

(2012) 11 MAD CK 0342
In the Madras High Court
Case No : Writ Petition No. 27800 of 2012

V. Pitchiyya

APPELLANT

Vs

Chairman, C.B.E. and C.

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Citation : (2013) 291 ELT 177

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : P. Saravanan, for the Appellant; K. Mohanamurali, for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing on behalf of the respondents. It has been stated that the petitioner had appeared in the Customs House Agent written examination and the oral examination, held under Regulation 9 of the Customs House Agents Licensing Regulations, 1984. It had been declared that the petitioner had qualified in the examinations.

2. It had been further stated that the grant of licence to the petitioner, as customs house agent is governed by the Customs House Agents Licencing Regulations, 1984. The Regulations had been issued, originally, in the year, 1965. The said regulations had been repealed by the subsequent regulations issued in the year, 1984, vide Notification No. 85-Cus., dated 19-3-1984. Thereafter, the Regulations issued in the year, 1984, had been superseded by the Customs House Agents Licensing Regulations, 2004, vide Notification No. 21/2004-Cus., dated 23-2-2004. The new regulations issued in the year, 2004, had specifically saved the things done or omitted to be done under the old regulations, as well as those which had been omitted to be done before the introduction of the new regulations. However, the regulations issued in the year, 2004, contains a condition that those who had passed the examinations under the regulations issued in the year, 1984, would be required to pass another examination, in respect of the additional papers introduced under the new regulations issued in

the year, 2004.

3. It has been further stated that this Court had passed an order, dated 31-3-2010, in W.P. No. 5472 of 2010, directing the Commissioner of Customs (CHA Section) Chennai, to issue Customs House Licence to the petitioners therein, who had qualified in the written examination, prior to the coming into force of the regulations issued in the year, 2004. The said petitioners had qualified in the oral examination after the new regulations had come into force. The writ appeal filed against the said order, by the Department of Customs, in W.A. No. 1182 of 2011, had been dismissed by this Court, by its order, dated 26-9-2011.

4. It had been further stated that a Division Bench of the Gujarat High Court had quashed the new regulations issued in the year, 2004, by its order, dated 1-10-2010, in Ravindra K. Joshi Vs. Union of India (UOI) and Others, . It had been further stated that, in G. Saravanan v. Union of India and Others, this Court, by its order, dated 28-9-2011, made in W.P. No. 11699 of 2011, had directed the Commissioner of Customs (CHA Section), Chennai, to issue Customs House Agents Licence to the petitioner therein. In the said writ petition, the petitioner had passed the written as well as the oral examination, prior to the coming into force of the new regulations issued in the year, 2004. The petitioner in the present writ petition is also a similarly placed person, who had qualified in the written and the oral examinations, before the new regulations had come into force.

5. The learned counsel appearing on behalf of the petitioner had also relied on the decision of the Supreme Court, dated 27-4-2012, in Sunil Kohli Vs. Union of India (UOI), , wherein the Supreme Court had upheld the decision of a learned Single Judge of the Delhi High Court Sunil Kohli and Others Vs. Union of India (UOI) and Another, The Delhi High Court had held that those who had cleared the examinations under the regulations issued in the year, 1984, would be eligible for the grant of licence, subject to their fulfilling the other conditions of eligibility, as the actions already taken under the earlier regulations issued in the year, 1984, had been saved by the new regulations issued in the year 2004. Therefore, the learned counsel appearing on behalf of the petitioner had submitted that the petitioner is eligible for the grant of Customs House Agents Licence, as he had passed the written, as well as the oral examination, held prior to the coming into force of the new regulations in the year, 2004.

