RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 22255/2026
CNR: RJHC021059232026 | URN: CW / 46943U / 2026

Jyoti, W/o Shri Jitendra Sirawata, Aged About 35 Years, R/o Villa No. 160, Kesar Green Mohanpura, Sanganer, Jaipur Rajasthan

----Petitioner

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Versus

1. State Of Rajasthan, Through Its Principal Secretary, Education, Govt. Secretariat, Jaipur (Raj.)
2. Director, Secondary Education Bikaner And Ex Officio Additional State Project Director (Senior), Samgra Shiksha Abhiyan (Smsa), Bikaner
3. District Education Officer (H.q.) Secondary, Jaipur
4. Principal, Government Senior Secondary School, Muhana, Sanganer, Jaipur
5. Shri Ravi Sharma, Basic Computer Instructor Through Director, Secondary Education, Bikaner
6. Shri Meera Sharma, Basic Computer Instructor Through Director, Secondary Education, Bikaner

----Respondents

For Petitioner(s)	:	Mr. Hira Lal Gothwal with Mr. Vijay Pathak and Mr. Bhavya Sharma
For Respondent(s)	:	Mr. Devansh Sharma, Dy.GC

JUSTICE ANOOP KUMAR DHAND

Order

03/11/2026

1. By way of filing the instant writ petition, challenge has been led to the impugned transfer order dated 07.07.2026, passed by the respondent-Authority, by which the petitioner has been transferred.

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2. Learned counsel for the petitioner submits that the petitioner has delivered a baby on 15.05.2026 and currently she is on her maternity leave. During the currency of her maternity leave, she has been transferred to a remote area from her present place of posting. Counsel submits that looking to the age of the infant baby, the presence of the petitioner at her present place of posting is required for the upbringing and maternal care of the infant baby. Hence, under these circumstances, the petitioner has approached this Court by way of filing the instant writ petition. Counsel also submits that this Court in the case of **Suman Meena Vs. State of Rajasthan**, while deciding **S.B.C.W.P. No.19649/2026** vide order dated 29.09.2026, has dealt with the identical issue and disposed of the said writ petition, granting liberty to the mother of an infant child to file representation before the respondent-Authority and the respondent-Authority have been directed to take a sympathetic view on humanitarian grounds.

3. Per contra, learned counsel appearing for the respondents opposed the arguments and submitted that a policy decision has been taken by the government not to disturb any mother who is availing the maternity leaves. Counsel further submits that the petitioner has not been transferred to another district, rather she has been transferred within the same district on account of administrative exigency. Hence, under these circumstances, interference of this Court is not warranted and the instant writ petition is liable to be rejected.

4. Heard and considered the submissions made at the bar and perused the material available on the record.

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5. This fact is not in dispute that the petitioner has delivered a baby on 15.05.2026 and is currently availing her maternity leave. It is also not in dispute that during the currency of her maternity leave, she has been transferred vide impugned order dated 07.07.2026. At present, the age of the infant is five months and the infant is in the lap of the petitioner, wholly dependent upon her for breastfeeding. The newly born baby is under intensive care and requires constant maternal care and attention. Despite knowing this fact, the respondents have transferred the petitioner. Such an act of the respondents is not only against the transfer policy of the State, but also against the principles of humanity and Right to Life of the infant as guaranteed under Article 21 of the Constitution of India.

6. It is a settled position of law that transfer is an incident of service and is an exigency of service. Ordinarily, Courts are reluctant to interfere unless mala-fide or grave hardship is shown.

7. However, the exigency of service is not an absolute shield. The law carves out an exception where the transfer causes extreme hardship such as critical medical needs of an infant child.

8. When an infant is involved, the legal lens shifts from administrative efficiency to the best interests of the child. The welfare of the child is the paramount consideration of the Court.

9. For healthy growth of a child, the love and tenderness of a mother is most required, particularly when the child is in infancy.

10. It is general perception that as far as possible, a woman employee having infant child below one year should not be disturbed and her case should be considered sympathetically.

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11. Apart from that, the right of a newly born infant for motherly care, nutrition and development is implicit in Article 21 and Article 15(3) of the Constitution of India and is also protected under the Maternity Benefit Act, 1961.

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12. This Court is conscious of the fact that the relationship between a mother and her newly born infant of five months is not merely biological but is a fundamental, natural and constitutional right of highest pedestal. The initial days including the first six months of exclusive breast feeding are universally recognized by World Health Organization and UNICEF as most critical for physical, mental and emotional development of the child. The mother is the sole source of nutrition, warmth, security and emotional bonding for the infant.

13. The right to motherhood, right to breast feed and right of infant to be breast fed and nurtured have been held to be part of Right to Life with dignity under Article 21 of Constitution. Forcible separation of a four-month-old child from mother due to transfer to a far off place would amount to deprivation of this invaluable right, both for mother and child, and would cause irreparable psychological trauma, insecurity, malnutrition and health hazard to the infant, which cannot be compensated in any manner. The State as a model employer is expected to protect this sacred bond and not to break it by mechanical transfer.

14. Child care, maternal care and infant welfare are integral part of social justice. In the case of female employees who are nursing mothers, a more humane, compassionate and sensitive approach is required. The emotional bonding, skin-to-skin contact, breast feeding and constant presence of mother is essential for

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development of trust, affection, immunity and personality of infant. Transferring the mother at this tender stage of the baby being five months old would be against the very spirit of Maternity Benefit Act, 1961 as amended in 2017, Child Care Leave norms, and International Convention on Rights of the Child.

15. Keeping in view the fact that the petitioner is having a five months old newly born baby/infant in her lap and the baby is fully dependent on the mother, and considering the biological, emotional and nutritional necessities of an infant and the strong emotional bonding between mother and child, this Court deems it appropriate to direct the respondents to consider the case of the petitioner sympathetically and humanely, rather than mechanically.

16. Accordingly, the present writ petition is disposed of with the following directions:

(i) The petitioner shall file a fresh representation along with certified copy of this order, birth certificate / proof of age of the infant child, and medical certificate showing requirement of breast feeding and bonding, before the competent authority / Respondents within a period of seven days from the date of receipt of certified copy of this order.

(ii) The competent authority shall consider the representation of the petitioner sympathetically and with a humane approach, in the interest of the five months old newly born infant baby and its strong emotional bonding, nutrition, health and welfare with the mother, keeping in view the state transfer policy,

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child care norms, Maternity Benefit Act, article 21 of the Constitution of India regarding welfare of infant child as paramount consideration, and pass a reasoned and speaking order within a period of five weeks from the date of receipt of the aforesaid representation.

(iii) Till the representation of the petitioner is decided, the effect and operation of the impugned transfer order dated 07.07.2026 qua the petitioner shall remain stayed for a period of six weeks and she shall be allowed to continue at her present place of posting for the aforesaid period of six weeks.

(iv) It is made clear that this order has been passed in the peculiar facts and circumstances of the case, considering the welfare, rights and emotional bonding of the four-month-old infant child with mother, and the same may not be treated as a precedent.

17. The respondents would be at liberty to pass fresh order of transfer after one year, if the administrative exigency so arises.

18. With the aforesaid directions, the writ petition stands disposed of. Stay application also stands disposed of. No order as to costs.

(ANOOP KUMAR DHAND),J

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