RAJASTHAN HIGH COURT

**Reportable**

# HIGH COURT OF JUDICATURE FOR RAJASTHAN
# AT JODHPUR

D.B. Special Appeal Writ No. 1278/2026
CNR: RJHC011095502026 | URN: SAW / 2625U / 2026

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Kamal Kishore Chotiya S/o Shri Mohan Lal Sharma, Aged About 58 Years, Village Minolasari, Post Singhana, Tehsil Ladnu, District Didwana -Kuchaman (Previously Nagaur) Rajasthan.

----Appellant

Versus

1. The State Of Rajasthan, The State Of Rajasthan, Through The Additional Chief Secretary, Sanskrit Education, Government Secretariat, Jaipur
2. Secretary, Rajasthan Public Service Comission, Ajmer
3. The Senior Deputy Secretary, (Education Group-6), Government Of Rajasthan, Secretariat, Jaipur
4. The Director, Sanskrit Education Department, Shiksha Sankul, Jln Marg, Jaipur, Rajasthan.
5. Dr Niranjan Sahu S/o Shri Bhaskar Chandra Sahu, R/o 9, Vidhya Vihar, Kayad Road, Ghooghra, Ajmer, Rajasthan.
6. Rajesh Sharma S/o Shri Babu Lal, R/o Government Varishath Upadhyay , Sanskrit School, Devanbara, District Dausa, Rajasthan.

----Respondents

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| For Appellant(s) | : | Mr. Ankur Mathur assisted by<br>Ms. Divya Bapna<br>Mr. Harshvardhan Thanvi<br>Mr. Udit Mathur |
| For Respondent(s) | : | Mr. B.L. Bhati, AAG assisted by<br>Mr. Deepak Chandak. |

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**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**
**HON'BLE MR. JUSTICE CHANDRA SHEKHAR SHARMA**

**Judgment**

**06/11/2026**

1. The present Special Appeal has been preferred against the common order dated 23.09.2026 passed by the learned Single

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Judge whereby the batch of writ petitions filed by the petitioner-appellant, have been disposed of without adjudication of the controversy on merits, relegating the appellant to avail the alternative and efficacious remedy by way of filing Original Applications before the Rajasthan Civil Services Appellate Tribunal (RAT).

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2. Briefly stated facts of the case are that the petitioner-appellant was initially appointed on the post of Senior Teacher Grade-I *(Samanya Vyakaran)* on 24.09.1993 and was subsequently accorded ad hoc promotion to the post of Principal (*Varishth Upadhyay)*. However, the respondents failed to determine the vacancies year-wise and convene Departmental Promotion Committees in accordance with the Rajasthan Sanskrit Education Service Rules, 1977 and the Rajasthan Sanskrit Education Subordinate Service Rules, 1978. Instead, vacancies pertaining to different years were clubbed together and promotions were made by applying the Rajasthan Sanskrit Education State and Subordinate Service (School Branch) Rules, 2015, without considering the appellant's candidature under the rules and criteria applicable to the respective vacancy years.

3. That the petitioner-appellant challenged his reversion order dated 23.11.2017 by way of filing S.B. Civil Writ Petition No. 16133/2017, wherein interim protection was granted in favour of the appellant vide order dated 07.12.2017, which was subsequently made absolute. During the pendency of the said writ petition, the respondents issued an order dated 30.06.2020 directing re-fixation of the appellant's pay with reference to the

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post of Senior Teacher and contemplating recovery of the excess amount paid. The said order was challenged by the petitioner-appellant by way of filing the S.B. Civil Writ Petition No. 10663/2020, wherein the learned Single Bench vide order dated 14.10.2020, stayed the operation of the order dated 30.6.2020. Thereafter, the respondents filed application under Article 226(3) of the Constitution of India seeking vacation of the said stay order and the same came up for consideration before the learned Single Bench on 23.08.2023 and while rejecting the said application, the learned Single Judge not only admitted the writ petition, but also confirmed the interim order till the disposal of the writ petition.

4. That however, the said writ petitions alongwith connected writ petitions came up for consideration before the learned Single Bench on 23.09.2026 and the learned Single Bench holding that since the appellant is having alternative and efficacious remedy by way of filing Original Applications before the RAT, dismissed the writ petitions with liberty file the same.

5. Heard the learned counsel for the petitioner and perused the material available on record.

6. Learned counsel for the appellant submits that the impugned order passed by the learned Single Judge is contrary to law and the facts of the case, inasmuch as the writ petitions have been disposed of without adjudicating the substantive controversy on merits, while relegating the appellant to avail the remedy before the Rajasthan Civil Services Appellate Tribunal (RAT), despite the fact that the writ petitions had already been admitted and the stay

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orders granted by the learned Single Judge were confirmed till the disposal of the writ petitions.

7. Learned counsel further submits that the availability of an alternative remedy before the RAT does not constitute an absolute bar to the exercise of writ jurisdiction under Article 226 of the Constitution of India, particularly when the writ petitions had already been entertained and interim protection had continued to operate in favour of the appellant since 14.10.2020. He submits that relegating the appellant to the alternative forum at this belated stage would cause serious prejudice and compel him to initiate fresh proceedings after nearly nine years.

