



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

S.B. Civil Writ Petition No. 17086/2022

Anil Paliwal S/o Shri Chiranji Lal Paliwal, Aged About 57 Years, 2,
Behind Shree Nath Hospital, Rajratan Complex, New Navratan,
Udaipur, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Higher Education, Government Of Rajasthan, 1St Floor, Main Building, Government Secretariat, Jaipur - 302005, Rajasthan.
2. Commissioner, Department Of College Education, Government Of Rajasthan, Block-Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur - 302015, Rajasthan.
3. Joint Director (Rvres), Commissionerate, Department Of College Education, Government Of Rajasthan, Block -Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur 302015, Rajasthan.
4. Principal, Government College, Kherwarda, Udaipur.

-----Respondents

Connected With

S.B. Civil Writ Petition No. 13163/2022

Dr. Anil Paliwal S/o Shri Chiranji Lal Paliwal, Aged About 57 Years, R/o 2, Behind Shree Nath Hospital, Rajratan Complex, New Navratan, Udaipur, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Higher Education, Government Of Rajasthan, 1St Floor, Main Building, Government Secretariat, Jaipur 302005, Rajasthan.
2. Commissioner, Department Of College Education, Government Of Rajasthan, Block-Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur 302015, Rajasthan.
3. Joint Director (Rvres), Commissionerate, Department Of College Education, Government Of Rajasthan, Block-Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur 302015, Rajasthan.
4. Principal, Government College, Kherwarda, Udaipur.

-----Respondents

S.B. Civil Writ Petition No. 14767/2023

Dr. Anil Paliwal S/o Shri Chiranji Pal Paliwal, Aged About 58



Years, R/o 2, Behind Shree Nath Hospital, Rajratan Complex,
New Navratan, Udaipur, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Higher Education, Government Of Rajasthan, 1St Floor, Main Building, Government Secretariat, Jaipur-302005, Rajasthan.
2. Commissioner, Department Of College Education, Government Of Rajasthan, Block-Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur- 302015, Rajasthan.
3. Joint Director (Rvres), Commissionerate, Department Of College Education, Government Of Rajasthan, Block-Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur-302015, Rajasthan.
4. Principal, Government College, Kherwada, Udaipur.

----Respondents

For Petitioner(s) : Dr. Nikhil Dungawat.

For Respondent(s) : Mr. Priyanshu Gopa.

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

01/04/2025

1. Since above titled petitions involve common inter connected issues and facts, they are being decided through this common order.

2. The petitioner is before this Court having preferred three writ petitions viz. :-

2.1. S.B. Civil Writ Petition No.14767/2023 inter-alia seeking quashing of an order dated 07.09.2023 (Annexure-23) whereby, petitioner was pronounced as "deemed to have resigned from service" w.e.f. 05.05.2022.

2.2. S.B. Civil Writ Petition No.17086/2022 challenging an order dated 22.04.2022 whereby, petitioner was directed to report for



joining for "work arrangement" and assigned duties other than teaching job, which he declined.

2.3. S.B. Civil Writ Petition No.13163/2022, inter alia, for a direction to the respondents to release the salary of the petitioner from the month of May, 2022.

3. The factual narrative is taken from S.B. Civil Writ Petition No.14767/2023, wherein challenge is to the order dated 07.09.2023 (Annexure-23) passed under Rule 86(4)(a) of the Rajasthan Service Rules, 1951 (for short, 'the RSR Rules') vide which, the petitioner's absence was treated as deemed resignation.

3.1. The petitioner was appointed as Lecturer in Government aided Teachers' Training College and thereafter, he was absorbed in Government service.

3.2. The respondents issued order dated 22.04.2022 to the Principals of the five Government Colleges to relieve the B.Ed. faculty members for reporting at the office of Commissioner, College Education. The petitioner was relieved along with other teachers on 22.04.2022 itself. He reported for duty on 04.05.2022 after availing of the joining period (Yogkaal). However, the same day itself, he applied for Headquarter Leave due to personal exigency, while submitting that he will apply for the appropriate Leave admissible to him.

3.3. Thereafter, vide communication dated 05.05.2022, the petitioner requested for granting him summer vacation when he was at the Office of the Assistant Director, Regional Office, Udaipur. The petitioner was served with a show cause notice on



05.05.2022 asking him to explain as to why he reported late for duty. The petitioner gave his detailed explanation on 07.05.2022.

3.4. The petitioner received another show cause notice dated 17.05.2022 from the Additional Commissioner to explain as to why proceedings be not initiated against him for insubordination.

The petitioner gave his explanation vide communication dated 18.05.2022 and also on 19.05.2022.

