RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 5438/2026
CNR: RJHC010234842026 | URN: CW / 9904U / 2026

Rajasthan High Court
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1. Dr. Prameshwar Lal S/o Shri Bholu Ram, Aged About 45 Years, Resident Of C 184, Near Krishna Temple, Shastri Nagar, Jodhpur (Raj.), Presently Posted As Assistant Professor (Utb), Pediatrics Surgery Department, Dr. Sn Medical College, Jodhpur.
2. Dr. Mohanlal S/o Shri Malaram Kajala, Aged About 40 Years, Resident Of Vpo Mainpura, Tehsil Udaipurwati, District Jhunjhunu, Presently Posted As Assistant Professor (Utb), Pediatrics Surgery Department, Sp Medical College, Bikaner (Raj.).

----Petitioners

Versus

1. State Of Rajasthan, Through Its Principal Secretary, Department Of Medical Education (Group -I), Secretariat, Jaipur.
2. Joint Secretary, Department Of Medical Education (Group I), Secretariat, Jaipur.
3. Principal Secretary, Medical, Health And Family Welfare Services, Govt. Secretariat, Jaipur.
4. Rajasthan Public Service Commission, through its Secretary, Ajmer.
5. Principal And Controller, Dr. SN Medical College, Jodhpur.
6. Principal And Controller, SP Medical College, Bikaner.

----Respondents

For Petitioner(s) : Mr. Yashpal Khileree
For Respondent(s) : Mr. Milap Chopra

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

17/11/2026

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1. By way of filing the present civil writ petition, the petitioners have prayed for the following reliefs:-

> *"I. be pleased to call for record of the selection process pursuant to advt. dated 27.11.2021 Annex.4 and be pleased to direct the respondents to comply the rule 20 of rules of 1962 in its true letter and spirit and operate the reserve/ waiting list already forwarded by respondent RPSC;*
> *II. be pleased to direct the respondent department to appoint the petitioners on the post of Assistant Professor (Super Specialty) in Paediatrics Surgery subject. by operating the reserve list as per rule 20 of the rules of 1962 and consequentially issue appointment order to the petitioners forthwith with all consequential benefits pursuant to advertisement dated 27.11.2021 Annex.4;*
> *III. the respondents may kindly be further directed not to re-advertise the aforesaid two post of Assistant Professor (Super Specialty) in Paediatrics Surgery subject by way of new recruitment-advertisement;..."*

2. Learned counsel for the petitioners submits that the petitioners, being eligible for appointment to the post of Assistant Professor (Super Specialty) (Paediatric Surgery), applied pursuant to the notification dated 27.11.2021 issued by the Rajasthan Public Service Commission (RPSC). The petitioners applied under the OBC category. Upon qualifying the first stage of the selection process, they were called for interview and document verification. After completion of the interview and document verification process, the RPSC issued the merit/select list dated 01.05.2024. Though the names of the petitioners did not find place in the merit/select list, their names were included in the reserve/waiting list published on the same date at Serial Nos. 1 and 2.

3. Learned counsel for the petitioners further submits that at least three candidates, namely, Dr. Priyanka, Dr. Sahej Prajapati and Dr. Bherulal, whose names were included in the merit/select list dated 01.05.2024, did not join their duties against the advertised posts within the stipulated period. The competent

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authority, however, continued to extend the joining period in favour of Dr. Priyanka. Initially, vide order dated 17.10.2025, her joining period was extended by three months and vide order dated 23.01.2026 by another one month. Thereafter, vide communication dated 25.02.2026, the joining period was further extended up to 15.03.2026. Even after the expiry of the extended period, when Dr. Priyanka failed to join, she was once again granted a final opportunity to join within ten days vide letter dated 24.04.2026. Learned counsel submits that identical communications extending the joining period in respect of the post of Assistant Professor (Paediatric Surgery) were also issued in favour of Dr. Bherulal Gurjar.

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4. Learned counsel for the petitioners submits that, despite repeated extensions of time, Dr. Sahej Prajapati and Dr. Bherulal Gurjar did not join their respective posts. Consequently, the petitioners, whose names figured at Serial Nos. 1 and 2 in the reserve/waiting list, acquired a legitimate expectation of being considered for appointment against the vacancies arising on account of the abandonment of claim or non-joining of the aforesaid selected candidates. It is further submitted that, during the pendency of the present writ petition, the Joint Secretary to the Government, Department of Medical Education, vide orders dated 13.07.2026, cancelled the appointment orders issued in favour of Dr. Sahej Prajapati and Dr. Bherulal Gurjar. Learned counsel contends that the petitioners are meritorious candidates and are, therefore, entitled to be considered for appointment against the vacancies which have arisen on account of the non-joining of the aforesaid candidates.

