

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

WRIT PETITION NO.9124 OF 2024

G.K. Gujar Memorial Charitable Trust
Through its Secretary and anr. ... Petitioners
V/s.
Shikalgar Firoj Almaash and ors. ... Respondents

**WITH
WRIT PETITION NO.13181 OF 2024**

G.K. Gujar Memorial Charitable Trust
Through its Secretary and anr. ... Petitioners
V/s.
Pawar Vijay Popat and anr. ... Respondents

**WITH
WRIT PETITION NO.13183 OF 2024**

G.K. Gujar Memorial Charitable Trust
Through its Secretary and anr. ... Petitioners
V/s.
Kakade Yashwant Anandrao and ors. ... Respondents

**WITH
WRIT PETITION NO.13186 OF 2024**

G.K. Gujar Memorial Charitable Trust
Through its Secretary and anr. ... Petitioners
V/s.
Pawar Umesh Raghunath and anr. ... Respondents

**AND
WRIT PETITION (ST.) NO.16538 OF 2024**

G.K. Gujar Memorial Charitable Trust
Through its Secretary and anr. ... Petitioners
V/s.
Salunkhe Ganesh Nivrutti and anr. ... Respondents

Mr. N. V. Bandiwadekar, Senior Advocate with Mr. Milind Deshmukh, Mr. Shailesh Chavan, Mr. Swapnil Vighre and Mr. Aniket Phaphale, for the Petitioners.

Mr. Avinash Belge, for Respondent No.1.

Ms. Snehal Jadhav, AGP for the Respondent-State in WP No.9124 of 2024.

Ms. Tanu Bhatia, AGP for the Respondent-State in WP No.13186 of 2014 and WP(St) No. 16538 of 2024.

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 18 FEBRUARY 2025

PRONOUNCED ON : 28 FEBRUARY 2025

JUDGMENT:

1) These five petitions are filed by the Petitioner-Management challenging common judgment and order dated 26 April 2024 passed by the Presiding Officer, Savitribai Phule, Pune, Shivaji and Solapur University and College Tribunal (**College Tribunal**) allowing all the five appeals and directing Petitioner-Management to reinstate the Respondents-Employees in service by setting aside their termination order dated 10 September 2018 with full backwages and other consequential benefits.

2) Briefly stated, facts of the case are that Petitioner is a charitable Trust who owns and operates Dr. Ashok Gujar Technical Institute, Dr. Daulatrao Aher College of Engineering, Karad (Petitioner No.2). Petitioner

No.2 is a permanently unaided college. Respondent No.1 in each petition were appointed in Petitioner No.2-College as under :-

Sr. No.	Writ Petition No.	Name	Designation	Date of Appointment
1.	9124 of 2024	Shikhalgar Firoj Almaash	Workshop Instructor	01/07/2010
2.	13181 of 2024	Vijay Popat Pawar	Workshop Instructor	03/08/2009
3.	13186 of 2024	Umesh Raghunath Pawar	Workshop Instructor	02/07/2012
4.	13183 of 2024	Yashwant Anandrao Kakade	Peon	01/07/2010
5.	(St.) 16538/2024	Ganesh Nivrutti Salunkhe	Workshop Instructor	02/07/2012

3) The Respondent No.1 in each petition are referred to as 'Respondents' for the sake of brevity and convenience. All the Respondents were initially appointed on temporary basis for a specified period. To illustrate, Mr. Shikalgar Firoj Almaash was appointed as Workshop Instructor (Machines) on temporary basis with effect from 1 July 2010 to 30 June 2011. This was the common trend in respect of all the Respondents. The only difference is in the cases of Mr. Shikalgar Firoj Almaash and Vijay Popat Pawar, in respect of whom, confirmation orders were issued on 24 July 2013 confirming their services on completion of period of probation. It is Petitioner-Management's case that the said confirmation orders were issued by mistake and that the same were withdrawn on 24 July 2013. So far as the rest of the three Respondents are concerned, they were admittedly not confirmed in service and continued as temporary employees. On 10 September 2018, Petitioner-Management terminated services of all five Respondents stating that since their appointments were temporary and since period of appointment was over, they were relieved from services with effect from 10 September 2018.

4) Respondents approached College Tribunal by filing their respective Appeals challenging their termination orders dated 10 September 2018. The appeals were resisted by Petitioner-Management by filing written statement. Petitioner-Management also filed amended written statement to bring on record the factum of reduction in intake capacity of the students. After considering the pleadings and after hearing the submissions canvassed by the rival parties, the College Tribunal has allowed all the five appeals by its common judgment and order dated 26 April 2024 by setting aside the termination orders dated 10 September 2018 and directing reinstatement of Respondents with backwages and other consequential benefits. The Tribunal has also imposed cost of Rs.10,000/- in each of the appeals in favour of the Respondents and against the Petitioner-Management. Petitioner-Management is aggrieved by the common judgment and order dated 26 April 2024 passed by the College Tribunal and has accordingly filed the present petitions.