6. The learned counsel appearing on behalf of the respondents had placed before this Court a decision of the Division Bench of the High Court of Bombay, reported in The Bombay Custom House Agents Association and others Vs. The Union of India and others, Paragraph 18 of the said order reads as follows:

18. The view which we have taken in regard to the validity of the regulations is consistent with the view taken by a Division Bench of the Madras High Court in C.V. Karunakaran Vs. The Chairman, Central Board of Excise and Customs, The

Commissioner of Customs and The Assistant Commissioner of Customs, Custom House Agent Unit,). The Division Bench of the Madras High Court presided over by Mr. Justice H.L. Gokhale (as His Lordship then was) held that an applicant who had passed the examination held under the regulations of 1984 had no vested right to obtain a licence. Such an applicant had at best an opportunity to apply for licences which could not be treated as a vested right. A contrary view has been taken in a judgment of a Division Bench of the Gujarat High Court in D.N. Thakknr v. Union of India (Special Leave Application 6152 of 2010 and connected cases) decided on 13 July 2010. Leave has been granted by the Supreme Court to appeal against the judgment of the Gujarat High Court. The Gujarat High Court has held that persons who had cleared the examination which was held under Regulation 9 of the 1984 regulations and were otherwise qualified for the grant of a licence subject to fulfillment of certain conditions fell in one class. Such persons were working in some capacity or other with regular licence holders. According to the judgment, the regulations of 2004 have created two classes of persons viz. those who had obtained licenses prior to the regulations of 2004 and those who on account of the failure of the concerned Commissionerate to notify applications could not obtain licences before the new regulations came into force. In our respectful view the judgment delivered by the Madras High Court commends itself for acceptance. The mere passing of an examination under the 1984 regulations did not confer a vested right to the grant of a licence. Upon the enforcement of the regulations of 2004 every applicant for the grant of a new licence must comply with the regulations which were made in the exercise of the statutory power conferred by Section 146(2). The requirement of passing an examination in additional subjects is based on an intelligible consideration which is to upgrade the skills and competencies of persons who seek to apply for a licence as CHAs. A person who seeks a licence after the enforcement of the Regulation of 2004 must therefore comply with the requirements of the new regulations. For these reasons we are of the view that no case for interference under Article 226 of the Constitution has been made out. The Petition shall accordingly stand dismissed.

7. However, it is noted that a Division Bench of the Gujarat High Court had quashed the new regulations issued in the year, 2004, by its order, dated 1-10-2010, in Ravindra K. Joshi Vs. Union of India (UOI) and Others,

8. It is also noted that the Supreme Court by its decision, dated 27-4-2012, in Sunil Kohli Vs. Union of India (UOI), , had upheld the decision of a learned Single Judge of the Delhi High Court. The Delhi High Court had held that all those who had cleared the examinations, under the regulations issued in the year, 1984, would be eligible for the grant of the custom house agents licence, subject to their fulfilling the other conditions of eligibility.

9. Further, this Court had also passed an order, dated 1-10-2012, in W.P. No. 24210 of 2012 and in other similar matters, holding that the candidates, who had passed the examinations under the regulations issued in the year, 1984,

would be entitled for the grant of customs house agents licence, if they were otherwise eligible to obtain the said licence. Even otherwise, the Division Bench of the High Court of Bombay, in its decision, reported in *The Bombay Custom House Agents Association and others Vs. The Union of India and others*, has only stated that a mere passing of the examinations, under the 1984 Regulations, did not confer any vested right for the grant of the license to the candidates concerned. As such, there is no doubt that the candidates concerned ought to be otherwise qualified for the grant of such licence, as held by this Court, in its earlier orders.

10. The learned counsels appearing on behalf of the respondents had not been in a position to show that the petitioner is ineligible for the grant of the Customs House Agents Licence, as per the new regulations issued in the year, 2004. There is no dispute that the petitioner had passed the written, as well as the oral examination under Regulation 9 of the Customs House Agents Licensing Regulations, 1984, which were existing prior to the coming into force of the new regulations in the year, 2004.

11. In such view of the matter, this Court does not find it appropriate to differ from its earlier view expressed in its decision, dated 1-10-2012 in W.P. No. 24210 of 2012, and in other similar matters. In such circumstances, in view of the contentions raised on behalf of the petitioner and in view of the decisions cited supra, this Court finds it appropriate to direct the respondents to issue the necessary certificate granting the Customs House Agents Licence to the petitioner, as per Regulation 9 of the Customs House Agents Licensing Regulations, 2004, on the petitioner complying with the requirements prescribed, under Regulation 10 of the said regulations, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs.