RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No.6334/2026
CNR: RJHC020303012026 | URN: CW / 14015U / 2026

Rajasthan High Court
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Rajneesh Kumar S/o Shri Devi Singh, Aged About 24 Years, R/o Village Gahlau, Post Pichuna, Teshil Uchhain, District Bharatpur (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Personnel, Government Secretariat, Jaipur (Raj.)
2. Additional Chief Secretary, Finance Department, Government Of Rajasthan, Government Secretariat, Jaipur (Raj.)
3. Jai Singh, (Dob 21.09.2002), Merit No. 741, Roll No. 1103133 Through Principal Secretary, Department Of Personnel, Government Secretariat, Jaipur (Raj.), Presently Sent Under Training At The Officer Training School, Harish Chandra Mathur, Rajasthan Institute Of Public Administration (Ripa), Opposite Shiksha Sankul, J.l.n. Marg, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Tanveer Ahamad Mr. Iliyas Khan Ms. Harshita Sharma Ms. Julekha
For Respondent(s)	:	Mr. Yash Joshi Mr. Sankalp Vijay Ms. Monisha Agarwal for Mr. Vigyan Shah, AAG

JUSTICE ANOOP KUMAR DHAND

Order

18/11/2026

Reportable

1. The instant writ petition has been filed by the petitioner with the following prayer:-

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"It is, therefore humbly prayed that Your Lordship may graciously be pleased to accept and allow this writ petition and by an appropriate writ, order or direction:-

1. The respondents may be directed to consider candidature of the humble petitioner for allocation of the Rajasthan Account Services for appointment with all consequential benefits w.e.f. the date any candidate with less marks than the humble petitioner has been considered for the same in pursuant to the advertisement no. 02/2023-24 dated 28.06.2023 and the corrigendum's issued from time to time;

2. The ordered dated 19.03.2026 Annexure-12 and appointment ordered dated 20.03.2026 Annexure-14 to the extent of not including the humble petitioner may be declared arbitrary and illegal, and accordingly such the orders dated 19.03.2026 and 20.03.2026 may be ordered to be set right accordingly by considering candidature of humble petitioner for his selection and appointment to the Rajasthan Accounts Services pursuant to the advertisement dated 28.06.2023 Annexure-1 and corrigendums issued thereunder.

3. All the consequential benefits pursuant to such appointment may also be directed to be granted to the humble petitioner, in the interest of justice.

4. Any other appropriate order, which may be found just and proper in the facts and circumstances of the case, be passed in favour of the petitioner."

2. By way of filing the instant writ petition, a direction has been sought against the respondents for allocation of the cadre of the Rajasthan Account Services to the petitioner for his appointment, in pursuance of the advertisement dated 28.06.2023 with all consequential benefits. A challenge has also been led to the impugned order dated 19.03.2026 by which the candidature of the petitioner for appointment to the Rajasthan Accounts Services has been rejected on the ground of pendency of criminal case against him.

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3. Learned counsel for the petitioner submits that the respondents issued an advertisement dated 28.06.2023 for conducting the Rajasthan State and Subordinate Services Combined Competitive Examination, 2023 (RSSSCCE, 2023). In pursuance of the said advertisement, the petitioner participated in the RSSSCCE, 2023, wherein he was found meritorious by the respondents. However, on account of registration of an FIR No.293/2024 with the Police Station Uchain, District Bharatpur, for the offences punishable under Sections 126(2), 115(2), 74 & 352 BNS, 2023, against the petitioner, the respondents declined the appointment of the petitioner on the basis of his result in the RSSSCCE, 2023. Learned counsel submits that mere registration of an FIR cannot be a ground to deny appointment to the petitioner, as till date, the petitioner has neither been found guilty for commission of any offence nor he has been convicted for any offence. Learned counsel further submits that any individual, such as the petitioner, is presumed to be innocent, unless he is found guilty and convicted by a competent Court of law. But overlooking this aspect of the matter, the respondents have declined appointment to the petitioner. Hence, under these circumstances, the petitioner has approached this Court seeking appropriate directions.

4. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment dated 27.03.2025 passed by the Co-ordinate Bench of this Court at Principal Seat at Jodhpur in the case of **Neeraj Kanwar Vs. State of Rajasthan & Others** while deciding **S.B. Civil Writ Petition No.9517/2024**. Learned counsel submits that the aforesaid writ

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petition has been decided by the Co-ordinate Bench of this Court at Principal Seat at Jodhpur on the basis of several judgments passed by the Hon'ble Apex Court and the order dated 11.07.2024 passed by the Division Bench of this Court at the Principal Seat at Jodhpur in the case of **Jubair Bhati Vs. Rajasthan High Court and Ors.**, while deciding **D.B. Civil Writ Petition No.17047/2022**. Learned counsel submits that Special Leave to Appeal (Civil) No.28414/2024, submitted before the Hon'ble Apex Court against the order dated 11.07.2024, passed in the case of **Jubair Bhati** (supra) by this Court, has been dismissed by the Hon'ble Apex Court vide order dated 09.12.2024. Learned counsel further submits that recently, the Hon'ble Apex Court in the cases of **State of West Bengal & Ors. Vs. Mitul Kumar Jana**, while deciding **Civil Appeal No.8510/2011** vide judgment dated 22.08.2023 and **SPO/Constable IRB Satpal Singh Vs. State of Punjab & Ors.**, while deciding **Civil Appeal No.9749/2016** vide judgment dated 04.08.2026, has taken a view that a person cannot be discharged from service merely on the basis of pendency of criminal case against him, unless he is found guilty and convicted by the competent Court of law. Learned counsel submits that under these circumstances, interference of this Court is warranted.

5. *Per contra*, learned counsel appearing on behalf of the respondent-State opposed the arguments raised by learned counsel for the petitioner and submitted that candidature of the petitioner has been rightly rejected, in terms of the circular dated 04.12.2019 issued by the Chief Secretary, Department of Personnel, as the petitioner is found to have criminal antecedents.

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Learned counsel submits that respondents have not caused any illegality in denying appointment to the petitioner. He further submits that even the Division Bench of this Court in the case of **State of Rajasthan & Ors. Vs. Jeetendra Kumar Choudhary**, while deciding **D.B. Special Appeal (Writ) No.210/2026** vide judgment dated 05.09.2026, has taken a view that one cannot presume that in a pending criminal case, a person who is seeking employment, would be acquitted. A charge-sheet has been submitted by the investigating against the petitioner before the competent Court of law and there are every chances of his conviction. Counsel appearing on behalf of the respondent-State has placed reliance upon the judgment dated 11.03.2026, passed by the Hon'ble Apex Court in the case of **State of Madhya Pradesh & Ors. Vs. Rajkumar Yadav**, while deciding **Civil Appeal No.3279/2026**. Learned counsel submits that in the aforesaid judgment, the Hon'ble Apex Court was of the view that the recruiting authority or its screening committee, as the case may be, has a wide range of discretion in allowing or rejecting the appointment of a candidate on the basis of the antecedents or involvement in any criminal activity of such candidate. It was further held by the Apex Court in **Rajkumar Yadav** (supra) that the Courts have no role to interject in the decision of the recruitment authority/screening committee in their regard. Hence, the respondents have not caused any illegality in passing the order impugned, which warrants any interference of this Court.

6. Heard and considered the submissions made at the Bar and perused the material available on the record.

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7. The core question involved in the instant writ petition is as to "whether a person can be deprived to get appointment merely on the basis of registration of any criminal case against him and "whether such person can be presumed to be an innocent unless he is found guilty and convicted by a competent Court of law".

8. Two conflicting views have been taken by two different Benches of this Court of equal strength, being Division Benches. In the case of **Jubair Bhati** (supra), the Division Bench of this Court at Principal Seat at Jodhpur was of the view that mere pendency of a criminal case is not a ground for denial of appointment. The Court was of the view that the majesty of Law requires that such person is required to be protected and should not be penalized for indefinite period of time on account of pendency of criminal case. On the basis of this analogy, a direction was issued by the Division Bench in the case of **Jubair Bhati** (supra) for grant of appointment in favour of the said petitioner-Jubair Bhati.

