged About 34 Years, Village Kaman Post Office Bhojan Tehsil Rajgarh District Churu Rajasthan

----Respondent

D.B. Spl. Appl. Writ No. 718/2025

1. State Of Rajasthan, Through Its Principal Secretary Medical And Health Services, Government Secretariat, Jaipur.
2. Director (Non-Gazetted), Medical Health And Family Welfare Department, Health Bhawan Rajasthan, Jaipur.
3. The Director, State Institute Of Health And Family Welfare (Sihfw), Jhalana Doongri Ghat Ki Guni, Jaipur 302004.

----Appellants

Versus

Rina Kunwar Rajput D/o Shri Jagdish Singh Rajput, W/o Shri Yogendra Singh, Aged About 28 Years, R/o Village/ Post Gordhanpura, Asnawar, District Jhalawar, Presently Residing At C/o Shri Swaroop Singh, Village/ Post Ransi Gaon, Tehsil Bilara, District Jodhpur (Raj.).





----Respondent

D.B. Spl. Appl. Writ No. 721/2025

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.

----Appellants

Versus

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

----Respondent

D.B. Spl. Appl. Writ No. 780/2025

1. State Of Rajasthan, Through Secretary, Medical And Health Department, Government Of Rajasthan Secretariat, Jaipur.
2. The Director, State Institute Of Health And Family Welfare, Jhalna Institutional Area, Near Doordarshan Kendra, Jaipur.

----Appellants

Versus

Kamlesh S/o Shri Jaivir Singh W/o Shri Naresh Kumar, Aged About 35 Years, Vpo Gagor, Post Office Dokwa, Tehsil Rajgarh, District Churu, Rajasthan.

----Respondent

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For Appellant(s)	:	Mr. Narendra Singh Rajpurohit, AAG assisted by Ms. Aditi Sharma, AAAG
For Respondent(s)	:	Mr. Yashpal Khileree Mr. Vikas Bijarnia with Mr. Punit Choudhary Mr. Sushil Bishnoi Mr. Lucky Rajpurohit Mr. Puna Ram Sen

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

**Reportable**  
**11/02/2026**

1. The present controversy arises out of Advertisement No. F-109(8)/SIHFW/MH-Recruit/FHW/2023/4850 dated 19.05.2023, Health Worker Female, where the respondents succeeded on merits in the EWS category but were denied appointment on the ground that married women candidates cannot be given the benefit of the EWS category. All the impugned orders have been passed on issues which are already covered by the judgment passed in S.B. Civil Writ Petition No. 7512/2022, Aman Kumari vs. State of Rajasthan & Ors., decided on 21.09.2022, which reads as follows:

*"These writ petitions have been filed by the petitioners aggrieved against Clause 12.2 (vi) of the advertisement dated 31.12.2021 for recruitment to the post of Teacher Grade-III (Level-I) in relation to providing reservation to candidates in EWS category.*

*Further relief has been sought that as the petitioners fall in merit in the EWS category, they may be accorded appointment on the post of Teacher Grade-III (Level-I).*

*It is, inter-alia, indicated in the petitions that the advertisement dated 31.12.2021 was issued by the respondents for recruitment to the post of Teacher Grade-III (Level-I). The respondents had, inter-alia, provided reservation for the candidates belonging to EWS category, however, in Clause 12.2 (vi) pertaining to the reservation, it was, inter-aia, indicated as under :*

*"VI. माननीय सर्वोच्च न्यायालय द्वारा सिविल अपील संख्या 8425/2013 रंजना कुमारी व अन्य बनाम उत्तराखण्ड राज्य व अन्य में पारित निर्णय दिनांक 01.11.2018 एवं माननीय उच्च न्यायालय जयपुर द्वारा डी बी स्पेशल अपील संख्या 1116/2018 राज्य सरकार व अन्य बनाम मंजू यादव व अन्य में पारित निर्णय दिनांक 18.09.2018 के अनुसार राजस्थान राज्य में विवाह उपरान्त प्रवासित हुई आरक्षित वर्ग (आर्थिक रूप से कमजोर वर्ग, अन्य पिछड़ा वर्ग, अति पिछड़ा वर्ग, अनुसूचित जाति, अनुसूचित जनजाति एवं सहरिया आदिम जाति) की महिला अभ्यर्थी को उनके वर्ग के आरक्षित पदों का लाभ देय नहीं होगा, अतः ऐसी महिला अभ्यर्थियों को सामान्य वर्ग के अन्तर्गत आवेदन करना होगा।"*





