(2016) 08 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No. 2523 of 2016 and W.M.P. Nos. 2153-2154 and 20318 of 2016

T. Raja APPELLANT

Vs

Commissioner of Customs, Chennai RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:

Citation : (2016) 342 ELT 215

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : M/s. R. Hemalatha, SSC, for the Respondent; Shri Hari Radhakrishnan, Counsel, for the Petitioner

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J. - Heard Mr. Hari Radhakrishnan, learned Counsel appearing for the petitioner, and M/s. R. Hemalatha, learned Senior Standing Counsel for respondent-Customs Department.

2. The petitioner has filed this writ petition, praying for issuance of a writ of certiorarified mandamus to quash the circular, issued by the third respondent, dated 28-12-2015, and to direct the respondents to accept the application, dated 2-11-2015, filed by him for the grant of Customs Broker Licence, and to permit him for written examination, conducted under the Regulation 6 of Customs Brokers Licensing Regulations, 2013 (CBLR).

3. The petitioner''s case is that, he is fully eligible for being recognised as a Customs Broker, in accordance with Rule 5(f)(ii) of CBLR. In spite of the same, he was not allowed to sit for the written examination.

4. The Court, having prima facie found that the petitioner possesses the requisite qualification, granted interim order on 27-1-2016, permitting the petitioner to appear for the written examination, which was held on 28-1-2016. Accordingly, the petitioner wrote the examination. When the matter came up before this

Court on the next hearing date, i.e., on 12-7-2016, this Court elaborately heard the learned Counsel appearing for the petitioner as well as the learned Senior Standing Counsel for the Department, and passed the following order :-

"6. To obtain a clarification as to what are such qualifications, the matter was passed over and when the matter was taken up subsequently, the Court has been informed that ACMA (Associate of Cost and Management Accountant) and FCMA (Fellow of Cost and Management Accountant) and these are not degrees; but something akin to the Certificate of membership given by the Institution of Company Secretaries of India and the Institute of Cost and Works Accountants of India. It is stated that earlier the Institute which awards the Certification as ACMA was called as Institute of Company Secretaries in UK and in 1986, the name was changed as CIMA (Chartered Institute of Management Accountant). Thus, this Court is of the view that the petitioner has made out a prima facie case to become eligible to participate in the oral test provided the petitioner clears the written examination for which he has already appeared.

7. Therefore, there will be a direction to the respondents to open the sealed cover and evaluate the petitioner''s paper and if he has secured the required cut-off marks, then, he shall be permitted to attend the oral interview. However, the results shall be withheld until further orders from this Court. It appears that the interview in Chennai is to be completed today and the interview in Coimbatore will be conducted tomorrow and in the event, the petitioner secures the required cut-off marks in the written examination, then the petitioner shall be permitted to appear at Coimbatore tomorrow for the oral interview.

8. List the matter on 11-8-2016."

5. Thus, this Court, after considering the counter-affidavit filed by the respondents, wherein, the qualification possessed by the petitioner was stated, and having found that the petitioner possesses the qualification issued by the Institute of Company Secretaries of India, as well as Institute of Costs and Works Accountants of India, was of the view that the petitioner becomes eligible to participate in the oral test, provided, he clears the written examination, for which, he had already appeared. Accordingly, a direction was issued to the respondents to open the sealed cover, and evaluate the petitioner''s paper, and if the petitioner has secured the required cut-off marks, then, he should be permitted to attend the oral interview (viva voce). This order was complied with by the respondents, and the petitioner, having declared pass in the written examination, he was also directed to attend the oral interview, and the result of the interview was kept under sealed cover. Subsequently, when the matter came up on 19-8-2016, this Court heard the submission of the Senior Standing Counsel for respondents and passed an interim order, which reads as follows :-

" "Pursuant to the order dated 12-7-2016, the petitioner has appeared for the oral interview at Coimbatore, conducted on 13-7-2016. Learned Counsel for the respondent-department submitted that the result is kept in a sealed cover as directed by this Court.

