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

Date of Decision:- 17.02.2020

+ LPA 83/2020, CM APPL. 5849/2020, CM APPL. 5848/2020

MUKESH THAKUR

..... Appellant

Through: Mr. K.K. Upadhyay, Adv.

versus

CHAIRMAN CUM MANAGING DIRECTOR & ORS.. Respondents

Through: Ms. Jagriti Ahuja, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (Oral):

1. The present Letters Patent Appeal under Clause 10 of the Letters Patent read with Section 10 of the Delhi High Court Act is directed against the judgment dated 20.08.2019 passed in W.P. (C) 5769/2016 along with order dated 06.12.2019 in Review Petition No. 510/2019, whereby the learned Single Judge has dismissed the writ petition filed by the Appellant, challenging his reduction in rank from the post of Group General Manager to General Manager.

2. The brief sequence of events giving rise to the present appeal is that the Appellant was offered the post of General Manager in Engineering Projects India Ltd. (EPIL) vide offer of employment dated 04.01.2012 in the

IDA pay scale of Rs.43200-66000/-. He joined the said post on probation for a period of one year and was later confirmed during the probation period.

3. In the mean time, while serving on the said post as a probationer, on 03.01.2013 he was called for an interview for the post of Group General Manager. On his selection, he was appointed to the said post vide appointment letter dated 30.09.2013 and assumed charge on 09.10.2013 with a condition of one-year probation, extendable by six months. Subsequently, Respondent issued the reversion order dated 29.09.2014, whereby the Appellant was reverted to the post of General Manager. He was later transferred to Kolkata vide order dated 01.10.2014 and then placed under suspension which was followed by issuance of charge-sheet and departmental inquiry. Aggrieved by the aforesaid actions, the Appellant filed the writ petition *inter alia* challenging the order of reduction in rank and sought several reliefs. During the course of the proceedings, as noted in the impugned judgment, the Appellant confined his challenge only to the order of reduction in rank. The learned Single Judge on consideration of the memorandum issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India, relating to probation/confirmation in central services, and the service conditions, held that since the Appellant was on probation, the Respondent-Organization was within its right to revert the Applicant to his original post, as his performance was not found to be satisfactory.

4. Learned Counsel for the Appellant at the outset submits that the Respondent has violated the probationary rules by reverting the Appellant to the post of General Manager. He argues that in case performance of the

Appellant was unsatisfactory during the probation period of one year, the same could be extended, but not beyond the period of six months. If during the extended period, the performance is not up to the mark, the probationer could be reverted to the substantive post. However, since the performance of the Appellant was good, the action of the Respondent in issuing the reversion order dated 29.09.2014 is unlawful. He further argues that the writ petition has been dismissed due to falsification of facts in the pleadings by the Respondent- Corporation. The Respondent-Corporation has misled the Court by wrongly alleging that the performance of the Appellant during the probation was unsatisfactory. Neither the probationary performance report, nor the authorization given by the competent authority for issuing the reversion order was placed on record. The learned Single Judge dismissed the writ petition solely on the basis of the pleadings of the Respondent without verifying whether, as a matter of fact, the contentions of the Respondent-Corporation were supported by documents. The Respondent-Corporation also misled the Court about the probationary period, as the Appellant had served for a period of one year commencing from the date of him joining on the post of Group General Manager on 09.10.2013, whereas, the impugned judgment incorrectly records that *“The petitioner was appointed as Group General Manager (Civil) on 30.05.2013 and an impugned order is passed on 29.09.2014. Thus, the impugned order passed by the respondent is within the extended period of probation”*. He argues that the Appellant has never been under the extended period of probation and the reversion order dated 29.09.2014 presents a false picture that he had served as Group General Manager on probation for nearly 1.5 years.

5. We have heard learned counsels for the parties at considerable length and do not find any merit in the contentions of the Appellant. Considering the conspectus of the applicable rules, learned Single Judge declined to interfere with the action of the Respondent-Corporation. The operative portion of the impugned order reads as under:

"15. On the other hand, learned counsel appearing on behalf of the respondents submits that the present petition is a simple case where an employee was on probation for one year and during the probation period, his performance was not found satisfactory. In terms of the appointment letter dated 30.09.2013 his services could have been terminated by ending the probation' period. However, instead of adopting this route the respondents have placed him back on the post over which he had a lien being a departmental candidate. It may also be noted that the petitioner herein has already availed the statutory remedy of departmental appeal against the impugned order which has culminated into a final order passed by the Appellate Authority.

16. The clause 20 of the EPI Recruitment Policy provides that all appointment in the company are governed by the rules relating to probation and confirmation as notified from time to time or specific terms of appointment. Similarly, clause 13 of the policy provides that if performance of the employee during probation is not found satisfactory he/she will be reverted to the post from which he was promoted.

17. The services of the employees of respondent (LIC) are governed by the rules and policies framed by and for respondent. The rules applicable to other PSUs are not applicable to the employees of respondent.

