

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal Writ No. 261/2026

- 1 State Of Rajasthan, Through The Director And Special Secretary, Local Self Government Department, Directorate Of Local Bodies, Near Inox Cinema Hall, C-Scheme, Jaipur (Rajasthan).
- 2 Municipal Board, Udaipurwati Through Its Chairperson, Office Of Mb Udaipurwati, Tehsil Udaipurwati, District, Jhunjhunu (Rajasthan).
- 3 Executive Officer, Municipal Board Udaipurwati, Office Of Mb Udaipurwati, Tehsil Udaipurwati, District Jhunjhunu (Rajasthan).

----Appellants

Versus

- 1 Rajesh Swami S/o Shri Shankar Das, Aged About 33 Years, Resident Of Ward No. 4, Jamaat Udaipurwati, Tehsil Udaipurwati, District Jhunjhunu (Rajasthan).
- 2 Rajender Kumar Saini Son Of Shri Sultan Ram Saini, Aged About 24 Years, Resident Of Ward No. 23, Kua Pandiwal, Udaipurwati, Tehsil Udaipurwati, District Jhunjhunu (Rajasthan).
- 3 Sish Ram Indora Son Of Shri Ram Lal, Aged About 23 Years, Resident Of Dhani Bera Ki, Ward No. 2, Village Chhapoli, Tehsil Udaipurwati, District Jhunjhunu (Rajasthan).
- 4 Rakesh Kumar Saini Son Of Shri Mangal Chand Saini, Aged About 32 Years, Resident Of Ward No. 28, Badi Mohalla, Udaipurwati, Tehsil Udaipurwati, District Jhunjhunu (Rajasthan).

----Respondents

For Appellant(s)	:	Mr. G.S. Gill (AAG) Ms. Shikha Sharma (AAAG) Mr. Manoj Choudhary (AAAG) Mr. Yadvendra Patel
For Respondent(s)	:	Mr. Saransh Saini Mr. Vinod Kumar Sharma Ms. Sanjana Choudhary Ms. Ayushi Singh Mr. Neeraj Kumar Pal

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE BIPIN GUPTA

Order

04/05/2026

1. The present appeal has been filed assailing the interim order dated 15.01.2026, passed by learned Single Judge on an application moved by the respondents seeking payment of their due salary. Vide the said order, the learned Single Judge has directed the appellants to make all due payments of the respondents within eight weeks of the date of receipt of the order and also further directed as under :-

"(I) The respondent Nos. 2 and 3 are directed to make all due payments to the petitioners within eight weeks from date of receipt of copy of this order.

(II) Henceforth the petitioner shall mark their attendance in the office or as per direction of Executive Officer of Municipal Board, Udaipurwati and only attendance marked in the office or as per direction shall be considered as attendance for the purpose of duty.

(III) The executive officer is directed to assign duty to the petitioner by written directions and if any of the petitioner(s) fail to duty, he is at liberty to take action against.

(IV) This arrangement will be continued till disposal of this writ petition and the petitioners are directed to comply the directions and command of Municipal Board, Udaipurwati."

2. Learned Additional Advocate General submits that the order passed by the learned Single Judge is erroneous inasmuch as the learned Single Judge has noted that the attendance of the

respondents was not marked in the attendance register and once the attendance was not marked, the concerned would not be treated to having been performed their duties and therefore, the direction to release the salary could not be passed. He further submits that it would be putting unnecessary burden on the State Exchequer to release the salary of those persons who have not performed their duties.

3. Heard learned counsel for the parties and perused the material available on record.

4. We notice that in the writ petition, the order dated 15.08.2022 passed by Executive Officer, Municipality, Udaipurwati District Jhunjhunu Raj. Has been challenged, whereby the services of the respondents had been dispensed with. This Court thereafter vide order dated 30.09.2022, stayed the operation of the order dated 15.08.2022 and directed to allow the writ petitioners to work on the post of Gardener, as they were working prior to the passing of the order dated 15.08.2022.

