

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

WRIT PETITION NO. 7049 OF 2000

The Secretary, Gokhale Education Society & Anr.	...	Petitioners
V/s.		
Sanjay J. Kale & Ors.	...	Respondents

**WITH
CIVIL APPLICATION NO. 1074 OF 2007
IN
WRIT PETITION NO. 7049 OF 2000**

Sanjay Jayram Kale	...	Petitioner
<u>In the matter between :-</u>		
The Secretary, Gokhale Education Society & Anr.	...	Petitioners
V/s.		
Sanjay J. Kale & Ors.	...	Respondents

**WITH
WRIT PETITION NO. 3351 OF 2009**

Sanjay Jayram Kale	...	Petitioner
V/s.		
Manisha Kulkarni & Ors.	...	Respondents

Mr.V.S. Talkute for Petitioner in WP/7049/2000 and for Respondent No.2 in WP/3351/2009.
 Mr.S.B. Deshmukh for Petitioner in WP/3351/2009 and for Respondent No.1 in WP/7049/2000.
 Mr.Niranjan Shimpi for Respondent No.1 in WP/3351/2009.
 Ms.V.S. Nimbalkar, AGP for the State.

CORAM : A.S. GADKARI, J.

DATE : 23rd July 2019.

P.C. :

1] The Petition No.7049 of 2000 impugns Judgment and Order dated 30/09/2000 passed by the Presiding Officer, School Tribunal, Nashik, in Appeal No.NSK-11 of 2000, thereby allowing the said Appeal preferred by the Respondent No.1 against his termination from services by Orders dated 16/03/2000 and 15/04/2000 issued by the Petitioners.

2] Heard Mr.Talkute, the learned counsel for the Petitioner in WP/7049/2000 and for Respondent No.2 in WP/3351/2009, Mr.Deshmukh, the learned counsel for the Petitioner in WP/3351/2009 and for Respondent No.1 in WP/7049/2000, Mr.Shimpi, the learned counsel for Respondent No.1 in WP/3351/2009 and Ms.Nimbalkar, the learned AGP for the State in both Petitions. Perused the record.

3] Shorn of unnecessary details, the brief facts giving rise to the Petition No.7049 of 2000 can be summarized as under :-

The Petitioner No.1 appointed the Respondent No.1 in their Junior College on the basis of his application dated 15/05/1999, as 'Full Time Instructor' of Medical Lab Technology (M.L.T.) of M.C.V.C. Course,

on the basis of minimum skill requirement. An appointment Order was accordingly issued on 14/06/1999. In the said appointment Order, it was categorically stated that, the appointment of the Respondent No.1 on the said post was for educational year 1999-2000. It was further stated that, the said appointment was subject to sanction accorded from the Deputy Director, Technical Education, Maharashtra State and if sanction is not accorded by the said authority, the services of the Respondent No.1 would be immediately terminated. The appointment Order further states that, the appointment of the Respondent No.1 was made on a post reserved for scheduled caste person and if a person from the said category subsequently becomes available, the services of the Respondent No.1 would be terminated.

4] The record indicates that, the services of the respondent No.1 were subsequently terminated by Order dated 16/03/2000 with effect from 20/04/2000. As the education year was subsequently extended by the Government for seven days, an additional Order of termination dated 15/04/2000 was issued by the Petitioner No.1 in that behalf and the services of the respondent No.1 were further terminated from 27/04/2000.

5] Feeling aggrieved by the said termination of services of Orders dated 16/03/2000 and 15/04/2000, the Respondent No.1 preferred Appeal No.NSK- 11 of 2000 before the Presiding Officer, School Tribunal, Nashik Region, Nashik. It was the contention of the respondent No.1 that his appointment on the said post was for a period of two years which covers the period of probation. That a specified pay-scale was prescribed in the appointment Order and therefore, it has to be inferred that it was on permanent basis. It was also the contention of the Respondent No.1 that, as he belongs to the reserved category, he was appointed on a post which was to be filled in by a person from scheduled caste and therefore, his services cannot be terminated. The Petitioners filed their say dated 11/08/2000 to the said Appeal. The School Tribunal after hearing the parties to the said Appeal and after evaluating the evidence available on record was pleased to set-aside the Orders of termination dated 16/03/2000 and 15/04/2000 issued by the Petitioner No.1, terminating services of the Respondent No.1 herein, holding it to be illegal.

The said Order dated 30/09/2000 is impugned herein.

6] Mr.Deshmukh, the learned counsel for the Respondent No.1 in opposition of Petition No.7049 of 2000 submitted that, a plain reading of the appointment Order would indicate that, the appointment of the Respondent No.1 to the said post was in a place where vacancy had fallen. That the Respondent No.1 belongs to scheduled caste and the post which was filled in by the Petitioner No.1 was for a person belonging to the scheduled caste. He submitted that the claim of Smt.Manisha Kulkarni on the said post which has been upheld by the Tribunal will not come in his way while seeking permanency, as Smt.Manisha Kulkarni does not belong to the reserved category. He further submitted that, in the appointment Order, a specific pay-scale has been mentioned which also leads to infer that, the appointment of the Respondent No.1 was on permanent basis. He submitted that the Tribunal has rightly considered all these aspects and has passed the impugned Order in favour of the Respondent No.1.

7] A bare perusal of appointment Order would clearly denote that, the appointment of the Respondent No.1 was on purely temporary basis. Para No.2 of the said appointment Order unequivocally mentions about the said fact. It is further categorically stated in the appointment

Order that, the services of the Respondent No.1 can be terminated without giving further intimation and at the moment the period of appointment comes to an end, the services would be automatically terminated. The record further indicates that, the Deputy Director, Technical Education, vide his communication dated 19/09/2000 addressed to the Petitioner No.1, while granting sanction to the appointment of the Respondent No.1, had specifically mentioned that, the appointment of the Respondent No.1, for the education year 1999-2000 was purely on temporary basis and also subject to the decision of the School Tribunal, wherein Smt.Manisha Kulkarni had questioned the appointment of the Respondent No.1. It is thus abundantly clear that the appointment of the Respondent No.1 was on purely temporary basis. It is well settled principle of law that a person appointed purely on temporary basis cannot claim permanency in furtherance thereof, unless and until there is a specific appointment and/or agreement in that behalf.

8] A perusal of impugned Order dated 30/09/2000 passed by the School Tribunal, Nashik, indicates that, the findings recorded therein are contrary to the evidence available on record and it also proceeds on

the footing of surmises and conjectures. It therefore deserves to be quashed and set-aside and is accordingly quashed and set-aside.

9] In view of the above, the Writ Petition No.7049 of 2000 succeeds and is allowed in terms of prayer Clause (b).

In view of the Order passed in Writ Petition No.7049 of 2000, the Civil Application No.1074 of 2007 pending therein does not survive and is accordingly disposed off.

10] In view of the Order passed in Writ Petition No.7049 of 2000, the Writ Petition No.3351 of 2009 filed by the Petitioner-Sanjay Jayram Kale impugning the Order dated 15/02/2000 passed by the Presiding Officer, School Tribunal, Nashik Division, Nashik, setting aside termination Order dated 26/03/1999 terminating the services of the Respondent No.1 - Smt.Manisha Kulkarni does not survive and is, accordingly, disposed off.

[A.S. GADKARI, J.]