*The stipulation debarred, those woman candidates, who are residents of the State due to marriage from getting the benefit, inter-alia, of EWS category.*

*The petitioners applied and claimed their status as EWS and as per provisional merit list, they were provisionally selected and called for document verification. However, in the final merit list, though the petitioners had obtained marks higher than the cut-off, their names were not reflected in the said list.*

*The petitioners made inquiry and were told that in terms of the stipulation made in the advertisement Clause 12.2(vi) as the petitioners were born outside the State and were married in the State and despite falling within the EWS category, they were not entitled to benefit of reservation and were treated in the General category and the marks obtained by them were less than the General category candidates, the petitioners have not been included in the final merit list.*

*Learned counsel for the petitioners made submissions that the action of the respondents in excluding the petitioners, who otherwise fall in the EWS category only on account of the fact that they originally are from outside the State and they have been married into Rajasthan, is not justified.*

*Reference has been made to Circulars dated 10.02.2020 & 16.08.2021 (Annex.11 to SBCWP No.7512/2022) in this regard. It is submitted that the circulars specifically provide that the candidates like petitioners would be entitled to the said benefit.*

*A reply to the petition has been filed, inter-alia, indicating that as specific stipulation has been made in the advertisement and despite that, the petitioners have applied, the petitioners are estopped for questioning its validity.*

*Further submissions have been made that the Circulars dated 10.02.2020 & 16.08.2021 (Annex.11 to SBCWP No.7512/2022) relied on by the petitioner are general in nature and the same do not deal with the recruitment and therefore, the petitioners are not entitled to any relief.*





*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 Utrakhnad & 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).*

*The petitioners would be entitled to all consequential benefits from the date the persons lower in merit to the petitioners were accorded appointment. However, the petitioners would be entitled to the monetary benefits from the date of actual appointment.*

*Needful may be done within a period of four weeks."*

2. The learned Additional Advocate General submits that although no appeal was filed against the judgment passed in Aman Kumari's case and the same was acted upon, still this court while considering a question involved in the case of 'State of Rajasthan v. Babli Kumari' D.B. Civil Writ Petition No.646/2025 (part of the present bunch), vide its order dated 21.05.2025 framed following questions for its consideration:

*"6. Following three issues arise for consideration are:-*

*(i) Whether the order passed in the case of Aman Kumari vs. State of Rajasthan & Ors. based on correct law ?*





*(ii) Whether in view of the judgment of Hon'ble Supreme Court in (2019) 15 Supreme Court Cases 664, the respondent could claim benefit of reservation in the migrating State ?*

*(iii) Whether the petition was otherwise barred as the writ petitioner did not challenge the specific terms and conditions of advertisement and participated in the process of selection ?"*

3. The above mentioned issues are thus required to be adjudicated upon.

4. He further submits that there is inconsistency in law regarding reservation in relation to the fact that whenever a person seeks to extend the benefit of reservation from one State to another State, on account of migration, such benefit cannot be granted to the concerned person.

5. Learned Additional Advocate General also submits that the Hon'ble Apex Court, in *Ranjana Kumari (2019) 15 SCC 664*), dismissed the petition on the ground that reservation benefits are not available to migrated persons in the State to which they have migrated. It is submitted that the advertisement contained specific terms and conditions, and unless those terms and conditions were challenged, the petitions could not have been entertained.