8. Learned counsel further submitted that the learned Single Judge failed to appreciate that the appellant's grievance primarily arises from the failure of the respondents to determine vacancies year- wise and convene Departmental Promotion Committees in accordance with the Rules applicable to the respective vacancy years. Consequently, the appellant was denied consideration for promotion against vacancies which had arisen prior to the introduction of the Rules of 2015. The legality of applying the criteria prescribed under the subsequently introduced Rules of 2015 to vacancies pertaining to earlier years constitutes the substantive controversy, which remains un-adjudicated.

9. Learned counsel also submits that the learned Single Judge failed to consider the judgment dated 04.01.2024 passed by this Hon'ble Court in ***Dr. Mahamaya Prasad Chobisa & Ors. v. State of Rajasthan & Ors.***, S.B. Civil Writ Petition No. 4265/2015, wherein, in relation to similarly situated Senior

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Teachers of the same Department, directions were issued for year-wise determination of vacancies, convening of DPCs and consideration of eligible candidates in accordance with law. It is contended that the aforesaid judgment had direct relevance to the controversy involved in the appellant's case and ought to have been duly considered before relegating him to an alternative forum.

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10. Learned counsel further submits that, despite the specific objection raised regarding the functioning of the RAT at Jodhpur and the respondents themselves having relied upon an undertaking for making the Tribunal operational with appropriate members, the learned Single Judge erred in relegating the appellant to the said forum without recording any finding as to the availability of an effective and efficacious remedy.

11. Learned counsel also submits that the learned Single Judge failed to take into consideration the prolonged pendency of the connected service dispute and the fact that the present writ petitions arose out of consequential action initiated by the respondents during the pendency of the earlier proceedings.

12. Learned counsel for the petitioner, in support of his contention, has placed reliance upon the judgments rendered in ***Smt. Pushpa Dave v. Rajasthan High Court***, reported in **2001 (2) RLW (Raj.) 784**; ***M/s Utkal Highways Engineers and Contractors v. Chief General Manager & Ors***., decided on 08.01.2025; ***and DVRGA Enterprises (P) Ltd. & Anr. v. Principal Secretary, Government of U.P. & Ors.***, reported **in (2004) 13 SCC 655**. Relying upon the aforesaid judgments,

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learned counsel submits that once a writ petitions have been admitted without any condition, the respondents have been called upon to file their replies and the pleadings are complete, the Court ought to decide the matter on merits rather than dismissing the writ petitions at a subsequent stage on the grounds of delay and laches or availability of an alternative remedy. He further contended that relegating the parties to an alternative remedy after a considerable lapse of time, particularly when the matter has remained pending for several years and the requisite pleadings and materials are already available on record, would not be an appropriate course, unless the controversy involves disputed questions of fact which cannot be adjudicated without recording formal evidence.

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13. Lastly, learned counsel submits that the impugned order has resulted in a failure of justice, as the substantive rights and claims of the appellant have remained wholly unexamined and undecided. Accordingly, it is prayed that the impugned order dated 23.09.2026, to the extent it disposes of S.B. Civil Writ Petition No. 10663/2020, deserves to be set aside and the writ petition be restored for adjudication on merits.

14. Per contra, learned AAG appearing for the respondent-State submits that the learned Single Judge has rightly rejected the writ petitions as the appellant is having alternative and effacacious remedy.

15. We have considered the submissions advanced by learned counsel for the parties and have carefully perused the material available on record.

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16. The controversy which arises for consideration in the present appeal is limited to the extent whether, in the facts and circumstances of the case, the learned Single Judge was justified in relegating the appellant to avail the alternative remedy before the Rajasthan Civil Services Appellate Tribunal, particularly when the writ petitions had already been admitted, the pleadings stood completed and the interim orders granted in favour of the appellant had been confirmed to operate till the disposal of the writ petitions.

17. At the outset, it is required to be observed that the existence of an alternative remedy, by itself, does not operate as an absolute bar to the exercise of jurisdiction by this Court under Article 226 of the Constitution of India. The rule of alternative remedy is essentially a rule of self-imposed restraint and does not take away the constitutional jurisdiction vested in this Court.

18. In the present case, it is not in dispute that the appellant initially approached this Court by way of filing S.B. Civil Writ Petition No.16133/2017 and then challenging the consequential order dated 30.06.2020 preferred S.B. Civil Writ Petition No.10663/2020, whereby his pay was directed to be refixed with reference to the post of Senior Teacher and recovery of the alleged excess payment was contemplated. This Court granted interim protection by staying the effect and operation of the said order. Subsequently, when the respondents sought vacation of the interim order by filing an applications under Article 226(3) of the Constitution of India, the learned Single Judge, vide order dated 23.08.2023, rejected the said applications, **admitted** the writ

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petitions and specifically directed that the interim order shall continue to operate till the disposal of the writ petitions.

