HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 175/2024

1. Praveen Singh Shekhawat S/o Shri Shravan Singh Shekhawat, Aged About 35 Years, Ward No 9 Shekhawat Colony, Bagar, District Jhunjhunu At Present Working At Dungarpur Medical College, Dungarpur.
2. Dr. Navneet Singh S/o Shri Vikam Singh Shekhawat, Aged About 32 Years, 202 Kb House, Pratap Nagar, 100 Feet Road Dungarpur.
3. Dr. Tara Chand S/o Shri Narottam Singh, Aged About 31 Years, House No. 276, Pratap Nagar, Dungarpur.
4. Dr. Ritul Rathore S/o Shri Prempal Singh Rathore, Aged About 30 Years, 202, Kb House, Pratap Nagar, 100 Feet Road, Dungarpur.
5. Dr. Brijesh Kumar Baranda S/o Shri Ratanlal Baranda, Aged About 36 Years, 2Nd Floor, Parswa Medical Store, Near Pratap Chowk, Hospital Road, Dungarpur.
6. Dr. Pappu Lal Salvi S/o Shri Mohan Lal Salvi, Aged About 29 Years, Gautam Lal Kharadi, Radhika Sadan New Colony, Dungarpur.
7. Dr. Ishaan Kalvatia S/o Shri Hemraj Kalavatia, Aged About 29 Years, Sohan Lalji Jain Gandhi Aasharam Near Pangtanjali Hospital, Udaipur Road, Dungarpur.
8. Dr. Mohammed Khushnood S/o Late N.b. Nalamawar, Aged About 33 Years, A 33 Shastri Nagar, Dungarpur.
9. Dr. Ajay M. Nalamwar S/o Late M.b. Nalamwar, Aged About 34 Years, Quarter No. 5, Government Faculty Quarter, Thana Dungarpur.
10. Dr. Radheshyam Jat S/o Shri Shaitan Singh Chouwdhary, Aged About 34 Years, Jhalara Kui Dhani Jatipura Chomu At Present Dungarpur.
11. Dr. Kavita Arya D/o Shri Shriram Arya, Aged About 30 Years, Shivaji Nagar, Dungarpur.

----Appellants

Versus

1. State Of Rajasthan, Through Secretary, Medical Education Department, Govt. Of Rajasthan, Secretariat, Jaipur.
2. Directorate Of Medical Education, Chikitsa Shiksha

Bhawan, Govind Marg, Jaipur.

3. The Additional Director (Administration) And Joint Secretary, Coordinator, Rajasthan Medical Education Society, Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.
4. Rajasthan Medical Education Society (Rajmes), Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.
5. The Coordinator, Rajasthan Medical Education Society (Rajmes), Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.
6. The Principal And Controller, Medical College And Associated Group Of Hospitals, Dungarpur.

----Respondents

Connected With

D.B. Spl. Appl. Writ No. 141/2024

1. Sohel Solanki S/o Shri Abdul Rasheed Solanki, Aged About 38 Years, R/o Chaniya Kirana Store, Near Nehru Yuva Kendra, Barmer.
2. Dr. Mukesh Fulwaria S/o Shri Bhanwar Lal Fulwaria, Aged About 40 Years, R/o Barmer Medical College, Barmer.
3. Dr. Aradhana Devi W/o Shri Dr. Anil Shishodiya, Aged About 37 Years, R/o Navjeewan Ke Pass, Laxmipura, Barmer.
4. Dr. Vandana Sharma W/o Dr. Kamlesh Kumar Sharma, Aged About 42 Years, R/o 302, Aakansha Apartment, Sector 4, Vidhyadhar Nagar, Jaipur At Present Barmer Medical College, Barmer.
5. Dr. Ghanshyam Gehlot S/o Shri Bhika Ram Gehlot, Aged About 35 Years, R/o Under Chaibili Ghati Near Neem Ka Gatta, Bikaner At Present Barmer.
6. Dr. Motilal Khatri D/o Shri R.l. Khatri, Aged About 43 Years, R/o Khatri Street, Khatriyon Ka Michla Bas, Barmer.
7. Dr. Sweta Amarneel D/o Mr. Amrendra Kumar, Aged About 37 Years, R/o B/4/8 Rajwest Colony, Shivkar Road, Barmer.