5. It is also noticed that after the order dated 30.09.2022 was passed by the Court, the same was duly conveyed to the Executive Officer, Municipality Udaipurwati, through a letter dated 07.10.2022 with a request to allow the respondents-petitioners to mark their attendance in the attendance register. Thereafter, notices for initiation of contempt proceedings were also issued by the counsel appearing for the writ petitioners and the case came up before the learned Single Judge on 24.05.2023 on an application moved under Article 226(3) of the Constitution of India by the appellants and the Court noticed that after the order dated 30.09.2022 was passed, the compliance was made by the Office of

Executive Officer by order dated 12.04.2023, wherein it was directed that one of the writ petitioner shall continue to perform his duties as he was performing prior to the passing of the order dated 15.08.2022. It appears that similar orders were passed in respect of other writ petitioners. The Court therefore, vide its order dated 24.05.2023 while taking note of the undertaking given by the counsel for the petitioners that he will not pursue contempt petition against the order dated 30.09.2022 observed as under:

"1. Matter has come up on an application (1/2023) under Article 226(3) of the Constitution of India for vacation of stay order dated 30.09.2022 whereby order of withdrawal of appointment of petitioners has been stayed.

2. It has not been disputed that in compliance of the interim stay order dated 30.09.2022, petitioner has been reinstated on the post of Gardner on 12.04.2023, however, counsel for petitioner submits that due salary and regular monthly salary to the petitioner has not been paid. If that is so, petitioner is free to move appropriate application with complete details.

3. Let writ petition be listed for admission on 24.07.2023.

4. Application (1/2023) for vacation of stay shall be considered at the time of hearing the writ petition for admission.

5. *In the meanwhile, counsel for petitioner undertakes not to pursue the contempt petition against the order dated 30.09.2022."*

6. We notice that in the order dated 24.05.2023, the petitioners were also allowed to move appropriate application with complete details regarding payment of their salary and in view thereto an application was moved before the learned Single Judge seeking directions to pay due salary in regular monthly salary to the petitioners. In reply to the application, the appellants admitted that an order dated 12.04.2023 was passed to take the petitioners on duty.

7. However, it was stated that even after passing of the said order, the petitioners are not coming on duty, whereas in the application filed before the Court, it was taken on an affidavit that while they were working on the post of Gardener they were not being paid the due monthly salary and while the attendance was being marked by the Garden Nursery-in-Charge, the regular attendance was not being allowed to be marked on the register.

8. In these circumstances, the present impugned order has been passed by the learned Single Judge. The contention of the appellants cannot be accepted as if after the order dated 12.04.2023, the writ petitioners would not have joined and that would have been the situation, naturally the Officers would have complained about it or would have issued a notice to the concerned writ petitioners or they would have been taken up this contention before the learned Single Judge.

9. We also notice that the respondents herein had not further pursued the contempt proceedings which reflects that they were

always intending to work and they have actually performed their duties in the garden where their attendance has not been marked. It is not a case that their attendance was not noted by the Garden-in-Charge but it is only a case where their attendance in the Office of the Executive Officer and Jamadar/Sanitary Inspector has not been marked which reflects the adamant attitude of the Executive Officer and the Jamadar/Sanitary Inspector, who for more than seven months did not allow the writ petitioners to join i.e. from 30.09.2022 upto 12.04.2023. The salary for that period of course can be recovered from the concerned Executive Officer or the Officer of the Municipal Board who had not allowed the writ petitioners to join.

10. However, we find no reason to entertain the present appeal against interim order dated 15.01.2026, which is in consonance and we find that the present appeal deserves to be dismissed with costs of Rs.50,000/- to be recovered from the Concerned Officer who has not allowed the attendance to be marked of the writ petitioners and has filed a frivolous appeal before this Court.

11. Pending application(s), if any, stands disposed of.

(BIPIN GUPTA),J

(SANJEEV PRAKASH SHARMA),ACTING CJ