5) Mr. Bandiwadekar, the learned senior advocate appearing for Petitioner-Management would submit that the College Tribunal has erred in setting aside mere relieving orders, which in fact did not amount to termination of services of Respondents. That Respondents were mere temporary employees and were continued in service by issuance of separate temporary appointment orders. That the last tenure of their appointment had come to an end and therefore, the employees were merely relieved from services on 10 September 2018. That Respondents were aware that they would be relieved from services after completion of the tenure of their temporary appointment. That therefore there is no violation of principles of natural justice. That the College Tribunal has erroneously held that Rules 5

and 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 ought to have been followed for termination of the services ignoring the position that the services were not terminated due to any misconduct.

6) So far as the alleged confirmation of two Respondents is concerned, Mr. Bandiwadekar would submit that the confirmation letters were issued by mistake and were immediately withdrawn on 24th July 2013 itself. That the said two employees had full knowledge about withdrawal of the confirmation letters as their service post 24 July 2013 was continued by issuing yearly temporary appointment letters which they had accepted without any demur. Having worked for five long years after 24 July 2013 on the strength of temporary letters of appointment, the said two Respondents could not have relied upon an inadvertently issued confirmation letters by suppressing the letters by which the confirmation orders were withdrawn.

7) So far as the balance three employees are concerned, Mr. Bandiwadekar would submit that the College Tribunal has erred in conferring the status of permanency as there was no prayers to that effect in the appeals filed by them. That while deciding validity of termination letters, it was impermissible for the College Tribunal to go into the issue of permanency. He would therefore submit that the declaration of permanency issued by the College Tribunal in respect of the three Respondents in absence of prayer to that effect clearly amounts to jurisdictional error. Lastly Mr. Bandiwadekar would submit that reduction of intake capacity is an admitted position and such reduction has been recognized and approved by State Government, AICTE and the University. That therefore Petitioner-Management cannot be forced to continue excess staff despite closure of part of college. He would submit that Respondents were merely temporary

employees and did not have semblance of right to remain in continuous service with the Petitioner-Management. He would accordingly pray for setting aside the common judgment and order passed by the College Tribunal.

8) The petitions are opposed by Mr. Belge, learned counsel appearing for the Respondents-employees. He would submit that all the five Respondents are terminated from service in a veiled manner under the garb of relieving them after completion of tenure of their appointments. That two of the Respondents were confirmed in service and no longer remained as temporary employees. That the letters showing withdrawal of the confirmation orders were prepared as an afterthought and produced directly before Tribunal. That no such withdrawal letters were served on the two Respondents. Similarly, alleged temporary orders post confirmation order dated 24 July 2013 were also prepared by way of afterthought and the said orders were also never served on the two Respondents. He would submit that the College Tribunal has recorded a finding of the fact that letter withdrawing confirmation orders was falsely prepared behind the back of the said two Respondents. He would submit in the audited accounts of the Petitioner-Management, the said two employees were shown as regular employees, thereby falsifying the stand of withdrawal of the confirmation orders.

9) Mr. Belge would further submit that the Tribunal has rightly set aside the termination orders in respect of the balance three employees as well. He would submit that the said employees were appointed after following due process of law. That they were eligible to hold the post, were subjected to

selection process and were appointed on sanctioned vacant posts. That the Tribunal has rightly held that they could no longer be treated as temporary employees for being thrown out of service. In support of his contentions, he would rely upon judgment of the Apex Court in ***Vinod Kumar and ors. Vs. Union of India and ors.***¹. Mr. Belge would clarify that the College Tribunal has not awarded permanent status to the three Respondents, but has merely set aside the orders of their termination, which is premised on the assumption that the three Respondents remained as temporary employees. He would submit that the College Tribunal has not committed any glaring error for this Court to exercise jurisdiction under Article 227 of the Constitution of India. He would accordingly pray for dismissal of the petitions.

10) Rival contentions of the parties now fall for my consideration.

11) The present five appeals need to be segregated into two groups. One comprising of the two Respondents, in respect of whom, confirmation orders were issued on 24 July 2013 and second in respect of whom, no confirmation orders were admittedly issued. The Tribunal has however proceeded to decide all the five appeals by a common judgment and order dated 26 April 2024.

