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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 6590/2015

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16th November, 2016

SHRI ANKUR VERMA

..... Petitioner

Through: Mr. Soumo Palit, Advocate.

versus

LIC NOMURA MUTUAL FUND

ASSET MANAGEMENT CO. LIMITED & ANR

..... Respondents

Through: Mr. Arun Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed under Article 226 of the Constitution of India by the petitioner Mr. Ankur Verma seeking quashing of the Letter dated 21.5.2014 issued by the respondent no. 1/M/s. LIC Nomura Mutual Fund Asset Management Company Limited whereby the petitioner's probationary services were terminated.

2. The petitioner was appointed by the respondent no.1 on probation in terms of its Letter dated 28.2.2013. Paragraphs 3, 4, 7, 11, 13,

15, 17, 18 and 19 of this appointment Letter dated 28.2.2013 are relevant and the same are reproduced as under:-

“3. You will be on Probation for a period of one year (extendable by one more year) from the date of jointing. On successful completion of probation period, your services will be confirmed in the Company.

4. Your confirmation will be subject to satisfactory work performance, good conduct and behavior, as decided by the Company.

XXXXX

XXXXX

7. You will also be eligible for such employee benefits like Provident Fund, Gratuity, HRA, City Compensatory Allowance etc. as are applicable to the employees of the company in your cadre and as per the company's rules, as amended from time to time.

XXXXX

XXXXX

11. In case period of probation is extended, the prescribed quarterly target for the extended period will be the target as fixed by the Company.

XXXXX

13. The Company may at any point of time after your appointment as Relationship Manager but before the start of your probation or during the period of probation, including extended period of probation if any, terminate your services without notice, without assigning any reason.

XXXXX

15. Your confirmation in the cadre of “Relationship Manager” will be subject to your satisfactorily complying with all the provisions mentioned above and the any other Company policy decisions made from time to time.

XXXXX

17. Upon confirmation, you shall not leave or discontinue your service without first giving notice in writing to the Competent Authority of your intention to leave or discontinue the service. The period of such notice shall be

one month in case you are in the cadre of Relationship Manager and three months in case you are in any higher cadre.

18. Upon confirmation, the Competent Authority of the LIC Nomura Mutual Fund Asset Management Company Ltd., may, in accordance with the Company rules, retire, remove or dismiss you from the service by giving one month's notice in case you are in the cadre of Relationship Manager and three month's notice in case you are in any higher cadre.

19. Upon your confirmation in the cadre of Relationship Manager, you shall be required to fulfil business targets of Key Performance Index (KPI) (to be given after confirmation) on monthly basis or any other prescribed targets as per the Company policy, failing which appropriate action including termination of your services will be taken by competent authority."

(underlining added)

3. Petitioner was issued various letters by the respondent no. 1 company that the petitioner was failing to meet the necessary targets and such Letters are dated 8.7.2013, 18.12.2013, 6.1.2013 (sic. 6.1.2014), 15.1.2014 and 17.2.2014 stating that the petitioner has failed to meet the targets. All the aforesaid letters are to the same effect and therefore for the sake of convenience three such letters are reproduced as under:-

(i) **Letter dated 8.7.2013**

"Date : 8th July, 2013

Mr. Ankur Verma
Relationship Mangar (Prob.)
ME Code – M- 380
LIC Nomura MF, Delhi Area Office,
New Delhi

Dear Sir,

Re : Performance Review as on 1st July, 2013.

The target fixed for you for the month of June, 2013 and the performance under your ME Code is tabulated as below:

TARGET FOR JUNE, 2013			
CASH	DEBT	EQUITY	TOTAL
5.00	2.00 Cr	0.05 Cr	7.05 Cr

NET COLLECTION FOR JUNE, 2013
Rs. 30000.00

Cumulative Performance Report as of 30 th June, 2013		
SIP/STP(Amount)	PCMC	Retiree Business
Rs. 20000.00	NIL	NIL

Upon review of your performance, it has been noticed that you are lacking behind on ALL THE COUNTS, which is totally unacceptable. Performance, as is evident from the above figures is very POOR. You have to make large scale efforts to achieve positive results. We would like to make it clear that you are required to complete your Business Target on ALL COUNTS and any failure in this regard will lay a direct impact on the release of the Monthly PLI which may even be forfeited.

