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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

Judgment reserved on: 26.11.2026

Judgment delivered on: 28.11.2026

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D.B. Special Appeal Writ No. 1000/2023

CNR: RJHC010775252023 | URN: SAW / 2011U / 2023

Chandraveer Singh Godara S/o Shri Nand Ram Godara, Aged About 40 Years, 96, Near Bsf Tarbandi, Nehru Nagar, Barmer (Raj.), Mobile No. 9462831133.

----Appellant

Versus

1. State Of Rajasthan, Through Its Secretary, Medical And Health Services, Secretariat, Jaipur.
2. The Joint Secretary, Medical And Health (Group-Ii) Department, Secretariat, Jaipur.
3. The Director (Public Health), Medical And Health Services, Health Bhawan, Jaipur.
4. The Director, Rajasthan Medical Education Society (Raj-Mes), Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.
5. The Principal And Controller, Govt. Medical College, Barmer (Raj.).
6. The Principal Medical Officer, Govt. District Hospital, Barmer.

----Respondents

For Appellant(s)	:	Mr. R.N. Mathur, Sr. Adv. Through VC with Mr. Mahendra Bishnoi
For Respondent(s)	:	Mr. N.S. Rajpurohit, AAG assisted by Mr. Sher Singh Rathore

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

HON'BLE MR. JUSTICE SANDEEP SHAH

Judgment

BY THE COURT: (PER HON'BLE MR. JUSTICE VINIT KUMAR MATHUR)

1. The present special appeal has been filed by the appellant challenging the order dated 17.08.2023 passed by learned Single

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Bench in S.B. Civil Writ Petition No.17851/2022, whereby, the writ petition filed by the appellant has been dismissed.

2. Brief facts of the case are that the appellant was initially appointed on the post of Medical Officer by order dated 03.02.2012 and thereafter he was confirmed on the said post on 15.10.2013 w.e.f. 12.02.2013. On 03.10.2020, the appellant was promoted on the post of Senior Medical Officer.

3. On 05.08.2021, an advertisement was issued by the Rajasthan Medical Education Society, Jaipur for the post of Assistant Professor in various streams. The appellant being eligible sought No Objection for the purpose of participating in the said selection process for the post of Assistant Professor (Radio Diagnosis) from the Department, which was issued on 24.08.2021. After participating in the selection process, the appellant was selected on the post of Assistant Professor by order dated 31.12.2021. In terms of the NOC dated 24.08.2021, the appellant was relieved to join the post of Assistant Professor (Radio Diagnosis) on 06.01.2022. On 15.02.2022, an order was passed by the Joint Secretary, Medical & Health Department *inter-alia* indicating therein that relieving of the appellant is subject to the conditions indicated in the NOC and that he would have no lien in the Department. Being aggrieved with the said condition, the appellant submitted a representation dated 31.05.2022 to the Director, Medical & Health Services stating therein that as he has so far not been confirmed on the post of Assistant Professor, for his personal reasons, he now wants to join back on the post of Senior Medical Officer at the Department again and, therefore, he may be permitted to join on the said post. The said representation

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of the appellant came to be rejected by the Department vide order dated 21.09.2022 holding therein that pursuaunt to the order dated 26.09.2017 issued by the Rajasthan Medical Education Society, the place where the appellant had joined, his lien on the earlier post stood terminated and, therefore, he was not entitled to join back.

4. Aggrieved by the orders dated 15.02.2022 and 21.09.2022, the appellant preferred a writ petition before learned Single Bench, which was also dismissed vide order dated 17.8.2023. Hence, this appeal has been preferred by the appellant.

5. Challenging the aforesaid orders, Mr. R.N. Mathur, learned Senior Counsel appearing for the appellant submitted that the appellant was relieved from the post of Senior Medical Doctor without there being any condition of terminating his lien, while joining on the post of Assistant Professor (Radio Diagnosis) in the Rajasthan Medical Education Society, Jaipur and, therefore, imposing the condition of termination of his lien, while issuing the relieving order was absolutely arbitrary and unreasonable, however, while dismissing the writ petition, the learned Single Judge, failed to take into notice of this vital aspect of the matter.

