

BEFORE SHRI. R. N. AMBATKAR, MEMBER,

IN THE INDUSTRIAL COURT AT MUMBAI

COMPLAINT (ULP) NO. 204 OF 2018

Mr. Nana Shrirang Suradkar,
Aged : 41 Years, Room No.B/A 102,
Sarnath Tower, Buddhanagar CHS Ltd.,
Gowandi, Mumbai : 400 043. ... Complainant

VERSUS

1. M/s. Western Regional Instrumentation
Centre Mumbai, (A National Facility
Centre of University Grants Commission
New Delhi), Through its Chairperson,
University of Mumbai, Vidhyanagari,
Kalina, Santacruz (East), Mumbai : 98.
& Others. ... Respondents

-: ORDER BELOW EXH.C-2 :-

(Passed on 28th July 2020)

01) The Complainant has filed this Complaint under Item Nos. 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. After the appearance of the Respondents, they have filed '*preliminary objection*' at Exh.C-2 and have challenged the maintainability of the Complaint.

02) It is the contention of the Respondents that, the Complaint under Item Nos. 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 is not maintainable at all. The Complainant has already filed one another Complaint under Item No. 1 (a), (b), (d), (f) and (g) of Schedule IV of the MRTU & PULP Act, 1971. In this Complaint before the Learned Labour Court, the Complainant has pleaded and alleged that, the

Respondents have illegally and wrongfully terminated his services with effect from 16/03/2018. Thus, the Complainant himself has gone before the Learned Labour Court with the case of '*termination of service*'. The Complainant has already taken up his cause of action before the Learned Labour Court, the said proceeding is pending and hence, in view of the circumstances, the present Complaint is not maintainable.

03) It is further alleged that, the Complainant has tried to espouse his cause of permanency when the services of the Complainant have not been extended in the month of March-2018 itself and hence also, the Complainant cannot lie more particularly, when the cause of so-called termination is subjudice before the Learned Labour Court. It is further contended that, the Respondent is not at all an '*industry*' and even an '*industrial establishment*' and hence, the Model Standing Orders are not applicable. Therefore, the question of permanency does not arise.

04) This Application is opposed by the Complainant by filing reply. The Application is strongly opposed. It is contended that, his services have been terminated and he has not been allowed to attend his duties and therefore, the Complainant has rightly filed the Complaint before the Industrial Court under the relevant provisions.

05) Considering the rival contentions, following point arise for my determination and I have recorded my findings for the reasons given below :-

<u>No.</u>	<u>POINT</u>	<u>FINDING</u>
(1)	Whether the Complaint is maintainable ?	In the Affirmative

-: **REASONS** :-

06) I have carefully gone through the Complaint. According to the Complainant, he was appointed on 02/09/2013 as 'Clerk' cum 'Typist'. He was appointed purely on temporary basis for six months period, but thereafter, the Respondent No.1 continued the Complainant in its employment till 15/03/2018. His services were time to time extended and the Complainant has given the picturesque idea by providing a chart. It is the contention of the Complainant that, on vacant post of 'Clerk' cum 'Typist', he has worked uninterruptedly and continuously without any breaks right from 02/09/2013 to 15/03/2018 and in every year, he has rendered the services for more than 240 days. The Respondents have kept the Complainant out of employment illegally and wrongfully in breach of the Model Standing Orders. The Respondent has not allowed the Complainant to attend the duties with effect from 16/03/2018. The Complainant has rendered his services continuously for more than five years. The permanency has been denied to the Complainant and this has been done with ulterior and malafide intention. The Respondent is duty bound to follow the provisions of the Model Standing Orders framed under Maharashtra Industrial Employment (Standing Orders) Rules, 1959 and the Industrial Employment Standing orders Act, 1946. In the employment of the

Respondents, one post of '*Clerk*' cum '*Typist*' is vacant and there is likelihood that, the Respondent No.1 may fill the vacant post. For this reason, the Complainant contends that, the Respondents may be restrained from filling up the vacant post as he is entitled for the said post.

07) In the present Complaint, the Complainant has prayed for the relief to declare that, the Respondent Nos.1 and 2 have appointed the Complainant as '*Clerk*' cum '*Typist*' for years together in breach of Clause No.3, 4, 4(A), 4(b), 4(C) and 4(D) of the Model Standing Orders. He has sought declaration that, the Complainant is deemed permanent '*Typist*' cum '*Clerk*' by virtue of Model Standing Orders and the Respondent No.1 has illegally and wrongfully kept the Complainant out of employment with effect from 16/03/2018. The Complainant has sought relief to direct the Respondents to designate him as '*Clerk*' cum '*Typist*' and accord the Complainant the status and privilege of permanent workman with retrospective effect and to pay difference of wages from the date of his permanency.

08) It appears that, the Complainant has not been allowed to render his duties from 16/03/2018. The Complainant has taken it as his termination and has approached the Learned Labour Court under Item No. 1 of Schedule IV of the MRTU & PULP Act, 1971. The grievance of the Complainant in the present Complaint is almost different. In this Complaint, the Complainant alleges that, his service contract was extended time to time. He was appointed on 04/03/2014 and has worked for the

Respondents till 15/03/2018, uninterruptedly and continuously. On this post, the Complainant is seeking relief of permanency. Merely, the Complainant has approached the Learned Labour Court against the order passed alleging termination, cannot make this Complaint non maintainable. The cause of action and the grievance of the Complainant in this Complaint is almost different. Though the Complainant has espoused the cause of action before the Learned Labour Court alleging that, he has been terminated from the services, cannot restrain him from filing the Complaint before the Industrial Court under the relevant Items of Schedule IV of the MRTU & PULP Act, 1971. This Complaint is maintainable. No doubt, the burden lies upon the Complainant to prove his contentions and allegations.

09) In my view, the Complaint is maintainable and hence, I answer the Point No.1 in the '*Affirmative*' and I pass the following order :-

:- ORDER :-

- (i) The Application at Exh.C-2 is rejected.
- (ii) Complaint is maintainable.

Mumbai
Dt:-28-07-2020.
SRS/-

Sd/-
(R. N. AMBATKAR)
Member
Industrial Court, Mumbai.