3.5. Since the grievance of the petitioner regarding grant of joining period and TA/DA as well as for grant of summer vacations remained unaddressed, he preferred a writ petition bearing No. 8290/2022, which was disposed of by this Court vide order dated 03.06.2022 while directing the respondents to decide the representation filed by the petitioner on 26.05.2022.

3.6. Besides the grievance of the petitioner as stated above, the salary of the petitioner since month of May, 2022 was stopped by the Respondents. Being aggrieved, the petitioner thus preferred writ petition no.13163/2022. The petitioner also filed S.B. Civil Writ Petition No.17086/2022 inter-alia challenging the order dated 22.04.2022 whereby, he was directed to give joining for "work arrangement" and assigned duties other than teaching job, which he refused. On 22.11.2022, this Court issued notices and the matter is pending further adjudication.

3.7. A show cause notice dated 12.12.2022 was issued to the petitioner, alleging absence from duty since 05.05.2022, under Rule 17 of Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958. The petitioner submitted a detailed reply on 18.12.2022 narrat



3.8. A communication dated 29.05.2023 was again issued to the petitioner granting last opportunity to him join within seven days, failing which proceedings under Rule 86 of the Rules of 1951 would be initiated. The petitioner responded to the same vide communication dated 30.05.2023.

3.9. The respondents eventually passed an order dated 07.09.2023 under Rule 86(4) of the Rules of 1951, treating the petitioner as deemed to have resigned, citing absence from duty since 05.05.2022. Hence, challenge to the same.

4. In opposition, the respondents, inter alia, assert that with the promulgation of Rajasthan Voluntarily Rural Education Service Rules, 2010 (RVRES Rules), employees working in the B.Ed. faculty were given the opportunity to submit the option form and thereafter were given appointments in State service. The petitioner after opening of the B.Ed government college. was posted at government college Kherwada to perform the teaching work in B.Ed faculty. Petitioner continued to perform his duties at Government College Kherwara but on account of non fulfillment of requisite standards for running the B.Ed course, the recognition was cancelled for running the B.Ed course in all the 5 government colleges by the National Council for Teachers Education from 27.8.2019.

4.1. On account of aforesaid, the new admissions in B.Ed faculty could not be given and work of teaching stopped in the government college Kherwara. The employees of B.Ed faculty working government college cannot be permitted for teaching work of other subjects at the UG and PG level in the government colleges as they didn't possess the requisite eligibility as per the



UGC regulations and since it was not possible to allow the teaching work to such employee, they have been posted under work arrangement to the Commissionerate for discharge of administrative work. Accordingly, the petitioner was posted under work arrangement to perform the administrative work for which respondents are very much entitled to take his services according to the Rule 5(iii) of RVRES Rules.

4.2. As per Rule 5(iii) of RVRES Rules, an employee can be posted on any other post having equivalent pay scale of the aided post in the event of not having the equivalent post in the government and the petitioner being aware of the same applied for appointment under RVRES cadre.

4.3. Pursuant to the order dated 22.4.2022, petitioner was relieved on same day but petitioner resumed his duties on 4.5.2022 at Commissionerate and thereafter without prior permission as well as without seeking sanctioning of leave, left the head quarter and is absent continuously from 5.5.2022. Further, there is no summer vacation in the Commissionerate and as such, all the employees have to remain present in the office during that period and as such, petitioner deliberately without prior sanction as well as in utter disregard to the government order remained absent which amounts to indiscipline and misconduct.

4.4. Pursuant to the direction given by this Court in SBCWP No.8290/2022, representation of the petitioner was duly considered and petitioner was not found entitled for the joining time and summer vacation and petitioner remained willfully absent from 5.5.2022 from head quarter without seeking permission as such representation was rejected vide order dated 2.11.2022.



4.5. Thereafter petitioner was afforded ample opportunity to join the duties despite that petitioner failed to do so and petitioner was served with the show cause notice under Rule 17 of CCA Rules and explanation furnished by the petitioner was not found satisfactory as such, letter dated 31.5.2023 was issued for initiating the proceedings under Rule 86 of RSR but no satisfactory explanation was given for willful absence and as such, competent authority while resorting the provision of Rule 86 rightly passed the order deeming the petitioner resigned from services. Thus, no interference by this court is warranted.

5. In the aforesaid backdrop, I have heard the rival contentions which are on the lines of respective grounds taken in the pleadings and perused the case files.

6. First and foremost, let us deal with the controversy regarding petitioner's assertion that he was illegally assigned the duties of non-teaching staff. Being a Teacher, he could not have been assigned the same. However, he was forced with the same.

