

**BEFORE SHRI R.N. AMBATKAR, MEMBER,
INDUSTRIAL COURT, MUMBAI.**

COMPLAINT (ULP) NO. 204 OF 2018

CNR NO : MHICO1-000558-2018

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 (E),
Mumbai- 400 098.

2. The Assistant Registrar of
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 (E),
Mumbai- 400 098.

... **Respondents**

CORAM : Shri R.N. Ambatkar, Member

Appearances : Shri **A.D. Nimbalkar**, Learned Advocate
for the Complainant
Mr. **Mahesh Shukla**, Learned Advocate
for the Respondents

ORDER BELOW EXH.U-2

(Passed on 29/10/2021)

1. The complainant has filed this complaint under Items 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (*hereinafter referred to as 'the MRTU & PULP Act'*). This separate application is filed for grant of interim relief.

2. The facts emerging from the complaint and necessary for the decision of present application may be summarized as follows:

According to the complainant, the respondent No.1 is autonomous institute. It is established in India, New Delhi in Association of University of Mumbai as part of its comprehensive program for establishing universal science, instrumentation center (U.S.I.Cs) all over the countries since 1981. The respondent No.1 is functioning as registered society with the council of which the Vice Chancellor of University of Mumbai is ex-officio Chairperson. It is only regional instrumentation centre having research and development, technical service division, optical instrumentation, analytical instrumentation by medical instrumentation and mechanical workshop. The complainant claims that, he was appointed on 02/09/2013 by the respondent No.2 as a Cleark-cum-Typist with the respondent No.1 on consolidated monthly wages. His appointment was on temporary basis for six months period. After every six

months the respondent No.1 continued the complainant in its employment till 15/03/2018. According to the complainant, he has discharged his duties uninterruptedly and continuously without breaks from 02/09/2013 to 15/03/2018. The respondent No.1 has issued him appointment letter giving one day's artificial break after every six months. He was working with the respondent No.1 on vacant post of Clerk-cum-Typist. During the service tenure from 02/09/2013 to 15/03/2018 he has put 240 days employment in each year. The respondent No.2 has kept the complainant out of employment illegally and wrongfully in breach of Model Standing Orders applicable to the complainant. The services of the complainant are governed by the Model Standing Orders framed under the Maharashtra Industrial Employment (Standing Orders) Rules, 1959 and the Industrial Employment (Standing Orders) Act, 1946. It is contended that, as he has put 240 days continuous service in the employment in each year he is deemed to be permanent Typist-cum-Clerk. However, the respondent No.1 has not made him permanent and he has been deprived of permanent status, privileges of permanent employee and other benefits. In this way the respondents have committed unfair labour practice under Item 6 of Schedule IV of the MRTU & PULP Act. Keeping the complainant as temporary employee for years together amounts to showing partiality and attracts Item 5 of Schedule IV of the MRTU & PULP Act. It is alleged that, the respondents have shown favoritism to permanent

employees and partiality towards the complainant. The respondent No.1 is duty bound to follow the provisions of Model Standing Orders and as the respondents have failed, this amounts to unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act. He has been kept out of employment by the respondents by using managerial powers which attracts Item 10 of Schedule IV of the MRTU & PULP Act.

3. It is contended that, there are four sanctioned posts of Clerk-cum-Typist in the respondent No.1. Out of these one post is vacant due to retirement of employee, Mr. B.N. Gujwar. There is likelihood that, the respondent No.1 may fill the vacant post and for this reason, the respondents may be restrained from filling up the vacant post of Clerk-cum-Typist. The complainant is entitled to get vacant post as he is in continuous service with the respondents. In this application the complainant has made several prayers. He has prayed to hold and declare that, the respondents No.1 and 2 have appointed the complainant as Clerk-cum-Typist for years together in breach of Model Standing Orders. He has prayed to hold and declare that, the complainant is deemed permanent Typist-cum-Clerk by virtue of Model Standing Orders and that, the respondent No.1 has illegally kept the complainant out of employment with effect from 16/03/2018. He has requested to direct the respondents to designate him as Clerk-cum-Typist and afford him status and privileges of permanent workman with retrospective effect.

He has prayed for difference of wages from the date of his permanency till the decision of the complaint. He has also prayed to restrain the respondents from employing new person on the post of Typist-cum-Clerk till the decision of the complaint.

4. The respondents have filed reply at Exh.C-3. It is contended that, the complaint is nothing but the abuse of process of law. The complainant has levelled false and baseless allegations. The complainant has not approached this Court with clean hands. The complaint is not maintainable. The complainant himself has narrated that, his services has been wrongfully terminated with effect from 16/03/2018. The complainant himself has approached the Labour Court challenging his termination. The complainant was appointed on fixed term employment basis as per the needs and exigencies. The last appointment of the complainant was dated 14/09/2017 and his tenure was from 16/09/2017 to 15/03/2018. His services came to an on 15/03/2018 as per the terms and conditions stipulated in the appointment order. In view of these circumstances, the complaint is not maintainable. The complaint is hit by the principle of res-judicata.

