

Mr. M. S. Topkar for Petitioner.
Mr. T. S. Ingale for Respondent No.1.
Mr. A. D. Kango, AGP for Respondent No.2.

ORDER :

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 31.01.2014 passed by the learned Member, Industrial Court No.2, Kolhapur (for short 'Tribunal) in Complaint (ULP) No.897 of 2001. By that order, the Tribunal dismissed the complaint instituted by the petitioner under Section 28 read with Items No.6, 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act').

1/5

appointment, the staffing pattern of the respondent No.1 Council was not approved. On 24.10.2005, State Government approved the staffing pattern. As far as the respondent No.1 Municipal Council is concerned, one post of 'Computer Operator' was sanctioned with a remark that in the event of retirement of employee or for any reason whatsoever the post becomes vacant, the said post will stand abolished. He submitted that even condition No.1 in Government Resolution dated 24.10.2005 lays down that in the event of temporary post in Schedule A becomes vacant on account of retirement of employee or for any reason whatsoever, the temporary post shall stand abolished. That apart, if the permanent post is rendered vacant, the senior most employee working temporarily shall be appointed on that post and the temporary post shall stand abolished.

4. Mr. Topkar submitted that the qualification for the post of 'Computer Operator' is Graduate and passing of Government approved Computer Programming and Assessing Course. When the petitioner joined as Computer Programmer on 10.07.1997, he was having qualification of 11th Standard and Computer Operator Course. In the year 2003, he became Graduate. Mr. Topkar submitted that he was also working as a Clerk in the establishment of the respondent No.1 Council as is evident from exhibits U-44, U-45, U-49 to U-52 and U-58 to U-65. He submitted that if it is not possible to accommodate the petitioner on the post of 'Computer Operator', he may be absorbed on the post of 'Clerk'. He submitted that the respondent No.1 Council had submitted proposals on 06.08.2012 and 11.09.2012 for creating the post of Computer Operator and the same is pending with the State Government. Till such decision is taken by the State Government, he may be continued on the post of Clerk.

5. On the other hand, Mr. Ingale supported the impugned order. He

submitted that basically appointment of the petitioner on the post of Computer Programmer was purely of temporary basis and subject to payment of honorarium. It was also made clear that no right will be accrued directly or indirectly in favour of the petitioner for absorption in the employment of the Municipal Council. In case the post of Computer Programmer is created, the candidate will be appointed on that post after following the selection process and the appointment of the petitioner will stand cancelled. Even at that time, post of Computer Programmer was not sanctioned. He further submitted that basically when the staffing pattern was approved on 24.10.2005, the post of Computer Programmer was not sanctioned. Earlier, one Mr. Nivrutti S. Gavali was working on the post of Computer Programmer upto 31.10.2001. Thereafter, Mr. Subhash S. Deshpande was working as Computer Operator from 31.10.2001 to 21.04.2003. Mr. Gavali was again appointed as Computer Operator from 21.04.2003 to 21.04.2008 when he opted for State Cadre Service. He submitted that the post of Computer Operator fell vacant and in view of Government Resolution dated 24.10.2005, the said post was automatically lapsed. He submitted that the post of Computer Operator is no more available in the establishment of the respondent No.1 Council. The post of Computer Programmer is also not sanctioned. He, therefore, submitted that since the post is not vacant and available, no fault can be found with the impugned order. As far as the proposals dated 06.08.2012 and 11.09.2012 submitted by respondent No.1 Council for creating the post of Computer Operator are concerned, the same were turned down by the respondent No.2.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, on 10.07.1997, the petitioner was appointed as Computer Programmer subject to the terms and conditions set out in the

appointment letter. Even at that time, the post of Computer Programmer was not sanctioned. His appointment was purely temporary and on payment of honorarium. It was also made clear that the petitioner will not have any right in the municipal employment either directly or indirectly. In case the post of Computer Programmer is created, a candidate will be appointed after following the selection process and in that case, the appointment of the petitioner will stand cancelled. As noted earlier, the staffing pattern was approved on 24.10.2005 by the State Government. The post of Computer Programmer is not sanctioned by the State Government. There is only one post of Computer Programmer. Initially, Mr. Gavali was working on that post till 31.10.2001. Thereafter Mr. Deshpande was holding that post from 31.10.2001 to 21.04.2003. Subsequently, Mr. Gavali was appointed as Computer Programmer from 21.04.2003 to 21.04.2008 when he opted for State Cadre Service. In view of the remark made against the post of Computer Operator read with Condition No.1 in the Government Resolution dated 24.10.2005 approving the staffing pattern, the post of Computer Programmer, being temporary post, stood abolished on account of accrual of vacancy on that post. In other words, the post of Computer Operator is abolished. The post of Computer Programmer is not sanctioned in the staffing pattern. The appointment of the petitioner on 10.07.1997 was purely temporary and in view of the conditions stipulated in the appointment order, the petitioner cannot be appointed on the post of Computer Programmer.

7. In paragraphs 19 to 21 and 23 to 25, the Tribunal has held that the petitioner was appointed as Computer Programmer on honorarium basis. At the time of his appointment, the post of Computer Programmer was not sanctioned. The staffing pattern dated 24.10.2005 shows that the required qualification for the post of Computer Operator is Graduate and

passing of Government approved Computer Programming and Assessing Course. After considering the material on record, the Tribunal held that the petitioner miserably failed to prove that the respondent No.1 Council intentionally and deliberately did not make the petitioner as a permanent employee only with a view to depriving him from the benefits of permanency and that it has engaged in unfair labour practices under Items 6, 9 and 10 of Schedule IV of the Act. The said findings are based upon the material on record and cannot be said to be either perverse or contrary to record.

8. Mr. Topkar submitted that in any case, the petitioner may be absorbed on the post of Clerk. The said request cannot be entertained in this Petition. It will be open to the petitioner to make representation to the respondents No.1 and 2 for absorbing him on the post of Clerk.

9. Subject to above, no fault can be found with the impugned order. Hence, the Petition fails and the same is dismissed.

10. At this stage, Mr. Topkar orally applies for continuation of ad-interim order dated 21.03.2014 for the period of 6 weeks from today. Mr. Ingale opposes this application.

11. Having due regard to the fact that ad-interim order is operating from 21.03.2014 as also having further due regard to the fact that the petitioner wants to challenge this order before the higher Court, I find that the request made by Mr. Topkar is reasonable. Hence, notwithstanding dismissal of the Petition, ad-interim order dated 21.03.2014 shall remain in force for a period of 6 weeks from today. Order accordingly.

(R. G. KETKAR, J.)