19. Thus, the aforesaid sequence of events clearly reflects that the writ petitions were not merely entertained at an initial stage but was consciously **admitted** by the learned Single Judge. Once the writ petitions had been admitted and the interim orders were specifically confirmed to operate till disposal of the writ petitions, the appellant had a legitimate expectation that the controversy raised by him would be examined and adjudicated by this Court on its merit.

20. We are conscious of the settled proposition of law that mere admission of a writ petitions or grant of an interim orders do not, in every circumstance, preclude the Court from subsequently examining the question of maintainability or the availability of an alternative remedy, but in the peculiar facts and circumstances of the present case, particularly when the writ petitions had remained pending consideration for a long period of nine years, the interim protection had already been confirmed till the disposal of the writ petitions and the matter had proceeded to the stage of final adjudication, relegating the appellant to an alternative forum at such a belated stage would cause a serious prejudice and compel him to initiate fresh proceedings at this stage.

21. It is also relevant to notice that the grievance raised by the appellant is not confined merely to the consequential order dated 30.06.2020. The appellant has also raised a substantial issue concerning the determination of vacancies year-wise. The appellant has also placed reliance upon the judgment dated

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04.01.2024 passed by this Court in ***Dr. Mahamaya Prasad Chobisa & Ors. v. State of Rajasthan & Ors.***, ***S.B. Civil Writ Petition No. 4265/2015***.

22. We also find substance in the contention advanced by learned counsel for the appellant that the present writ petition arose out of consequential action initiated by the respondents during the pendency of the earlier proceedings instituted by the appellant challenging his reversion. The interconnection between the two proceedings, coupled with the subsisting interim protection and the subsequent admission of the writ petitions, was a relevant consideration which ought to have been taken into account before relegating the appellant to another forum.

23. The judgments relied upon by learned counsel for the appellant, particularly ***Smt. Pushpa Dave v. Rajasthan High Court***, reported in ***2001 (2) RLW (Raj.) 784***, and ***M/s Utkal Highways Engineers and Contractors v. Chief General Manager & Ors.***, decided on 08.01.2025, also lend support to the contention raised by the learned counsel for the petitioner. The Division Bench of this Court in the case of ***Smt. Pushpa Dave (supra)*** has held as under:-

> *"12. In our view, once the writ petition is **admitted** without any condition and the respondents were asked to file reply etc., the writ petition cannot be dismissed on the ground of laches and availability of alternative remedy and the Court has to dispose of the matter only on merits since all the required materials are already filed and the same are available for adjudication of the court. Therefore, we have no hesitation to reject the contention raised by Mr. Lodha that the writ petition*

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*should be dismissed on the question of delay and laches."*

24. The Hon'ble Supreme Court in the case of ***M/s Utkal Highways Engineers and Contractors*** (supra) held as under:

> *"8. Be that as it may, the High Court has not dealt with the merits of the writ petition. Moreover, it is not an inviolable rule that no money claim can be adjudicated upon in exercise of writ jurisdiction. Non-payment of admitted dues, inter alia, may be considered an arbitrary action on the part of respondents and for claiming the same, a writ petition may lie. Further, throwing a writ petition on ground of availability of alternative remedy after 10 years, particularly, when parties have exchanged their affidavits, is not the correct course unless there are disputed questions of fact which by their very nature cannot be adjudicated upon without recording formal evidence."*
>
> *[emphasis supplied]*

25. Hence, it is clear that where a writ petition has already been admitted, the parties have completed their pleadings and the matter has remained pending for a considerable period, the Court should ordinarily consider adjudicating the controversy on merits rather than relegating the parties to another forum at a subsequent stage, particularly when no compelling circumstances warranting such a course are apparent.

26. In view of the aforesaid factual and legal position, we are of the considered opinion that the learned Single Judge ought not to have disposed of the writ petitions by relegating the appellant to avail the alternative remedy before the Rajasthan Civil Services Appellate Tribunal.

27. Accordingly, the present Special Appeal is allowed. The common order dated 23.09.2026 is set aside to the extent it

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relates to S.B. Civil Writ Petition No.10663/2020. The said writ petition is restored to its original number and the matter is remanded back for deciding the same on merits by the learned Single Judge in accordance with law.

28. It is made clear that this Court has not expressed any opinion on the merits of the case including the appellant's entitlement to promotion, the determination of vacancies year-wise, the applicability of the relevant service rules or the legality of the consequential order dated 30.06.2020. All such issues are left open to be decided by the learned Single Judge, uninfluenced by any observation made hereinabove.

29. The interim protection granted vide order dated 14.10.2020 and confirmed vide order dated 23.08.2023 shall continue to operate until the writ petition is taken up for consideration by the learned Single Judge, who shall be at liberty to pass appropriate orders regarding continuation, modification or vacation thereof, after hearing the parties.

30. All pending applications, if any, also stand disposed of accordingly.

**(CHANDRA SHEKHAR SHARMA),J** **(VINIT KUMAR MATHUR),J**

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