9. The view taken by the Division Bench of this Court in **Jubair Bhati** (supra) has been further reiterated by the Co-ordinate Bench of this Court in the case of **Neeraj Kanwar** (supra), wherein the Co-ordinate Bench of this Court was of the view that there is no gainsaying to observe that mere registration of an FIR does not reduce a citizen to the status of either a convict or not having a good character. Every citizen is presumed to be innocent until proven guilty. Considering this material aspect of the matter that mere pendency of criminal case is not a ground to deny appointment, directions were issued to the authorities concerned

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to grant appointment in favour of the said petitioner-Neeraj Kanwar.

10. On the contrary recently the Division Bench of this Court in the case of **Jeetendra Kumar Choudhary** (supra) has taken a conflicting adverse view on the issue involved in the instant writ petition. The Division Bench of this Court in the case of **Jeetendra Kumar Choudhary** (supra) was of the view that one cannot presume that in a pending criminal case, a person who is seeking employment would be acquitted, as once the charge sheet has been filed against such accused candidate by the police, there are chances of conviction of such accused candidate. It was further observed in **Jeetendra Kumar Choudhary** (supra) that if a person facing criminal charges gets gainful employment, then the same would send a wrong message to the society, as such a person's character cannot be said to be clean and would remain under cloud until he is acquitted from all the charges.

11. Similarly, two conflicting views have been taken by the Hon'ble Apex Court in the cases of **SPO/Constable IRB Satpal Singh** (supra) and **Rajkumar Yadav** (supra). Hence, it becomes difficult for this Court to follow a particular view.

12. Judicial decorum and legal propriety demand that where any Single Bench or Division Bench does not agree with the decision of the Bench of equal size, the matter shall be referred to a Larger Bench. This view has been taken by the Hon'ble Apex Court in the case of **Sundaradas Kanyalal Bhathija & Ors vs. The Collector, Thane, Maharashtra**, reported in **AIR 1990 SC 261.** Similarly, in **Ayyaswami Gounder V. Munuswamy Gounder,** reported in **AIR 1984 SC 1789,** the Hon'ble Apex Court has held

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that a Single Bench of a High Court, not agreeing with the earlier decision of a Single Judge of the same High Court, should refer the matter to the Larger Bench and judicial propriety and decorum do not warrant him to take a contrary view.

13. In the case of **S. Kasi Vs. State Through the Inspector of Police Samaynallur Police Station Madurai District,** reported in **(2021) 12 SCC 1,** the Hon'ble Apex Court has held that:

> "It is well settled that a coordinate Bench cannot take a contrary view and in event there was any doubt, a coordinate Bench only can refer the matter for consideration by a Larger Bench. The judicial discipline ordains so. This Court in State of Punjab and another versus Devans Modern Breweries ltd. and another, (2004) 11 SCC 26, in paragraph 339 laid down following:-
>
> > "339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a Larger Bench. (See Pradip Chandra Parija v. Pramod Chandra Patnaik, (2002) 1 SCC 1 followed in Union of India Vs. Hansoli Devi, (2002) 7 SCC 273. But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. Kalyani Stores (supra) and K.K. Narula (supra) both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority."

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14. The Gauhati High Court in the case of **Shri Jagadish Deka Vs. The State of Assam** reported in **AIR 2014 Gauhati 143** has held that:

> "Similarly in the case reported in State of Bihar vs Kalika Kuer, reported in 2003 (5) SCC 448, the Supreme Court examined the circumstances in which a decision can be rendered "per incuriam".
>
> Quoting the passage from Halsbury's Laws of England, it was held in para 5 thus:
>
> > 5. At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In Halsbury's Laws of England (4th Edn.) Vol. 26: Judgment and Orders: Judicial Decisions as Authorities (pp.297-98, para 578) we find it observed about per incuriam as follows:
> >
> > > "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had not the benefit of the best argument, and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of

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> Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake."

Lord Godard, C.J. in Huddersfield Police Authorities case observed that where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam."

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Like wise, the question arose before the Supreme Court in the case reported in Official Liquidator vs Dayanand [(2008) 10 SCC 1] as to what is the effect of the decision when it is rendered in ignorance of earlier decisions rendered by other co-ordinate bench.

It is apposite to quote the following observations of the Supreme Court:

> "78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia v. Administrator General of W.B. this Court observed: (AIR p. 941, para 19)
>
> "19. ... If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division

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> Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court."