12) So far as the first group of two employees Shikalgar Firoj Almaash and Vijay Popat Pawar are concerned, it appears that though they were initially appointed on temporary basis, confirmation order dated 24 July 2013 was issued *qua* them. The confirmation order dated 24 July 2013 issued in respect of Shikalgar Firoj Almaash reads thus:-

1 2024 (9) SCC 327

Ref. No.GKG/07/2013-14

Date: 24/07/2013

Confirmation Order

To,
Mr. Firaz A. Shikalgar
A/P -Asad,
Tal- Kadegaon, Dist-Sangli.

Sir,

I am pleased to inform you that you have been confirmed in the services of Dr. Daulatrao Aher College of Engineering, Karad as a Workshop Instructor (Machinist) after completion of your probation vide appointment order No. GKG/2/7/1/2011-12 dt. 2nd July, 2011.

You will be paid basic of Rs.7820+Grade Pay 2400 with one increment in the pay band of 5200-20200 with effect from 1st July, 2013. You will be entitled all the Schemes applicable to the employees of G.K. Gujar Memorial Charitable Trust's, Dr. Daulatrao Aher College of Engineering, Karad.

Accepted
CC to-1. Personal File
2. Account section

Chairman/Secretary
Chairman/Secretary
G.K. Gujar Memorial Charitable Trust

13) It is the case of the Petitioner-Management that the confirmation order was issued due to mistake and that the same was cancelled immediately on the same day. Petitioner-Management has produced alongwith the compilation, copy of the said office order dated 24 July 2013 which reads thus:-

"Ref. No.GKG/07/21a/2013-14

Date: 24/07/2013

Office Order

To,
Mr. Firoz A. Shikalgar
A/P -Asad,
Tal- Kadegaon, Dist-Sangli.

It is to inform you that you have been confirmed as Workshop Instructor vide letter no.GKG/07/21/2013-14 dated 24/07/2013. This order is prepared by mistake. Hence, this order is cancelled. This is for your information.

Chairman/Secretary
Chairman/Secretary
G.K. Gujar Memorial Charitable Trust

CC to-1) Personal File
2) Account section
3) Establishment
4) H.O.D.”

14) The Tribunal has gone into the issue as to whether the alleged office order dated 24 July 2013 was contemporaneously issued or whether there is any genuineness in the claim of Petitioner-Management about withdrawal of confirmation orders. The Tribunal has recorded following findings for negating the claim of issuance of withdrawal orders:-

“29. Now coming to defence raised by the Management. It is the main defence of the Management that on the very day i.e. on 24/07/2013, the Management has withdrawn the confirmation order issued to above said Appellants and therefore they are not entitled to get any permanency benefits and protection in service. It is material to note that the cancellation order of above said both Appellants did not reflect the genuine reason for cancellation of order. Reason assigned in the cancellation of order of Appellant Mr. Vijay Pawar and Mr. Firoj Shikalgar was stated to be a mistake. No prudent person would believe it. It is also important to note that the copy of cancellation order never served on the Appellant as appearing from the record. Copy of cancellation order relied upon by the Management nowhere finds signature of respective Appellant thereon. It can be safely inferred that those cancellation orders came to be issued by the Management behind the back of the Appellants and without assigning any genuine and logical reason and secondly without following due procedure of law.

30. There is one more aspect which needs careful consideration. The date of confirmation order and the date of cancellation order of both the Appellants are the same and one. It is nothing but a bad game played on behalf of the Management to unstable the services of the Appellants who have become permanent in service on their respective post. It can be safely inferred that when the Management thought to terminate the services of the above said two Appellants realized that both of them were confirmed in service. As such, the Management was pleased to cancel their confirmation orders of the same date which no one would believe. It is nothing but a mischief played on behalf of the Management to terminate the services of the Appellants by issuing cancellation orders of the same date but after passage of time and by way of preplan. I do not find any merit in the submissions of Mr. Milind Pawar, learned Advocate for the

Management. No record is produced on behalf of the Management in order to support the decision of cancellation of confirmation order of above said two Appellants. It is a clear case of violation of principles of natural justice as well as violation of due process of law.

31. It was attempted on behalf of Management to establish that both the Appellants were not qualified for the respective post and secondly their appointment orders were made through local selection committee and as such they cannot claim permanency. Their services are not approved by the University. I do not find any force in the submissions of Mr. Milind Pawar, learned Advocate for the Management. Above referred confirmation, orders of two Appellants indicate that their services were confirmed on the respective post only because they were put on probation period and both of them had completed probation period satisfactorily. It demonstrates that both were having requisite educational qualification for the respective post and that's why they were appointed and subsequently confirmed in the service. The confirmation orders of both the Appellants issued by the Management are satisfactory answers to the questions raised on behalf of the Management about the selection and the appointments of the respective Appellants. I am unable to accept the argument advanced by Mr. Milind Pawar, learned Advocate for the Management.”