We have and will be regularly intimating you about your performance. It would be pertinent to remind you that failure to complete the Business Target, might lead to appropriate action by the Competent Authority and we will not be able to put up your request for CONFIRMATION favourably before the Competent Authority as per Clause No. 4 of your appointment letter dt. 28th February, 2013.

Kindly acknowledge receipt of the letter and return the duly acknowledged copy, that is also being enclosed, for our records.

Sd/-

Area Manager

Cc to Ms. Shefali B Suri, Head (HR), LIC Nomura MF AMC Ltd, Mumbai, for information

Area Manager”

(ii) **Letter dated 18.12.2013**

“Date : 18th December, 2013

Mr. Ankur Verma

Relationship Manager (Prob.)

ME Code – M -380

LIC Nomura MF, Delhi Area Office
New Delhi.

Dear Sir,

Re : Performance Review as on 15th December, 2013.

Upon review of your performance, and as is evident from the data received upto 15th December, 2013, **YOU ARE FAR BEHIND THE MINIMUM THRESHOLD POINTS TO BE ACHIEVED FOR Q3 14** i.e. for the period from 1.10.13 to 31.12.13. This poor performance, is bound to bring serious implications on your career growth.

We would like to make it clear that you are required to complete your Business Target on ALL COUNTS and any failure in this regard will lay a direct impact on the release of the Monthly Performance Allowance which will be forfeited in case of underperformance, in accordance with the Point No. 4 of the Terms and Conditions of the Circular dated 23rd September, 2013, regarding the Target as well as Competition for RMs (Retail), wherein failure to achieve the minimum threshold of 300 points in a quarter, will disqualify the RM from receiving the Performance allowance of Rs.6000/- per month for the next year.

We have and will be regularly intimating you about your performance. Your **POOR PERFORMANCE** is totally unacceptable. Focus on marketing activities seems to be on the lower side and the same must be improved that should reflect in the figures against your ME Code. You have to make large scale efforts to achieve positive results. It would be pertinent to remind you that failure to complete the Business Target, might lead to appropriate action by the Competent Authority. This poor performance, is bound to prove fatal and the same can lead to your **TERMINATION** as we will not be having any grounds to recommend either the extension of your probation period or **YOUR** confirmation before the Competent Authority. The Competent Authority, also, has taken a serious note of your under performance and the reasons for the same may please be explained in writing.

Kindly acknowledge receipt of the letter and return the duly acknowledged copy, that is also being enclosed, for our records.

With regards,

-sd-

(P K JAIN)

Area Manager

Cc to Ms. Shefali B Suri, Head (HR), LIC Nomura MF AMC Ltd,
Mumbai, for information

Area Manager”

(iii) **Letter dated 6.1.2013 (sic. 6.1.2014)**

“Date : 6th January, 2013

Mr. Ankur Verma
Relationship Mangar (Prob.)
ME Code – M- 380
LIC Nomura MF, Delhi Area Office
New Delhi

Dear Sir,

Re: **YOUR PERFORMANCE REVIEW**

Please find given below your performance figures, as per data received
from Karvy as on 30th November, 2013:

SIP		APPS		NEW FOLIO		EMPANELLMENT
COUNT	AMOUNT	COUNT	AMOUNT	COUNT	AMOUNT	COUNT
2	20000.00	0	0.00	19	764019.26	7

Performance, as is evident from the above figures is EXTREMELY POOR. You have to make large scale efforts to achieve positive results. Your Focus on marketing activities seems to be on the lower side and the same must be improved that should reflect in the figures against your ME Code.

