



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

D.B. Spl. Appl. Writ No. 284/2022

1. State Of Rajasthan, Through The Secretary, Department Of Medical And Health, Secretariat, Jaipur.
2. Director, Medical And Health Services, Tilak Marg, Jaipur.
3. Chief Medical And Health Officer, District Bikaner.
4. Block Chief Medical And Health Officer, Sri Dungargarh, District Bikaner.
5. Principal Secretary, Department Of Rural Development And Panchayati Raj, Jaipur, Rajasthan.

-----Appellants

Versus

Rekha Kumari

-----Respondent

Connected with

D.B. Spl. Appl. Writ No. 508/2022

1. State Of Rajasthan, Through The Secretary, Department Of Medical And Health, Secretariat, Jaipur.
2. Director Non Gazetted, Medical And Health Services, Tilak Marg, Jaipur.
3. Chief Medical And Health Officer, Ratangarh, District Churu.
4. Block Chief Medical And Health Officer, Churu, District Churu.
5. Principal Secretary, Department Of Rural Development And Panchayati Raj, Rajasthan, Jaipur.

-----Appellants

Versus

Rajesh Kumari

-----Respondent

Alongwith 89 Appeals mentioned in the Schedule



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For Appellant(s) : Mr. Karan Singh Rajpurohit, AAG, with  
Mr. Rajat Arora

For Respondent(s) : Mr. R.S. Choudhary  
Mr. Vikas Bijarnia  
Mr. Yashpal Khileree  
Mr. K.R. Saharan  
Mr. S.K. Poonia  
Mr. Surya Prakash, on behalf of  
Mr. Tanwar Singh

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**HON'BLE MR. JUSTICE SANDEEP MEHTA**  
**HON'BLE MR. JUSTICE KULDEEP MATHUR**

**Judgment**

**Judgment pronounced on : 17/08/2022**

**Judgment Reserved on : 07/07/2022**

**BY THE COURT : PER HON'BLE MEHTA, J.**

The instant bunch of 91 intra court appeals led by D.B. Civil Special Appeal (Writ) No.284/2022 (State of Rajasthan & Ors. Vs. Rekha Kumari) has been preferred by State of Rajasthan for assailing the common impugned order dated 09.03.2022 passed by the learned Single Bench accepting 99 writ petitions [led by S.B. Civil Writ Petition No.3299/2022 – Anju Bala Vs. State of Rajasthan & Ors.]. Details of the intra court appeals and the writ petitions are mentioned in the Schedule appended to this judgment.

The basic controversy involved in these appeals is as to whether the employees, whose parent cadre is Medical and Health Department and whose services have been provided to the Panchayati Raj institution can be transferred by the Medical and Health Department without following the procedure laid down under Rule 8 of the Rajasthan Panchayati Raj (Transferred Activities)



Rules, 2011 (for short, hereinafter referred to as 'the Rules of 2011'), which reads as below:-

**"8. Transfer.-** Transfer of such transferred employees shall be made under the transfer policy and directions issued by the State Government from time to time, by:-

- i. "the Administration and Establishment Committee of the Panchayat Samiti concerned within the same Panchayat Samiti.
- ii. the District Establishment Committee of the Zila Samiti to another Panchayat Samiti within the same District.
- iii. the department concerned from one district to another district with the consent of the Panchayati Raj Department."



A Division Bench of this Court in the case of **State of Rajasthan & Ors. Vs. Samleta [D.B. Civil Special Appeal (Writ) No.736/2018 decided on 11.10.2018]** took a view that as per Sub-rule (ii) of Rule 8 of the Rules of 2011, when an employee, whose services are governed by the Panchayati Raj Act, is proposed to be transferred from one district to another, there is a prerequisite condition of obtaining prior consent of Panchayati Raj Department irrespective of the fact that the employee is surplus in the Panchayati Raj Department. This court is apprised that the State of Rajasthan has assailed the Division Bench order in the case of *Samleta (supra)* before Hon'ble the Supreme Court by way of **Special Leave Petition (Civil) Diary No.41290/2019** which is pending.

