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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 10 May, 2022

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**W.P.(C) 9612/2019 & CM APPL. 39564/2019 STAY
CM APPL. 8310/2020 91 DAYS DELAY IN FILING COUNTER
REPLY AFFIDAVIT**

M/S EVALUESERVE SEZ (GURGAON) PVT. LTD..... Petitioner

Through: Ms.Richa Singh, Adv.

versus

THE NATIONAL COMMISSION FOR MINORITIES AND ANR.

..... Respondent

**Through: Mr.Kirtiman Singh, CGSC with
Ms.Srirupa Nagi, Adv.
Mr.Mubarak Ali, Adv. for R-2.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. The instant petition assails an order of 6 May 2019 passed by the National Commission for Minorities [the "Commission"]. The Commission in terms of the impugned order has proceeded to observe as follows: -

"The Commission after hearing both the parties and in view of the affidavit and the minutes of the meeting filed by the respondent company as well, as the contention of the petitioner directed the respondent company to be large hearted and reinstate the petitioner on the pay roles of last drawn salary. The minutes submitted by the company contained many suggestions put forward by different officers present in the meeting. There is a suggestion made by Sh. Nitin Garg, Vice President that pay role would be in a position to accommodate Sh. Shariq on previous drawn salary if needed. The Commission accept the recommendation of the Vice President of the company and direct the company to re-instate Sh. Shariq on the basis of the



said recommendation on the same pay scale last drawn. The direction has been given under section 9(1)(d) of the NCM Act, 1992.”

2. The aforesaid order of the Commission is in respect of proceedings which were drawn on receipt of a complaint from the respondent. The services of the respondent had come to be terminated by the petitioners here. Undisputedly, that order of termination was never challenged or assailed by the respondent by adopting any measure available in law. The order of termination which was passed on 20 August 2018 formed subject matter of the complaint which was lodged with the Commission. The petitioners contend that not only has the Commission clearly misconstrued the submissions which were made before it, it has also clearly exceeded its jurisdiction in proceeding to frame directions for the reinstatement of the respondent. They also placed reliance upon the decision of the Supreme Court in the case **Bal Patil & Anr. vs. Union of India & Ors.**, [(2005) 6 SCC 690] to submit that the Commission has clearly acted in excess of the jurisdiction conferred in seeking to require the petitioner to reinstate the respondent.

3. For the purposes of evaluating whether the Commission was correct in proceeding as if the issue had been conceded to by and on behalf of the respondents it would be pertinent to refer to the following extracts from the Minutes of 10 April 2019 and 12 July 2019:-

**“Government of India
National Commission for Minorities
3rd Floor, Block-3, CGO Complex, New Delhi 110003**

Petitioner: Shri Mohd Shariq, H.No.2320, 1st Floor, Aravalli Vihar,
Sainik Colony, Sector-49, Faridabad, Haryana-121001.



Respondent: Shri Deepak Batra (Head Omdoa Operations) Evaluserve Sez (Gurgaon) Pvt. Ltd., Tower 4, A-10 Floor, Candor Gurgaon One Realty Projects Pvt. Ltd, IT/ITES SEZ, Candor Techspace, Tikri, Sector:-48, Gurugram-122--1.

F.No.M/HR/207/57/2018

Date of Hearing 10.4.2019

The Bench of the NCM consisted of

1. Shri Syed Ghayorul Hasan Rizvi, Chairman.
 2. Shri George Kurian, Vice Chairperson
 4. Shri Vada Dusturji Khurshed Kaikobad Dastoor, Member
 5. Shri Manjit Singh Rai, Member
 6. Shri Atif Rasheed, Member
2. Shri A. Sengupta, Under Secretary and Shri M.A.Khan, Advocate, Legal Consultant assisted the Bench.

Brief record of the hearing held in the Conference Room of the National Commission for Minorities at on 10.4.2019 at 3.00 PM.

Present:

Petitioner: Shri Mohd Shariq alongwith Ms. Nazli Shariq H.No.2320, 1st Floor, Aravalli Villar, Sainik Colony, Sector-49, Faridabad, Haryana121001.

Respondent: Ms. Richa Singh, Advocate alongwith Shri Sandeep Kumar Dembla, Legal-A VP, M/s Evaluserve Pvt. Ltd.

The Commission took cognizance of the representation of Shri Mohd. Shariq an erstwhile employee of M/s Evaluserve, Gurugram. He has stated that he has served the respondent company for the last 4-5 years to the best of his ability. He has stated that on 10th August, 2018 he marked an e-mail to AVP and PUP(HR) with regard to denial of the due/appreciation and victimization despite his hard work with all responsibilities. However, on the same day he was threatened to either resign or to face termination through his Reporting Manager. He further alleged that his previous Reporting Manager and present VP of business unit denied any growth opportunity to him and any reward and recognition despite his exceptionally well performance. He alleged that last year the respondent changed his project on the basis of cost issue and when he



raised his concern he was given two options either to resign or face termination. He has also alleged that the leadership is not willing to work, with him. He also stated that the concerned officials of the respondent company sought an undertaking from him that he will not make any complaint or he will not feel harass and torture. He has stated that the extent of torture and harassment can be vouched from the fact that when his father was on death-bed, he was not allowed leave and ultimately his father died. He also stated that when his small son was admitted in hospital, he was discharging his duties to complete the work of the company. He has stated that he was transferred to LSE without any justification. He has also stated that he was conducting campus interview and managing team consisting of 30 members. The petitioner also alleged that due credit of his hard work was not given despite exceptionally well performance in comparison to other managers. The petitioner has alleged that his termination from the service was illegal and due to religious bias and discrimination.

