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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8084/2012 & C.M.No.20128/2012 (stay)**

% *Date of Decision: 17th May, 2013*

YASMEEN SAYED Petitioner

Through: Mr.N.D.Pancholi, Adv.

Versus

CENTRAL WAREHOUSING CORPORATION Respondent

Through: Mr.K.K.Tyagi, Adv. with Mr.Iftikhar
Ahmed, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes.**

: **VALMIKI J. MEHTA, J (Oral)**

1. This writ petition is filed by the petitioner challenging the termination order dated 7.6.2012 whereby the services of the petitioner have been terminated by the respondent/employer/Central Warehousing Corporation. The petitioner was a Management Trainee and the termination order was passed as the services of the petitioner have been found not to be satisfactory.

2. On behalf of the petitioner, it is contended that the officers of the respondent did not forward the reports of the petitioner in time. It is further argued that the assessment reports which have been prepared with respect to

the petitioner show that two officers have found that the petitioner was fit for independently working as Manager. It is further argued that the assessment reports during the training period shows that the work of the petitioner has always been found to be satisfactory, and therefore, termination order is unjustified in concluding that petitioner's services were unsatisfactory. It is also argued that as per the Final Assessment Report of the petitioner, the petitioner is found to have received 24 out of 40 marks in presentation for 'service tax', and therefore, it cannot be said that the petitioner's services were unsatisfactory. It is also argued that respondent was actuated by *malafides* in passing the termination order. It is also argued that the termination order is stigmatic, and therefore, liable to be set aside besides also because it has been passed without hearing the petitioner.

3. On behalf of the respondent in the counter-affidavit, it is basically contended that since as per the Final Assessment Report taken with earlier assessment reports, the competent authority had reached a conclusion that the services of the petitioner were not satisfactory, and the petitioner was only a Management Trainee who as per the appointment letter would only be taken in employment on satisfactory completion of services, consequently, the services of the petitioner have been terminated.

4. Besides the Final Assessment Report, there are a total of 4 periodic assessment reports so far as the petitioner is concerned. First report is by one

Sh.H.R.Arya which states that petitioner can independently work as Manager. This report is dated 12.12.2011. Second report is the report of Sh.G.Raja Rao dated 27.03.2012 which again states that petitioner can work independently as Manager. However, there are 2 other reports, one of Sh.Abhay Singh dated 24.03.2012 and the other of Sh.B.L.Samaria dated 22.03.2012, which state that petitioner cannot work independently as a Manager. All the 4 reports give the remark of only satisfactory so far as the work of the petitioner is concerned ie not of good or very good or excellent. The final assessment of the petitioner is in terms of the Final Assessment Report dated 24.05.2012 of a Regional Manager rank of the respondent, and the relevant portion of which reads as under:-

1. Please evaluate the management trainee on the following parameters during his/her training programme:			
a	Knowledge about general warehouse/ICD/Custom Bonded Warehouses	a	Good
b.	Knowledge about RO working	b	Good
2. Comments on his/her behavioural aspects:			
a.	Approach & Zeal towards work assigned	a.	Average
b.	Initiative drive	b.	Average
c.	Communication Skills	c.	

d.	Willingness to accept challenges & responsibilities.	d.	Average
e.	Discipline	e.	Very Well disciplined
f.	Leadership qualities/ability to take decision	f.	Average
g.	As a team player	g.	Average
3. Are you satisfied with the performance of Management trainee during his/her training?		To some extent	
4. If not, reason for such dissatisfaction.		Needs improvement in approach/zeal and initiative to come up to SAMs level	
5. Do you think Management Trainees is fit for his/her appointment as Senior Assistant Manager?		Needs more experience	
6. Comments on overall performance of Management Trainee		As Above	

Sd/-
Susheel Tyagi
Regional Manager

Forwarded to:
The AGM (Per.), CWC, RO, New Delhi
Copy to:
AGM (Trng.), CWC, CO, New Delhi.”

5. The aforesaid assessment report shows that basically the petitioner's performance is rated as average on 5 counts, and good on 2 counts.

However, so far as the satisfaction with respect to the performance is concerned, it is noted that it is only 'to some extent'. In the next very paragraph, it is clarified that the petitioner in fact needs improvement in approach/zeal for coming up to the Senior Assistant Managers (SAMs) level. Most importantly in the next para which required assessment as to whether the petitioner was fit for appointment as a Senior Assistant Manager, the answer is in the negative by stating that the petitioner needs more experience. It may be noted that besides the petitioner's 4 periodic assessment reports of the training year, the petitioner also had given a presentation which, as stated, has been marked only at 24 out of 40 marks, with high difference/range in marking by the four officers concerned.