6. Learned Additional Advocate General further submits that the circular dated 10.02.2020 provides only for issuance of the EWS certificate but does not provide for grant of reservation to the migrant female candidates of other State. Another relevant circular dated 16.08.2021 also does not provide for grant of reservation to migrant female candidates of other State. The explanation made in circular dated 10.02.2020 also provides that





status of EWS relates back to the family of candidate when she was born and in 'State of Rajasthan vs. Smt. Manju Yadav' (DB/SAW/1116/2018) decided on 18.09.2018 it has been held issuance of any certificate does not entitle any person for reservation in public employment and these facts are not considered in Aman Kumari's (supra) case. So, the decision in Aman Kumari's (supra) case is not a good law and same is liable to be distinguished.

7. Learned Additional Advocate General refers to these judgments: ***Ranjana Kumari v. State of Uttarakhand***, reported in **(2019) 15 SCC 664**; ***Marri Chandra Shekhar Rao v. Seth G.S. Medical College***, reported in **(1990) 3 SCC 130**; ***Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India***, reported in **(1994) 5 SCC 244**; ***Bir Singh v. Delhi Jal Board***, reported in **(2018) 10 SCC 312**; ***State of Rajasthan Vs. Manju Yadav in D.B. Special Appeal Writ No. 1116/2018***. Relevant paras of these judgments are reproduced here:

***Ranjana Kumari (Supra):***

"4. Two Constitution Bench judgments of this Court in *Marri Chandra Shekhar Rao v. Seth G.S. Medical College* [*Marri Chandra Shekhar Rao v. Seth G.S. Medical College*, (1990) 3 SCC 130 : 1 SCEC 382] and *Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India* [*Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India*, (1994) 5 SCC 244] have taken the view that merely because in the migrant State the same caste is recognised as Scheduled Caste, the migrant cannot be recognised as Scheduled Caste of the migrant State. The issuance of a caste certificate by the State of Uttarakhand, as in the present case, cannot dilute the rigours of the Constitution Bench judgments in *Marri Chandra*





*Shekhar Rao [Marri Chandra Shekhar Rao v. Seth G.S. Medical College, (1990) 3 SCC 130 : 1 SCEC 382] and Action Committee [Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India, (1994) 5 SCC 244] "*

**Marri Chandra Shekhar Rao (Supra):**

"13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in *Venkataramana Devaru v. State of Mysore* [1958 SCR 895, 918 : AIR 1958 SC 255] , where *Venkatarama Aiyer, J.* reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression 'for the purposes of this Constitution' in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all – to Scheduled Castes or Tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but





he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that





*the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution."*

***Action Committee on Issue of Caste Certificate to Scs/Sts vs. Union of India (Supra):***

*"16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to*





a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them...."

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.

17. Lastly the Constitution Bench referred to the cleavage in the views of different High Courts on the interpretation of Articles 341 and 342 of the Constitution and the consequential orders passed by the Government of India and the State Governments. It referred to the two decisions of the Gujarat High Court as well as the decision of the Karnataka High Court which place the interpretation canvassed before us by Mr Raju Ramachandran. The other side referred to the decisions of the Orissa High Court in *K. Appa Rao v. Director of Posts & Telegraphs, Orissa* [AIR 1969 Ori 220 : 35 Cut LT 55], the decision of the Full Bench of the Bombay High Court in *M.S. Malathi v.*





Commissioner, Nagpur Division [AIR 1989 Bom 138 : 1988 Mah LJ 1041 : (1988) 90 Bom LR 532 (FB)] and the decision of the Punjab & Haryana High Court in V.B. Singh v. State of Punjab [ILR (1976) 1 P&H 769] which take the contrary view canvassed before us by the respondents. All these decisions were considered by the Constitution Bench which agreed with the latter view. It upheld the view expressed in the communication dated 22-2-1985 and negated the challenge of the petitioner that the said view was ultra vires Articles 14, 15, 16 or 21. It, however, observed that in the facts and circumstances of the case and having regard to the fact that the petitioner student's career was involved it directed the authorities to consider whether the petitioner was a 'Goudi' and if yes, the institution may consider if he can be allowed to complete his studies in the institution. However, on the interpretation of the relevant provisions of the Constitution this Court was clear in its view that legally speaking he was not entitled to admission in the Scheduled Tribe quota.