6. Learned Senior Counsel further submitted that since the appellant was on probation on the post of Assistant Professor (Radio Diagnosis) in the Rajasthan Medical Education Society, Jaipur, therefore, his lien continued to be remained on the earlier post as Rule 3 (p) of the Rajasthan Medical Society Employees (Recruitment and Promotion) Rules, 2022 (hereinafter referred to as 'the Rules of 2022') which clearly stipulates that the appointment made under the provisions of these Rules to a

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substantive vacancy after the due selection by any of the methods of recruitment prescribed under these Rules includes an appointment on probation or as a probationer trainee followed by confirmation on the completion of the probationary period. Therefore, unless, the services of the appellant was confirmed on the post of Assistant Professor (Radio Diagnosis), his lien continues to be on the earlier post held by him and, therefore, the appellant being on probation is entitled to keep his lien on his earlier post.

7. Learned Senior Counsel has relied upon a judgment of Hon'ble Supreme Court delivered in case of ***State of Rajasthan & Anr. Vs. S.N. Tiwari & Ors,*** reported in ***(2009) 4 SCC 700*** to substantiate his argument that unless a person is on probation and his services are not confirmed, his lien will continue to be on the post earlier held by him. He, therefore, submitted that the learned Single Bench has committed grave error while dismissing the writ petition. He, therefore, prays that the appeal as well as writ petition filed by the appellant may be allowed.

8. *Per contra*, Mr. N.S. Rajpurohit, learned AAG appearing for the respondent-State has supported the impugned order and submitted that after taking into consideration entire facts and circumstances and the applicable Rules, the learned Single Judge has rightly passed the impugned order. He further submitted that by accepting the employment on the post of Assistant Professor with the Society, the appellant has lost his lien with the earlier Department automatically and the pleas sought to be raised by the appellant have no substance. He further submits that as the appointment of the appellant was substantive in nature and

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merely because he was on probation, the same by itself did not change the nature of appointment and therefore, the appellant is not entitled to seek any relief. He, therefore, prays that the appeal may be dismissed.

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9. We have considered the submissions advanced by learned Senior Counsel appearing for the appellant and have carefully examined the relevant statutory provisions governing the acquisition and termination of lien under the Rajasthan Service Rules, 1951 (hereinafter referred to as 'the RSR'). The principal question which arises for consideration in the present appeal is whether, after his selection and appointment against a substantive vacancy on the post of Assistant Professor (Radio Diagnosis), the appellant could have continued to retain his lien on the earlier post of Senior Medical Officer (SMO) in his parent department or not.

10. In order to appreciate the controversy, it would be appropriate to refer Rule 15 of the RSR, which deals with the acquisition of lien which reads as under:

> *"Rule 15. Lien: Unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post".*

A bare reading of the aforesaid provision makes it clear that a Government servant, upon being substantively appointed to a permanent post, acquires a lien on such post and simultaneously ceases to hold any lien previously acquired on another post. The language employed in Rule 15 is unambiguous and does not

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contemplate the simultaneous retention of liens on two different permanent posts. Thus, the acquisition of a lien on a subsequently acquired permanent post entails cessation of the lien previously held by the Government servant on his earlier post.

11. The aforesaid provision is further supplemented by Rule 18 of the RSR, which specifically deals with termination of lien which reads thus:

> *"Rule 18. Termination of Lien: (a) A Government servant's lien on a post may in no circumstances be terminated, even with his consent if the result will be leave him without a lien or a suspended lien upon a permanent post.*
>
> *(b) A Government servant's lien on a post stands terminated on his acquiring a lien on a permanent post whether under the Government or Central/other State Governments outside the cadre on which he is borne."*

A conjoint reading of Rules 15 and 18 of the RSR makes it evident that the statutory scheme provides for termination of an earlier lien upon acquisition of a lien on another permanent post, including a permanent post outside the cadre in which the Government servant was originally borne. Rule 18(b) specifically provides that such termination takes place upon acquisition of a lien on another permanent post. The expression 'stands terminated' clearly indicates that the termination of the earlier lien is a consequence flowing from the operation of the statutory provision itself and is not dependent upon any separate election or option exercised by the Government servant.