6. It is the employer which decides the suitability of the employee. It is for this purpose that firstly an employee like the petitioner is put on the job as a Management Trainee and not directly as a Sr. Asst. Manager/employee. The object is that every employer has a right to judge the suitability of an employee for being employed. The Final Assessment Report prepared by a very high ranking official being the Regional Manager shows that the competent authority has not found that the petitioner has the necessary experience for being appointed as Senior Assistant Manager. In my opinion, Courts cannot sit in the armchair of the competent authority to decide the suitability of the employee, more so, because it is ill-equipped to do so. Of

course, Courts do interfere in certain cases where there is *ex facie* discrimination or malafides found, however, considering that the petitioner has received only about average reports in 2 out of 4 earlier periodic reports state that the petitioner is not capable of being appointed as a Manager (this is wrongly described because the form contains printed word 'Manager' and what is actually intended is the word Senior Assistant Manager) because petitioner was to be appointed as Sr. Asst. Manager and not Manager, and in the Final Assessment Report against her I do not find that the respondent in this case is actuated by *malafides* in passing the termination order dated 07.06.2012. Further, in my opinion, general allegations of *malafides* are not enough, inasmuch as, *malafides* have to be alleged against each specific officer who gave the different assessment reports finding the petitioner not fit to be appointed as Senior Assistant Manager, and which factual aspects are missing in the writ petition.

7. Therefore, I do not find that this Court in exercise of its extraordinary power under Article 226 of the Constitution of India can interfere in the facts as found in the present case and quash the termination order.

8. Counsel for the petitioner relied upon the provisions of Delhi Shops and Establishment Act, 1954 being Sections 2(5); defining 'commercial establishment', S. 2(7); defining 'an employee', S.2(8); defining 'an employer', S. 2(9); defining 'an establishment' and Section 30 which

provides that services of an employee covered under the Delhi Shops and Establishment Act, 1954 cannot be terminated except by giving one month's notice and which having not been given in this case hence the termination order is liable to be set aside.

9. Reliance in this regard is placed upon a Division Bench judgment of this Court in the case of ***Kala Kendra Pvt. Ltd. Vs. Sh.K.K.Baweja & Anr.*** ***ILR (1980) II Delhi 1355*** which holds that if an employee is covered by the Delhi Shops and Establishment Act, then the services of such contractual employee cannot be terminated without giving one month's notice or one month's wages in lieu of notice.

10. In my opinion, argument urged on behalf of the petitioner that petitioner's services cannot be terminated without giving one month's notice is misconceived for the reason that Section 30(3) provides the consequence of not giving one month's notice or pay in lieu of notice and which consequence is that a complaint has to be made before a Magistrate and the Magistrate will, in addition to give an employee a month's salary, give compensation to the employee up to one month's salary. The Magistrate may also impose a fine under Section 40. Therefore, once the consequence of non-compliance of Section 30 is provided in Section 30 itself, it is only that consequence which will flow and it would not mean that the termination order is to be set aside for the reason of not having given one month's notice

or pay. In my opinion, though I am not finally expressing one way or the other, even one month's notice or pay may not be applicable because as per the appointment letter, petitioner could always be terminated at any time during the period of her training. There is no requirement in her appointment letter of giving of a particular period of notice. At best the petitioner will be entitled to one month's notice or pay but it will not render termination of services of the petitioner bad in law, inasmuch as, once the employer/respondent found the services of the petitioner not to be satisfactory for confirmation in employment, the respondent will always be entitled to terminate the services of the petitioner as a Management Trainee.

11. I may state that the Supreme Court in the judgment in the case of ***Muir Mills Unit of NTC (U.P.) Ltd. Vs. Swayam Prakash Srivastava & Anr. (2007) 1 SCC 491*** has held that even if the non-stigmatic termination of services of the probationer refers to the performance being 'not satisfactory', such an order cannot for that reason be said to be stigmatic. The Supreme Court in this judgment further held that for terminating the services of the probationer, the principle of *audi alteram partem* are not applicable.

12. On behalf of the petitioner reliance is also placed upon the judgment of a Division Bench of this Court in the case of ***Pradip Kumar Das Vs. Union of India & Ors. 191 (2012) DLT 651*** to argue that the services of an

employee can be terminated only after one month's notice and if no notice is given, the termination would be bad in law. In my opinion, the judgment relied upon does not apply because the Division Bench of this Court in the said case was concerned with the statutory rules as applicable to CESTAT members. While interpreting the relevant Rule 9(2), it was held that termination has to be in terms of Rule 9(2). In the present case, I have already observed that consequence of non-compliance of Section 30 is specifically provided under sub-Section 3 of that section and which allows a complaint to be filed before the Magistrate who can impose penalty up to one month's pay and also a fine in addition.

13. I may state that counsel for the petitioner had prayed for time to file rejoinder by moving an adjournment slip. Since filing of a rejoinder is not compulsory in all cases, and in view of the admitted facts of the assessment reports as also the language of the non-stigmatic termination order stating that the petitioner's services are not found satisfactory, I have not acceded to the request to grant time for filing rejoinder. The assessment of the petitioner has necessarily to be only on the basis of the four periodic assessment reports and then the Final Assessment Report and all of which were on record for being considered. Surely, nothing else is required to be looked into when the issue of satisfaction of services of a Management Trainee such as the petitioner comes up except the admitted record which is already on

the file of this Court.

14. In view of the above, there is no merit in the petition, and therefore, the same is dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

MAY 17, 2013
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