

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

WRIT PETITION NO. 9712 OF 2022

Salunkhe Prasad Rajaram

...Petitioner

Versus

The State Of Maharashtra And Ors

...Respondents

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WITH

WRIT PETITION NO. 1426 OF 2022

Hemant Janardan Dixit

...Petitioner

Versus

The Secretary, Vyayam Mnadal Satar And Ors ...Respondents

.....

Mr. Kisan Dhamale, Advocate for the Petitioner in WP 9712 of 2022.

Ms. Jui Bhalchandra Gharat i/b Ms. Prjakata Arjunwadkar, Advocates for the Petitioner in WP 1426 of 2022

Mr. B.V. Samant, Addl GP a/w Ms. A.A. Purav, AGP for Respondent Nos. 1 & 2 in WP 9712 of 2022 and Respondent Nos. 3 & 4 in W.P. 1426 of 2022

Ms. Gunjan Shah for Respondent No. 3

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**CORAM : NITIN JAMDAR &
M.M.SATHAYE, JJ.**

DATE : 16 JANUARY 2024

P.C.:

. Heard learned counsel for the parties. In both these Petitions the employer/ institution is common. The Petitioner in Writ

Petition No. 9712 of 2022 is working as Junior Clerk and in Writ Petition No. 1426 of 2022 the Petitioner herein is working as a Peon. The grievance of the Petitioner in Writ Petition No. 9712 of 2022 i.e. Prasad Rajaram Salunke is that he is working as Junior Clerk in the un-aided division of the Respondent-Management i.e. Krantismruti Junior College and a proposal to transfer him to the post of Junior Clerk in the aided division has been rejected by the Respondent- Education Officer. In Writ Petition No. 1426/2022, Petitioner therein Hemant Janardan Dixit, who is working as a peon has sought a direction that he should be promoted to the post of Junior Clerk in aided division from the post of Peon in unaided division that he has held. Both the Petitioners therefore seek the post of Junior Clerk in the aided division of the Respondent-Management.

2. Proposal of the Respondent-Management in respect of the Petitioner Prasad Salunke is rejected by the impugned order dated 29 July 2021. The reason given is that no such transfer from a permanently un-aided division to aided division is permissible.

3. As regards Writ Petition No. 1426 of 2022 is concerned, there is no such rejection and this Petitioner seeks directions to Respondent- Management to promote him.

4. Petitioner Prasad Rajaram Salunke has contended that the

stand of the Respondent- Educational Institute that such a transfer from unaided division to aided division is impermissible is wholly incorrect. According to this Petitioner, the Education Officer has overlooked the amended Rule 41-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. He also contended that there is no such concept of permanently un-aided division and as far as transfer from unaided to aided division is not considered as a transfer at all but his posting within the Management. He has relied upon a decision rendered by this Court to that effect.

5. We note that such unilateral rejection without putting the Management to notice is increasing litigations in this Court, as the version of the Management is not considered before passing such orders. If the reason for rejection had been put to the Management, they would have pointed out statutory decisions and judicial procedures. In these circumstances, we direct that the impugned order dated 29 July 2021 be treated as a show cause notice to the Respondent-Management as to why the approval should not be rejected and Respondent-Management will reply to this notice placing on record its response and judgments of this Court. After this reply is given, Education Officer will deal with the reply and also deal with the judgments cited and pass a reasoned order. If according to the Education Officer, judgments and orders passed by this Court are not applicable to the facts of the Petitioners' case, specific reasoned order be passed within a period of 8 weeks after receipt of

explanation/ reply, subject to earlier time bound directions.

6. Since the inquiry as to whether Petitioner Prasad Rajaram Salunke can be appointed, transferred/posted to the post of Junior Clerk in the aided division would be considered by the Education Officer as per this order, at present we are not inclined to pass any separate order in Writ Petition No. 1426 of 2022 whose claim will have to be considered after an order is passed in case of Prasad Rajaram Salunke by the Education Officer.

7. Contentions of the parties in respect of the claim of Hemant Janardan Dixit is kept open.

8. Writ Petitions are disposed of in the aforesaid terms. All pending Interim Applications are also disposed of.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)