We have already intimated you about your performance vide our letter dated 18th December, 2013 wherein you have been clearly warned of the consequences of your continued under performance. This poor performance, if continued, is bound to prove fatal and the same can lead to your TERMINATION.

We would like to make it clear that you are required to achieve the Business Target Fixed for you under CPOF Sr-2 on ALL COUNTS and the Monthly Target of 20 cases each of SIP, APPS and New Foilios. It

would be pertinent to remind you that failure to complete the Business Target, might lead to appropriate action by the Competent Authority.

Kindly acknowledge receipt of the letter and return the duly acknowledged copy, that is also being enclosed, for our records.

-sd-
Area Manager

Cc to Ms. Shefali B Suri, Head (HR), LIC Nomura MF AMC Ltd., Mumbai, for information.

Cc to Mr. Nilesh Tawde, Head (Insti), LIC Nomura MF AMC Ltd., Mumbai, for information.

Cc to Mr. Gautam Nimkar, Head (Retail), LIC Nomura MF AMC Ltd., Mumbai, for information.

Area Manager”

4. The petitioner’s services were ultimately terminated by the respondent no. 1 vide Letter dated 21.5.2014 and which reads as under:-

“REF LICNMF/HR-SBS/TERMNRS
Date : 21st May 2014
Mr. Ankur Verma
SR No : 458635
RM, LIC Nomura Mutual Fund AMC Ltd,
Area Office – Delhi

Dear Mr. Verma,

Termination of your services

Your overall performance for the period between April 2013-March 2014 has been evaluated and based on the performance metric targets given to you, your performance has been found to be continually non satisfactory and much below expectations.

In view of the above, it has been decided to terminate your service with this organization with immediate effect. You are advised to surrender all the official documents and Company belonging with you to Mr. P.K. Jain – Delhi, Area Incharge immediately.

Yours faithfully,
Sd/-

HEAD-HUMAN RESOURCES”

5. The first issue which arises in this case is whether the respondent no. 1/company is at all a State as per Article 12 of the Constitution of India. On this aspect when the present writ petition first came up for hearing way back on 14.7.2015 a learned Single Judge of this Court directed filing of Memorandum of Association of respondent no. 1/company, but that was not done. On the next date on 3.8.2015 the writ petition was dismissed in default. The writ petition was thereafter restored vide Order dated 18.8.2015 and the matter was taken up on 27.8.2015. On 27.8.2015, the matter was adjourned for the petitioner to take instructions and whereafter the matter was taken up on 28.8.2015. Thereafter on various dates the Court was not held and the matter ultimately came up on 23.3.2016 and on which date notice was issued to the respondents in the application in C.M. Appl. No. 15401/2015 seeking restoration of the writ petition dismissed in default for today. This Order dated 23.3.2016 was sought by the petitioner overlooking the fact that the writ petition already stood restored vide Order dated 18.8.2015 by allowing of the same C.M. Appl. No. 15401/2015. Today, therefore the present writ petition is really listed for admission.

6. It is seen that the petitioner has filed an Additional Affidavit dated 31.7.2015 and this additional affidavit shows that LIC of India only has 49% share holding in the respondent no. 1/company which employed the petitioner. Therefore, on this ground itself it is seen that respondent no. 1/company is not a State because respondent no. 1/company is not funded or controlled by a State or a State entity. Writ petition therefore would not be maintainable against the respondent no. 1/company which is a private organization. Counsel for the petitioner sought to argue that LIC Housing Finance Limited owns 16% share in the respondent company and therefore the totality of shareholding of LIC of India and LIC Housing Finance Limited with respondent no. 1/company comes to 65% and consequently respondent no. 1/company should be held to be a State, but it is noticed that there are no details given of the shareholding of the shareholders of LIC Housing Finance Limited and on a query counsel for the petitioner states that in LIC Housing Finance Limited, LIC of India only has 49% shareholding. It is, however, argued that since there are other PSUs which own shareholding in the respondent no. 1/company hence respondent no. 1/company should be considered as a State. Reliance is also placed in this regard upon the judgment of the Central Information Commission in the case of *Sh. Nisar Ahmed Shaikh and Ors. Vs. LIC Housing Finance*