18. We are in respectful agreement with the above view expressed by the Constitution Bench in the aforesaid decision. All the points which were canvassed before us by Mr Raju Ramachandran were also canvassed by him in the said matter. They were negated by the Constitution Bench. Nothing has been pointed out to persuade us to think that the view taken by the Constitution Bench requires reconsideration by a larger Bench. In fact we are in complete agreement with the interpretation placed on the various provisions of the Constitution, in particular Articles 341 and 342 thereof, in the said judgment. We, therefore, see no merit in this writ petition and dismiss the same. However, we make no order as to costs."

**Bir Singh (Supra):**

"34. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The





expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'."

**State of Rajasthan vs. Manju Yadav & Ors. (supra):**

"4. Females outside the State of Rajasthan on migrating to Rajasthan, post marriage may not be entitled to the benefit of reservation in public employment in the State of Rajasthan on account of being a member of a SC or ST or OBC in another State."

8. Per contra, the learned counsel for the respondents has drawn the attention of this Court towards to the Circular dated 10.02.2020, which is an exhaustive circular providing reservation under the EWS category. The relevant portion of the Circular dated 10.02.2020 reads as follows:

"प्रकरण के समुचित परीक्षणोपरान्त इस सम्बन्ध में यह स्पष्ट किया जाता है कि आर्थिक रूप से कमजोर वर्ग के अन्य राज्यों से स्थानान्तरित होकर राजस्थान राज्य में स्थाई रूप से निवास कर रहे व्यक्तियों को उनके स्वयं अथवा उनकी संतानों के उपयोगार्थ आर्थिक रूप से कमजोर वर्ग का प्रमाणपत्र जारी किया जावे परन्तु इस संबंध में उक्त वर्ग के व्यक्ति पूर्व में जिस सब्य से उसका संबंध है अपने पूर्व निवास स्थान में अपनी व अपने परिवार की वार्षिक आय & सम्पत्ति यदि कोई हो एवं उससे वार्षिक आय के सम्बन्ध में वहां के सक्षम अधिकारी जो उपखण्ड अधिकारी या समकक्ष स्तर का हो सक्षम अधिकारी कनिष्ठ होने की स्थिति में स्थानीय उपखण्ड द्वारा प्रतिहस्ताक्षरित एक शपथपत्र प्रस्तुत करेगा। राज्य में सक्षम अधिकारी द्वारा ऐसे स्थानान्तरित होकर आये व्यक्ति की पूर्व आय एवं वर्तमान निवास स्थान की आय की संयुक्त रूप से गणना करते हुये नियमानुसार आर्थिक रूप से कमजोर वर्ग का प्रमाणपत्र जारी किया जायेगा।"

9. Learned counsel for the respondents further draws the attention of this Court towards the Circular dated 16.08.2021, wherein it has been clarified that the migrated class, particularly if it belongs to a reserved category, shall also be treated as falling





within the ambit of the Economically Weaker Sections (EWS), in accordance with the prescribed norms. The relevant portion of the

Circular dated 16.08.2021 reads as follows:

"इस सम्बन्ध में प्रथमतया यहां यह स्पष्ट किया जाता है कि स्थाई रूप से निवासरत् का तात्पर्य गाननीय सर्वोच्च न्यायालय ने इस प्रकार स्पष्ट किया है कि *Action Cornmittee on issue only to those who have ordinary residence of the place within the jurisdiction of competent authority. Ordinary resident means residence with is not for the purpose of the service, employment. education, confinement in jail etc. in short it means permanent residence and not a temporary residence.* यहाँ यह भी उल्लेखनीय है कि किसी भी व्यक्ति की जाति का निर्धारण उसको पैतृक जाति से होता है अर्थात यदि किसी व्यक्ति की जाति उसके मूल राज्य में सामान्य वर्ग में है (अर्थात अनुसूचित जाति, जनजाति व अन्य पिछडा वर्ग के अतिरिक्त) तो राजस्थान राज्य में भी यह सामान्य वर्ग में ही मानी जायेगी।, दुसरा 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 यह राजस्थान राज्य में सामान्य वर्ग (अर्थात अनुसूचित जाति, जनजाति व अन्य पिछडा वर्ग के अतिरिक्त) में जानी जायेगी एवं ऐसे आर्थिक कमजोर वर्ग (EWS) के व्यक्ति को निर्धारित मापदण्डों के अनुसार *Income & Asset Certificate* पाने के हकदार होंगे। अतः उपरोक्त तथ्यों के परिपेक्ष्य में राज्य के समस्त सक्षम अधिकारियों को यह निर्देशित किया जाता है कि ऐसे प्रकरणों में कार्मिक विभाग द्वारा जारी उक्त परिपत्र 10.02.2020 के अनुसरण में ऐसे माईग्रेट पात्र व्यक्तियों को निर्धारित मापदण्डों के आधार पर नियमानुसार *Income & Asset Certificate* जारी करावें।"