6.1. In this regard, reference may be had to Rule 5 of RVRES Rules, which reads as under :-

"5. Terms and Conditions for appointment of employees in Government Service. The regularly appointed existing employees in the Non-Government Aided Educational Institutions who are working against sanctioned aided post on the date of commencement of these rules shall be appointed under the Rajasthan Voluntary Rural Education Service on the following terms and conditions, namely:-

(i) The employee should possess the requisite educational and professional qualification for the respective posts as per the relevant service rules applicable to the Government servant of similar cadre.

(ii) The posts on which the employees shall be appointed in the Government shall constitute a separate dying cadre for each category of employees.

(iii) The appointed employees shall be posted only in the colleges/schools, as the case may be, in the rural areas on the equivalent posts specified in column number 2 of the Schedule. However, in case there is no such equivalent post in the government.



they shall be appointed on other posts carrying the same pay scale of aided posts:

Provided that in case the post of Principal (RVRES), Lecturer (RVRES), PTI (RVRES) or Librarian (RVRES) is not available for appointment in rural area colleges, the Principal (RVRES), Lecturer (RVRES), PTI (RVRES) or Librarian (RVRES) may be posted in municipal area colleges in the following priority order:

1. College situated in the area of IV" category municipality;
2. College situated in the area of III" category municipality;
3. College situated in the area of II" category municipality;

and whenever post is available in any college of rural area the person so posted in the municipal area shall be transferred in the said colleges of the rural area. Persons posted in the colleges situated in municipal areas shall be transferred in rural area in the following order, namely,

- (i) firstly from the colleges situated in the area of II municipalities, category
- (ii) secondly from the colleges situated in the area of III municipalities; and category
- (ii) thirdly from the colleges situated in the area of IV municipalities category

Provided further that in the case of non- teaching staff, screened for appointment on Non- teaching posts in College Education Section and posts for posting in rural areas are not available, such person shall be appointed on any equivalent post in rural areas in any other department governed by these rules. Such person shall be deemed to be appointed in the new department from the date of joining in the Directorate of College Education.

(iv) The employees appointed under these rules shall not be entitled for any promotion till they attain the age of superannuation. However, they shall be allowed benefit of Assured Career Progression/Career Advancement Scheme as allowed to other employees of the State Government. The period from the date of their appointment on the sanctioned and aided posts would be counted for the purpose of grant of Assured Career Progression/Career Advancement Scheme.

(v) The posts shall be automatically abolished as and when the posts become vacant for any reason whatsoever ie. on account of superannuation/voluntary retirement/termination of service/death while in service/resignation of the employee etc.

(vi) The salary of all the appointed employees shall be fixed on the basis of the salary as drawn at the time of appointment as per the Sixth Pay Commission with effect from the date they join in the government under these rules. Those who are drawing salary in Rajasthan Civil Services (Revised Pay Scale) Rules, 1998, Rajasthan Civil Services (Revised Pay Scales for Government College Teachers including Librarian and PTI Rules, 1999 and Rajasthan Civil Services Revised Pay Scales for Government Polytechnic College Teachers, Librarians and Physical Training Instructors Rules, 2001) shall be allowed benefit of Rajasthan Civil Services (Revised Pay) Rules, 2008, Rajasthan Civil Services (Revised Pay Scales for Government College Teachers including Librarian and PTI Rules, 2009 and Rajasthan Civil Services Revised Pay Scales for Government Polytechnic College Teachers, Librarian and Physical Training Instructors Rules, 2010) respectively with effect from the date they join in the Government after appointment under these rules.



(vii) No arrears on any account whatsoever, (including arrears of salary, selection scale, Assured Career Progression or Career Advancement Scheme) shall be paid by the State Government for the period prior to the date of their joining in the Government after appointment under these rules.

(viii) Carry forward of the balance of Privilege Leave shall not be allowed. Employees shall be free to get payment of encashment of balance of P.L. from the respective grant-in-aid educational institutions.

(ix) The persons who are appointed in the government service under these rules shall be governed by the provisions of the Rajasthan Civil Services (Contributory Pension) Rules, 2005 and the provisions of the Rajasthan Civil Services (Pension) Rules, 1996 shall not be applicable to them. Contributory Provident Fund contribution, if not deposited by the Non- Government Aided Educational Institutions for the period prior to the date of their joining in the government after appointment under these rules, shall not be paid by the State Government.

(x) The period of service in the aided institutions shall not be counted for payment of gratuity. The employees shall be free to obtain payment of gratuity from the respective grant in aid educational institution.