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5. *Per contra*, learned counsel for the respondents submits that, though Dr. Sahej Prajapati and Dr. Bherulal Gurjar did not join the advertised posts despite being granted multiple opportunities and their appointment orders were ultimately cancelled vide office order dated 13.07.2026, such cancellation does not confer any vested or indefeasible right of appointment upon the petitioners merely because their names find place in the reserve/waiting list at Serial Nos. 1 and 2. It is contended that the operation of a reserve/waiting list is governed by the applicable statutory provisions and executive instructions issued by the Department of Personnel from time to time. In this regard, learned counsel has placed reliance upon the circular dated 27.12.2021 issued by the Department of Personnel, which clarifies that a reserve/waiting list remains operative only for a period of six months and, upon expiry of the said period, the names of candidates included therein cannot be recommended for appointment against available vacancies. It is, therefore, submitted that, since the appointment orders issued in favour of Dr. Sahej Prajapati and Dr. Bherulal Gurjar were cancelled after the expiry of six months from the date of preparation of the reserve/waiting list, the petitioners cannot claim appointment against the resultant vacancies.

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6. Heard learned counsel for the parties and perused the material available on record.

7. The principal defence raised by the respondents to oppose the petitioners' claim for appointment on the basis of their names placed in the reserve/waiting list at Sr. No.1 and 2 rests upon the circular dated 27.12.2021 issued by the Department of Personnel.

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The relevant portion of the aforesaid circular is reproduced hereinbelow for ready reference:-

"उपर्युक्त के सम्बन्ध में बिन्दुवार निम्न प्रकार स्थिति स्पष्ट की जाती है*:-*

1. परिपत्र दिनांक *18.10.2021* द्वारा यह निर्देश जारी किये जा चुके है कि भर्ती संस्था द्वारा चयन सूची टुकड़ो में प्रेषित न कर एक साथ ही प्रेषित की जायेगी। अतः आरक्षित सूची प्रेषित करने हेतु *6* माह की अवधि की गणना मुख्य सूची प्रेषित करने की तिथि से की जायेगी। मुख्य सूची प्रेषित करते समय यदि बहुत कम संख्या में नाम *(*कुल प्राप्त रिक्तियों का *10* प्रतिशत से कम*)* अपरिहार्य कारणों से प्रेषित नहीं किये जाकर आवश्यक पूर्ति के पश्चात प्रेषित किये जाते है तो ऐसे प्रकरणों को आपवादिक माना जायेगा तथा इस अनुशंषा *(recommendation)* की तिथि पर आरक्षित सूची के प्रवर्तन के सम्बन्ध में विचार नहीं किया जायेगा तथा *6* माह की अवधि के लिए तिथि की गणना मूल सूची प्रेषित करने की तिथि से ही की जायेगी। यदि किसी प्रकरण में अपरिहार्य कारण से कुल रिक्तियों के *10* प्रतिशत से अधिक नाम मुख्य सूची प्रेषित करने के पश्चात कालान्तर में प्रेषित किये जाते है तो उस स्थिति में समयावधि की गणना चयन की अन्तिम अनुशंषा *(recommendation)* प्रेषित करने की तिथि से की जायेगी।

2. सेवा नियमों में यह स्पष्ट प्रावधान है कि भर्ती संस्था द्वारा मूल सूची प्रेषित करने की तिथि से *6* माह के भीतर आरक्षित सूची से नाम प्रेषित किये जा सकते है। यदि प्रशासनिक विभाग द्वारा *6* माह की अवधि में आरक्षित सूची से नाम प्रेषित करने हेतु अर्थना करने के बाद भी भर्ती संस्था द्वारा *6* माह की अवधि के पूर्ण होने तक आरक्षित सूची से नाम प्रेषित नहीं किये जाते हैं, तो *6* माह की अवधि समाप्त होते ही आरक्षित सूची समाप्त हो जायेगी तथा उसके पश्चात भर्ती संस्था को आरक्षित सूची से नाम चयन हेतु अनुशंषित करने का अधिकार नहीं होगा। चूंकि विभाग से आरक्षित सूची हेतु अभिशंषा *(recommendation)* प्राप्त होने के पश्चात भर्ती संस्था स्तर पर अनेक औपचारिकताएँ पूर्ण करनी होती है, अतः सभी विभागों को निर्देशित किया जाता है कि भविष्य में आरक्षित सूची से नाम प्राप्त करने हेतु विभाग की अभिशंषा भर्ती संस्था के पास *6* माह की अवधि समाप्त होने के न्यूनतम *45* दिवस पूर्व पहुँच जानी चाहिए। आरक्षित सूची से नाम प्राप्त करने हेतु उक्त समय सीमा के अंदर भर्ती संस्था के पास अर्थना नही पहुँचने के कारण प्रतीक्षा सूची का क्रियान्वयन नहीं होने की समस्त जिम्मेदारी संबंधित विभागाध्यक्ष की होगी।