10. Learned counsel for the respondents also draws the attention of this Court towards the judgment in *Aman Kumari (supra)*, wherein the learned Single Bench of this Court, while considering the Circulars dated 10.02.2020 and 16.08.2020, allowed the writ petition.

11. Learned counsel for the respondents draws the attention of this Court towards the Condition No. 6 of the advertisement dated 19.05.2023, which requires both a Domicile Certificate and an EWS Certificate for the purpose of claiming reservation under the EWS category. Paragraph 6 of the advertisement reads as follows:

"माननीय सर्वोच्च न्यायालय द्वारा दीवानी अपील संख्या 1085/2013 में पारित निर्णय दिनांक 30.08.2018 एवं माननीय रजस्थान उच्च न्यायालय द्वारा डी.बी. विशेष अपील (रिट्स) संख्या 1116/2018 में पारित निर्णय दिनांक 18.09.2018 के अनुसार राजस्थान राज्य के बाहर अर्थात अन्य राज्य की महिला जो विवाहोपरान्त राजस्थान राज्य की मूल निवासी बन जाती है तो उसे सार्वजनिक नियोजन में एससी/एसटी/ओबीसी / एमबीसी वर्ग में आरक्षण का लाभ नहीं दिया जायेगा। इसलिए उन्हें सामान्य वर्ग के अन्तर्गत ही आवेदन करना होगा। अन्य राज्य





की किसी भी श्रेणी की महिला का राजस्थान में विवाह होने के उपरान्त राजस्थान का मूल निवास एवं EWS का प्रमाण पत्र प्रस्तुत करने पर उसे आर्थिक रूप से कमजोर वर्ग श्रेणी के लिए पात्र माना जायेगा।”

12. The above mentioned advertisement has been issued by the Rajasthan Staff Selection Board, Jaipur, under Advertisement No. 9 of 2025 and pertains to the recruitment for the post of Teacher.

13. Learned counsel for the respondents draws the attention of this Court towards the Notification dated 20.10.2019, particularly to the amendment introduced in Rule 2, being the Second Amendment, which defines the 'Reservation of vacancies for Economically Weaker Sections (EWS)'. The explanation thereto is reproduced as under:

**2.Substitution of rule 8A:** *The existing rule and regulation 8A of the Rajasthan Public Service Commission (Ministerial and Subordinate Service) Rules and Regulations, 1999 shall be substituted by the following, namely;-*

**"8A. Reservation of vacancies for Economical Weaker Sections:-** *Reservation of vacancies for Economically Weaker Sections shall be 10% in direct recruitment in addition to the existing reservation. In the event of non-availability of eligible and suitable candidate amongst Economically Weaker Sections in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure.*





**Explanation:** For the purpose of this rule '**Economically Weaker Sections**' shall be the persons who are bonafide resident of Rajasthan and not covered under the existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes, the Backward Classes, the More Backward Classes and whose family has gross annual income below rupees 8.00 lakh. Family for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years. The income shall include income from all sources i.e. salary, agriculture, business, profession etc. and it will be income for the financial year prior to the year of application"

14. Learned counsel for the respondents further draws attention of this Court towards the order dated 28.08.2012 pertaining to the issuance of Domicile Certificates. Paragraph 4 of the said order specifically deals with persons who have been married, clarifying that such persons shall be considered as domicile. The relevant portion of Paragraph 4 of the Domicile Order reads as follows:

क्र.सं.	साक्ष्य	साक्ष्य हेतु संलग्न दस्तावेज
4.	उन महिलाओं की दशा में जो राजस्थान की मूल निवासी नहीं है और ऐसे व्यक्ति से विवाह कर लेती है जो राजस्थान का मूल निवासी है और जो अपने पति के साथ राजस्थान में रहती है। सामान्यतया राजस्थान का मूल निवासी मान ली जायेगी चाहे उसने	पति का मूल निवास प्रमाण पत्र व चुनाव पहचान पत्र/पासपोर्ट /डाइविंग लाइसेंस / अन्य फोटो पहचान पत्र तथा विवाह प्रमाण पत्र





	राजस्थान में अपने 10 वर्ष के निवासी की शर्त पूरी न की हो.	
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15. Learned counsel for the respondents further draws attention of this Court towards the judgment of the Hon'ble Division Bench of the Himachal Pradesh High Court in Review Petition No. 47 of 2021, titled as **State of H.P. & Ors. vs. Smt. Naveen Kumari**, decided on **04.09.2021**. The relevant portion of the said order reads as follows:

"11. Moreover, she establishes that upon her marriage in Himachal Pradesh, she has provenly established the requisite animus deserendi, from the State of her origin i.e. Punjab. Therefore, she becomes an ordinary resident of Himachal Pradesh, as she has not migrated to Himachal Pradesh rather solitarily for the purpose of service, employment, and, education, rather has migrated on account of her marriage in Himachal Pradesh with her husband.

12. Emphasisingly, the settling of the conundrum with regard to "ordinary resident and bonafide resident" is/are of utmost importance. The meaning of the term "bonafide resident" as defined under various pronouncements made by different Courts, is, that of residence with a permanent intention to reside, in the State concerned.

13. Now the intention to reside permanently, is to be inferred from the circumstance of a particular caste. Since various states including the State of Himachal Pradesh, have framed rules for issuance of a bonafide certificate. The Himachal Pradesh Rules, for issuance of a bonafide certificate, prescribe that a person, who continuously resides in Himachal Pradesh for 15 years, becomes entitled for issuance of a bonafide certificate. If, a person continuously for 15 years holds his residence at Himachal Pradesh, it means that he has a permanent intention to reside in Himachal Pradesh, and, hence evinces his animus deserendi from the State of his origin. Consequently, a person, who becomes a bonafide resident of Himachal Pradesh, has definitely suffered and has become socially disadvantaged, disadvantages whereof, arise from his





*caste, given his for a minimum period of 15 years. rather being permanently domiciled in H.P. Therefore, he cannot be considered to be a migratee after 15 years, as, after the afore period he becomes entitled, for the issuance of a bonafide certificate, as per the rules. Consequently, if the caste of his origin is by birth in the State of his origin, and, is notified in the State where he is a bonafide resident, or is permanently domiciled. Therefore, he becomes entitled to receive an apposite caste certificate.*

*14. Consequently, as discussed above, when a person is issued a bonafide certificate, it means that he is a permanent resident of the State, for all intents and purposes as he has intention to live permanently there, and, he remains no more a migrant. Similarly, the petitioner after her marriage no more remains a migrant, and, she for all intents and purposes, is, now settled in the house of her husband."*

16. Upon conjoint consideration of the questions proposed by the Division Bench of this Court, this Court is of the firm opinion that the State of Rajasthan has accorded the status of EWS to migrants in terms of its Circulars dated 10.02.2020 and 16.08.2021, wherein the procedure has been laid down for issuance of EWS Certificates after obtaining a Domicile Certificate and assessing the economic condition of the applicant. This Court is also of the view that the order relating to Domicile Certificates, as prevalent in the State of Rajasthan, specifically includes married women who have migrated from another State and acquired domicile status by virtue of marriage. It is further observed that the decision in Ranjana Kumari (supra) pertained to reservation in respect of a reserved category, whereas the EWS Certificate is distinct in nature, being based solely on economic criteria. Since the specifications for EWS are uniform across the country, migration in this context is supported by the Constitution of India.