(xi) Each employee shall be required to execute an undertaking, in Form-II, that he/she voluntarily accepts all the terms and conditions of service prescribed under these rules and agrees to serve in the government educational institutions situated in the rural areas till attaining the age of superannuation in the service of Government."

A perusal of Rule 5(iii) clearly reveals that in case exigency so warrants, a teaching staff can also be accommodated on non-teaching post provided his status and seniority is not compromised and is paid the same salary as is to be paid, in case, he was appointed as a teaching staff.

To that extent, the assertion of the petitioner that it is his right to decline to work on non-teaching post, is noted only to be rejected.

7. Adverting now to the contention of the petitioner that he could not have been treated as deemingly resigned, let us first see the applicable rule i.e. Rule 86 of the RSR Rules, which is reproduced herein below :-

"86. Absence after expiry of leave:—(1) A Government servant who is absent from duty without leave or before leave applied for has been sanctioned by the competent authority shall be treated to have remained



willfully absent from duty and such absence shall amount to interruption in service involving forfeiture of past service unless, on satisfactory reasons being furnished, the absence is regularized by grant of leave due or is commuted into extra-ordinary leave by the authority competent to sanction leave.

(2) (a) A Government servant who remains absent from duty after the expiry of the sanctioned leave or after communication of refusal of extension of leave is not entitled to any pay and allowances for the period of such absence and the period of such absence shall be commuted into extra ordinary leave unless on satisfactory reasons being furnished, the period of absence is regularized by grant of leave due by the authority to grant leave.

(b) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

(3) Notwithstanding the provisions contained in sub-rules (1) and (2) above the disciplinary authority may initiate departmental proceeding under Rajasthan Civil Services (Classification, Control & Appeal) Rules against a Government servant who willfully remains absent from duty for a period exceeding one month and if the charge of willful absence from duty is proved against him, he may be removed from service.

(4) No Government Servant shall be granted leave of any kind for a continuous period exceeding five years.

A Government Servant shall be deemed to have resigned from the service if he,-

- (a) is absent without authorization for a period exceeding one year from the date of expiry of sanctioned leave or permission, or*
- (b) is absent from duty for a continuous period exceeding five years even if the period of unauthorized absence is for less than a year, or*
- (c) continuous on foreign service beyond the period approved by the State Government:*

Provided that a reasonable opportunity to explain the reason for such absence or continuation of foreign service, shall be given to the Government Servant before the provisions of this sub-rule are invoked."

A perusal of the above would clearly reflects that there are only three contingencies, in which a Government servant shall be deemed to have resigned from service :-

- (i) if he is absent without authorization for a period exceeding one year from the date of expiry of sanctioned leave or permission, or
- (ii) if he is absent from duty for a continuous period exceeding five years even if the period of unauthorized absence is for less than a year, or



(iii) continuous on foreign service beyond the period approved by the State Government:

7.1. In light of the above, the petitioner challenges the decision treating his absence from duty as a deemed resignation under Rule 86 of the Rajasthan Service Rules (RSR), asserting that the rule applies only in specific circumstances—namely, when a government servant is absent without authorization for over one year following sanctioned leave or permission, is continuously absent for over five years, or remains on foreign service beyond the approved period. The deeming provision under Rule 86(4) is strictly limited to the above situations and cannot be extended to cases of abandonment without prior leave or sanction. The provision serves as a non-punitive resolution in cases where a government servant, despite having obtained leave, fails to return for a prolonged period. However, treating illegal/unauthorized abandonment of duty, which is an act of indiscipline and insubordination, as deemed resignation would improperly equate such conduct with procedural non-compliance following authorized leave, effectively granting a lenient exit to someone who ignored the basic norms of service discipline. Therefore, I am of the view that the conditions for invoking deemed resignation under Rule 86 are not met in the petitioner's case.

The competent authority seems to have lost sight of the fact that such a deeming provision can be invoked in only those cases, in which the government servant remained absent on expiration of the sanctioned leave or permission and that too when the absence on expiration of the sanctioned leave is for a period of one year.



In the present case, the petitioner never applied for or was sanctioned any leave or permission for absence.

7.2. Be that as it may, the conceded position is that the petitioner simply abandoned his assignment after joining duty on 04.05.2022 and never reported back for duty. In fact, the reasons provided in the Rules are based on sound logic that in case, there is jumping of sanctioned leave or permission, the competent authority has all the reason to believe that given long lapse during which the Government servant has not reported for work, he may have lost interest to join back and thus, instead of taking any harsh or punitive measures, he might be given the benefit of deemed resignation under the Rules *ibid*. However, in case where the Government servant simply abandons his post without intimating or seeking prior sanction, he cannot be given any premium over another person who follows the prescribed procedure, gets his leave sanctioned or takes necessary permission but thereafter, is unable to report or does not report back for work for one year or more.