5. It is contended by the respondents that, the respondent No.1 is not an Industry and an Industrial Establishment as contemplated under the Industrial Employment (Standing Orders) Act, 1946. The complaint is not maintainable and the Court is not having jurisdiction to

entertain it. Absolutely, there is no prima facie case and balance of convenience in favour of the complainant to claim the reliefs from the Court. It is contended that, considering the landmark judgment in the **State of Karnataka vs. Umadevi** reported in [2006 II CLR 261 SC] the complaint deserves to be dismissed. The respondent No.1 is required to get the post, sanctioned and approved from the State Government. The complainant is not a permanent employee and was appointed on temporary basis and his services have been utilized on the basis of requirement and availability. The services of the temporary workers are governed by the guideline of Government Resolution dated 25/08/2005 wherein it has been mentioned that, regularization cannot be mode of recruitment in any state within the meaning of Article 12 of the Constitution. It is contended that, the complainant is not entitled for any of the reliefs as its contentions does not disclose prima facie case. The application deserves to be rejected.

6. After going through the rival contentions and pleadings following points arise for my determination and I have recorded my findings for the reasons given below:

POINTS

FINDINGS

1. Whether there exists prima facie : In the Negative case in favour of complainant ?
2. Whether balance of convenience : In the Negative lies in favour of complainant ?

3. Whether complainant will suffer : In the Negative
irreparable loss if the interim
relief is not granted?
4. What order ? : As per final order

REASONS

As to Points No.1 to 3 :

7. Heard Learned Advocate Shri A.D. Nimbalkar for the complainant and Learned Advocate Shri Mahesh Shukla for the respondents.

8. I have carefully gone through the complaint at Exh. U-1. I have carefully perused the prayer clause of the present application, which is under consideration. In this application the complainant has prayed to declare that, the respondents No.1 and 2 have appointed him as Clerk-cum-Typist for years together in breach of Clauses 3, 4, 4-A, 4-B, 4-C and 4-D of Model Standing Orders. He has also prayed to hold and declared that, he be deemed permanent Typist-cum-Clerk by virtue of Model Standing Orders and the respondent No.1 has illegal and wrongfully kept him out of employment with effect from 16/03/2018. The complainant in this application has prayed to direct the respondents to designate him as Clerk-cum-Typist and afford him status and privilege of permanent workman with retrospective effect from 03/09/2014 or thereafter. He has further requested to direct the respondent No.1 to pay the complainant difference of wages from the date of his permanency till the decision of

this Court. He has further prayed to restrain the respondents from employing new person on the post of Typist-cum-Clerk till the decision of the complaint. Learned Advocate for the complainant submits that, the prayer Clauses No.1 to 4 in the present application may not be considered at this stage. He submits that, the prayer Clause 5 is very important and the complainant is in dire need of the reliefs. Learned Advocate Shri Nimbalkar submits that, the respondents are required to be restrained from employing new person on the post of Typist-cum-Clerk till the decision of the complaint.

9. Learned Advocate Shri Mahesh Shukla for the respondents submits that, the respondent No.1 is educational institute and the complainant in para No.3 of the complaint himself has stated that, respondent No.1 is functioning as registered society with council of which the Vice Chancellor of University of Mumbai is ex-officio Chair Person. The respondent No.1 is only regional instrumentation centre and having research and development, technical service division, optical instrumentation, analytical instrumentation. Learned Advocate submits that, it is apparently clear that, the respondent No.1 cannot be called as industrial establishment. He submits that, when it is not industrial establishment Model Standing Orders are not applicable. The provisions of Industrial Employment (Standing Orders) are not applicable and for this reason, the criteria of completion of service of 240 days cannot be applied. He submits that, the complainant was appointed on temporary basis and his services were

terminable at any point of time. He submits that, the complainant cannot claim permanency. He further submits that, the prayer Clause 5 in the present application is illogical and the relief restraining the respondents from employing new person on the post of Typist-cum-Clerk till the decision of the complaint cannot be granted. It is submitted by Learned Advocate Shri Shukla that, if this prayer Clause is allowed it will amount of interference in the administration of the respondents. Learned Advocate Shri Mahesh Shukla has relied on the observations of the Hon'ble Bombay High Court, Bench at Nagpur in **Rashtra Sant Tukloji Maharaj Nagpur University & Anr. vs. Hon'ble Member, Industrial Court, Nagpur Bench & Ors.** reported in [2016 (2) Mh.L.J. 454)]. I have gone through the judgment. The Hon'ble Nagpur Bench has observed that; *"The Rashtra Sant Tukloji Maharaj Nagpur University cannot be said to be an industrial establishment as contemplated by Section 2(e) of the Act of 1946"*.

