



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

S.B. Civil Writ Petition No. 10490/2024

Dr. Mahesh Kumar Panwar S/o Shri Dudha Ram Panwar, Aged About 56 Years, Resident Of 1/10, Vyas Colony, Nagaur, Presently Holding The Post Of Principal Medical Officer, Govt. Jln Hospital, Nagaur (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through Its Additional Chief Secretary, Medical And Health Services, Secretariat, Jaipur.
2. Joint Secretary, Medical And Health Services (Group-2), Secretariat, Jaipur.
3. Director (Public Health), Medical And Health Services, Health Bhawan, Jaipur.
4. The Joint Director, Medical And Health Services, Zone Ajmer, Ajmer.

-----Respondents

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For Petitioner(s) : Mr. Yashpal Khileree & Ms.Vinita  
For Respondent(s) : Mr. N.S. Rajpurohit, AAG with  
Ms. Anita Rajpurohit

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**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

**Reportable**

**Order**

**09/09/2024**

Heard learned counsel for the parties.

With the consent of learned counsel for the parties, the writ petition is being heard and decided finally at this stage.

The present writ petition has been filed challenging the awaiting posting order dated 24.06.2024 (Annex.5) and relieving order dated 25.06.2024.



Briefly noted the facts of the present case are that the petitioner was appointed on the post of Medical Officer on 11.06.1996 by regular process of selection as per the provisions of the Rajasthan Medical and Health Service Rules, 1963 (for short 'the Rules of 1963'). Thereafter, vide order dated 12/16.07.2018, he was promoted on the post of Principal Specialist (Orthopedics) as per the Rules of 1963. Pursuant to the said order, the petitioner joined as Principal Medical Officer, Nagaur on 18.08.2021. While the petitioner was working as Principal Medical Officer at Nagaur, he was kept under 'Awaiting Posting Order' vide order dated 24.06.2024 (Annex.5) and his Headquarter was changed from Nagaur to Directorate (Public Health), Jaipur. The petitioner was relieved from the post of Principal Medical Officer, District Hospital, Nagaur vide order dated 25.06.2024. Hence, the present writ petition has been filed.

Learned counsel for the petitioner vehemently and fervently submits that the awaiting posting order passed by the respondents on 24.06.2024 is in violation of the Ban imposed by the State Government vide order dated 04.01.2023. He submits that no transfer/awaiting posting order could have been passed by the respondents during the period of ban without taking permission from the office of the Hon'ble Chief Minister of Rajasthan. He submits that even the awaiting posting order is in violation of the decisions of the State Government under Rule 25-A of the Rajasthan Service Rules, 1951. Learned counsel for the petitioner vehemently argued that the awaiting posting order passed in the case of the petitioner is only with the purpose to adjust and accommodate one Sunita Singh at Nagaur.



To buttress his contention, learned counsel for the petitioner has relied upon the judgments of this Court rendered in case of **Hemendra Kumar Trivedi vs. State of Rajasthan & Ors (S.B. Civil Writ Petition No.6261/2017)**, decided on 13.03.2018 and in case of **Satish Gupta vs. State of Rajasthan & Ors (S.B. Civil Writ Petition No.4564/2020)**, decided on 18.08.2023. He, therefore, prays that the writ petition may be allowed and the awaiting posting order dated 24.06.2024 (Annex.5) and consequential relieving order dated 25.06.2024 (Annex.6) may be quashed and set aside.

*Per contra*, Mr. N.S. Rajpurohit, learned Additional Advocate General for the respondent State assisted by Ms. Anita Rajpurohit submits that it is well within the domain of the State Government to utilize the services of a government employee at a particular place in the larger public interest and, therefore, in the administrative exigency, awaiting posting order passed in the case of the petitioner is perfectly justified. Learned counsel submits that it is for the respondents-State to see that the services of a particular person can be best utilized at a particular place and, therefore, the transfer order/awaiting posting order is passed in the larger public interest.

Learned counsel further submits that in the present case, awaiting posting order has been passed in consonance with the decision No.5 of the Government of Rajasthan's Decision under Rule 25-A of the Rules of 1951.

Learned counsel for the State very fairly submitted that the awaiting posting order stands almost on identical footing to the order of transfer and the application of the period of ban is equally



applicable for the transfers/awaiting posting order to be passed by the State Government. He also submitted that in the present case, the permission of the Hon'ble Chief Minister's Office was not obtained before passing the awaiting posting order in the case of the petitioner. He, therefore, prays that the writ petition filed by the petitioner may be dismissed.