----Appellants

Versus

1. State Of Rajasthan, Through Secretary Medical Education

Department Govt Of Rajasthan Secretariat Jaipur

2. Directorate Of Medical Education, Chikitsa Shiksha Bhawan, Govind Marg, Jaipur

3. The Additional Director (Administration) And Joint Secretary, Coordinator, Rajasthan Medical Education Society, Chikitsa Shiksha Bhawan, Govind Marg, Jaipur

4. Rajasthan Medical Education Society (Rajmes), Chikitsa Shiksha Bhawan, Govind Marg, Jaipur

5. The Coordinator, Rajasthan Medical Education Society (Rajmes), Chikitsa Shiksha Bhawan, Govind Marg, Jaipur

6. The Principal And Controller, Medical College And Associated Group Of Hospitals, Dungarpur.

----Respondents

D.B. Spl. Appl. Writ No. 163/2024

1. Jeetendra Yogi S/o Rati Ram Yogi, Aged About 35 Years, R/o 81 Housing Board Vistar, Dungarpur.

2. Dr. Arvind Kumar S/o Shri Ramesh Chand Goyal, Aged About 41 Years, R/o Chetan Das, 8/46, Housing Board, Dungarpur.

3. Dr. Jignesh Kumar S/o Shri Mishri Mal, Aged About 37 Years, R/o Kachrulal Jain, Sf71, Shivji Nagar, Housing Board, Dungarpur.

4. Dr. Rajesh Roat S/o Shri Shiv Ram Roat, Aged About 39 Years, R/o Plot No. 17, Pratap Nagar, Dungarpur.

5. Dr. Mamta Damor S/o Shri Kal Singh Damor, Aged About 36 Years, R/o Plot No. 17, Pratap Nagar, Dungarpur.

6. Dr. Prabhash Bhavsar S/o Shri Harirar Prasad, Aged About 38 Years, R/o Karulal Jain, Gokuldham Society, Near Vardaan Kidzee School, Dungarpur.

7. Dr. Arihant Tater S/o Shri Madan Tater, Aged About 34 Years, R/o Near Garh, Ratangarh, District Churu At Present Dungarpur.

8. Dr. Priya Vijay Kumar Gameti D/o Shri Vijay Kumar Gameti, Aged About 33 Years, R/o 299 C/o Kesari Mal Jain, Opposite 132 Kv Power House, Dungarpur.

9. Dr. Mala Jain D/o Shri Virendra Jain, Aged About 35 Years, R/o House Number 360, Near Pratap Circle Hospital Road, Dungarpur.

10. Dr. Ankit Gupta S/o Shri Mahesh Kumar Gupta, Aged About 35 Years, R/o 3/21 New Colony Towards Police Line, Dungarpur.

11. Dr. Charita Meena D/o Shri Surendra Meena, Aged About 42 Years, R/o H. No. 1/j/17, Bramsthali Colony, Rajasthan Baord Extension Scheme, Dungarpur.

12. Dr. Vijay Kumar Meena S/o Shri Nand Lal Meena, Aged About 40 Years, R/o Vardhanman Medical, New Hospital Road, Dungarpur.

13. Dr. Gunvanti Meena W/o Shri Hari Narain Meena, Aged About 38 Years, R/o Vardhanman Medical, New Hospital Road, Dungarpur.

----Appellants

Versus

1. State Of Rajasthan, Through Secretary Medical Education Department Govt Of Rajasthan Secretraiat Jaipur

2. Directorate Of Medical Education, Chikita Shiksha Bahwan, Govind Marg, Jaipur.

3. The Additional Director (Administration) And Joint Secretary, Coordinator, Rajasthan Medical Education Society, Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.

