

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 286/2025

Rampratap Godara S/o Shri Sahab Ram, Aged About 49 Years,
R/o Plot No.-B-59-L, Tar Ghar Road, Sector -06, Hanumangarh.

----Appellant

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Agriculture, Pant Krishi Bhawan, Govt. Of Rajasthan, Jaipur.
2. Deputy Secretary, To Government, Agriculture And Panchayati Raj Department (Agriculture) Govt. Of Rajasthan, Jaipur.
3. Joint Director, Agriculture (Administrative), Jaipur.

----Respondents

For Appellant(s)	:	Mr. R.C. Joshi
For Respondent(s)	:	Mr. I.R. Choudhary, AAG with Mr. Pawan Bharti Mr. Kanishk Singhvi

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

20/02/2025

1. Heard.
2. The present appeal has been filed assailing the order dated 05.02.2025, passed by the learned Single Judge of this Court in S.B. Civil Writ Petition No.2280/2025 (Rampratap Godara Vs. State of Rajasthan & Ors.), mainly on the ground that the said order has been passed in violation of the provisions contained in Rule 8(iii) of the Rajasthan Panchayati Raj (Transferred Activities) Rules, 2011.
3. Learned counsel appearing for the appellant would submit that the judgment dated 11.10.2018, passed by the Division Bench of this Court in the case of ***State of Rajasthan & Ors. Vs.***

Samleta (D.B. Special Appeal Writ No.736/2018) was not properly appreciated and the judgment dated 14.01.2022, rendered in the case of **State of Rajasthan & Ors. Vs. Mool Shanker (D.B. Special Appeal Writ No.683/2021)** has also not been correctly interpreted by the learned Single Judge. He would further submit that the judgment in the case of State of Samleta (Supra) is very clear that prior consent is necessary.

4. It is next submitted by learned counsel for the appellant that the learned Single Judge, despite having found that consent has not been obtained, dismissed the writ petition with a direction to Panchayat Department to consider ex-post facto consent within a period of 30 days, which amounts to re-writing the provisions of law.

5. The reliance placed on the judgment in the case Samleta (supra) is misconceived. The aforesaid judgment was taken into consideration and then explained by this Court in the subsequent judgment in the case of Mool Shanker (supra). In that case, the Division Bench of this Court explained the earlier judgment in the case of Samleta (supra) as below:-

"Coming to the validity of the transfer orders of the staff which effects inter-district transfers, the question that arises is whether the Health department can order such orders without obtaining consent of the Panchayati Raj department. The term 'consent' has not been defined in the rules but carries the specific connotation in legal term. Consent has been defined in Section 13 of the Contract Act, 1872 as two or more persons are said to be in consent when they agree upon the same thing in the same sense. The Law Lexicon by P Ramanatha Aiyar further explains the term 'consent' as an act of reason, accompanied with deliberation, the mind weighing as in a balance the good and evil on each side. The Law Lexicon by

Sumeet Malik defines the term 'consent' as an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Consent requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. The legislature has thus used the term 'consent' which has a specific legal connotation. Such consent cannot be tacit or through non-resistance. It must be expressed in specific term and through conscious decision making process.

While effecting inter-district transfers of transferred employees, the powers are retained by the department concerned but in all such cases the consent of the Panchayati Raj department has to be obtained. This has dual purpose. The cadre controlling and the powers of posting an employee across the district in the State would be retained with the parent department of the employee but at the same time since such an employee has been placed at the disposal of Panchayati Raj institution, the Panchayati Raj department would be in ideal position to concur or object to any such inter-district transfer. Such requirement of consent cannot be brought down to a mere formality by suggesting that the same is not mandatory but directory in nature. We are conscious of the decisions of the Supreme Court which suggests that one of the indicators of legal requirement being mandatory or directory is whether non-adherence to such requirement leads to any adverse penal consequences or not. However, this is not the only indicator nor the only means to interpret the statutory provision either as mandatory or directory. In the present case, treating such provision as directory, would completely neutralize the Rule of the Panchayati Raj department, in the context of transfer and posting of the Government employees who are posted at the disposal of the Panchayati Raj institution for carrying out the transfer activities. The consent of the Panchayati Raj department, in our opinion, is therefore necessary before transferring any such employee from one district to another. Neither recourse to Rule 13 of the Rules of 2011 nor the order dated 16.06.2018 passed by the Panchayati Raj

department would save the position. Rule 13 merely provides that in case of doubt in relation to interpretation or scope of the Rules, the decision of the Panchayati Raj department would be final. Firstly, we do not find the Panchayati Raj department has interpreted this provision. Secondly, such finality would not bind the Court when in exercise of writ jurisdiction it examines the legality of the Government action and in the context interpreting the Rule position. The order dated 16.06.2018 merely records that in view of the permission granted by the Government under order dated 12.03.2018, the consent of the Panchayati Raj department before transferring employee would not be necessary. Firstly, the order dated 12.03.2018 of the Government has not been produced before us despite our earlier request and time being granted. Secondly, this appears to be the order permitting transfer of the employees during a certain period. The Panchayati Raj department cannot abdicate its powers by providing that during such period transfer of transferred employees can be done *dehors* the statutory requirement.

However, this would not complete the full story. We have noticed that this has brought about a grim situation. The administration is saddled with two employees against one vacant post in some cases and in some cases the posts are vacant without anybody looking after it. Even if the situation has been brought about on account of administrative errors, we would like to find a way out of this impasse particularly looking to the great challenges that the Government administration in general and the Health department in particular is facing due to the recent third wave of Corona virus. Even otherwise it is not in interest of the administration of public health that large number of posts are unoccupied whereas some places have excess incumbents.