15) The date of issuance of the confirmation order and the date of the office order withdrawing the confirmation order is the same i.e. 24 July 2013. Though it is vaguely stated that letter dated 24 July 2013 was prepared by mistake, the exact mistake in issuance of confirmation order has not been indicated in the office order dated 24 July 2013. Petitioner-Management did not produce any proof of having served the office order dated 24 July 2013 on the concerned two Respondents. The office copy of the said office order does not bear acknowledgment of two Respondents. There is nothing on record to indicate that the said office order dated 24 July 2013 was dispatched by post to the concerned two Respondents, if they refused to receive the same in-person. Even otherwise, it is quite unbelievable that the Petitioner-Management would issue confirmation order dated 24 July 2013 and withdraw it on the same date. The exact mistake for issuance of confirmation order is neither indicated in the

withdrawal order nor pleaded before me. It therefore becomes highly doubtful as to whether the office order dated 24 July 2013 withdrawing the confirmation orders were indeed passed on 24 July 2013. In any case, even if the said withdrawal order were indeed issued, the same were admittedly not served on the two Respondents since the Petitioner has not produced any iota of evidence showing service of the withdrawal orders on the two Respondents. I therefore, do not find any palpable error being committed by the College Tribunal in rejecting the defence of the Petitioner-Management in respect of withdrawal of the confirmation orders.

16) Much is sought to be made by Mr. Bandiwadkar by relying upon yearly temporary appointment orders issued to the two Respondents after withdrawal of confirmation orders. However, the Tribunal has observed that none of the alleged temporary appointing orders are proved to have been served on the concerned two Respondents. If the initial written statement of the Petitioner-Management is perused, it is seen that though defence of withdrawal of confirmation letter was pleaded in paragraph No.7 of the written statement, there is no pleadings that yearly temporary appointments were issued after 24 July 2013. If Petitioner-Management had indeed issued fresh temporary appointment orders pursuant to withdrawal of confirmation orders, the same ought to have been pleaded in the written statement. This is yet another reason why this Court is unable to believe the defence of the Petitioner-Management that the two employees continued to remain in service as temporary employees on account of withdrawal of their confirmation order. I am therefore not inclined to interfere in the orders passed by the College Tribunal directing reinstatement of the two employees-Firoj Almaash Shikalgar and Vijay Popat Pawar.

17) So far as the case of balance three employees is concerned, admittedly confirmation orders were not issued in their cases. They admittedly continued to work merely as temporary employees. They did not have any right to remain in continuous services of the Petitioner-Management. The Tribunal has erred in going into the issue of regularization/permanency in respect of the said three temporary employees. Merely because names of the said three employees were reflected in audited statement of accounts, the same would not *ipso-facto* mean that the said three employees had also attained the status of permanency. The Tribunal has grossly erred in deciding the issue of permanency/regularization while deciding validity of termination of services of the said three employees. The prayers made by the Respondents did not include the prayer for grant of permanency. Mr. Bandiwadekar has placed on record copy of the Appeal Memo filed by Mr. Ganesh Nivrutti Salunkhe in which following prayers were made:-

"८) तेव्हा अपीलंट खालील प्रमाणे नम्र प्रार्थना करीत आहे.

अ) रिस्पॉन्डेंट क्र. २ यांनी दि. १०/०९/२०१८ रोजी यातील अपीलंटला दिलेला सेवासमाप्ती आदेश बेकायदेशीर व अन्यायी असल्याने तो रद्द करावा व तसे जाहीर करावे.

ब) अपीलंटला त्याने धारण केलेला मूळ पदावर पूर्ववत: रुजू करून घेणेबाबत यातील रिस्पॉन्डेंट क्र. १ व २ यांना आदेश व्हावेत.

क) अपीलंटला त्याच्या सेवासमाप्त काळातील सर्व वेतन व भत्ते अदा करण्याबाबत यातील रिस्पॉन्डेंट क्र. १ व २ यांना आदेश व्हावेत.

ड) अपीलंटचा सेवकाला हा वेतनवाढी, भत्ते, पेंशन इ. सर्व कारणासाठी सेवाकाळ म्हणून धरण्याबाबत यातील रिस्पॉन्डेंट क्र. १ व २ यांना आदेश व्हावेत.