In the cases of **State of Rajasthan & Ors. Vs. Mool Shankar [D.B. Civil Special Appeal (Writ) No.683/2021]** and **State of Rajasthan & Ors. Vs. Krishna Devi [D.B. Civil Special Appeal (Writ) No.17/2022] decided on 14.01.2022,**



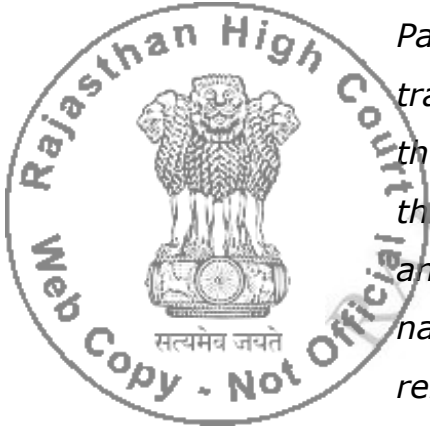
involving identical controversy, Division Bench of this Court proceeded to reiterate the view taken in the case of *Samleta (supra)* and held that while effecting inter-district transfers of the employees transferred to the Panchayati Raj Department, the powers are retained by the department concerned, but in all such cases, the consent of the Panchayati Raj Department has to be obtained. Such requirement of consent cannot be brought down to a mere formality by suggesting that the same is not mandatory but directory in nature. At the same time, the Hon'ble Division Bench noticed that this requirement has brought about a grim situation. The administration is saddled with two employees against one vacant post in some cases and in some cases the posts are lying vacant without anybody looking after it. The court felt that even if the situation has been brought about on account of administrative errors, a way out of this impasse is required to be found particularly looking to the great challenges that the Government administration in general and the Health Department in particular is facing due to recent third wave of Corona virus. Observing this, the court went on to hold that there was no limitation or inhibition under the Rules by virtue of which, the ex-post facto consent of the Panchayati Raj Department can not be obtained. It was observed as below :-

*"In this context, we do not find any limitation or inhibition under the Rules by virtue of which the ex-post facto consent of the Panchayati Raj department can not be obtained. The consent of the Panchayati Raj department is of course needed before effecting inter-district transfer as we have already concluded. However, there is nothing in the Rules to suggest that the same is a sine qua non and if the consent is obtained post facto, the order of transfer cannot be*





validated. We notice that in the judgment dated 11.10.2018 passed by the Division Bench of this Court in the case of **State of Rajasthan and others Vs. Samleta (D.B. Spl. Appl. Writ No. 736/2018)**, the Court had confirmed the judgment of the learned Single Judge setting aside orders of transfers under similar circumstances where the consent of the Panchayati Raj department was not obtained. In that case, the counsel for the employees-original petitioners had argued that the ex-post facto sanction granted by the Panchayati Raj department would not save the order of transfer. The Division Bench while confirming the view of the learned Single Judge had not given any declaration on this question. The judgment on this point is thus sub silentio and in our view does not lay down any ratio of a binding nature on this question. Under the circumstances, we reiterate that the Rules of 2011 do not prohibit ex-post facto sanction being granted by the Panchayati Raj department and if such ex-post facto sanction is obtained hereafter, it would be open for the Government to regularize all orders of inter district transfers.”



The present set of appeals involves inter-district transfers by the Medical and Health Department of its employees, whose services have earlier been transferred to the Panchayati Raj Department. During pendency of the appeals, learned AAG Shri Rajpurohit, has filed an additional affidavit with official note-sheets, as per which, a proposal was moved to grant ex-post facto sanction to validate transfer orders of surplus transferred employees of the Panchayati Raj Department.

It is noteworthy from the affidavit that as per the distribution of Departments amongst the Cabinet of Ministers, Shri Parsadi Lal Meena, the Minister for Medical and Health Services, Government of Rajasthan has been given independent charge of Medical and Health Services under the Panchayati Raj Department.

After obtaining legal opinion and referring to the



Division Bench judgment in the case of *Mool Shankar (supra)*, the file was moved for grant of ex-post facto sanction to validate the transfer orders passed earlier by the Medical and Health Department. The Departmental officers proposed issuance of ex-post facto sanction and the Minister Shri Meena has approved the said proposal on 21.03.2022.

As a consequence of the above development, we are of the view that the Panchayati Raj Department has lawfully granted ex-post facto sanction as per the requirement of Rule 8 of the Rules of 2011 to validate the questioned transfer orders.