Ms. Richa Singh, Advocate representing the respondent denied all the allegations made by the petitioner as false, malicious and mis-leading. She has stated that the respondent company is a leading provider of proprietary solution and specialist services for research, analytics and data management, employing more than 3000 people world- wide. She has stated that the company prides itself in being an equal opportunity employer, committed to providing employment to all regardless of race, colour, religion. She submitted that services of the petitioner was terminated in accordance with clause 11.1.1 of the employment agreement and has fulfilled all conditions stipulated therein. The petitioner was given 3 months salary in lieu of notice in terms of the agreement. She has stated that employment agreement is the valid and enforceable contract between the petitioner and the company and the company is well within its rights to exercise its option to terminate the services of the petitioner. She has stated that the petitioner has never made any complaint of communal bias. The counsel to give credence to her submissions has filed documents to show that there are about 200 employees belonging to different minority communities including Muslims. She also stated that the company every year awards its employees in recognition of their performance including minorities. She has also stated that similarly, promotion is granted to employees according to their performance and, the company never indulged in favoritism as alleged by the petitioner. She has submitted that although company does not maintain record indicating religion of its employees but company prepared a list to show its bonafide and for the satisfaction of the Hon'ble Commission that no bias is done on the basis of religious affiliation of its employees.

The Commission on the complaint along with the rejoinder of the petitioner and the reply of the respondent company decided to hold a



hearing with both the parties on 29.1.2019. On 29.1.2019 the Commission after hearing both the parties directed the respondent company to file an affidavit indicating that termination letter dated 28.8.2018 was in strict terms of the agreements and was not on the basis of discrimination. The Commission also suggested the respondent company to take lenient view against the petitioner and suggest some ways to offer an opportunity for employment of petitioner.

As no response has been received the Commission to take a final view in the matter held hearing on 10.4.2019. During the hearing petitioner reiterated his submissions made in earlier hearing and further submitted that the company in its letter of termination mentioned that there is no role matching to his skill and considering the role redundancy the company terminated his employment which fact is not correct. The company assigned same skill and qualification for another project and employee in China during the same period. He stated that the requirement in the company of his qualification and skill are still there and in the same branch. The employees working there were given permanent employment. The petitioner further submitted that his appraisal report was satisfactory, however, he was denied promotion. The respondent denied all the allegations of bias and discrimination against the petitioner and reiterated the contentions made during the last hearing and submitted that it is not a minority issue and if the appraisal rating is satisfactory, it is not necessary that the person will be entitled to promotion.

On being asked whether the company filed the affidavit and taken a view with regard to re-employment in terms of the hearing dated 29.1.2019, the respondent company submitted affidavit and minutes of the meeting of the company dated 12.2.2019. In the affidavit the respondent reiterated that the termination letter dated 20.8.2018 was in terms of clause 11.1.1 of the Employment Contract and not on the basis of any discrimination.

Proceeding Note:

The Commission after hearing both the parties and in view of the affidavit and the minutes of the meeting filed by the respondent company as well as the contention of the petitioner directed the respondent company to be large hearted and reinstate the petitioner on the pay roles of last drawn salary. The minutes submitted by the company contained many suggestions, put forward by different officers present in the meeting. There is a suggestion made by Sh.Nitin Garg, Vice President that pay role would be in a position to accommodate Sh. Shariq on previous drawn salary if needed. The Commission accept the recommendation of the Vice President of the company and direct the company to re-instate Sh. Shariq on the basis of the said recommendation on the same pay scale last drawn. The direction has been given under section 9(1)(d) of the NCM Act, 1992.



**“Government of India
National Commission for Minorities
3rd Floor, Block-3, CGO Complex, New Delhi 110003**

Petitioner: Shri Mohd Shariq, H.No.2320, 1st Floor, Aravalli Vihar, Sainik Colony, Sector-49, Faridabad, Haryana-121 001.

Respondent: Shri Deepak Batra (Head India Operations) EvaluserveSez (Gurgaon), Pvt. Ltd., Tower 4, A-10 Floor, Candor, Gurgaon One Realty Projects Pvt. Ltd, IT/ITES SEZ, Candor Techspace, Tikri, Sector 48, Gurugram - 122001.

F.No. M/HR/207/57/2018

Date of Hearing :12.07.2019 at 3:30 PM

The Bench of the NCM consisted of :

1. Shri Syed Ghayorul Hasan Rizvi, Chairman
2. Shri George Kurian, Vice Chairman
3. Shri Sunil Singhi, Member
4. Shri Manjit Singh Rai, Member
5. Shri Atif Rasheed, Member

2. S/Shri Daniel E. Richards, Joint Secretary, A. Sengupta, Under Secretary and M.A. Khan, Advocate, Legal Consultant assisted the Bench.

