

(2025) 09 RAJ CK 0679

In the Rajasthan High Court, Jodhpur Bench

Case No : Spl. Appl. Writ No. 912 Of 2025

Ravindra Gurjar

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 24-09-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 528
Bharatiya Nyaya Sanhita, 2023 - Section 105
Indian Penal Code, 1860 — Section 304

Citation : (2025) 09 RAJ CK 0679

Hon'ble Judges : Farjand Ali, J

Bench : Division Bench

Advocate : Dhirender Singh, Priyanka Borana, Muktesh Maheshwari, Vandana Bhansali, Deepak Chaoudhary

Final Decision : Disposed of

Judgement

Sandeep Taneja, J

1. The present special appeal is directed against the order dated 09.05.2025 passed by learned Single Judge in S.B. Civil Writ Petition No.6599/2025, whereby the writ petition filed by the appellant challenging the validity and legality of order dated 19.03.2025 issued by respondent No.2 i.e. Commissioner Udaipur Development Authority (for short "UDA"), has been dismissed.

2. Brief facts of the case are that the appellant was appointed as Junior Accountant in the Local Self Department. Subsequently, the appellant was promoted on the post of Assistant Accounts Officer-II.

3. Respondent No.1, by order dated 20.09.2023, transferred the services of appellant from Municipal Council (under transfer) Makrana to UDA. In pursuance of the said order dated 20.09.2023, appellant joined the duty at UDA on 10.10.2023. However, respondent No.2, by order dated 19.03.2025, relieved the appellant and repatriated him to his parent department.

4. Being aggrieved by the said order dated 19.03.2025, the appellant filed the writ petition before the learned Single Judge of this Hon'ble Court. The learned Single Judge dismissed the writ petition holding that transfer of the appellant by order dated 20.09.2023 was a transfer on deputation and thus the respondent No.2 is empowered to repatriate him to his parent department.

5. Learned counsel for the appellant assailing the correctness of the order passed by learned Single Judge, has submitted that appellant was transferred by order dated 20.09.2023 by the respondent No.1 in exercise of powers under Section 336 of the Rajasthan Municipalities Act, 2009 (for short 'the Act of 2009'). Section 336(2) of the Act of 2009 uses the word 'transfer' and not 'deputation', therefore, the appellant's transfer cannot be said to be a transfer on deputation. Learned counsel has further submitted that the respondent No.2 is not legally competent to unilaterally relieve the appellant without any direction or approval from the State Government. Learned counsel has also submitted that the learned Single Judge failed to consider that transfer by way of deputation involves consent of the employee. However, consent of the appellant was not obtained before passing of the order dated 20.09.2023 and, therefore, his transfer cannot be said to be transfer on deputation. To buttress his argument, learned counsel has relied upon the judgment passed by a Co-ordinate Bench of this Court in D.B. Special Appeal Writ No.175/2025 (Dr. Shankar Lal Bamania Vs. State of Rajasthan & Ors., decided on 09.04.2025).

6. On the other hand, learned counsel for the respondents supported the order passed by the learned Single Judge and submitted that appellant was transferred from his parent department to UDA on deputation as he continued to retain lien in the parent Municipality. It is further submitted that the respondent No.2 is competent to relieve and repatriate the appellant to his parent department.

7. Heard learned counsel for the parties and perused the record.

8. The issue for consideration is as to whether the posting of the appellant from Municipal Council, Makrana to UDA by order dated 20.09.2023 issued by the State Government under Section 336 of the Act of 2009 was on transfer or deputation. 8.1 Section 336 of the Act of 2009 reads as under :-

"336. Transfer from one Municipality to another:-

(1) Any officer or servant of a Municipality who is a member of subordinate service, ministerial service or class IV service may be transferred by the State Government from the service of one Municipality to the services of another Municipality.

(2) Any officer or servant of the Municipality may be transferred by the State Government to the Jaipur Development Authority or Jodhpur Development Authority or Rajasthan Housing Board or any Urban Improvement Trust or any other local body on post carrying pay scale not lower than the pay scale of the officer or servant to be transferred.

Provided that the lien of the Officer or servant so transferred shall remain in the parent Municipality and he shall be considered for further promotion whenever a consideration for promotion to the higher post in his cadre is made in the Municipality."

8.2 Section 336(2) of the Act of 2009 clearly discloses that the power to transfer an officer or servant of the Municipality to Jaipur Development Authority or Jodhpur Development Authority or Rajasthan Housing Board or any Urban Improvement Trust or any other local body is conferred on the State Government.

8.3 The law relating to the meaning of expression 'deputation' in service jurisprudence is well settled whereby voluntarily an employee of one department or cadre or an organization is assigned to another department or cadre or organization. This entails a tripartite agreement between the lending employer, borrowing employer and the employee concerned. Thus, one of the essential requirements is the consent of employee concerned to go on deputation.

8.4 The Hon'ble Supreme Court in the case of Umapati Choudhary Vs. State of Bihar reported in (1999) 4 SCC 659 held as under :-

"8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled...."

(Emphasis Supplied)

8.5 Following the above judgment, a Co-ordinate Bench of this Hon'ble Court in the case of Dr. Shankar Lal Bamania Vs. State of Rajasthan & Ors. (D.B. Special Appeal Writ No.175/2025, decided on 09.04.2025) held as under :-

"21) A close scrutiny of the above decisions makes abundantly clear that 'transfer' is limited to equivalent posts within the same cadre and the same department, whereas 'deputation' refers to service outside the cadre or outside the parent department in which an employee is serving, and it is a temporary phenomenon. The concept of deputation involves a consensual and voluntary decision by the employer to lend the services of its employee, along with a corresponding acceptance of such services by the borrowing employer. It also requires the consent of the employee to go on deputation."