12. At the same time, Rule 18(a) safeguards a Government servant against being left without a lien or a suspended lien on any permanent post. However, the said protection cannot be

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construed to confer a right upon a Government servant to retain liens on two different permanent posts simultaneously, particularly when the conditions stipulated under Rule 15 read with Rule 18(b) stand fulfilled.

13. It would also be necessary to refer to the relevant definitions contained in Rule 7 of the RSR, which explain the expressions employed in Rules 15 and 18. The relevant definitions are reproduced herein below:-

> *"Rule 7(17) – Lien:- Means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively."*
>
> *Rule 7(26) – Permanent Post: - Means a post carrying a definite rate of pay sanctioned without limit of time."*
>
> *Rule 7(34-A) – Substantive Appointment:-Means the appointment of a Government servant on a permanent post and on which he acquires a lien."*

The aforesaid definitions, when read together, make it clear that lien is a substantive right of a Government servant to hold a permanent post, and such right is acquired upon substantive appointment to a permanent post. Therefore, for the purposes of attracting Rule 15 of the RSR, the material consideration is whether the subsequent appointment is substantive in nature and whether the post against which such appointment has been made is a permanent post within the meaning of Rule 7(26) of the RSR.

14. In this regard, it is also relevant to refer to Rule 3(p) of the Rajasthan Medical Education Society Rules, 2022, which defines the expression 'Substantive Appointment' in the following terms:-

> *"Rule 3(p) – Substantive Appointment:- 'Substantive Appointment' means an appointment made under the*

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provisions of these rules to a substantive vacancy after due selection by any of the methods of recruitment prescribed under these rules and includes an appointment on probation or as a probationer trainee followed by confirmation on the completion of the probationary period;

Note: Due selection by any of the methods of recruitment prescribed under these rules shall include recruitment either on initial constitution of Service or in accordance with the provisions of any Rules promulgated under 'the Rules and regulations of the Rajasthan Medical Education Society, Jaipur', except an urgent temporary appointment."

A plain reading of the aforesaid provision makes it clear that an appointment made against a substantive vacancy after due selection is treated as a substantive appointment. **The definition expressly includes an appointment on probation or as a probationer trainee, followed by confirmation upon completion of the prescribed probationary period**. The Note appended to the definition further clarifies that an urgent temporary appointment is excluded from its ambit.

15. Thus, the Rules of 2022 themselves recognize that an appointment against a substantive vacancy, made after due selection, does not lose its substantive character merely because the appointee is required to undergo a period of probation before confirmation. The period of probation is a stage in the service career of an incumbent appointed substantively and cannot, by itself, be treated as an indication that the appointment is merely temporary or non-substantive.

16. Adverting to the facts of the present case, it is an admitted position that the appellant was initially holding the post of Senior Medical Officer in his parent department. While working on the said post, he applied for the post of Assistant Professor (Radio

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Diagnosis) after obtaining a No Objection Certificate from his parent department. His candidature was duly considered through the prescribed selection process and, upon being selected, he was appointed against a substantive vacancy on the post of Assistant Professor (Radio Diagnosis). It is, therefore, evident that the appointment of the appellant was not an urgent temporary appointment, nor was it an appointment made on an ad hoc basis. Rather, the appointment was made against a substantive vacancy after due selection in accordance with the recruitment process prescribed under the Rules of 2022. Consequently, the appointment squarely falls within the definition of 'Substantive Appointment' under Rule 3(p) of the Rules of 2022.

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17. Further, in view of the nature of the post and the relevant sanction governing it, the appointment satisfies the requirement of a permanent post under Rule 7(26) of the RSR. Accordingly, the appointment of the appellant attracts the provisions of Rule 15 read with Rule 18(b) of the RSR.