I have considered the submissions made at the Bar and gone through the relevant record of the case.

It is true that the authority to transfer and pass 'awaiting posting order' squarely lies within the domain of the State Government but then the State Government is required to pass the same taking into consideration the guidelines as well as the orders issued imposing ban. Even during the ban period, the transfer orders/awaiting posting orders can be passed keeping in mind the urgency of the situation and after taking the appropriate clearance from the office of Hon'ble Chief Minister. The larger public interest and administrative exigency is hallmark which has to be kept in mind while passing the transfer/awaiting posting order. In the present case, the awaiting posting order has been passed during the currency of the ban imposed by the State Government vide its order dated 04.01.2023.

For brevity, the order dated 04.01.2023 imposing ban is reproduced as under :-

राजस्थान सरकार

प्रशासनिक सुधार एवं समन्वय (ग्रुप-1) विभाग

क्रमांक प.5 (1)प्रसु/अनु.-1/ 2018

जयपुर, दिनांक :

04,01,2023



राजकीय अधिकारियों/ कर्मचारियों के स्थानान्तरण पर रोक संबंधी पूर्व में जारी समस्त आदेशों के अधिक्रमण में राज्य सरकार के सभी अधिकारियों/कर्मचारियों के स्थानान्तरण पर दिनांक **15.01.2023** से पूर्ण प्रतिबंध लगाया जाता है। अति आवश्यक प्रकृति के स्थानान्तरण माननीय मुख्यमंत्री महोदय की अनुमति पश्चात् ही किये जा सकेंगे।

विभाग के परिपत्र दिनांक **23.03.2022** द्वारा स्थानान्तरण प्रतिबंध अवधि में अधिकारियों/कर्मचारियों को आदेशों की प्रतिकक्षा (ए.पी.ओ) अथवा अन्य माध्यम से उन्हें इच्छित जगह रिक्त पद पर पदस्थापन आदेश जारी नहीं करने के संबंध में निर्देश जारी किए गये हैं। अतः उक्त परिपत्र अनुसार पालना सुनिश्चित करते हुए समस्त अतिरिक्त मुख्य सचिव/ प्रमुख शासन सचिव/ शासन सचिव/ विभागाध्यक्षों को निर्देशित किया जाता है कि ऐसा कोई प्रकरण राज्य सरकार के ध्यान में आया तो इसका दायित्व आप स्वयं का होगा।

उक्त प्रतिबंध के आदेश राज्य के समस्त निगमों/मण्डलों एवं स्वायत्तशासी संस्थाओं पर भी लागू होंगे।”

A bare perusal of the ban order shows that a Government Officer can be transferred during ban period provided the same is of very urgent nature and the permission is taken from the office of the Hon'ble Chief Minister. The same principle is applicable while passing the awaiting posting order. In the present case, in view of the facts narrated above, neither it has been mentioned that the awaiting posting order in the case of the petitioner is of urgent nature nor the permission from the office of the Hon'ble Chief Minister has been taken. Therefore, it can safely be presumed that the awaiting posting order has been passed by the Competent



Authorities in violation of the order dated 04.01.2023 passed by the State Government imposing complete ban on the transfer/awaiting posting order to be issued by the State Functionaries.

The awaiting posting order also does not mention any exigency of service, nor it discloses the fact that the same has been passed after taking permission from the office of the Hon'ble Chief Minister. In the opinion of this Court, the State Government cannot blow hot and cold at the same time by passing the order contrary to the directions issued by imposing the ban vide order dated 04.02.2023.

This Court further takes note of the fact that the awaiting posting order can be issued by the State Government taking into consideration the factors prevailing in the matter contemplating some of the situations enshrined under its decision referred in Rule 25-A of the Rules of 1951. To encompass those situations, it will be fruitful to reproduce Rule 25-A of the Rules of 1951 and the Government of Rajasthan decision under this Rule:-

**25A. Pay during awaiting posting orders.—** A Government servant who is compulsorily kept under awaiting posting orders under note below Rule 7 (8)(b) (iii) shall be entitled to the pay and allowances at the rate at which he was drawing immediately before relinquishing charge in the old post. He shall not be allowed Conveyance Allowance or permanent Travelling Allowance during the period of awaiting posting order. Government of Rajasthan's Decision

1. Government servant are kept compulsorily under awaiting posting orders usually in the following circumstances:—

(1) On return from leave.