In this context, we do not find any limitation or inhibition under the Rules by virtue of which the *ex-post facto* consent of the Panchayati Raj department can not be obtained. The consent of the Panchayati Raj department is of course needed before effecting inter-district transfer as we have already concluded. However, there is nothing in the Rules to suggest that the same is a *sine qua non* and if the consent is

obtained post facto, the order of transfer cannot be validated. We notice that in the judgment dated 11.10.2018 passed by the Division Bench of this Court in the case of State of Rajasthan and others Vs. Samleta (D.B.Spl. Appl. Writ No. 736/2018), the Court had confirmed the judgment of the learned Single Judge setting aside orders of transfers under similar circumstances where the consent of the Panchayati Raj department was not obtained. In that case, the counsel for the employees-original petitioners had argued that the ex-post facto sanction granted by the Panchayati Raj department would not save the order of transfer. The Division Bench while confirming the view of the learned Single Judge had not given any declaration on this question. The judgment on this point is thus sub silentio and in our view does not lay down any ratio of a binding nature on this question. Under the circumstances, we reiterate that the Rules of 2011 do not prohibit ex-post facto sanction being granted by the Panchayati Raj department and if such ex-post facto sanction is obtained hereafter, it would be open for the Government to regularize all orders of inter district transfers."

6. In another judgment dated 17.08.2022, passed by the Division Bench of this Court in the case of **State of Rajasthan Vs. Rekha Kumari & Ors. D.B. Special Appeal Writ No.284/2022**, the aforesaid aspect was also taken into consideration and the transfer order was upheld on the ground that ex post facto sanction is permissible, relying upon the decision in the case of Mool Shanker (supra) following observations were made:-

"The present set of appeals involves inter-district transfers by the Medical and Health Department of its employees, whose services have earlier been transferred to the Panchayati Raj Department. During pendency of the appeals, learned AAG Shri Rajpurohit, has filed an additional affidavit with official note-sheets, as per which, a proposal was moved to grant ex-post facto sanction to validate transfer orders of surplus

transferred employees of the Panchayati Raj Department.

It is noteworthy from the affidavit that as per the distribution of Departments amongst the Cabinet of Ministers, Shri Parsadi Lal Meena, the Minister for Medical and Health Services, Government of Rajasthan has been given independent charge of Medical and Health Services under the Panchayati Raj Department.

After obtaining legal opinion and referring to the Division Bench judgment in the case of Mool Shankar (supra), the file was moved for grant of ex-post facto sanction to validate the transfer orders passed earlier by the Medical and Health Department. The Departmental officers proposed issuance of ex-post facto sanction and the Minister Shri Meena has approved the said proposal on 21.03.2022.

As a consequence of the above development, we are of the view that the Panchayati Raj Department has lawfully granted ex-post facto sanction as per the requirement of Rule 8 of the Rules of 2011 to validate the questioned transfer orders.

It was the fervent contention of the learned counsel for the respondent employees that ex-post facto consent does not relate to the transfer orders at hand because the date mentioned in the office note is 22.11.2021. This contention is not tenable for the simple reason that this date refers to the distribution of departments amongst the Ministers, whereby independent charge of Medical and Health Services coming under the purview of Panchayati Raj Department was assigned to Shri Parsadi Lal Meena, the Minister for Medical and Health Services. As is evident from the note-sheets annexed with the additional affidavit, both the Departments have concurred on the transfers, which are subject matter of challenge in this litigation. The action so taken is compliant of the view taken by the Division Bench in the case of Mool Shankar (supra) and hence, the requirement of consent of the Panchayati Raj Department for effecting transfers of the transferred employees of the Panchayati Raj Department has been satisfied.”

7. Once, it has been held that ex post facto sanction is permissible, challenge to the transfer order on the ground that consent was not obtained, is not tenable and liable to be rejected.

8. We also find that the learned Single Judge has issued a direction to the State to complete the process of grant of sanction within a period of 30 days.

9. But for the aforesaid direction, we would have considered this aspect as to whether even if it is permissible to grant ex post facto sanction, is it permissible to delay such ex post facto consent for indefinite period.

10. We concur with the view taken by the learned Single Judge that even in such case of ex post facto consent, the same is required to be completed within a reasonable period and it cannot be kept pending for an indefinite period.

11. In the present case, we are not inclined to say further on the aspects of statutory violation because the learned Single Judge has directed the exercise of ex post facto consent to be completed within a period of one month.

12. One of the additional grounds raised in this case is that the appellant has been subjected to as many as six transfers within a period of four years and this time also he has been transferred within a period of ten months.

13. This aspect requires consideration by the authorities because it is a case of too frequent transfers.

14. Though administrative exigencies may warrant transfer of an employee any time, considering that the appellant was subjected to transfer as many as six times within a short span of four years and the impugned transfer order has been passed within a period of ten months, we are inclined to stay the effect and operation of the order dated 15.01.2025 to the extent of transferring the petitioner.

15. Issue notice to the respondents.
16. Mr. I.R. Choudhary, learned Additional Advocate General takes notice on behalf of the respondents. Service is, therefore, complete.
17. List the matter for final disposal in the next week.
18. In the meantime, the effect and operation of the transfer order dated 15.01.2025 qua the petitioner shall remain stayed.

(MUNNURI LAXMAN),J

(MANINDRA MOHAN SHRIVASTAVA),CJ