Limited, MANU/C1/0069/2009 decided on 28.10.2009 to argue that LIC Housing Finance Limited is held to be a public authority as per Section 2(h) of the Right to Information Act, 2005 in terms of this judgment and hence it should be held that LIC Housing Finance Limited is also a PSU or a State authority as per Article 12 of the Constitution of India.

7. Reliance placed on behalf of the petitioner to the judgment of the Central Information Commission in **Nisar Ahmed Shaikh's** case (*supra*) is misconceived because the definition of a public authority under the Section 2 (h) of the Right to Information Act is that if a body is substantially financed by a Government then such a body would become a public authority, and on such reasoning the Central Information Commission held that LIC Housing Finance Limited being substantially financed by LIC which owns 45% share holding in the said LIC Housing Finance Limited and which latter entity was therefore a public authority. The definition of a public authority under Section 2 (h) of the Right to Information Act will not apply with respect to determining whether the respondent no. 1/company is or is not a State and therefore reliance placed by counsel for the petitioner upon the judgment in the case of **Nisar Ahmed Shaikh's** (*supra*) is misconceived and rejected. Whether the respondent no.1/company is or is not a State depends upon the meaning which is to be given to a State under

Article 12 of the Constitution of India and not what is public authority for the purposes of the Right to Information Act. For the sake of convenience the relevant paragraphs of the judgment in the case of *Nisar Ahmed Shaikh (supra)* holding that substantial financing is sufficient for taking the body to be a public authority under Section 2 (h) of the Right to Information Act are reproduced as under:-

“30. We will first take up the LICHFL. During the course of hearing, the LICHFL has submitted that their shareholding pattern will show that the total holding of the public sector undertaking is only to the extent of 45% and as such it cannot be treated as substantial finance by the Government. It has also been submitted that their company is listed in stock exchange and that the Government has no control over trading of their shares. It was also submitted that LICHFL is governed by the Companies Act but has not been constituted under the Companies Act. In their view, since total holding of the LIC in LICHFL is less than 51%, the ownership of LICHFL does not vest in LIC. Since the LIC does not own, it cannot also control. The ownership is virtually synonymous with the extent of shareholding and unless an organization has the shareholding exceeding 50%, it cannot be said that it owns that entity. It was also stated that the LIC may also decide to disinvest their shares in the LICHFL. It was also submitted that LICHFL is not dependent on LIC for financing their requirements.

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32. From the submissions made before us, it appears that the LICHFL was incorporated by LIC of India and both of them share the Chairman and Managing Director. The stake of LIC in the LICHFL is 40.497%. If the share of the LIC is aggregated with other Government Insurance Companies, the total stake in the shareholding of LICHFL comes to 45.918%. As per Article 133(1) of the Articles of Association of LICHFL, the LIC has the authority to appoint one of its Directors and Managing Director of LICHFL.

33. In view of this, it can be inferred that the control of LIC over LICHFL is explicit and effective. The very fact that Chairman of the LIC is also the Chairman of LICHFL further strengthened this inference. The appellant has also submitted that if the shareholding of other Banks is added to the total shareholding of the PSU, the total shareholding will exceed 80%. It is an admitted fact that the total shareholding of the PSU is 45% and this is

sufficient enough to bring it within the definition of the term “substantial finance”. We may agree that the LICHFL is not owned by LIC of India as the total shareholding of the LIC does not exceed 50% but there can be no doubt that LIC and other insurance companies and banks taken together have financed LICHFL substantially.”