(2) *On reversion to parent department from deputation within India.*

(3) *On return from abroad after completion of training or foreign assignment.*

(4) *On return from training within India.*

(5) *Awaiting posting order after making over charge of the old post under the directions of Appointing Authority.*

(6) *Non-acceptance of the officer on transfer to another post.*

(7) *To save a Government servant from reversion.*

2. *A Government servant who proceeds on leave cannot resume duties on return from leave as a matter of course on the post which he held before proceeding on leave in the absence of formal order of posting. In cases where leave sanctioning authority and appointing authority is one and the same, authority competent to grant leave should invariably indicate in the order sanctioning leave that the officer is reposted to the same post on the expiry of leave. Authority competent to grant leave can also issue orders of reposting to the same post if during the currency of leave the post was kept unfilled. Where leave has been sanctioned by an authority other than the appointing authority and the leave vacancy has been filled up under the orders of the appointing authority, the latter authority can only issue reposting orders of the officer returning from leave. In such cases the appointing authority should as far as possible issue the posting order of the Government servant before expiry of the leave so that the contingency of keeping a Government servant under posting orders on return from leave does not arise.*

3. *In the case of Government servants placed in the circumstances mentioned at items No. 2, 3, and 4 in para 1 above, the competent authority should invariably issue orders of posting at least 15 days in advance of the return of Government servant from deputation/training or foreign assignment in order to eliminate keeping of a Government servant under awaiting posting orders. With a view to watch and effectively control the situation in this regard, the authority competent to send an officer on deputation,*







*training or foreign assignment should maintain registers to ensure that proposal for posting of Government servants due to return from deputation within India or from deputation abroad on foreign assignment terms of training are moved well in time for issue of posting orders.*

*4. Sometimes Government servant are required to make over charge of the post and await posting orders under the direction of the appointing authority. Such situation should, as far as possible be avoided, and if it is absolutely necessary in some cases, the orders of posting should be issued within a week. In case of promotion of an officer against vacant post, the posting order should invariably be issued simultaneously.*

*5. Government servants transferred from one post to another post should not be prevented from assuming charge of the post and the practice of non- acceptance of an officer reporting for duty in consequence of his posting/transfer being an unhealthy one, should be scrupulously avoided.*

*6. Government servants are some times placed under awaiting posting orders in the following circumstances:—*

*(1) Reversion of a Government servant to a lower post held by him in officiating capacity pending approval or regularisation of his appointment by Departmental Promotion Committee/ Rajasthan Public Service Commission.*

*(2) Reversion to a lower post as a result of abolition of the post held by him.*

*7. It is against the spirit of rules to treat a Government servant as awaiting posting orders till he can be reappointed to an identical post in the same time scale of pay on occurrence of vacancy or otherwise. In such cases a Government servant shall not be treated as awaiting posting orders, and he shall not be entitled to pay and allowances under Rule 25A of Rajasthan Service Rules. The orders issued by the authority reverting a Government servant should be carried out. A Government servant shall be treated to have been reverted from the date of issue of orders or from the date specified in the order as the case*







*may be and his reversion becomes effective from that date irrespective of whether he proceeds on leave immediately after reversion or not. In such cases even if a Government servant is kept under awaiting posting orders to save him from reversion of any other junior person to him in the cadre; the time so passed in such circumstances shall be regularised by grant of leave as may be due and admissible as in no-circumstances it will be treated as awaiting posting orders.*

*8. Under the existing delegation the Administrative Department of Government have power to keep a government servant under posting orders for a period not exceeding 30 days, and cases involving the period exceeding 30 days require the concurrence of the Finance Department. Keeping a Government servant under awaiting posting orders for unduly long period (s) without any justification involves infructuous expenditure as the Government servant remains idle during awaiting posting orders. It is, therefore, enjoined upon all concerned authorities to scrupulously follow these instructions with a view to eliminate the cases of awaiting posting orders and thereby avoid wasteful expenditure. Every case of awaiting posting orders in which a Government servant has been kept under awaiting posting orders for unduly long period without adequate reasons and justifications should be enquired into by the administrative department first at their own level and necessary action may be taken against the delinquent Government servant who are responsible for delay in issuing posting orders in infringement of these instructions or any other instruction issued by the Government from time to time in this behalf."*

In the opinion of this Court, the decisions are only illustrative and the same cannot be exhaustive, therefore, the inference which can be gathered from Rule 25A & Govt. of Rajasthan Decisions is that the Awaiting Posting Order should usually be passed only to meet certain contingencies and not in a routine



matter as a substitute of transfer order. The awaiting posting order cannot be used as a tool to bypass the orders of transfer for adjustment/ accommodation of certain persons.