8.6 A close reading of Section 336(2) of the Act of 2009 reflects that it does not

provide for consent of either of the parties i.e. lending employer, borrowing employer and the concerned

employee. Once the State Government, in exercise of powers conferred in the aforesaid section, issues an order for transfer of an officer or servant of a Municipality to a Development Authority, the employee concerned has no option but to join the duty at the transferred place. The section does not contemplate seeking of consent of the employee before issuing his transfer order. In the absence of his consent, therefore, it cannot be said that the transfer as provided under Section 336(2) of the Act of 2009 shall be a transfer by way of deputation.

8.7 On facts also, there is nothing on record that consent of the appellant was obtained before issuing the order dated 20.09.2023. Even in the transfer order dated 20.09.2023, it is not mentioned that the appellant was transferred on deputation.

9. The counsels for the respondents have emphasized that by virtue of proviso to the aforesaid section, the officer or servant retains his lien in the parent Municipality and, therefore, the transfer being temporary in nature should be treated as deputation. We are not impressed with the said contention of the respondents.

9.1 It is well settled that function of a proviso is to carve out exception(s) or to qualify something enacted in the main provision. However, it can not be interpreted to expand or limit the main provision. Hence, merely because of by virtue of the proviso, lien of the officer or servant remains in the parent Municipality, the transfer cannot be said to be transferred by way of deputation unless the fundamental requirement i.e. consent of all the three parties, is fulfilled.

10. The counsels for the respondents have also relied upon Section 330 of the Act of 2009 in support of their contention that the transfer of the appellant from Municipal Council, Makrana to UDA was on deputation. The said Section reads as under :-

"330. Recruitment to posts in the Service.- (1) Upon the creation and constitution of the service, appointments to all posts therein shall, subject to any notwithstanding anything contained in the rules made under section 339, be made in accordance with the provisions of sections 332, 333 or, as the case may be, 335.

(a) by direct recruitment,

(b) by promotion,

(c) by transfer, or

(d) by deputation in exceptional case when eligible person is not available in municipal service.

(d) by deputation in

2. xxxxx

3. xxxxx

(4) It shall not be lawful for the Municipality,-

(a) to take any officer or employee on deputation from any department of the State Government without obtaining prior approval of the State Government,

(b) to relieve any officer or employee without seeking orders of the State Government.

(c) to refuse or not to allow any officer or employee to join the duty when such employee is transferred or deputed by the State Government.”

(Emphasis Supplied)

10.1 A bare perusal of the aforesaid section reveals that the same relates to appointment to posts in the municipal services and has nothing to do with power of State Government to transfer an officer or servant from Municipality to Development Authority, therefore, the said provision has no applicability to the facts of the present case.

10.2 However, it is relevant to note that Section 330 of the Act of 2009 contains both the expression i.e. ‘transferred’ or ‘deputation/ deputed’. It is, thus, apparent that the legislature has used the expression deputation/deputed in this section, however, no such expression has been used under Section 336 of the Act of 2009, which makes the legislative intent clear that transfer by way of deputation is not provided under Section 336(2) of the Act of 2009.

11. It is also relevant to mention Section 89 of the Udaipur Development Authority Act, 2023, which reads as under :

“89. Power to transfer.- Any officer or employee of the Authority may, in accordance with the rules made under section 95, be transferred by the State Government to the Rajasthan Housing Board or any Urban Improvement Trust or any Municipality on post carrying pay scale not lower than the pay scale of the officer or employee to be transferred:

Provided that lien of the officer or employee so transferred shall remain in the Authority and he shall be considered for further promotion whenever a consideration for promotion to the higher post in his cadre is made in the Authority.”

11.1 This provision also confers power only upon the State Government to transfer any officer or employee of UDA to the Rajasthan Housing Board or Urban Improvement Trust or any Municipality.

11.2 On joint reading of Section 336 of the Act of 2009 and Section 89 of the Act

of 2023, it can be easily deduced that the power to transfer an employee from Municipality to UDA and vice versa is exclusively conferred on the State Government.

12. The counsels for the respondents have also argued that since there is no prohibition under Section 336 of the Act of 2009 on repatriation of an employee by a Development Authority to a Municipality, therefore, respondent No.2 was competent to relieve and repatriate the appellant to his parent department. We do not find any force in the said argument. It is only in the case of deputation, an employee can be repatriated at any time at the wish of either of the employers i.e. lending employer or borrowing employer. However, since we have already held that transfer under Section 336 of the Act of 2009 is not a deputation and the power to transfer an officer or servant is exclusively conferred upon the State Government, we are of the view that power to retransfer/recall/repatriate is also vested in the State Government.

13. Resultantly, this Court is of the opinion that the order dated 19.03.2025 passed by the Commissioner, UDA is without authority of law and the same is hereby quashed. The order dated 09.05.2025 passed by the learned Single Judge is also quashed and set aside.

14. However, before parting with the judgment, this Court deems it appropriate to observe that the Commissioner, UDA may refer the matter for transfer of appellant to the State Government. The State Government is further directed to decide the matter expeditiously but not later than 30 days from the date of receipt of reference from the Commissioner, UDA.

15. With these observations, the instant special appeal is allowed.