

(2013) 04 DEL CK 0289
In the Delhi High Court
Case No : W.P. (C) No. 2336 of 2013

Dinesh Pratap Singh

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Citation : (2014) 305 ELT 59

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J.—The broad contours of the writ petition have been narrated in the order dated 12-4-2013. For the sake of brevity, the said order is reproduced hereinafter:

The learned counsel for the petitioner says that he had appeared for a written examination for obtaining a license as a Custom House Agent. It is submitted that under Regulation 8 of the Customs House Agents Licensing Regulations, 2004 (in short the Regulations) the person desirous of taking the examination has to sit for the written examination and also take an oral exam.

It is the case of the petitioner that the petitioner had cleared the written examination on 29-4-2011 and therefore, in terms of Regulation 8(3) he was entitled to take the oral examination within two years of the related written examination irrespective of the number of chances. It is stated that if the person fails to clear the oral examination in terms of Regulation 8, wilt he then be declared as having failed the examination completely.

The learned counsel for the petitioner says that, the period of two years will commence from the date of publication of the results of the written examination. Since results of the written examination was published on 29-4-2011, the two years period for taking the oral examination would expire only on 28-4-2013. For this purpose, the learned counsel for the petitioner relies upon the Kerala High

Court Judgment in the case of M. Ajith Narayan v. Commissioner of Customs, 2009 (237) E.L.T. 665 (Kerala). The learned counsel for the petitioner says that, this judgment has been affirmed by the Division Bench of that court. The Order of the Division Bench is appended at pages 23-24 of the paper book.

Mr. Kamal Nijhawan, who appears for the respondent, on advance notice says that he will take appropriate instructions as to whether the Division Bench's judgment was appealed against and if so, the result of the same. List for directions on 18-4-2013.

Mr. Nijhawan was asked by the Court as to whether the judgment of the Division Bench of the Kerala High Court, which affirmed the Single Judge judgment of the same High Court [2009 (237) E.L.T. 665 (Ker.)], was carried in appeal in the Supreme Court. Mr. Nijhawan says that the respondent has not carried the matter in appeal and, therefore, the judgment has attained the finality.

2. Mr. Nijhawan is, however, right in submitting that the judgment of the Kerala High Court would have only a persuasive value for this Court. Though the submission is correct, what concerns this Court is that an applicant or a petitioner in the Kerala High Court will enjoy a particular kind of dispensation, whereas the petitioners in other States would be subjected to another kind of dispensation. If Courts in the country were to take a different view in a matter, such as this, it would create a strange anomaly insofar as petitioners in different States are concerned.

3. In matters like this, it would be best for the respondents, if they are aggrieved with the judgment delivered by a Court, to carry the matter to the next appellate forum in order to set the controversy at rest. In any event, having examined the judgments of the Kerala High Court, it cannot but be said that it is a plausible view.

4. In these circumstances, the writ petition is disposed of with a direction to the respondent to accord an opportunity to similarly circumstanced persons to take the oral examination if, his/her case falls within the time frame fixed by the aforementioned judgments of the High Court of Kerala.

5. There is no dispute insofar as this petitioner is concerned, that the time frame of two years if, calculated from the date of the publication of the result of the written examination, would expire on 28-4-2013.

6. In these circumstances, respondent shall permit the petitioner to take the oral examination, on any date convenient, prior to 28-4-2013.

7. With the aforesaid observations the writ petition is disposed of. Dasti under the signatures of the Court Master.