8. Clearly, therefore, respondent no. 1/company is not a State or an instrumentality of a State under Article 12 of the Constitution of India because it is not controlled by the Government and is not completely or almost completely financed by the Government, and therefore, the writ petition will not be maintainable. A Division Bench of this Court in similar type of facts held Maruti Udyog Ltd. not to be a State under Article 12 of the Constitution of India as per the judgment reported as ***P.B. Ghayalod Vs. M/s. Maruti Udyog Ltd. and others, AIR1992 Delhi 145.***

9. Even for the sake of arguments let us take that the present writ petition is maintainable. It is seen that the petitioner was only a probationer. Probation period as per paragraph 3 of the Letter of Appointment dated 28.2.2013 was to be of one year which could be extended by one more year. Paragraph 3 specifically requires that on successful completion of the probation period the services have to be confirmed i.e specifically confirmed. No doubt in this regard remains as paragraph 4 of the Appointment Letter dated 28.2.2013 categorically states that confirmation of the petitioner was to be subject to satisfactory work performance, etc. i.e

a specific order of confirmation was to be passed. Further, paragraph 11 of the Appointment Letter dated 28.2.2013 talks of extension of probation and paragraph 13 talks of termination at any time during the period of probation without assigning any reason. Paragraph 15 then clarifies that confirmation of the petitioner in the cadre of Relationship Manager has to be subject to satisfactorily complying with the relevant paragraphs of the Appointment Letter dated 28.2.2013 i.e confirmation is not automatic but is to be specifically ordered. Paragraphs 17 and 18 of the appointment letter also talks of 'upon confirmation'. Therefore, in view of the aforesaid paragraphs of the Appointment Letter dated 28.2.2013, it is clear that there is no automatic confirmation of the petitioner on completion of one year period of probation or even after extended period up to two years, and that there is required a specific order of confirmation of services of the petitioner. Admittedly, no letter has been issued by the respondent no. 1/company confirming the services of the petitioner and therefore the petitioner cannot be held to have successfully completed the period of probation and thus becoming a permanent employee with the respondent no. 1/company by being confirmed in services of the respondent no.1/company as a regular employee.

10. Learned counsel for the petitioner sought to argue by reference to the pay-in-slip for the month of April, 2014 as per which Employees Provident Fund has been deducted from the salary of the petitioner, and which as per the petitioner was not done earlier, and it is thus argued that this shows that the petitioner stands confirmed in services on completion of the period of probation. I cannot agree with the said argument in view of the specific language of various paragraphs of the appointment letter which require an order of confirmation to be passed and merely because there is a deduction towards Provident Fund cannot be held to mean that the petitioner has successfully completed the period of probation. In fact, the petitioner miserably and repeatedly failed to meet the targets and the respondent no. 1/company had no option but to terminate his services. I also cannot agree that the respondent no. 1/company had fixed unrealistic targets. Every organization is entitled to fix its own targets and once it is uniformly applied to all its probationary employees, then the petitioner hence cannot complain of discrimination because other employees who would be similarly placed as the petitioner would be required to meet the targets before the confirmation of their services.

11. I may note that in the entire writ petition, the petitioner has not questioned any of the lack of performance letters issued to the petitioner and

which showed how the petitioner repeatedly and miserably failed to comply with the fixed targets and which were required to be met by the petitioner in terms of the Appointment Letter dated 28.2.2013.

12. In view of the above, this writ petition is not maintainable against the respondent no. 1/company, which is not a State or an instrumentality of a State, and in any case even assuming for the sake of arguments that the respondent no. 1/company is a State or an instrumentality of a State, since the petitioner has failed to meet the necessary targets as fixed by the respondent no. 1/company the services of the petitioner were rightly terminated by the respondent no. 1/company in view of various paragraphs of the appointment letter stated above, and especially paragraph 13 entitling termination of probation without notice and without assigning any reason.

13. No other ground or issue is urged before this Court.

14. In view of the above, the present writ petition is dismissed.

NOVEMBER 16, 2016/ AK

VALMIKI J. MEHTA, J