

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 2784 of 2015 (O&M)

Reserved on: 28.07.2015
Date of Decision: 01.10.2015

Jai Parkash Sharma and another

... Petitioner(s)

Versus

Chief Commissioner of Income-Tax, Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.

Present: Mr. Aman Bansal, Advocate
for the petitioner(s).

Mr. Yogesh Putney, Senior Standing
Counsel for the Revenue/respondents.

G.S. SANDHAWALIA, J.

In the present writ petition, challenge is raised to order dated 31.12.2014 (Annexure P11) passed by the Chief Commissioner of Income Tax, Haryana vide which the application of the petitioners for registration as a "Valuer of Immovable Property" under Section 34AB of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act") was rejected. Liberty was given to resubmit the application as and when the requisite conditions under the relevant rules are satisfied.

The reasoning given by the said respondent was that the applicants must have been practicing as a Consulting Engineer, Valuer of real estate, Surveyor or Architect for a period of not less than ten years after having obtained the qualification as defined in Rules 8A(2)(i). It was noticed that the applicant had obtained the graduate Degree in

Civil Engineering in 2009 and, therefore, the experience acquired prior to the acquisition of the degree would be of no benefit.

The pleaded case of the petitioners is that they had applied for registration under the Act on 23.11.2011 and were granted the said benefit on 2.3.2012 for a period of three years. They had worked continuously with the department to its satisfaction. On expiry of the above said period, they had applied for continuation of registration on 18.11.2014. A show cause notice was issued that as per Rules 8A(2)(i) (A) & 8A(2)(ii)(B) of the Wealth Tax Rules, 1957 (hereinafter referred to as "the Rules"), graduation in Civil Engineering or Architecture or Town Planning of a recognized University and the period of experience not less than ten years was required and how the petitioners were eligible. Accordingly, the petitioners had submitted their reply that they had worked with Taneja & Associates for more than ten years since May 2001. It was further replied that on account of the graduate degree in Civil Engineering in 2009, the petitioner had worked for two years with the said firm and thereafter, worked independently for three years and had the necessary qualifications. Resultantly, the impugned order was passed.

In the written statement filed by the department, the plea taken was that the petitioner did not fulfill the statutory requirements. The earlier registration granted was an erroneous action and will not confer any indefeasible right to claim registration. The degree in Civil Engineering had been taken by Distance Education and not as a regular student. The competent authority was well within his right to rectify its

mistake and the same could not be allowed to be perpetuated. Reference was made to Section 34AB of the Act, which provides registration of valuers and Rule 8A(2)(i) of the Rules, which pertains to the qualifications. Accordingly, it was pleaded that the erroneous registration had been earlier granted but when they had applied for continuation, it was noticed that they did not fulfill the requisite conditions. The experience of ten years would be completed in the year 2019 and, therefore, on account of ineligibility, the impugned order had been passed which was accordingly justified.

Admittedly, the petitioners were granted the registration for specific period of three years as per the initial registration on 2.3.2012 (Annexure P3). In pursuance of the said term expiring they had applied afresh. In such circumstances, the respondents were well justified in considering the matter afresh. Merely because earlier they had been registered as a “Valuer of Immovable Property” would not grant them such right to continue for all times to come. As per their letter of registration itself, the period of registration was only for three years. The argument that once registration had been granted would continue and the respondents were precluded from examining the eligibility afresh is without any basis. The registration was for a specific period and even as per Clause 3(vi), after giving an opportunity of hearing, the Chief Commissioner could delete the name from the valuation register in case he felt appropriate, which could be on account of pertaining to wrong and actual facts as per sub clause (a) or (c) that the name could not be included in the valuation register as per Section 34AB of the Act.

Section 34AD also provides that the Chief Commissioner may remove the name of any person from the register of valuers after being satisfied and giving that person a reasonable opportunity of being heard and after such further enquiry, if any, as he thinks fit.

The second submission made by learned counsel that the petitioners had an adequate experience of ten years since they had worked from the year 2001 and, therefore, reasoning given for rejecting their application that the experience should be after the date of having acquired the minimum educational qualification, is the legal question for consideration that arises in the present writ petition. A perusal of the Rules would go on to show that apart from being a graduate in Civil Engineering, Architect or Town Planning, the applicants were required to have work experience also.

The relevant provisions pertaining to the requisite qualifications read as under:-

“34AB Registration of valuers

(1) *The Chief Commissioner or Director-General shall maintain a register to be called the Register of Valuers in which shall be entered the names and addresses of persons registered under sub-section (2) as valuers.*

(2) *Any person who possesses the qualifications prescribed in this behalf may apply to the Chief Commissioner or Director-General in the prescribed form for being registered as a valuer under this section: Provided that different qualifications may be prescribed for valuers of different classes of assets.*

(3) *Every application under sub-section (2) shall be verified in the prescribed manner, shall be accompanied by*

such fees as may be prescribed and shall contain a declaration to the effect that the applicant will