7.3. In the present case, the petitioner just abandoned his assignment after joining duty on 04.05.2022 and never reported back for duty. Viewing the fact situation from a purely legal angle, there seems substance in the contention of the learned counsel for the petitioner that the conditions prescribed for applicability of Rule 86 of the RSR Rules were/are not met for treating the petitioner as having deemingly resigned.

8. Having observed as above, I may hasten to add here that the fact remains that the petitioner remained absent w.e.f. 05.05.2022 without even applying for any leave or permission. For



this, he can be and is liable to be proceeded with in accordance with law/Rules. In such cases, indiscipline of the Government servant has to be appropriately dealt with in accordance with law under Rule 17 of the CCA Rules for willful absence from duty. Rule 17 of the CCA Rules is reproduced hereinbelow :-



“17. Procedure for imposing minor penalties.— (1) No order imposing any of the penalties specified in clause (i) to (iii) of rule 14 shall be passed except after –

(a) The Government Servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make;

(aa) holding an enquiry, in the manner laid down in Rule 16, in every case, in which it is proposed to withhold increments of pay for a period exceeding three years, or with cumulative effect for any period or so as to adversely affect the amount of pension payable to him or in which the Disciplinary Authority is of the opinion that such inquiry is necessary;

(b) such representation, if any submitted by the Government Servant under clause (a), and the record of enquiry, if any, held under clause (aa), is taken into consideration by the Disciplinary Authority;

(c) an opportunity of personal hearing is given by the Disciplinary Authority to the Government Servant to explain his case, if so desired by him;

(d) The Commission is consulted in cases where such consultation is necessary.

(2) The record of proceedings in such cases shall include:—

(i) a copy of the intimation to the Government Servant of the proposal to take action against him;

(ii) a copy of the statement of allegations communicated to him;

(iii) his representation, if any;

(iv) the evidence produced during the enquiry;

(v) the findings of each allegation;

(vi) the advice of the Commission, if any; and

(vii) the orders on the cases together with the reasons therefore.”

In light of Rule 17 *ibid*, if delinquency of petitioner is proved, the same would necessarily result into infliction of appropriate penalty by the competent authority. No fault can, therefore, be found with the issuance of show cause notice dated 12.12.2022 Annexure-20 calling upon the petitioner to explain why disciplinary proceedings be not initiated against him.

9. The petitioner has filed S.B. Civil Writ Petition No. 17086/2022 challenging the order dated 22.04.2022 whereby, he



was directed to give joining for "work arrangement" and assigned duties other than teaching job, which he refused. In this connection, the respondents' specific stand is that according to Rule 5(3) of the RVRES Rule, an employee can be posted on any other post having equivalent pay scale of the aided post in the event of not having the equivalent post in the Government and the petitioner being aware of the same applied for appointment under RVRES cadre. Since no teaching work of B.Ed. is being conducted in the college of the Department, the petitioner has been posted under work arrangement under the Commissionerate of College Education. No specific prohibition against such work arrangement has been cited or otherwise brought to the notice of the Court. The challenge to the impugned order dated 22.04.2022 is, therefore, rejected.

10. The petitioner has filed S.B. Civil Writ Petition No.13163/2022 inter alia for a direction to the respondents to release the salary of the petitioner from the month of May, 2022. As noted above, the petitioner remained and is absent since 05.05.2022 without even applying for any leave or permission, for which he can be and is liable to proceeded with in accordance with law/Rules. As held above, no fault can be found with the issuance of show cause notice datd 12.12.2022 Annexure-20 calling upon the petitioner to explain why disciplinary proceedings be not initiated against him under Rule 17 of the CCA Rules for willful absence from duty. It follows that the respondents at liberty to proceed against the petitioner as per show cause notice ibid. At this stage, there is no question of issuing any direction to pay



salary to the petitioner for the period of his absence since 05.05.2022.

11. In the premise, S.B. Civil Writ Petition No. 17086/2022 and S.B. Civil Writ Petition No.13163/2022 are dismissed while S.B. Civil Writ Petition No.14767/2023 is partly allowed to the extent that the impugned order dated 07.09.2023 is set aside with liberty to the respondents to proceed against the petitioner as per show cause notice dated 12.12.2022 Annexure-20 issued under Rule 17 of the CCA Rules and to take further decision in accordance with law.

12. All pending applications also stand disposed of.

(ARUN MONGA),J

147-149-SP/-

Whether fit for reporting : Yes / No