

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2009

CORAM:

THE HON'BLE MR. JUSTICE R. SUDHAKAR

Writ Petition No.4198 of 2009

Sanish D.Jain

..Petitioner

Vs

1. The Secretary,
The Council of Institute
of Chartered Accountant of India,
ICAI Bhawan,
Post Box No.7100,
Indiraprashta Marg,
New Delhi 110 002

2. Mr.T.K.Shanmugam
M/S.SNB Associates

..Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus to call for the records of the first respondent relating to Letter No.ICA/MSS/SRO 0147795/legal/08 dated 09.03.2009, quash the same and to direct the first respondent to issue No Objection Certificate to the petitioner herein in order to take effect of Articleship retrospectively from "September 2007 the date of termination with M/S.Dayalal & Associates, bearing door No.29, Narayana Mudali Street, Sowcarpet, Chennai.79.

For Petitioners : Mr. P.Subba Reddy
For Respondents : Mr.AR.L.Sundaresan SC for
M/S.Sampathkumar Associates (R1)
Mr.S.Namasivayam (R2)

O R D E R

This Writ Petition is filed seeking to quash the Letter of the first respondent in No.ICA/MSS/SRO 0147795/legal/98 dated 09.03.2009 to direct the first respondent to issue No Objection Certificate to the petitioner.

2. The petitioner is a B.Sc Graduate and joined the services of the second respondent for undergoing Articleship as

provided under Chapter 4 of the Chartered Accountants Regulation 1988 on 22.02.2007. After a period of time, the petitioner, due to unforeseen and unfortunate circumstances, met with an accident, resulting in serious injuries to his abdominal area and consequently, his spleen was removed. After treatment, the petitioner was advised to curtail his travelling. Restriction in food habits was imposed. This resulted in partial immobilisation and petitioner's routine activities were restricted. The petitioner, who is residing at George Town in North Madras, found it difficult to come to Nungambakkam, the place of his office. Therefore, he made a request for transfer of his Articleship to a place of his choice. In this endeavour, he made a request to the second respondent to issue a 'No Objection' Certificate.

3. The second respondent declined to issue the certificate stating that the grievance of the petitioner was considered and suitable adjustments were made so as to enable him to continue his articleship with the second respondent.

4. Aggrieved by the second respondent's rejection of his request for granting 'No Objection' Certificate, the petitioner approached the first respondent-Council, which concurred with the second respondent. The Council stated that only on the issuance of a 'No Objection Certificate' by the second respondent, the transfer of Articleship can be considered. Therefore, the petitioner approached this Court earlier. The matter was remanded to the authority for reconsideration. The first respondent reiterated its stand and stated that no afresh material was there for the first respondent to reconsider the issue in the absence of 'No Objection' Certificate from the second respondent.

5. Be that as it may. Now, the present writ petition has been filed by the petitioner renewing his request for transfer of Articleship. At the time of final hearing and upon hearing the learned counsel for the petitioner, Mr.AR.L.Sundaresan, learned counsel for the first respondent and Mr.Namasivayam, the learned counsel for the second respondent, it is now transpires that Regulation 56 of Chartered Accountant's Regulations 1988 as on 19.05.2009, has undergone a radical change and the issue may have to be relooked at this point of time.

6. The primary reason as to why this Court is inclined to interfere with the order of the first respondent is that the medical grounds on which the request for transfer of Articleship has been made by the petitioner has not been properly considered by the first respondent, objectively and this is a very serious issue. The rejection by the first respondent merely on the premise that the second respondent has not agreed for grant of 'No Objection Certificate' can not be countenanced by this Court. The first respondent though gives a vague reason in support of the order, which

has been passed pursuant to the order of this court, the first respondent being an authority under the Chartered Accountants Regulations, is also an authority bound by the Chartered Accountant's Regulations 1988 as amended and is bound to consider the plea in terms of the Regulation. Further more, the amended Regulation 56 reads as follows:

"In Regulation 56, for sub-regulation (1), the following shall be substituted namely,

(1) Every articled assistant executing the deed of articles for the full period of articled training prescribed under these regulations, shall be required to complete such articles only with the member, who has engaged him:

Provided that the articles so engaged may, by agreement between the articled assistant and his principal, be terminated under such exceptional circumstances of conditions, as may be decided by the Council."

7. The first respondent has, set out certain matters, which should be considered by Students and Members of the Institution while considering a case under Regulation 56 of the Chartered Accountants Regulations. One of the reasons set out in the announcement dated 19.05.2009 reads as follows:

"If the articled assistant is not able to serve the articleship for specified genuine medical reasons thereby opting to discontinue the C A course for a period of at least three months, the termination of articles be permitted, provided that the medical grounds are such that warrant termination of Articleship."

8. In view of the above, it will be necessary for the first respondent to consider the extreme medical condition pointed out by the petitioner for the purpose of considering his case for transfer of Articleship. The first respondent has not taken a decision considering the scope of Regulation 56 and the decision taken on 19.10.2007 did not consider the plea for transfer of Articleship on medical grounds. Therefore, the proceedings of the first respondent which is impugned in this writ petition, bereft of reasons, has to be necessarily interfered with by this Court. Further, the case of the petitioner is only for transfer and not for discontinuing the Chartered Accountant Course. Hence, the respondents have to consider the petitioner's claim both under equity and under law. The medical records produced have also to be considered.

9. In the result, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the first respondent to consider the medical certificates, reasons given by the petitioner, the amended regulation, and the first respondent Circular dated 19.10.2007 for the purpose of considering the case of the petitioner on merits. Such decision shall be taken by the first respondent as expeditiously as possible, preferably on or before 31.01.2010.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

PAL

To

The Secretary,
The Council of Institute of Chartered Accountant of India,
ICAI Bhawan,
Post Box No.7100,
Indiraprashta Marg,
New Delhi 110 002.

- + 1 c.c. to M/s. Sampath Kumar & Associates. S.R.No.71714.
- + 1 c.c. to Mr. P. Subba Reddy, Advocate. S.R.No.71588.

TEJ (CO)
GSK 11.01.2010.

W.P.No.4198 of 2009

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