It was the fervent contention of the learned counsel for the respondent employees that ex-post facto consent does not relate to the transfer orders at hand because the date mentioned in the office note is 22.11.2021. This contention is not tenable for the simple reason that this date refers to the distribution of departments amongst the Ministers, whereby independent charge of Medical and Health Services coming under the purview of Panchayati Raj Department was assigned to Shri Parsadi Lal Meena, the Minister for Medical and Health Services. As is evident from the note-sheets annexed with the additional affidavit, both the Departments have concurred on the transfers, which are subject matter of challenge in this litigation. The action so taken is compliant of the view taken by the Division Bench in the case of *Mool Shankar (supra)* and hence, the requirement of consent of the Panchayati Raj Department for effecting transfers of the transferred employees of the Panchayati Raj Department has been satisfied.

Consequently, the appeals deserve to be accepted. The impugned order dated 09.03.2022 passed by the learned Single



Bench in the writ petitions mentioned in the Schedule is reversed.  
The appeals are allowed, accordingly.

**(KULDEEP MATHUR),J** **(SANDEEP MEHTA),J**

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**Schedule**

S. No.	D.B. Civil Special Appeal (Writ) Number	S.B. Civil Writ Petition Number	PARTY NAME		Date of impugned order
1	271/2022	3299/2022	Anju Bala	State & Ors.	09.03.2022
2	285/2022	3319/2022	Sunita Devi	State & Ors.	09.03.2022
3	286/2022	3329/2022	Munesh Kumari	State & Ors.	09.03.2022
4	287/2022	3322/2022	Pinku	State & Ors.	09.03.2022
5	288/2022	3334/2022	Savita	State & Ors.	09.03.2022
6	289/2022	3605/2022	Murti Devi	State & Ors.	09.03.2022
7	290/2022	3336/2022	Reshma	State & Ors.	09.03.2022
8	291/2022	3278/2022	Sarita Devi	State & Ors.	09.03.2022
9	292/2022	3325/2022	Manisha Kumar	State & Ors.	09.03.2022
10	293/2022	3282/2022	Nirmala Kumari	State & Ors.	09.03.2022
11	294/2022	3330/2022	Sunita	State & Ors.	09.03.2022
12	295/2022	3315/2022	Manju Rani	State & Ors.	09.03.2022
13	296/2022	3318/2022	Vimla Meghwal	State & Ors.	09.03.2022
14	297/2022	3324/2022	Rakesh Kumari	State & Ors.	09.03.2022
15	298/2022	3283/2022	Neetu	State & Ors.	09.03.2022
16	299/2022	3284/2022	Sunita	State & Ors.	09.03.2022
17	300/2022	3307/2022	Rampyari	State & Ors.	09.03.2022
18	301/2022	3337/2022	Sunita	State & Ors.	09.03.2022
19	302/2022	3297/2022	Sahnila	State & Ors.	09.03.2022
20	303/2022	3281/2022	Nirmala Devi	State & Ors.	09.03.2022
21	304/2022	3311/2022	Ankori	State & Ors.	09.03.2022
22	387/2022	3677/2022	Ompati	State & Ors.	09.03.2022
23	395/2022	3690/2022	Sushila	State & Ors.	09.03.2022
24	398/2022	3453/2022	Sarla	State & Ors.	09.03.2022
25	408/2022	3680/2022	Saroj Bala	State & Ors.	09.03.2022
26	409/2022	3526/2022	Laxmi Meena	State & Ors.	09.03.2022
27	412/2022	3300/2022	Sushila Devi	State & Ors.	09.03.2022
28	416/2022	3649/2022	Baljeet Kaur	State & Ors.	09.03.2022
29	429/2022	3513/2022	Sangeeta	State & Ors.	09.03.2022
30	445/2022	3449/2022	Suman	State & Ors.	09.03.2022
31	446/2022	3245/2022	Suman	State & Ors.	09.03.2022
32	447/2022	3678/2022	Sumitra	State & Ors.	09.03.2022