4. Rajasthan Medical Education Society (Rajmes), Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.

5. The Coordinator, Rajasthan Medical Education Society (Rahmes), Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.

6. The Principal And Controller, Medical College And Associated Group Of Hospitals, Dungarpur.

----Respondents

D.B. Spl. Appl. Writ No. 173/2024

1. Prahlad Kalwan S/o Shri Sita Ram Kalwan, Aged About 43 Years, Aj-23/24, Mahaveer Nagar Barmer.

2. Dr. Mahendra Kumar Choudhary S/o Shri Nawla Ram, Aged About 44 Years, Rajeev Nagar, Sindhari Choraya, Barmer.

3. Dr. Ram Kumar Singhal S/o Shri Kedar Nath Singhal, Aged About 41 Years, Beriyon Ka Bas, Near Bachpan School, Raj Colony, Barmer.

4. Dr. Anil Kumar Sethiya S/o Shri Prakash Chandra Sethiya, Aged About 45 Years, New Ganpati Market, Barmer.

5. Dr. Pratap Tanwar S/o Shri Ratan, Aged About 36 Years, 397, Agarsen Nagar, Sri Ganganagar.

6. Dr. Girish Chandra Baniya S/o Shri Panna Ram Baniya, Aged About 43 Years, Near Income Tax Colony, Mahaveer Nagar, Barmer.

7. Dr. Garima Gupta D/o Shri Ashok Kumar Gupta, Aged About 38 Years, 2/ba/15, Near Ganesh Choraya, Pratap Nagar, Jodhpur.

8. Dr. Anshul Sharma S/o Shri Prakash Sharma, Aged About 43 Years, Behind Hutch Tower, Mahaveer Nagar, Barmer.

9. Dr. Madan Kumar Solanki S/o Shri Pyare Lal Solanki, Aged About 35 Years, Ad/12/jeengar Mohalla, Mahaveer Nagar, Barmer.

10. Dr. Neha Garg D/o Shri H.s. Garg, Aged About 36 Years, Vijay Vitta, Behind New Jewan Hospital, Ray Colony, Barmer.

11. Dr. Pooja Arya W/o Dr. Vikash, Aged About 39 Years, A/9, K.k. Colony, Bikaner At Present Barmer.

12. Dr. Ganeshee Lal Sharma S/o Shri Ram Dayal Sharma, Aged About 40 Years, Ward No. 14, Roopa Devi School, Dungarpur, Bikaner At Present Barmer.

13. Dr. Manish Choudhary S/o Shri Ghisa Ram Choudhary, Aged About 38 Years, Kawaro Bhanwaro Ka Bas, Badhar Chowk, Bilara, Jodhpur At Present Barmer.

14. Dr. Vikram Singh S/o Shri Bhagwat Singh, Aged About 35 Years, Bharatpur At Present Barmer Medical College, Barmer.

15. Dr. Dimple Shakeet W/o Dr. Manish Chinia, Aged About 39 Years, Behind Saraf Well, Near Airfail Tower Ke Pass, Ratangarh, Churu.

16. Dr. Alka Luniya D/o Dr. Bhikam Chand Luniya And W/o Dr. Pawan Dhariwal, Aged About 36 Years, Teliyon Ka Nichla Bas, Mal Godawan Road, Barmer.

----Appellants

Versus

1. State Of Rajasthan, Through Secretary Medical Education

Department Govt Of Rajasthan Secretariat Jaipur

2. Directorate Of Medical Education, Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.

3. The Additional Director (Administration) And Joint Secretary, Coordinator, Rajasthan Medical Education Society, Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.

4. Rajasthan Medical Education Society (Rajmes), Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.

5. The Coordinator, Rajasthan Medical Education Society (Rajmes), Chikitsa Shiksha Bhawan, Govind Marg, Jaipur.

6. The Principal And Controller, Medical College And Associated Group Of Hospitals, Dungarpur.

----Respondents

For Appellant(s)	:	Dr. Harish Kumar Purohit
For Respondent(s)	:	Mr. Narendra Singh Rajpurohit, AAG assisted by Ms. Anita Rajpurohit

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HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN

Judgment

Reserved on 07/01/2025
Pronounced on 20/01/2025

Per Dr. Pushpendra Singh Bhati, J:

1. The present Special Appeals have been preferred by the appellants (writ petitioners) laying a challenge to the order dated 04.10.2023 passed by the learned Single Judge of this Hon’ble Court in a bunch of writ petitions led by S.B. Civil Writ Petition No. 4595/2020 (Dr. Praveen Singh Shekhawat & Ors. Vs State of Rajasthan & Ors.).

2. The impugned order was passed, dismissing the writ petitions preferred by the appellants (writ petitioners), impugning the order dated 27.06.2019 [as reflected from the prayer clause of the writ petition(s)], pursuant to which the respondent department sought recovery of the remote area allowance granted to the probation trainees. Furthermore, as per the impugned order passed by the learned Single Judge of this Hon'ble Court, the writ petitioners also laid a challenge to the office order dated 14.05.2020, whereby the reduction in the salaries of the writ petitioners was made as well as the office order dated 29.05.2020, whereby the excess amount of salary paid to the writ petitioners was ordered to be recovered in four equal quarterly installments from their future salary.

3. As against the order issued by the Finance Department in question, the case of appellants (writ petitioners) as represented by Dr. Harish Kumar Purohit, learned counsel for the appellants, is that the appellants (writ petitioners) were employed as Senior Demonstrators and Assistant Professors in the respondent department and are posted at Government Medical College, Dungarpur. Their employment is governed by the provisions of the Rajasthan Medical Education Society Jaipur Personnel's (Recruitment and Other Conditions) Employment Rules, 2017 (*hereinafter referred to as 'Rules of 2017'*), which are the bye-laws framed by the Rajasthan Medical Education Society, Jaipur, Rajasthan.

3.1. The appellants (writ petitioners), since their appointment as Assistant Professors and Senior Demonstrators, were receiving a salary along with a Remote Area Allowance. This allowance was extended to them in accordance with the notification dated 08.03.2018, ensuring parity with other employees who were similarly entitled to the benefit.

3.2. By order dated 27.06.2019, the respondent department, without providing the appellants (writ petitioners) an opportunity of being heard, issued a letter stating that, as per Schedule V of the Rules of 2017, they are probationer/trainees and therefore not entitled to receive the Remote Area Allowance.

3.3. Aggrieved by the order dated 27.06.2019, the appellants (writ petitioners) preferred S.B. Civil Writ Petition No. 12538/2019 before this Hon’ble Court. The Court, by an interim order, stayed the effect and operation of the impugned order in favor of the petitioners/appellants. Notably, following the stay on the order dated 27.06.2019, the appellants (writ petitioners) continued to receive the Remote Area Allowance, except for the month of July, 2019.

3.4. Subsequently, the matter was heard by the learned Single Judge of this Hon’ble Court, and vide the impugned order dated 04.10.2023, the writ petition, along with other connected matters, were dismissed. Hence, the present special appeals have been preferred by the appellants (writ petitioners).

4. Dr. Harish Kumar Purohit, learned counsel appearing for the appellants submitted that the order dated 27.06.2019/10.05.2019

issued by the Finance Department, clarifying the position regarding remote area allowances being not admissible to the probation trainees like the present appellants, cannot be deemed valid unless supported by an amendment to the corresponding rules. Furthermore, even if the contents of the order dated 27.06.2019 are presumed to be correct, without conceding the same, its applicability would only be prospective. Consequently, any payments made prior to the issuance of the clarification dated 27.06.2019 cannot be considered unlawful and thus cannot be recovered.

4.1. Learned counsel further submitted that the respondent authorities have failed to provide any justification for withholding the remote area allowance from the appellant and/or seeking to recover the allowance already paid, from the appellants, and have thereby adopted an arbitrary and discriminatory approach in the matter. This is particularly untenable given that no distinction exists between probationer trainees and regular employees with respect to the performance of duties in remote areas.

4.1.1. In support of such submissions, learned counsel relied upon the judgment rendered by a Division Bench of this Hon'ble Court in the case of ***Gopal Kumawat vs. State of Rajasthan & Ors. (D.B. Civil Writ Petition No. 2963/2007***, *decided on 29.07.2015*).

4.2. Learned counsel also submitted that the appellants are entitled to the remote area allowance as explicitly provided under Rule 29 of the Rules of 2017. The said rule contains no restriction

or prohibition that would preclude the appellants from asserting their entitlement to the allowance.

4.3. Learned counsel further submitted that the respondent department has exhibited disparity by granting the remote area allowance to individuals holding the posts of Professor and Associate Professor while simultaneously denying the same benefit to the appellants during the period of probation, thereby creating a class within class. He further contended that while the teaching staff, including Professors, Deans, Superintendents, Additional Superintendents, and others, are remunerated in accordance with Schedule VI of the Rules of 2017, the appellants, serving as Assistant Professors and Senior Demonstrators, are receiving a consolidated salary as prescribed under Schedule V, which is not permissible under the law.

4.4. Learned counsel further submitted that the respondent authorities failed to afford the petitioners an opportunity of hearing before disallowing the said allowance and/or recovering the amount thereof already paid to them.

5. *Per contra*, Mr. Narendra Singh Rajpurohit, AAG assisted by Ms. Anita Rajpurohit, appearing on behalf of the respondents vehemently opposed the aforementioned submissions made on behalf of the appellants and emphatically supported the impugned order.

5.1. It was submitted that appellants (writ petitioners) posted as the Assistant Professors and Senior Demonstrators, were fully cognizant of their status as probational-trainees under the

provisions of the Rules of 2017 and the emoluments they were entitled to. Consequently, any excess amount erroneously disbursed to them cannot confer upon them a legitimate right to retain such payments.

5.2. It was further contended that regarding the issue of providing an opportunity of hearing to the appellants, the house rent allowance and remote area allowance were disbursed erroneously and in contravention of the provisions of the Rules of 2017. As such, the respondents were within their rights to recover the said amounts without issuing prior notice to the petitioners and in the given circumstances, grant of such prior opportunity to the appellants, would have made no difference.

5.3. Learned Counsel also submitted that Schedule V, in conjunction with Rule 29 of the Rules of 2017, was designed to establish uniform fixed remuneration for probationer-trainees across various categories, including teaching and non-teaching staff. The respondent department has not engaged in any discriminatory practices, as regular employees, upon successful completion of their probationary period, receive emoluments in accordance with Schedules VI and VII, as prescribed under Rule 32(1) and Rule 32(2), respectively.

6. Heard learned counsel for the parties as well as perused the record of the case along with the judgment cited at the Bar.

7. This Court observes that the appellants (writ petitioners), appointed as Assistant Professors and Senior Demonstrators pursuant to the Rules of 2017, were granted the remote area

allowance by the respondent department in accordance with the order dated 08.03.2018. However, through the subsequent order dated 27.06.2019, the respondents asserted that the petitioners/appellants, being probationers governed by Schedule V of the Rules of 2017 until the completion of their probation period, are not entitled to receive the remote area allowance.

8. This Court further observes that it is an uncontested fact that the appellants were cognizant of the employment conditions outlined under the Rules of 2017, which governed their initial engagement for a probationary period of one year, as specified in the proviso to Rule 29. Upon successful completion of the probationary period, the appellants were to receive remuneration determined in accordance with Schedule VI and Schedule VII, as provided under Rule 32(1) and Rule 32(2) of the Rules of 2017, respectively.

8.1. Upon a meticulous examination of the relevant provisions of the Rules of 2017, this Court observes that three teaching posts, namely Assistant Professor, Senior Demonstrator, and Physical Training Instructor, have been categorized under Schedule V, alongside various non-teaching posts. It is further noted that these positions constitute entry-level posts of the teaching staff and that they necessitate a period of initial training and evaluation by the respondent department, even subsequent to the selection process, so to ensure that the candidates are adequately equipped to perform their duties effectively. This evaluation period is formalized as a probationary period. Final appointments are made

only upon the successful completion of this probationary period, the duration of which varies depending on the specific post. Noticeably, the respondent department retains discretionary authority to reject the appointment of candidates who fail to demonstrate requisite efficiency during their probationary period, notwithstanding the fulfillment of the initial eligibility criteria for employment by them.

