

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

S.B. Civil Writ Petition No. 7190/2024

1. Pradeep Rakecha S/o Shri Ghan Shyam Rakecha, Aged About 32 Years, Resident Of Bapu Nagar, Gotan, District Nagaur.
2. Vishnu Kumar Meena S/o Shri Hargovind Meena, Aged About 27 Years, Resident Of Dungarpur, Dausa, District Dausa.
3. Shiv Shanker S/o Shri Naneki Lal, Aged About 36 Years, Resident Of 108, Nadi Paar Veer Gurjar Basti, Bhatwara, District Baran.
4. Dipendra Kumar Mehra S/o Shri Babulal Mehra, Aged About 33 Years, Resident Of C-379, Navjeevan Sangh, Bundi, District Bundi.
5. Manju Saini D/o Ghanshyam Prasad Saini, Aged About 30 Years, Resident Of Main Market Gram Mitrapura, District Sawaimadhopur.

-----Petitioners

Versus

1. The State Of Rajasthan, Through The Principal Secretary, Medical And Health Department, Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Mission Director, National Health Mission (Nhm), Swasthya Bhawan, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Hanuman Singh Choudhary
For Respondent(s)	:	Mr. Tanuj Jain for Mr. Mukesh Dave, AGC

HON'BLE MR. JUSTICE KULDEEP MATHUR
Order

RESERVED ON:- 07/05/2026

PRONOUNCED ON:- 25/06/2026

The present writ petition under Article 226 of the Constitution of India has been filed by the petitioners seeking the following reliefs:-

"It is, therefore, most respectfully prayed that this writ petition may kindly be allowed and -

i) by an appropriate writ, order or direction, the action of the respondents while not filling all advertised posts of

Community Health Officer (CHO) in pursuance to CHO Recruitment 2020 vide advertisement dated 31.08.2020 (Annex-1), is per se bad in the eye of law, unjust, arbitrary, violative to Article 14, 16 and 21 of the Constitution of India.

ii) by an appropriate writ, order or direction, the respondents may kindly be directed to issue select list for filling about 800 vacant posts of CHO in view of letter dated 30.09.2022 (Annex-13) issued by the respondent 2 Director, National Health Mission (NHM) by operative reserve/waiting list and if the petitioners comes in the said select list then they may be given appointment with all consequential benefits.

iii) by an appropriate writ, order or direction, respondents may kindly be directed to issue select list with cutoff marks towards filling available vacant posts with issuing cutoff marks of earlier waiting list dated 28.01.2022 (Annex-11).

iv) Any other writ, order or direction which this Hon'ble Court may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioners.

v) Costs of the writ petition may kindly be awarded to the petitioners."

2. With the consent of learned counsel representing respective parties, the matter is heard finally.

3. Learned counsel for the petitioners submitted that the Mission Director, National Health Mission (NHM), respondent No.2, issued an advertisement dated 31.08.2020 (Annexure-1) inviting applications from eligible candidates for appointment to the post of Community Health Officer (CHO) on a purely contractual basis at Health and Wellness Centres, in terms of the operational guidelines of Ayushman Bharat Comprehensive Primary Health Care through Health and Wellness Centres. Learned counsel submitted that applications were initially invited for 1,041 posts of CHO in TSP Areas and 5,269 posts of CHO in Non-TSP Areas. The petitioners, being eligible in all respects for appointment to the advertised posts, submitted their applications to the respondents.

4. Learned counsel further submitted that during the pendency of the recruitment process, 1,500 additional posts were included and it was decided that selections would be made against a total of 7,810 posts.

5. Learned counsel submitted that after completion of the selection process, the respondents published the select list along with the cut-off marks for the advertised posts. The names of the petitioners did not find place in the select list as they failed to secure marks above the prescribed cut-off in their respective categories.

6. Drawing the attention of the Court to various documents and inter-departmental communications placed on record, learned counsel submitted that about 457 posts out of the advertised 7,810 posts could not be filled due to non-verification of documents of certain candidates, and about 591 posts remained vacant owing to the non-joining of selected candidates. In these circumstances, the petitioners submitted various representations to the respondents seeking filling up of the vacant posts by publishing a reserve/waiting list, the number of such vacancies being more than 800. Learned counsel submitted that there was no valid reason or justification available with the respondents for not filling up the vacant posts despite the availability of eligible candidates. He further submitted that, despite a clear stipulation in the advertisement regarding publication of the main and reserve/waiting lists, the respondents failed to publish any reserve/waiting list, thereby depriving the petitioners of fair consideration against the available advertised vacancies. On these grounds, learned counsel prayed that the respondents be directed

to publish a select/reserve list for filling up the remaining unfilled vacancies. It was further prayed that, in the event the petitioners find place in such select/reserve list, they be granted appointment against the advertised posts.