Brief record of the hearing held in the Conference Room of the National Commission for Minorities at 3:30 P.M on 12.07.2019

Present:

Petitioner: Shri Mohd Shariq with Shri Rajender Pathak, Advocate, H.No.2320, 1st Floor, Aravalli Vihar, Sainik Colony, Sector-49, Faridabad, Haryana- 121001.

Respondents: Shri Sandeep Kumar Dembla, AVP, Legal & Director, Evaluserve Sez (Gurgaon), Pvt. Ltd., Gurugram - 122001 with Ms.Richa Singh, Advocate.

The Commission took cognizance of the representation of the petitioner with regard to illegal termination of his service, harassment and bias against him. The respondent Company, however, denied the allegations made by the petitioner. The respondent informed that petitioner had some concern with his previous reporting manager and he was moved to another department. It was further informed that the petitioner did not



like his transfer, therefore, started making allegations of harassment and torture. The employment of petitioner was terminated according to term of the employment agreement. The Commission in its hearing dated 10.4.2019, in view of the meeting of the respondent Company and suggestions put forward by Shri Nitin Garg, Vice President that pay **role** would be in a position to accommodate the petitioner on previous drawn salary if needed, the Commission accepted the recommendation of the Vice President and directed the Company to reinstate Shri Shariq on same pay scale last drawn. The respondent Company has failed to submit action taken report in response to the hearing dated 10.4.2019. The respondent Company also stated that the Company is still examining the recommendation of the Hon'ble Commission and to the best of their understanding no cause of action taken report is required/arise at this stage. Under the circumstances it was decided to again call a hearing on 12.7.2019. During the hearing the petitioner submitted that, due to actions of the respondent he has reached a pitiable position, he has to maintain his family and due to termination of his service, he is not in a position to get new employment. He requested the Commission to direct the respondent Company to help him so that he can get a job.

The respondent submitted that he will convey the position to the higher ups as he is not the sole person to take a decision.

Proceeding Note

After hearing both sides, the Commission asked the respondent to consider the case of Petitioner sympathetically and help him out so that he can get employed by considering re-employment for some period on current salary, gratuity, appraisal rating so that he could be able to get suitable job elsewhere. The respondent assured the Commission to look into the matter sympathetically. The case has been kept in abeyance to enable the respondent to take decision and inform the Commission accordingly."

4. From the aforesaid recitals as appearing in the Minutes as drawn by the Commission, it is manifest that that was no concession to reinstate the respondent in the company. In fact, and as would be manifest from a reading of the Proceeding Note of 12 July 2019, it is evident that all that was stated on behalf of the petitioner was that the case of the respondent would be considered sympathetically and help would be extended so that he may



obtain employment or be considered for re-employment on current salary and be not rendered jobless. The petitioners had at that stage only assured the Commission that the matter would be looked into sympathetically. It is also relevant to note that the “concession” which is attributed to Mr. Nitin Garg was noticed from an internal memorandum of the Petitioner drawn in the course of discussion with respect to the proceedings initiated by the Commission. Ms. Singh learned counsel would submit that the statement of the employee as reflected from that memorandum has been read totally out of context since at that stage the Petitioner was only evaluating the financial impact that an order of reinstatement if made would have had.

5. However, this Court is of the considered view that the aforesaid memorandum could not have possibly formed a basis for the Commission framing a direction for reinstatement. An internal memorandum which embodied a recordal of discussion amongst officers of the company cannot possibly constitute a basis for holding that a concession was made or that a decision was taken to reinstate the petitioner. It in any case could not have possibly formed the basis for holding that the Petitioner had conceded to the request for reinstatement. Once the petitioner was appearing before the Commission, it would necessarily be the statements and submissions made before it which could have constituted a ground to hold that the position was conceded. It becomes pertinent to note that at no stage of the proceedings before the Commission did the petitioner concede to the claim raised nor did it categorically express any decision taken by its competent authority to reinstate the petitioner.

6. In any case and as would be evident from the Minutes as drawn, there was essentially no concession of the petitioner in terms of which it could be



said that they had agreed to the reinstatement of the respondent. As this Court reads the Minutes as drawn as well as the statements which were made before the Commission, it cannot be said that the petitioners had at any time agreed to or expressed any consent for the termination being reviewed and the respondent being reinstated.

7. Regard must also be had to the powers which stand statutorily conferred upon the Commission. This Court is of the considered opinion that while the Commission could have gone into the question of alleged discrimination or the violation of the rights of a member belonging to the minorities, the Act cannot possibly be interpreted as empowering the Commission to direct reinstatement of an officer or employee or to question the validity of an order of termination on merits. That subject must necessarily and in the scheme of things stand reserved for the decision of a competent court or tribunal alone.

8. Accordingly and for all the aforesaid reasons, the instant writ petition is allowed. The impugned order dated 06 May 2019 shall consequently stand set aside. Pending applications also stand disposed of.

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YASHWANT VARMA, J.

MAY 10, 2022/rb