33	448/2022	3454/2022	Prem Kumari	State & Ors.	09.03.2022
34	449/2022	3298/2022	Meenakshi	State & Ors.	09.03.2022
35	450/2022	3433/2022	Sharmila	State & Ors.	09.03.2022
36	451/2022	3488/2022	Sunita Kumari	State & Ors.	09.03.2022
37	452/2022	3426/2022	Saroj	State & Ors.	09.03.2022
38	453/2022	3277/2022	Manju Kumari	State & Ors.	09.03.2022
39	454/2022	3428/2022	Sushila	State & Ors.	09.03.2022
40	455/2022	3560/2022	Smt. Vijayanta	State & Ors.	09.03.2022
41	456/2022	3545/2022	Smt. Urmila	State & Ors.	09.03.2022
42	457/2022	3424/2022	Tara	State & Ors.	09.03.2022
43	458/2022	3224/2022	Nisha Choudhary	State & Ors.	09.03.2022
44	459/2022	3348/2022	Bhagwanti Dangi	State & Ors.	09.03.2022
45	460/2022	3249/2022	Urmila	State & Ors.	09.03.2022
46	462/2022	3509/2022	Sharda	State & Ors.	09.03.2022
47	463/2022	3275/2022	Sulochana	State & Ors.	09.03.2022
48	464/2022	3254/2022	Sharmila	State & Ors.	09.03.2022
49	465/2022	3211/2022	Kaushalya	State & Ors.	09.03.2022
50	466/2022	3246/2022	Shakuntala	State & Ors.	09.03.2022
51	467/2022	3573/2022	Smt. Suman Kumari	State & Ors.	09.03.2022
52	468/2022	3222/2022	Rajbala	State & Ors.	09.03.2022
53	469/2022	3429/2022	Gurpreet Kaur	State & Ors.	09.03.2022
54	470/2022	3248/2022	Banta Devi	State & Ors.	09.03.2022
55	471/2022	3691/2022	Santosh	State & Ors.	09.03.2022
56	473/2022	3242/2022	Nirmala Devi	State & Ors.	09.03.2022
57	474/2022	3327/2022	Ranjana	State & Ors.	09.03.2022
58	475/2022	3210/2022	Poonam	State & Ors.	09.03.2022
59	476/2022	3341/2022	Sushila Devi	State & Ors.	09.03.2022
60	477/2022	3576/2022	Smt. Darshana	State & Ors.	09.03.2022
61	478/2022	3356/2022	Suman	State & Ors.	09.03.2022
62	479/2022	3580/2022	Smt. Priyanka Kumari	State & Ors.	09.03.2022
63	480/2022	3231/2022	Vinod Kumari	State & Ors.	09.03.2022
64	481/2022	3575/2022	Smt. Kamla	State & Ors.	09.03.2022
65	482/2022	3217/2022	Suman	State & Ors.	09.03.2022
66	483/2022	3430/2022	Suman	State & Ors.	09.03.2022
67	484/2022	3371/2022	Kamla Devi	State & Ors.	09.03.2022
68	485/2022	3345/2022	Gulab Devi	State & Ors.	09.03.2022
69	486/2022	3397/2022	Nirmala	State & Ors.	09.03.2022
70	487/2022	3578/2022	Smt. Rajbala	State & Ors.	09.03.2022
71	488/2022	3380/2022	Manju Nain	State & Ors.	09.03.2022
72	489/2022	3260/2022	Kamlesh Kumari	State & Ors.	09.03.2022
73	490/2022	3395/2022	Alpna	State & Ors.	09.03.2022
74	491/2022	3612/2022	Suman Kumari	State & Ors.	09.03.2022
75	492/2022	3303/2022	Santosh Thori	State & Ors.	09.03.2022
76	493/2022	3230/2022	Batul Bano	State & Ors.	09.03.2022
77	494/2022	3280/2022	Saroj Bala	State & Ors.	09.03.2022
78	495/2022	3328/2022	Suman Dhaka	State & Ors.	09.03.2022
79	496/2022	3214/2022	Suman Lata	State & Ors.	09.03.2022





80	497/2022	3508/2022	Suman Kumari	State & Ors.	09.03.2022
81	498/2022	3232/2022	Kavita	State & Ors.	09.03.2022
82	499/2022	3366/2022	Kavita Kumari	State & Ors.	09.03.2022
83	500/2022	3532/2022	Sangeeta Meena	State & Ors.	09.03.2022
84	501/2022	3268/2022	Sarita	State & Ors.	09.03.2022
85	502/2022	3243/2022	Kamlesh Kumari	State & Ors.	09.03.2022
86	503/2022	3252/2022	Sakuntala Kumari Kaswa	State & Ors.	09.03.2022
87	504/2022	3231/2022	Pushpa Kumari	State & Ors.	09.03.2022
88	505/2022	3362/2022	Smt. Monika	State & Ors.	09.03.2022
89	506/2022	3274/2022	Santosh	State & Ors.	09.03.2022



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