18. Thus, the contention raised by learned Senior Counsel appearing for the appellant that since the appellant was still undergoing probation on the post of Assistant Professor (Radio Diagnosis), he continued to retain his lien on the earlier post of Senior Medical Officer, cannot be accepted. The said contention proceeds on an erroneous assumption that a substantive appointment can come into existence only upon confirmation of the incumbent. Such an interpretation is contrary to the express language of Rule 3(p) of the Rules of 2022, which specifically includes an appointment on probation or as a probationer trainee within the definition of substantive appointment.

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19. There is a clear distinction between the nature of the initial appointment and the subsequent confirmation of an incumbent upon successful completion of probation. Confirmation is a subsequent incident of service, whereas the substantive character of the appointment, in the present case, flows from the fact that the appellant was selected and appointed against a substantive vacancy in accordance with the prescribed recruitment rules. Therefore, the mere fact that the appellant had not completed his probationary period or had not been formally confirmed on the post of Assistant Professor (Radio Diagnosis) would not alter the substantive nature of his appointment. Once the appellant acquired a lien on the subsequently acquired permanent post, the consequence prescribed under Rule 15 of the RSR followed, namely, cessation of his previously acquired lien on the post of Senior Medical Officer.

20. It is also significant to note that the appellant had applied for the post of Assistant Professor (Radio Diagnosis) after obtaining a No Objection Certificate from his parent department and thereafter participated in the selection process. Upon being selected, he accepted appointment against a substantive vacancy on the said post. The appellant cannot, therefore, claim continuation of his earlier lien contrary to the statutory consequences flowing from his substantive appointment to another permanent post. The grant of a No Objection Certificate by the parent department, by itself, would not override the statutory provisions governing the acquisition and termination of lien. The question of retention of lien has to be determined in accordance with the applicable service rules and not merely on the

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basis of the administrative permission granted at the time of applying for the subsequent post.

21. The judgment of the Hon'ble Supreme Court in ***S.N. Tiwari*** (supra), relied upon by learned Senior Counsel for the appellant, also does not render any assistance to the appellant. In the said case, the appointment of the incumbent was purely on an urgent temporary basis and, therefore, the protection of his lien on the earlier substantive post was considered in the context of the nature of such temporary appointment. The factual position in the present case is entirely different. Here, the appellant was selected through the prescribed recruitment process and appointed against a substantive vacancy on the post of Assistant Professor (Radio Diagnosis). Further, Rule 3(p) of the Rules of 2022 expressly excludes an urgent temporary appointment from the definition of substantive appointment. Thus, the principle considered by the Hon'ble Supreme Court in ***S.N. Tiwari*** (supra), in the context of an urgent temporary appointment, cannot be extended to a case where the incumbent has been appointed against a substantive vacancy after due selection. The aforesaid judgment is, therefore, clearly distinguishable on facts and has no application to the controversy involved in the present appeal.

22. In view of the foregoing discussion, we are of the considered opinion that the appellant, upon his selection and appointment against a substantive vacancy on the post of Assistant Professor (Radio Diagnosis), acquired the status of a substantive appointee within the meaning of Rule 3(p) of the Rules of 2022. The appointment, being against a permanent post within the meaning of Rule 7(26) of the RSR, attracted the operation of Rule 15 read

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with Rule 18(b) of the RSR. Consequently, the lien previously held by the appellant on the post of Senior Medical Officer stood terminated by operation of the aforesaid statutory provisions.

23. The fact that the appellant was undergoing probation on the post of Assistant Professor (Radio Diagnosis) does not alter the aforesaid legal position, particularly when the Rules of 2022 expressly recognize an appointment on probation as a substantive appointment. The appellant, therefore, cannot claim a right to retain his lien on the earlier post of Senior Medical Officer.

24. We are, accordingly, in complete agreement with the view taken by the learned Single Judge that the appellant is not entitled to retain his lien on the post of Senior Medical Officer.

25. In view of the discussions made herein above, we find no merit in the present appeal. The same is, accordingly, dismissed.

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

(SANDEEP SHAH),J **(VINIT KUMAR MATHUR),J**

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