The order of APO cannot be used in place of disciplinary action for penalizing a person. If a Government Servant has committed any wrong then the appropriate disciplinary action is required to be initiated against that person in accordance with the Rules and, therefore, passing of awaiting posting order in such cases are not sustainable.

Learned counsel for the State has tried to justify the awaiting posting order bringing the same within the ambit of decision No.5 of the Government of Rajasthan's decision under Rule 25A but in the opinion of this Court, the present case is not even remotely covered under decision No.5 of the State Government's Decision under Rule 25A of the Rules of 1951.

This Court, therefore, is firmly of the view that the awaiting posting order cannot be passed in a casual and mechanical manner, more particularly when the ban was imposed by the State Government. The sanctity of the ban is required to be adhered to by the State Functionaries.

This Court in the case of *Satish Gupta* (supra) in somewhat similar situation has also held as under :-

*"4. A perusal of aforesaid provision shows that it is neither an enabling provision nor does it clothe the appointing authority/State with the power to keep the employees without any posting or change his/her/their Headquarters at Jaipur or any other place.*

*5. In the opinion of this Court, Rule 25A of the Rules of 1951 cannot be invoked impending the transfer of an employee or to accommodate/transfer other*



*employee in place of already working employee. It not only causes inconvenience to the employee but also poses unwarranted financial burden on the State.*

*6. In the contingencies enumerated in Rule 25A or under exceptional circumstances, a Government servant can be asked to await posting.7. A perusal of the impugned order reveals that no reason has been inscribed and the order has been passed in a mechanical manner.*

*8. That apart, substantial time has since passed after passing of the interim order in favour of the petitioner, whereby the order of keeping the petitioner awaiting posting, has been stayed.*

*9. Learned counsel for the petitioner relied upon the judgment dated 13.03.2018, passed by a Coordinate Bench of this Court in the case of Hemendra Kumar Trivedi Vs. State of Rajasthan &Ors.: S.B. Civil Writ Petition No.6261/2017.*

*10. This Court in Hemendra Kumar Trivedi (supra) has held thus:-*

*"A bare look at the order dated 19.5.2017(Annex.7) indicates that the order is non-speaking, no reason whatsoever has been indicated as to why the petitioner was being placed APO. The repeated orders passed against the petitioner, have been interfered with by this Court on account of their obvious deficiency and again in the present case, the order has been passed in apparent violation of Rule 25-A of the Rajasthan Services Rules, 1951.The submissions made in the reply seeking to justify the order dated 19.5.2017, cannot be countenanced, inasmuch as, the respondents cannot use the provisions of Rule 25-A of RSR for extraneous purposes without indicating reasons for the same in the order. If the order dated 19.5.2017 (Annex.7) was issued for the reasons as indicated in the reply, the same should have been reflected in the order and, therefore, the reasons indicated in the reply cannot be used for sustaining the order impugned."*



11. *In view of the aforesaid, the writ petition is disposed of in terms of the judgment in the case of Hemendra Kumar Trivedi (supra).*

12. *Needless to observe that the respondents shall be free to pass fresh posting order qua the petitioner, if the administrative exigency so warrants.*

13. *Stay petition also stands disposed of."*

The discussion made above, therefore, clearly shows that the awaiting posting order passed in the present case is not in conformity with the provisions of law discussed above as neither it discloses any administrative exigency or emergent nature nor appropriate permission from the office of the Hon'ble Chief Minister was obtained before passing the order impugned. Consequently, the writ petition merits acceptance. The same is allowed. The order impugned dated 24.06.2024 (Annex.5) and its consequential relieving order dated 25.06.2024(Annex.6) are quashed and set aside.

No order as to costs.

The stay application and other pending applications, if any, also stand disposed of.

**(VINIT KUMAR MATHUR),J**

13-SanjayS/-