17. This Court finds that the EWS category is based upon the economically weaker segment of society, and the nature of this segment, does not change on account of migration. Categories based on specific caste, religion, groups or social backwardness require further identification and specification, whereas economic backwardness is determined by uniform criteria applicable throughout the State. Moreover, this Court is of the firm opinion that once a married daughter has been granted domicile of a particular State, on account of marriage, the benefits accruing to the migrated family, particularly economic benefits ought to be extended to her as well.

18. Reservation for Economically Weaker Section for the first time was introduced by way of the 103rd Constitutional Amendment Act, 2019, wherein other than the reservation based upon social or educational backwardness, an affirmative action of reservation was provided based upon economic condition of the persons concerned. The above mentioned amendment to the Constitution was challenged before the Constitution Bench. The Apex Court, while dealing with the issue raised in this regard, in the case of '**Janhit Abhiyan vs. Union of India**' reported in **(2022) SCC OnLine SC 1540**, upheld the reservation and also held that the reservation for economically weaker section is not to be extended to the persons who are already getting the benefit of reservation based upon their social or educational backwardness i.e. the reservation covered under Article 15(4), 15(5) and 16(4) of Constitution, while specifically treating the category of EWS as a separate category, while emphasizing that it was created with the goal of having an egalitarian society while counteracting





inequalities and bringing the economically weaker section into the main stream of the society. The Central Government, for the purpose of granting EWS reservation, had issued the office memorandum dated 31.01.2019, providing for grant of 10% reservation in direct recruitment in Civil posts and services under the Government of India to the persons belonging to the EWS category and to those who are not covered under the scheme of the reservation for SC, ST and OBC categories.

19. The Government also specified the criteria for determining as to who will belong to or be identified as EWS and fixed criteria for the persons whose family had gross annual income below eight lakhs to fall under EWS category. It was further specified that income from all sources for the financial year prior to the year of application is included. It was further specified that the property held by a family would be clubbed while applying the criteria of 'the land or property holding test' to determine the EWS status. The clarification further specified that not only the property belonging to parents or siblings, but also of the spouse and the children would be included for determining the property owned by the family while assessing whether the person belongs to the EWS category or not. For ready reference, the relevant portion of the office memorandum dated 31.01.2019 is quoted as under:

**"2. QUANTUM OF RESERVATION**

*The persons belonging to EWSs who, are not covered under the scheme of reservation for SCs, STs and OBCs shall get 10% reservation in direct recruitment in civil posts and services in the Government of India.*

**4 CRITERIA OF INCOME & ASSETS:**

**4.1** *Persons who are not covered under the scheme of reservation for SCs, STs and OBCs and whose family has gross annual income below Rs.8.00 lakh (Rupees eight lakh*





only) are to be identified as EWSs for benefit of reservation. Income shall also include income from all sources i.e. salary, agriculture, business, profession, etc. for the financial year prior to the year of application.

Also persons whose family owns or possesses any of the following assets shall be excluded from being identified as EWS, irrespective of the family income:-

- i.** 5 acres of agricultural land and above;
- ii.** Residential at of 1000 sq ft. and above;
- iii.** Residential plot of 100 sq. yards and above in notified municipalities;
- iv.** Residential, plot of 200 sq. yards and above in areas other than the notified municipalities.

**4.2.** The property held by a "Family" in different locations or different places/cities would be clubbed while applying the land. or property holding test to determine EWS status.

**4.3** The term "Family" for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years."

20. Identical criteria has been incorporated by the State Government, which is clear from the perusal of the notification dated 20.10.2019 (quoted supra), wherein the criteria for determining as to whether the persons belongs to EWS category has been fixed, as person having gross annual income below rupees eight lakhs and for the purpose of determining the property, it has further been clarified that the property belonging to parents and siblings as well as spouse and children shall also be included. Thus, a combined analysis of the 103<sup>rd</sup> Constitution amendment as well as the criteria fixed for determination of EWS will reveal that irrespective of the migration, the status of the candidate is to be determined based upon the income of the family and the family includes not only parents but the spouse also, meaning thereby that if a person migrates from one State to





another post marriage, then the benefit of EWS can be attained by him, in case the total income of the family including the income of spouse, children, parents and siblings is below the threshold of rupees eight lakhs. Rather, the State Government themselves clarified by way of issuing the circular dated 10.02.2020 wherein, in spite of migration from one State to another, the income certificate shall be issued for determining as to whether the person would qualify as EWS or not. However, the income of the person concerned earning in the earlier State prior to migration was also to be kept in mind for determining whether he/she falls into the definition of EWS or not.

