

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3154 OF 2021

- 1) Namdev Tukaram Patil
Aged 35 Years, Occ. Service
R/o. Ibrahimpur,
Tal. Chandgad, Dist. Kolhapur.
- 2) Sharada Shikshan Prasarak
Mandal, Yashwant Nagar
(Office at Patane Phata,
Tal. Chandgad, Dist. Kolhapur,
Through its Chairman/Secretary ... Petitioners

Versus

- 1) The State of Maharashtra
Through the Secretary,
School Education Department,
Mantralaya, Mumbai – 400 032.
- 2) The Education Officer
(Secondary), Zilla Parishad,
Kolhapur. ... Respondents

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Mr. N.V. Bandiwadekar a/w Mr. Vinayak Kumbhar i/b Ashwini N.
Bandiwadekar for the Petitioners.

Mr. N.C. Walimbe, A.G.P for the State-Respondent Nos.1 and 2.

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**CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.**

**DATE : 28th JULY, 2021.
(V.C.)**

JUDGMENT : (Per R.D. DHANUKA, J.)

1 Rule. Learned A.G.P. waives service for the Respondents.

2 A perusal of the Roznama indicates that the learned A.G.P.
had sought adjournment on 02.02.2021 which was granted by this
Court. The matter was accordingly adjourned to 16.02.2021. The
matter therefore, appeared before this Court on 22.07.2021 when the
learned A.G.P. sought time to make a statement before this Court as to
whether the judgment in case of the Writ Petition No.8643 of 2019
filed by Rajaram S. Mandale and another vs. State of Maharashtra and
another annexed at pages 51 to 54 of the Writ Petition, applies to the
facts of this case. Learned A.G.P. states that the said judgment has no
application to the facts of this case. He seeks adjournment for filing
affidavit-in-reply. The application for adjournment is rejected. The
Respondents have not filed any reply though sufficient opportunities
have been granted by this Court since February 2021 till date.

3 By this Petition filed under Article 226 of the Constitution
of India, the Petitioner has impugned the order dated 31.12.2017
thereby refusing to grant approval to the transfer of the Petitioner No.1
as a Peon (non-teaching employee) from un-aided School to aided

School of Petitioner No.2 -Management and seeks approval to the said transfer w.e.f. 15.06.2016 and for an order to release the grant-in-aid for payment of monthly salary.

4 The Petitioner No.1 was appointed as a Peon on 11.06.2003 in the unaided school of Petitioner No.2. The said appointment was approved by the Education Officer on 24.08.2014. On 15.06.2016 Petitioner No.2 transferred the Petitioner No.1 from the un-aided school to the aided school in the post of Peon. The proposal was submitted by the Head Master of the aided school to Respondent No.2. On 31.12.2016 the Head Master of the aided school submitted the proposal to Respondent No.2 for approval in respect of the said transfer. On 31.12.2017 the Respondent No.2 refused to grant approval to the said transfer of the Petitioner No.1 from unaided school to aided school. On 20.05.2020, the Head Master of the school resubmitted the proposal to Respondent No.2. Respondent No.2 further declined to entertain the said proposal. The Petitioners accordingly filed this Petition.

5 Mr. Bandiwadekar, learned Counsel for the Petitioners, invited our attention to various documents annexed with the Petition including order of approval granted by Respondent No.2 in respect of

the appointment of the Petitioner as a Peon in the unaided school. Respondent No.2 refused to grant the approval. The learned Counsel for the Petitioners invited our attention to the judgment delivered by this Court on 08.10.2020 in Writ Petition No.8643 of 2019 filed by Rajaram S. Mandale and another vs. The State of Maharashtra and various other judgments annexed to the Writ Petition. It is submitted by the learned Counsel for the Petitioners that Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981, would apply not only to teaching staff but also to non-teaching staff including the Peon. He submits that the similar issue has been already dealt by this Court in the said judgment. The order passed by the Enquiry Officer has been set aside in the said judgment.

6 The learned A.G.P. on the other hand submits that though in the impugned order passed by Respondent No.2 the proposal of the Petitioner No.1 was rejected only on the ground that there is no such provision. The approval could have been rejected by Respondent No.2 on several other grounds which grounds the Respondents proposed to place on record by filing an affidavit.

7 In our view, no such additional reasons can be placed in the affidavit-in-reply for the first time. Reasons cannot be supplanted

for the first time in the affidavit-in-reply.

8 We have perused Rule 41 of the M.E.P.S. Rules which permits transfer of teaching as well as non-teaching staff of the recognized school. Petitioner No.1 was transferred by the Petitioner No.2 from the unaided school to aided school on 15.06.2016 and thus, In view of Rule 41 of the M.E.P.S. Rule, Respondent No.2 was required to grant proposal of appointment of Petitioner No.1 to the said transfer from unaided school to aided school.

9 A perusal of impugned order passed by Respondent No.2 indicates that only reason recorded in the impugned order rejecting approval is that there was no provision for such transfer of non-teaching employee from the unaided school to aided school. In our view, the impugned order discloses total non-application of mind on the part of Respondent No.2 and indicates gross violation of Rule 41 of M.E.P.S. Rules. A perusal of Rule 41 of M.E.P.S. Rules alongwith definition of employee under Section 2 (7) would clearly indicate that 'employee' means any member of the teaching and non-teaching of a recognized school. The Respondent No.2 does not dispute that Petitioner No.2 School is recognized school. In our view, the Petitioner was holding post of Peon and was thus an employee within the

meaning of employee under Section 2(7) read with Rule 41 of the M.E.PS. Rules.

10 The Division Bench of this Court in case of Rajaram S. Mandale (supra) has held that Rule 41 applies to all employees, both teaching and non-teaching, as defined in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, of a recognized school. Rule 41, thus, permits transfer of teaching and as well as non-teaching staff of a recognized school.

11 In our view the said judgment of this Court applies to the facts of this Petition. In our view the impugned order passed by Respondent No.2 thus deserves to be quashed and set aside. It is ordered accordingly. Respondent No.2 is directed to approve the transfer of the Petitioner No.1 w.e.f. 15.06.2016 and sanction the payment of monthly salary applicable to the said post from that date. Respondent No.2 shall comply with this order within six weeks from today.

12 Rule is made absolute in aforesaid terms. Writ Petition is disposed of. There shall be no order as to costs. Parties to act on the authenticated copy of this order.

(R.I. CHAGLA, J.)

(R.D. DHANUKA, J.)