



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

S.B. Civil Writ Petition No. 10455/2023

Vikash Gupta Son Of Shri Prahlad Kumar Gupta

-----Petitioner

Versus

District And Sessions Judge

-----Respondent



For Petitioner(s) : Mr. Ashok Bansal with
Mr. Ayush Bansal
Mr. Pawan Sharma
For Respondent(s) : Mr. Sandeep K. Sharma, Dy. G. C.

HON'BLE MR. JUSTICE SAMEER JAIN

Order

29/01/2026

1. As substantial arguments are heard, the matter is admitted.
2. Learned counsel for the petitioner has submitted that impugned order dated 12.06.2023 passed by the respondent is *per se* illegal, arbitrary and suffers from violation of the principles of natural justice. It is contended that the said order is contrary to the statutory provisions enshrined under Rule 86(4) of the Rajasthan Service Rules, 1951.
3. It is further submitted that the respondent has committed a grave error of law by treating the willful absenteeism of the petitioner for approximately five years as the willful and voluntary resignation from the service.
4. Furthermore, learned counsel has drawn attention of this Court to para 6 of the reply of the instant petition filed by the respondent, whereby the respondent has admitted the receipt of multiple leave applications filed by the petitioner on various occasions. However, the said applications were either sanctioned



partially without pay or has been rejected without communicating the outcome to the petitioner. It is submitted that the said admission substantiates that the petitioner had duly applied for the leave without pay for the period starting from 08.06.2021 till 07.12.2018, thereby indicating that the petitioner had no intention to voluntary resign from his services.

5. Learned counsel for the petitioner has relied upon the dictum encapsulated by the Hon'ble Supreme Court in **Krushnakant B. Parmar Vs. Union of India & Ors., (2012) 3 SCC 178**, wherein it has been held that the unauthorized absence due to compelling reasons beyond the control of the employees, such as illness, accident, or hospitalization cannot be equated with the willful absenteeism.

6. It is submitted that in the instant matter, the petitioner was constrained to remain absent due to reasons beyond his control, namely the diagnosis and critical treatment of his mother, who is a cancer patient. It is further submitted that the petitioner's mother underwent approximately 80 chemotherapy sessions during the said period and is still undergoing treatment.

7. Heard.

8. Upon consideration of the aforesaid facts and the medical hardship suffered by the petitioner's mother, this Court is of a view that all the essentials for granting an interim relief namely, *prima facie* case, balance of convenience, and irreparable injury in case of non-grant of interim relief, at this stage, are drawing equity in favor of the petitioner.



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9. Accordingly, the operation and effect of the impugned order dated 12.06.2023 (Annexure-2) shall remain stayed till the next date of hearing.

10. The petitioner is directed to resume his duties before the competent authority with immediate effect, and the respondents are directed to allow the petitioner to join his duties forthwith, without fail.

11. It is made clear that the adjudication qua the payment of pending dues, back wages, and regularization of the said leave period shall be carried out after hearing the respondent, at a later stage.

12. List the matter on 02.04.2026.

(SAMEER JAIN),J

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