21. As far as the judgments relied upon by the learned counsel for the respondent are concerned i.e. in the case of **Ranjana Kumari** (supra), **Action Committee** (supra) or by the Constitution Bench of Apex Court in **Marri Chandra Shekhar Rao** (supra), the same pertains to reservation being granted to the persons belonging to socially and educationally backward class of citizens, more particularly SC & ST categories, wherein a specific list has been provided for determining who shall belong to SC/ST by way of Article 341 and 342 under the Constitution. The consideration was that a person may be belonging to a category of *SC/ST in one particular State by looking to circumstances prevailing in that State, but in the migrated state, same caste or tribe may not be considered as a SC/ST* correspondingly, and even if considered, the circumstances for consideration are totally different. The consideration by the Hon'ble Apex Court was, particularly, with regard to the fact that upon migration, the concerned person's special right, which was attributed to him or





granted to him in the original State or part thereof, would prevail. The Court also considered that the expression "in relation to that State", would become nugatory, if in all the States special privileges or the rights granted to SC/ST are carried forward. It was also observed that the same would be inconsistent with the whole purpose of the scheme of reservation. Based upon the same, the Hon'ble Apex Court held that the benefit of the reservation cannot be extended post migration as stated (supra). The same was pertaining to the reservation granted based upon the social and educational backwardness, however, as far as EWS is concerned, the same has been treated as separate category by the Hon'ble Apex Court itself in **Janhit Abhiyan vs. Union of India'** (supra), qua which there is no identical provision like Article 341 and 342. Thus, the judgments relied upon by the learned counsel for the respondent have got no application as far as the case in hand is concerned.

22. In almost identical issue, with regard to non-grant of benefit of being a resident of Tribal Sub-Plan (TSP) to a lady who was married to a person residing within Tribal Sub-Plan, came up for consideration before the Hon'ble Single Bench of this Court, in the case of Smt. **Twarita Gehlot v. State of Rajasthan & Ors.** in **S.B. Civil Writ Petition No.15540/2007** wherein, while dealing with the issue of migration of a married lady who has come to reside with her husband who is already a resident of a TSP area, it was held that she cannot be denied the benefit that are available to the TSP area in question. The above mentioned judgment was challenged in appeal, wherein the appeal came to be disposed of by way of order dated 04.01.2020 in **D.B. Spl. App. Writ**





**No.576/2018 (State of Rajasthan & Ors. V. Smt. Twarita Gehlot),** in view of the fact that the State Government itself has amended the definition of candidate of Tribal Sub-Plan area, by way of notification dated 21.10.2019 extending the benefit of reservation to women marrying a resident of TSP area with effect from 16.06.2013.

23. This Court finds that the judgment passed in the case of **Smt. Twarit Gehlot** (supra) is applicable to the present case also as the reservation for Economic Weaker Sections cannot be denied to a person simply on the ground of migration from one State to another, more particularly when while calculating the total income of the family for the purpose of determining the status of Economic Weaker Sections i.e. the maximum total income of rupees eight lakhs, the income of the parents and the spouse as well as children and the siblings is to be considered.

24. Accordingly, the appeals do not call for interference and are hereby dismissed. The issue of migration as well as participation in pursuant to the advertisement and post that laying a challenge to the condition of the advertisement has rightly been dealt with by the Hon'ble Single Judge in case of Aman Kumari's (supra). The judgment passed by the Hon'ble Single Judge in the case of Aman Kumari's (supra) is held to be correct and upheld.

25. All the pending applications are also disposed of.

**(SANDEEP SHAH),J**      **(DR.PUSHPENDRA SINGH BHATI),J**

64-mohit & Raof Khan/-