Their Lordships then placed reliance on the earlier decision of the Supreme Court **Lala Shri Bhagwan vs Ram Chand** reported in **AIR 1965 SC 1767** in which the Hon'ble Apex Court ruled as under:

> "18. ... It is hardly necessary to emphasis that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present

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case and chose to examine the question himself."

15. Ordinarily, this Court would not go into the merits of the case once the position of law is settled with regard to controversy involved on a particular issue. But, the difficulty before this Court is to follow a particular view when two conflicting views are available on the same issue by two separate Division Benches of this Court. The Hon'ble Apex Court in the case of **Central Board of Dawoodi Bohra Community & Ors. Vs. State of Maharashtra & Ors.**, reported in **(2005) 2 SCC 673**; has held in the relevant Para 12 as under:-

"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength,

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whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions: (i)The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh and Ors. and Hansoli Devi and Ors. (supra)."

16. It is the case of the petitioner that mere registration / pendency of a criminal case cannot be a ground to deny him appointment. Until a person is held guilty by a competent Court, he is presumed to be an innocent. Denial of appointment on such ground is arbitrary violative of Articles 14, 16 and 21 of the Constitution of India and defeats the merit of a selected candidate.

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17. While, it is the case of the respondents that the appointing authority is entitled to consider the antecedents and suitability of a candidate for public employment. Pendency of a criminal case, particularly involving moral turpitude / serious offence, makes the candidate unsuitable and the employer cannot be compelled to appoint a person facing criminal trial.

18. This Court has considered the submissions. The issue involves a conflict between two important principles —

(a) on the one hand, the presumption of innocence and the right of a meritorious selected candidate to get appointment; and

(b) on the other hand, the right of the employer to ensure suitability, integrity and public trust in a public service.

19. The matter has been considered by different Division Benches of this Court and by the Hon'ble Supreme Court in different contexts and there appears to be divergence of opinion as to whether mere pendency of a criminal case, without conviction, can by itself be a sufficient ground to deny appointment, and if so, under what circumstances.

20. In the considered opinion of this Court, the issues/ questions involved are of far-reaching consequence, affect a large number of recruitments in the State and require an authoritative pronouncement by the Larger Bench, so that uniformity and certainty in law is maintained.

21. In the situation like the present one, where two conflicting views have been taken by two different Division Benches of this

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Court, this Court has no option except to refer the matter to the Special/Larger Bench, so that the controversy involved in the instant petition is put to rest, in accordance with law.

22. This Court, therefore, deems it appropriate to refer the following questions for consideration and being answered by the Special/Larger Bench:

i) Whether appointment to a public service can be denied to a selected candidate merely on the ground of registration/pendency of a criminal case against him, without there being any conviction or finding of guilt by the competent court of law?

ii) Whether the pendency of a criminal case, by itself, can be treated as a valid ground to deny, withhold or cancel the appointment of an otherwise selected and meritorious candidate?

iii) Whether, in view of the principle of presumption of innocence, a candidate against whom a criminal case is pending, must be treated as innocent and entitled to public appointment, unless and until he is held guilty and convicted by a competent Court?

iv) Whether the appointing authority has any discretion to deny appointment on the ground of pendency of a criminal case, and if so, what are the nature, scope and limits of such discretion, particularly with reference to the nature and gravity of the offence?

23. Let the matter be placed before Hon'ble the Chief Justice, on the administrative side, for constitution of a Special/Larger Bench to answer the above questions, referred by this Court.

24. It has been apprised at Bar that an interim order dated 10.04.2026 has been passed in favour of the petitioner for

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granting provisional appointment to the petitioner, subject to final outcome of the present writ petition.

25. Learned counsel for the State-respondent submits that the aforesaid order could not be complied with on account of law established in the above narrated judgments and thereafter, the petitioner has also filed a contempt petition.

26. In view thereof, it is directed that till the decision of the Larger Bench on the above referred questions, the interim order dated 10.04.2026 passed by this Court shall remain in abeyance and the respondents are directed to keep one post vacant for the petitioner, as per his order of merit.

(ANOOP KUMAR DHAND),J

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