8.2. This Court is conscious of the judgment of the Hon'ble Supreme Court in the case of ***Purshottam Lal Dhingra v. Union of India, AIR 1958 SC 36***, wherein it was held that an appointment on probation is initially made to mitigate potential errors in human judgment while selecting suitable candidates for service. The probation period allows the employer to assess the employees' performance, including their work quality, efficiency, sincerity, and competence, in the following words:

> *"An appointment to a permanent post in government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial."*

8.3. The other teaching posts, excluding the aforementioned three, are promotional positions generally contingent upon factors such as the years of experience held by the candidate, the educational qualification, by virtue of post held and other criteria which may differ from post to post and thus, a probation period prior to appointment on these posts is not required.

8.4. In view of the aforesaid discussion, this Court is of the opinion that the distinction created by the respondents by keeping all the probationer-trainees under a common schedule, i.e., schedule V, is a reasonable classification. It is undisputed that post the probation period, the teaching staff including the probationer-trainees are remunerated as per Schedule VI read with Rule 32(1) and the non- teaching staff are paid as per Schedule VII read with Rule 32 (2) of the rules of 2017, as regular employees only upon successful completion of the probation period and therefore, no discrimination whatsoever by the respondents, as has been alleged by the appellants.

8.4.1. This Court further observes that since the distinction in question is reasonable and legally valid, the respondents' action of issuing the order dated 27.06.2019 stating that the petitioners/appellants are not entitled to the remote area allowance and the same has been erroneously paid to them during the period of probation, is correct and therefore, recovery of the amount paid in excess is liable to be recovered by the respondent department from the future salary of the appellants.

9. Addressing the contention that the respondents ought to have provided an opportunity of hearing before issuing the impugned orders, this Court observes that while it is preferable to grant such an opportunity, particularly when the recovery of the alleged excess amount impacts the civil rights of the appellants, the absence of such an opportunity does not alter the legal position. The excess payment was made inadvertently and is

explicitly contrary to Rule 29 and Rule 32(6) of the Rules of 2017. Consequently, the impugned orders cannot be deemed unlawful solely on the grounds of non-compliance with the principles of natural justice, as such non-compliance is not fatal to the respondents' right to recover the erroneously disbursed amounts from the petitioners/appellants.

10. This Court notes the contention of the appellants that the respondents cannot reduce the salary of a probationer during the probation period, as held by the Division Bench of this High Court in ***Gopal Kumawat (supra)***. However, it is observed that the matter is currently pending before the Hon'ble Supreme Court with a stay in place, and thus, the said judgment, at this stage, does not render any assistance to the appellants' case. Moreover, the Rules challenged in *Gopal Kumawat* (supra) differ from those involved in the present case.

11. In light of the aforesaid observations, this Court observes that the impugned order dated 04.10.2023 passed by the learned Single Judge of this Hon'ble Court has dealt with the question raised viz-a-viz the legality of the impugned order dated 27.09.2019 passed by the respondent department, elaborately in accordance with the settled principles of law governing the field as well as the facts and circumstances of the case. Thus, the same requires no interference of this Court.

11.1. Consequently, the present special appeals are ***dismissed***, and accordingly, the impugned order dated 04.10.2023 passed by learned Single Judge is upheld. However, it is directed that the

respondents may recover the excess amount in question from the future salary of the appellants in equal quarterly installments and not in lumpsum, while keeping into due consideration that the same may not cause unforseen financial difficulty to the appellants. All pending applications stand disposed of.

(MUNNURI LAXMAN),J **(DR. PUSHPENDRA SINGH BHATI),J**

SKant/-