इ) अपिलामध्ये काही दुरुस्ती, बदल करावयाचे असल्यास त्यास मान्यता देण्यात यावी.

फ) इतर न्यायाचे काही लाभ अपीलंटला देय असतील तर ते देण्याबाबत यातील रिस्पॉन्डेंटना आदेश व्हावेत.

ग) अपिलाचा खर्च अपलंटला देण्याबाबत यातील रिसपाँडट क्र . १ व २ यांना आदेश व्हावेत.

ह) अपील खर्चासह मान्य करण्यात यावे.”

18) Thus, no prayer was made before the College Tribunal for regularization of the services of the said three employees from a particular date. In absence of prayer, the Tribunal could not have adjudicated the issue of confirmation in service. Therefore, reliance by Mr. Belge on Apex Court judgment in ***Vinod Kumar*** is misplaced. The said three employees continued to remain temporary employees and never attained the status of permanent employees. As per appointment orders issued from time to time, their services were to be terminated automatically at the end of the tenure of the appointment. The three Respondents were already put to notice that they would not be continued in the service at the end of the tenure of appointment. Finding of permanency could not have been recorded by way of sidewind while dealing with the issue of termination, that too in absence of prayer for permanency. The Tribunal has erred in holding that “*As discussed herein before all the Appellants are found to be permanent non-teaching staff of Respondent No.2-College. They cannot be terminated from the service without following the due process of law*”. This finding is incorrect *qua* the three Respondents in whose case confirmation orders were never issued.

19) In my view therefore, the Tribunal has grossly erred in holding that the concerned three employees had attained the status of the regular employees. In my view therefore, the order passed by the Tribunal directing reinstatement of the three employees on assumption of they acquiring the

status of regular employees is clearly erroneous. The Tribunal has erred in interfering in termination orders of the said three employees.

20) The common judgment and order dated 26 April 2024 passed by the College Tribunal is unsustainable *qua* the three Respondents-Mr. Umesh Raghunath Pawar, Mr. Yashwant Anandrao Kakade and Mr. Ganesh Nivrutti Salunkhe and the same is liable to be set aside.

21) However, *qua* the other two employees viz. Mr. Firoj Almaash Shikalgar and Mr. Vijay Popat Pawar, the order of the Tribunal directing their reinstatement of service is sustainable and need not be disturbed. Coming to the aspect of backwages in respect of those two Respondents, it appears that the Petitioner-Management was required to resort to termination of services of teaching and non-teaching staff on account of reduction in intake capacity. While deciding Petition relating to teaching staff, I have come across Government Resolution issued by the State Government permitting reduction of intake capacity of Mechanical Engineering course from 120 to 60 as well as complete closure of course of direct entry in second year engineering which also had intake capacity of 60. Thus, there appears to be reduction of 120 engineering students of Petitioner-College. It is ultimately a permanently unaided educational institution and dependent fully on the fees paid by the students. In my view, the direction for payment of 100% backwages to Respondents-Mr. Firoj Almaash Shikalgar and Vijay Popat Pawar would put heavy financial burden on the Petitioner-Management. Their services were terminated on 10 September 2018 and by now period of seven long years has elapsed. In my view therefore, ends of justice would meet if the said two Respondents are

awarded 50% backwages from 10 September 2018 till the date of their reinstatement.

22) I accordingly proceed to pass the following order :-

- (i) Writ Petition Nos.13186 of 2024, 13183 of 2024, Writ Petition (St). No.16538 of 2024 are allowed. Judgment and order dated 26 April 2024 passed by the School Tribunal in cases of Mr. Umesh Raghunath Pawar, Mr. Yashwant Anandrao Kakade and Mr. Ganesh Nivrutti Salunkhe are set aside and the appeals filed by the said three Respondents before the College Tribunal are dismissed.
- (ii) Writ Petition Nos.9124 of 2024 and 13181 of 2024 are partly allowed. Direction for reinstatement of the two Respondents-Mr. Firoj Almaash Shikalgar and Vijay Popat Pawar is confirmed. Petitioner-Management shall accordingly reinstate the said employees in service within four weeks.
- (iii) The said two employees- Mr. Firoj Almaash Shikalgar and Vijay Popat Pawar shall be entitled to only 50% backwages from 10 September 2018 till the date of their reinstatement. They shall however be entitled to benefit of continuity in the service. To this extent, the Writ

Petitions No.9124 of 2024 and 13181 of 2024 are partly allowed.

23) With the above directions, all the five petitions are disposed of. There shall be no order as to costs.

PRIYA
RAJESH
SOPARKAR
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(SANDEEP V. MARNE, J.)