10. The observations of Hon'ble Nagpur Bench are applicable to the present set of facts. The respondent No.1 is an educational institute. The complainant himself has stated that, respondent No.1 is functioning as registered society with council of which the Vice Chancellor of University of Mumbai is ex-officio Chair Person. If it is so, then it is a matter of dispute whether the respondent No.1 is industrial establishment. At this stage and prima facie it appears to me that, the respondent No.1 cannot be called as industrial

establishment and application of the provisions of Industrial Employment (Standing Orders) Act is out of question.

11. It is the contention of the complainant that, he was appointed on 02/09/2013 by the respondent No.2 as Clerk-cum-Typist by letter dated 02/09/2013 on consolidated monthly wages. He has stated that, he was appointed by the respondent No.1 purely on temporary basis for six months period by Deputy Registrar of the respondent No.1 but thereafter the respondent No.1 continued the complainant in its employment till 15/03/2018. The complainant has given a chart showing period of his appointment against which the office orders and dates of the orders are written. It appears to me that, the complainant is appointed for six months and thereafter he was given appointment letters after a break of one or two days. According to the complainant, this break is artificial and he has rendered his services continuously and for this reason, he is entitled for permanency in the respondent No.1 institute. Here in this case, the respondents have contended that, the respondent No.1 is not industrial establishment and for this reason, the provisions of Industrial Employment (Standing Orders) cannot be made applicable. The challenge of the respondents is untenable. Whether the complainant has rendered his services continuously or whether he was in continuous service in the respondent No.1 and on that basis whether he is entitled for permanency. All these issues shall be considered at the later stage.

12. The complainant has contended that, there are four sanctioned posts of Clerk-cum-Typist in the respondent No.1. It is his contention that, Miss. Mangal Kamble, Mrs. Minal Kabale, Mr. Deepak Pednekar are working with the respondent No.1 as Clerk-cum-Typists and one post is vacant with the respondent No.1 due to retirement of Mr. B.N. Gujwar. It is his contention that, Mr. Gujwar was also working as Clerk-cum-Typist with the respondent No.1 and he has retired from the employment on 31/08/2017. He contended that, one post of Clerk-cum-Typist and there is likelihood that, respondent No.1 may fill the vacant post of Clerk-cum-Typist and therefore, respondents are required to be restrained from filling up vacant post of Clerk-cum-Typist. In the present case the contention of the complainant that, he is in continuous service with the respondent No.1. At this stage, whether complainant was in continuous service cannot be decided. The complainant has to prove his contentions with cogent oral and documentary evidence. He has also to prove that, the Model Standing Orders are applicable to the respondents. If the Model Standing Orders are applicable then the question arise regarding whether the complainant was in continuous service and whether the permanency can be granted to him. It is pertinent to note that, the prayer of the complainant that, respondent No.1 be restrained from filling up the vacant post of Clerk-cum-Typist is not logical. The respondent No.1, Institute cannot be restrained from filling up vacancy. The complainant has to prove his

contention independently. He has to prove that, he is entitled for permanency. It is possible only when he is able to prove that, he was in continuous service and has completed 240 days in every calendar year and that Model Standing Order is applicable. Restraining the respondents from filling up the vacant post of Clerk-cum-Typist which has become vacant due to retirement of Mr. B.N. Gujwar cannot be considered and if this relief is granted it will amount to interference in the administration of the respondent No.1. In my opinion, there is no prima facie case in favour of the complainant. The complainant is out of employment as the contract between him and the respondent No.1 has come to an end. The respondent No.1 has not renewed the service contract and the complainant is taking it as he has been terminated. There is no balance of convenience in favour of the complainant.

13. As far as the point regarding irreparable loss is concerned, in my opinion, no irreparable would be caused to be complainant. In future, if complainant succeeds to prove that, he is entitled for permanency, he can very well agitate the issue regarding his dues. He may be adequately compensated. His entire due may be given to him if he succeeds. On the other hand, if the respondent No.1 is restrained from filling up the vacant post, many complications may arise and this may amount to interference in the administration of the respondent institute. The prayer of the complainant in the present application is not acceptable and it is not logical and legal. In view of my above

observations, I answer Points No.1 to 3 in the Negative and I proceed to pass the following order.

ORDER

- (1) The application Exh.U-2 stands rejected.
- (2) No order as to costs.

Sd/-

(R.N. Ambatkar)

Member,

Industrial Court, Mumbai.

Dated : 29/10/2021

Rry/- 29.10.

Argued on : 20/10/2021

Order dictated & typed on : 29/10/2021

Order checked & signed on : 29/10/2021