3. यह सुस्थापित सिद्धांत है कि आरक्षित सूची भर्ती का स्त्रोत नहीं हो सकती है। किसी भी भर्ती में आरक्षित सूची भर्ती विज्ञापन में विज्ञापित

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रिक्तियों के संदर्भ में ही तैयार की जाती है तथा इसका उद्देश्य चयन उपरांत नियुक्त किये गये अभ्यर्थियों के कार्यग्रहण न करने से उत्पन्न होने वाली रिक्तियों को भरना होता है। सेवा नियमों में यह भी प्रावधान है कि किसी भी भर्ती में चयन प्रक्रिया के अंतिम चरण उपरांत परिणाम जारी होने से पूर्व रिक्तियों की संख्या में *50* प्रतिशत तक वृद्धि की जा सकती है। उक्त नियमानुसार किसी भर्ती में रिक्तियों की संख्या में वृद्धि किये जाने पर संशोधित रिक्तियों को नियमानुसार विज्ञापित किया जाना आवश्यक है तथा किसी भी भर्ती में रिक्तियों की संख्या के सम्बन्ध में अन्तिम संशोधित विज्ञापन में प्रदर्शित रिक्तियों के अतिरिक्त अन्य किसी भी रिक्ति को उस भर्ती की आरक्षित सूची से नहीं भरा जा सकेगा।

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4. किसी रिक्त पद पर नवचयनित अभ्यर्थी द्वारा कार्यग्रहण करने के उपरांत उस पद पर भर्ती प्रक्रिया पूर्ण मानी जाती है तथा उस पद पर प्रतीक्षा सूची के अभ्यर्थियों का कोई अधिकार नही रहता है। कार्यग्रहण करने के उपरांत त्यागपत्र अथवा अन्य किसी कारण से उत्पन्न हुई रिक्ति को नवीन रिक्ति ही माना जावेगा तथा उस रिक्ति को नवीन भर्ती प्रक्रिया द्वारा ही भरा जा सकेगा।

5. कई बार मुख्य सूची अनुशंषित करने के पश्चात न्यायिक स्थगन के कारण मूल सूची के आधार पर नियुक्ति आदेश जारी करने में विलम्ब हो जाता है, तथा इस दौरान मूल सूची अनुशंषित करने की तिथि से *6* माह की अवधि पूर्ण हो जाती है अथवा अत्यन्त अल्प समय शेष रहता है, जिसमें कार्यग्रहण न करने वाले अभ्यर्थियों की रिपोर्ट, नियुक्ति आदेश निरस्त करना तथा आरक्षित सूची से नाम प्राप्त करने के लिए आवश्यक निर्णय आदि कार्यों के लिए पर्याप्त समय शेष नहीं रहता है जिससे आरक्षित सूची के प्रवर्तन में समस्या आती है। इसके अलावा कई प्रकरणों में न्यायालय आदेश अथवा अन्य अपरिहार्य कारणों से संशोधित / पुनः परिणाम जारी किया जाता है उनमें भी मूल सूची से समयावधि की गणना करने में समस्याएँ आती है क्योंकि संशोधित / पुनः परिणाम में बडी संख्या में नवीन अभ्यार्थियों का चयन होना तथा उनमें से अभ्यर्थियों का कार्यग्रहण न किया जाना सम्भव हो सकता है।

इस सम्बन्ध में यह स्पष्ट किया जाता है कि मूल सूची अनुशंषित करने के पश्चात भर्ती प्रकिया पर न्यायालय स्थगन हो जाने की स्थिति में आरक्षित सूची के प्रवर्तन के लिए *6* माह की अवधि की गणना करने के लिए स्थगन अवधि को निकालते हुए गणना की जायेगी। संशोधित/पुनः परिणाम के प्रकरणों में समयावधि की गणना पुनः परिणाम के पश्चात चयन सूची अनुशंषा करने की तिथि से की जायेगी।

6. आगामी भर्ती के लिए विज्ञापन प्रकाशित किये जाने को नवीन भर्ती का प्रारम्भ बिन्दु माना जायेगा। परंतु जिन प्रकरणों में नवीन विज्ञापन प्रकाशित