7. *Per contra*, learned counsel for the respondents submitted that admittedly the names of the petitioners were not included in the final select list issued by the respondent-department for the post of CHO, as the petitioners failed to secure the cut-off marks prescribed by the recruiting authority. Learned counsel submitted that since the petitioners failed to secure marks above the cut-off, they cannot claim appointment against the advertised posts as a matter of right, nor can they seek judicial intervention for that purpose.

8. Drawing the attention of the Court to paragraphs 6, 7 and 8 of the reply, learned counsel submitted that after completion of the recruitment process initiated vide advertisement dated 31.08.2020 (Annexure-1), the unfilled vacancies were included in the subsequent notification issued by the Rajasthan Staff Selection Board on 12.01.2024, whereby the number of posts was increased from 3,531 to 4,494. He further submitted that the recruitment process initiated in the year 2024 has already been completed and, at present, no vacant post of CHO on a contractual basis is available in the respondent department. It was emphatically argued that since no vacant contractual post of CHO remains available after issuance of the notification dated 12.01.2024, no relief, as prayed for in the present writ petition, can be granted to the petitioners.

9. Heard.

10. Paragraphs 6, 7 and 8 of the reply are reproduced below for ready reference:-

"6. That in reply to the averments made in the para no.11 of the writ petition it is submitted that issuing the reserved list in accordance with the DOP's circular is not appropriate, considering the revised CHO recruitment process initiated by the Rajasthan Staff Selection Board (RSSB). The NHM has not implemented the reserved list based on the Personnel Department's circular. The NHM, in its capacity, has revised the number of posts. A revised notification was issued on 12.01.2024, increasing the number of posts by 963, bringing the total to (3531+963) 4494 posts. Additionally, a notification dated 24.06.2024 was issued for (3401+767)5261 posts under the PIP year 2024-26.

7. That in reply to the averments made in the para no.12 of the writ petition it is submitted that as per the revised notifications, the number of posts have been increased, and subsequently a new selection process has been initiated. The re-conducted examination for the CHO posts was held, and the results were released on 27.06.2024. Document verification of the selected candidates is currently in progress.

8. That the subsequent recruitment process for contract CHOs has included all vacant posts within the scope of the CHO Recruitment 2020, including the remaining posts from the previous recruitment. Therefore, there are no vacant contract CHO posts left after the advertised vacancies. As such, the action as per points 4 and 6 of the DOP's circular regarding the release of the waiting list is not required."

11. There is no dispute that the names of the petitioners were not included in the final select list published by the respondents for the post of CHO, as they failed to secure the cut-off marks prescribed by the recruiting authority. The grievance of the petitioners is that if the respondents had published a reserve/waiting list for the vacancies that remained unfilled due to non-joining or any other reason, they could have secured appointment against the advertised posts. However, the petitioners have failed to point out any statutory provision imposing an obligation upon them to fill all advertised vacancies, including those remaining unfilled due to non-joining of selected

candidates, by operating a reserve/waiting list. This Court also observes that even if the advertisement contemplated preparation of reserve/ waiting list, such stipulation by itself would not create an infeasible right in favour of the petitioner to seek appointment against the advertised posts as they have not shown any statutory provision indicating that it was obligated upon respondents to operate such a list for filling vacancies on account of non-joining or other contingencies.

As a matter of fact, the petitioners' case rests on the assumption that, upon publication of a reserve/waiting list, they would have secured appointment. Such an assumption lacks any statutory basis. There is nothing on record to confer upon the petitioners any enforceable right to appointment to the post in question. It is a settled principle of law that even inclusion of a candidate's name in a select list does not, by itself, confer an infeasible right to appointment. A select list merely renders a candidate eligible for consideration in accordance with the governing rules.

12. It is pertinent to note that the respondents in their reply have stated that all unfilled vacancies were included in the subsequent recruitment process initiated by the Rajasthan Staff Selection Board and, therefore, no vacant post of CHO pertaining to the advertisement dated 31.08.2020 (Annexure-1) remained available with the respondents. This Court in view of the specific stand of the respondents that all remaining vacancies pertaining to recruitment in question stood carried forward and included in the subsequent recruitment process, no surviving vacancy exists against which any direction for preparation or operation of a

reserve/ waiting list can now be effectively issued, has no hesitation in reaching to a conclusion that no relief, as prayed for in the present writ petition, can be granted to the petitioners particularly when no specific challenge has been laid by the petitioners to the subsequent notifications inviting applications for the post of CHO.

13. In view of the aforesaid discussion, the present writ petition, being devoid of merit, deserves to be and is hereby dismissed.

14. The stay application and all pending applications, if any, also stand disposed of.

(KULDEEP MATHUR),J