2. At the first instance, interim direction issued by this Court on 27-1-2016 to attend the written examination is based on the fact that the petitioner had made out a prima facie case. When this Court directed the respondent to publish the results, it came out that the petitioner has cleared the written examination. Thus, the next issue is whether the petitioner should be permitted to participate in the oral interview. Taking into consideration the qualification possessed by the petitioner, this Court recorded a prima facie finding that the petitioner would be eligible to participate in the oral interview and the operative paragraphs of the order read as follows :

"5. The petitioner possesses a qualification issued by the Institute of Company Secretaries as well as the Institute of Cost and Works Accountants of India. This Court, on perusal of the CBLR, 2013, in particular, regulation 5(f)(ii), noted that among the qualifications prescribed, the qualifications, viz., ACMA and FCMA had been prescribed.

6. To obtain a clarification as to what are such qualifications, the matter was passed over and the matter was taken up subsequently, the Court has been informed that ACMA (Associate of Cost and management Accountant) and FCMA (Fellow of Cost and Management Accountant) and these are not degrees; but something akin to the Certificate of membership given by the Institution of Company Secretaries of India and the Institute of Cost and Works Accountants of India. It is stated that earlier the Institute which awards the Certification as ACMA was called as Institute of Company Secretaries in UK and in 1986, the name was changed as CIMA (Chartered Institute of Management Accountant). Thus, this Court is of the view that the petitioner has made out a prima facie case to become eligible to participate in the oral test provided the petitioner clears the written examination for which he has already appeared."

3. The Department had complied with the direction issued and has permitted the petitioner to participate in the oral interview. In order to consider as to what relief should be granted in this writ petition, it is essential that the result of the oral interview should be known. Accordingly, the respondents are directed to release the results of the oral interview, in which the petitioner had participated pursuant to the direction issued on 12-7-2016, within a period of one week from the date of receipt of a copy of this order.

List on 31-8-2016" ".

6. Pursuant to the interim direction issued on 19-8-2016, (as quoted supra), the respondents have declared the result of the petitioner in the oral examination, and it is stated that the petitioner has passed the oral examination.

7. Thus, considering the peculiar facts and circumstances of the case, and taking note of the qualification possessed by the petitioner, this Court is of the view that the petitioner should be considered for the grant of Customs Broker Licence.

However, this observation is made only by considering the peculiar facts of this case, and this shall be not be treated as precedent.

8. Furthermore, in the light of the fact that the petitioner has come out successfully, both, in the written and oral examinations, and taking note of the qualification possessed by him, which has been admitted by the respondents, in their counter-affidavit, i.e., possession of Bachelor Degree in Commerce, awarded by Bharathidasan University, Master Degree in Commerce, awarded by Annamalai University, and Post Graduate Diploma Degree in Financial Management, awarded by Annamalai University, and he is a member and associate of Institute of Company Secretaries of India, and he has been enrolled in the Institute of Cost and Works Accountants of India, this Court deems that, this is a fit case, where, the respondents should exercise their discretion, and grant Customs Broker Licence to the petitioner. However, this Court is conscious of the fact that the respondents have taken a stand in their counter-affidavit that, the qualifications possessed by the petitioner are not mentioned in the Regulation 5(f)(ii) of CBLR. Retorting to the said stand, this Court is inclined to observe that, when certain qualifications are listed out under the Regulations, it can be taken as an illustrative and not exhaustive. Therefore, the authorities are required to examine the nature of qualification possessed by the candidates, and as to whether, it would fall within the scope and ambit of the required qualification as per the Regulations contemplated under CBLR.

9. In the given facts of the case, this Court found that the petitioner was qualified. Therefore, the legal issue, which has been raised by the respondents, in their counter-affidavit, more particularly, in sub-para 3.4 of Para 3, and sub-paras 5.3 to 5.5 of Para 5, are left open to be adjudicated, as and when a need arises.

10. Thus, considering the peculiar facts and circumstances of the case, the respondents are directed to consider the petitioner''s application, dated 2-11-2015 and grant Customs Broker Licence by taking into consideration the fact that the petitioner has been successful, both, in the written examination and oral examination, within a period of three weeks from the date of receipt of a copy of this order. As observed in the preceding para, this order shall not be treated as condition precedent, and the legal issue raised by the respondents is left open.

11. With the above observations and direction, the writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