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होने पर प्रक्रियाधीन भर्ती में कार्यग्रहण न करने से प्राप्त रिक्तियों को नवीन भर्ती की अर्थना/विज्ञापन में शामिल नही किया गया हो. उनमें प्रक्रियाधीन भर्ती मे मूल सूची की अनुशंषा *(recommendation)* प्रेषित करने की तिथि से 6 माह की अवधि अथवा नवीन भर्ती में परीक्षा होने की तिथि जो भी पहले हो, तक आरक्षित सूची का प्रवर्तन किया जा सकेगा। इस संबंध में यह भी स्पष्ट किया जाता है कि यदि प्रक्रियाधीन भर्ती में आरक्षित सूची का क्रियान्वयन न्यायिक स्थगन के कारण समय पर नही हो पाता है, एवं रिक्त रहे पदों को नवीन भर्ती में भी शामिल नही किया गया है, तो आरक्षित सूची के प्रवर्तन के लिए 6 माह की अवधि की गणना स्थगन अवधि को निकालते हुए की जायेगी एवं उक्त स्थिति में नवीन भर्ती की परीक्षा आयोजित होने के उपरांत भी मूल सूची प्रेषित किये जाने की 6 माह की अवधि तक आरक्षित सूची का प्रवर्तन किया जा सकेगा।

सभी विभाग भर्तियों में आरक्षित सूची को लागू करने के संबंध में उपर्युक्तानुसार कार्यवाही करे।"

(emphasis supplied)

8. A Co-ordinate Bench of this Court, in ***Sarita Choudhary v. State of Rajasthan & Ors., S.B. Civil Writ Petition No. 9500/2014, decided on 11.09.2015***, while dealing with an identical controversy, examined a situation wherein the reserve list had been forwarded to the RPSC within the stipulated period, but the respondent authorities, despite the non-joining of certain selected candidates within the prescribed period, continued to grant extensions of time for joining. It was observed that such repeated extensions virtually frustrated the very purpose of operating the reserve list and rendered it impossible for the candidates placed therein to secure consideration for appointment. In the aforesaid circumstances, the Co-ordinate Bench held that the authorities could not deny consideration for appointment to candidates whose names appeared in the reserve/waiting list by taking shelter behind the alleged expiry of the validity period of the said list.

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9. In the present case, a careful perusal of the material available on record reveals that the non-operation of the reserve/ waiting list dated 01.05.2024, wherein the names of the petitioners stand at Serial Nos. 1 and 2, was primarily attributable to the repeated extensions granted by the respondents to the selected candidates, despite their failure to join the advertised posts within the stipulated period. The respondents continued to extend the joining period of the above named selected candidates vide communications dated 27.10.2025, 23.01.2026, 25.02.2026, 15.03.2026 and 24.04.2026, thereby keeping the vacancies in abeyance instead of taking timely steps to operate the reserve/waiting list.

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The aforesaid course of action adopted by the respondents virtually frustrated the very purpose for which the reserve/waiting list had been prepared and rendered its operation impracticable. Had the respondents taken timely steps upon the non-joining of the selected candidates and proceeded to fill the resultant vacancies by operating the reserve/waiting list in accordance with law, the petitioners, whose names figured at the first and second positions therein, would have had an opportunity to secure appointment without being compelled to approach this Court.

It is also significant to note that the appointment orders issued in favour of the concerned selected candidates were ultimately cancelled only on 13.07.2026 by the Joint Secretary to the Government, Department of Medical Education. Thus, the respondents, by repeatedly extending the joining period and postponing the decision regarding the non-joining of the selected

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candidates, themselves contributed to the delay in taking the requisite steps for operating the reserve/waiting list.

10. In the considered opinion of this Court, the respondents cannot be permitted to take advantage of their own inaction and then defeat the legitimate claim of the petitioners by contending that the reserve/waiting list had ceased to remain operative upon expiry of six months. The respondents, having themselves continued to grant repeated extensions to the selected candidates and thereby delayed the process of filling the resultant vacancies, cannot now be permitted to rely upon the expiry of the validity period of the reserve/waiting list to deny consideration to the petitioners.

It is also pertinent to note that this Court, vide interim order dated 19.03.2026, had restrained the respondents from re-advertising two posts of Assistant Professor (Super Specialty) (Paediatric Surgery) in the Unreserved/OBC categories. The aforesaid circumstances, when considered cumulatively, fortify the petitioners' claim for consideration against the vacancies which arose on account of the non-joining of the selected candidates. In the peculiar facts and circumstances of the present case, the respondents cannot be permitted to defeat the petitioners' claim by taking recourse to the technical plea of expiry of the reserve/waiting list, particularly when the delay in taking consequential action is attributable to their own conduct.

11. In view of the facts and circumstances of the present case, and having regard to the law laid down in ***Sarita Choudhary (supra),*** this Court finds merit in the present writ petition, which deserves to be and is hereby allowed. The respondent authorities

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are directed to requisition the names of the petitioners from the RPSC within 15 days from today and proceed to offer them appointment to the posts of Assistant Professor (Super Specialty) (Paediatric Surgery) in the respective Unreserved/OBC categories, against the vacancies arising on account of the abandonment of claim or non-joining of the selected candidates, subject to verification of their eligibility and fulfilment of other applicable conditions.

12. The stay petition and all pending applications, if any, also stand disposed of.

(KULDEEP MATHUR),J

Crt_9 (1810)
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Divya Raj Jasmatiya

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