18. While relying upon the Guidelines on Corporate Governance for Central Public Sector Enterprises, learned counsel for the petitioner states that these Guidelines and policies evolved by the Central Government with respect to the structure, composition,

selection, appointment and service conditions of Boards of Directors and senior management personnel shall be strictly followed.

19. He submits that the petitioner is a Senior Manager, therefore, the Guidelines of the Central Government is relevant in the present case. But the fact remains that the statutory rules are there, whereby the 'respondents have power to remove the employee who' is on probation, based upon the performance, if not found satisfactory and has power to revert him/ her to the original post.

20. It is not in dispute that the probation of petitioner was for one year and to be extended by three months, but not twice. The petitioner was appointed as Group General Manager (Civil) on 30.05.2013 and an impugned order is passed on 29.09.2014. Thus, the impugned order passed by the respondent is within the extended period of probation. The Guidelines issued by the Central Government is not applicable in the present case for the reason that the respondent has satisfied the statutory rules, whereby the impugned order has been passed. If the other PSE has adopted the guidelines of the Central Government, that cannot be made mandatory for the respondent herein.

21. It is settled law that when the statutory rules and administrative guidelines both exist, the statutory rules will prevail over the administrative guidelines. Accordingly, this Court hereby finds no merit in the present petition and the same is accordingly dismissed."

6. There is no dispute to the fact that the Appellant was on probation on the post of Group General Manager as on the date of reduction in rank. This is discernible from the terms and conditions contained in the offer of appointment dated 30.09.2013, relating to the post of Group General Manager and in particular, the Clause pertaining to the probationary period,

extracted herein below:

“4. You will be on probation for a period of one year. In case it is found desirable to extend your period of probation, such extension will be for a further period of six months. Unless confirmed in your appointment you shall deemed to be on probation.

5. (i) On the satisfactory completion of probation period, you will be confirmed in your appointment.

(ii) If you fail to complete the extend period of probation satisfactory, the appointment shall stand terminated.

6. (i) During probation period, your employment in this Company can be terminated without notice, without assigning any reason and without any payment in lieu of notice.

(ii) After confirmation, your services can be terminated in the Company without assigning any reason but three months notice shall be given to you or three months pay shall be given in lieu thereof.

(iii) Similarly, if you wish to terminate your services in this Company after your confirmation, you will required either to give three months notice for the termination of employment or three months pay in lieu thereof.”

[Emphasis Supplied]

7. The aforesaid Clause stipulates that Appellant’s appointment was on probation for a period of one year. In case, it was found desirable to extend the period of probation, the same could be done for a period of six months. Pertinently, the aforesaid Clause also stipulates that the Appellant would be deemed to be on probation, unless there is a specific confirmation. Clause 6 (i) stipulates that during the probation period, Appellant’s appointment could be terminated without notice, or without assigning any reason.

8. The conditions of probation and the impugned action are in line with the settled legal position, enunciated by various Courts. It has been repeatedly held that where the terms and conditions of the appointment prescribe issuance of a specific order of confirmation, there cannot be deemed confirmation. In absence of any confirmation, it would be deemed that the employee is continuing on probation. The law with regard to termination of the services of a probationer is well settled and it has been reiterated in multiple decision of the Supreme Court as well as this Court, that such power lies with the appointing authority which is at liberty to terminate the services of a probationer, if it finds the performance to be unsatisfactory during the period of probation (*See Mitul Goel v. The Food Corporation of India & ors.*, LPA No. 364/2019, decided on 06.02.2020). The concept of probation has been devised only to give an opportunity to the employer to observe the work and efficiency of the employee for the job. The assessment has to be made by the appointing authority itself, and the satisfaction is also that of the appointing authority and if the performance is not satisfactory, the Court cannot thrust its assessment on the employer. It is only for the employer to make the said assessment. It needs no reiteration that a probationer does not have any vested right to continue to the post and the employer is within its jurisdiction to remove/ revert an employee to its original position, in case his service is not found to be satisfactory.

9. Concededly, there is no confirmation issued to the Appellant by the Respondent-Corporation on the post of Group General Manager, and Appellant cannot be deemed to be confirmed on the said post in the absence of any formal extension of probation period. The impugned order dated

29.09.2014 records that the performance of the Appellant was unsatisfactory and, on the said date, Appellant had not completed one year on the said post. Therefore, even if there is an error in the recording of the facts in the impugned judgment, it is immaterial, in light of the fact that the reversion order was passed whilst the Appellant was still on probation. Appellant may not be on the extended period of probation, but certainly, as on the date of the impugned order, he was on probation. Therefore, Respondent's order cannot be faulted with.

10. Having regard to the legal position on the subject and the facts and circumstances of the present case, we do not find any merit in the present appeal. Accordingly, the same is dismissed. Pending applications are also disposed of.

SANJEEV NARULA, J

VIPIN SANGHI, J

FEBRUARY 17, 2020

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