- (i) make an impartial and true valuation of any asset which he may be required to value;*
- (ii) furnish a report of such valuation in the prescribed form;*
- (iii) charge fees at a rate not exceeding the rate or rates prescribed in this behalf;*
- (vi) not undertake valuation of any asset in which he has a direct or indirect interest.*
- (4) The report of valuation of any asset by a registered valuer shall be in the prescribed form and be verified in the prescribed manner.*

Qualifications of Registered Valuers

8A.(1) *For the purposes of sub-section (2) of section 34AB, the qualifications for registration as valuers of different classes of asset shall be as specified in sub-rules (2) to (11).*

(2) A valuer of immovable property (other than agricultural lands, plantations, forests, mines and quarries) shall have the following qualifications, namely :—

(i) he must—

- (A) be a graduate in civil engineering, architecture or town planning of a recognized university; or*
- (B) be a post-graduate in valuation of real estate from a recognized university; or*
- (C) possess a qualification recognized by the Central Government for recruitment to superior services or posts under the Central Government in the field of civil engineering, architecture or town planning;*
and

(ii)(A) he must be a person formerly employed—

- (a) in a post under Government as a gazetted officer;*
or

- (b) *in a post under any other employer carrying a remuneration of not less than ₹.2,000 per month, and, in either case, must have retired or resigned from such employment after having rendered service for not less than ten years as a valuer, architect or town planner, or in the field of construction of buildings, designing of structures, or development of land; or*
- (c) *as a professor, reader or lecturer in a university, college or any other institution preparing students for a degree in civil engineering, architecture or town planning, or for any qualification referred to in clause (i), and must have retired or resigned from such employment after having taught for not less than ten years any of the subjects of valuation, quantity surveying, building construction, architecture, or town planning;*

OR

B) he must have been in practice as a consulting engineer, valuer of real estate, surveyor or architect for a period of not less than ten years and must have acquired experience in any of the following four fields :—

- (a) *valuation of buildings and urban lands; or*
 - (b) *quantity surveying in building construction; or*
 - (c) *architectural or structural designing of buildings or town planning; or*
 - (d) *construction of buildings or development of land;*
- and his gross receipts from such practice should not be less than fifty thousand rupees in any three of the five preceding years.”*

The issue is that whether the experience only after the acquisition of the qualifications is to be seen and whether it is mandatory

to have 10 years of the said experience, after having the said qualifications. The said legal issue has come up time and again before the Apex Court. Reference can be made to **M. Suresh Nathan Vs. Union of India 1992 AIR (SC) 564** wherein the relevant rule was as follows:

- “1. Section Officers possessing a recognised Degree in Civil Engineering or equivalent with three years' service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years' service in the grade – 50%.*
- 2. Section Officers possessing a recognised Diploma in Civil Engineering with six years' service in the grade – 50%”*

The three Judges Bench held that service of Diploma holders prior to obtaining the degree cannot be counted as service in the grade with the degree. It was, accordingly, held that the period of 3 years can commence only from the date of obtaining the degree and not earlier. The issue was promotion of the Junior Engineers to the post of Assistant Engineers and whether the Diploma holder Junior Engineers who had obtained a degree in the service, became eligible for appointment by way of promotion on the completion of the 3 years of service. The contest was with the degree holders. The decision was based on the practice prevailing in the department for a number of years. Moreover, the Diploma was to be “with” six years service in the grade.

The said judgment was clarified by a two Judges Bench in **M.B.Joshi Vs. Satish Kumar 1993 AIR (SC) 267** wherein it was held that if the period is to be counted after obtaining the graduate degree,

incentive of adding in the educational qualification, during the service and continuation in service and getting the advantage of acceleration in promotion for all practical purposes would become nugatory. The relevant observation reads as under:

“13. If we accept the contention of Mr. Ashok Sen, it would defeat the very scheme and the purpose of giving incentive of adding educational qualification by diploma-holders while continuing in service in case the period of 8 years' is counted from the date of obtaining graduate degree in engineering. It may be noted that no such argument was raised even from the side of the respondents before the Tribunal. If such interpretation as now sought to be advanced by Mr. Ashok Sen, learned senior counsel is accepted, no relief could have been granted to the respondent Satish Kumar Pandey. We would illustrate the above position on admitted facts that Shri Satish Kumar Pandey had joined as Sub-Engineer on 23.8.1980, but had acquired the degree of engineering in May, 1987. In that situation, Mr. Satish Kumar becomes eligible only in May 1995 and he could not be considered as eligible in December 1989 when these Sub-Engineers were considered for promotion as Assistant Engineers. Even otherwise, if this period of 8 years is counted from the date of acquiring degree then this incentive of adding the qualification during the continuation of service and getting the advantage of acceleration in promotion in 8 years would for all practical purposes become nugatory and of no benefit.”

In **Subhash Vs. State of Maharashtra & another 1995**

(Sup3) SCC 332, while examining the Maharashtra Motor Vehicles Department (Recruitment) Rules, 1991, it was held by the Apex Court that the working experience of one year could be prior to or after the acquisition of the basic qualifications, which was a Diploma in Automobile Engineering. The decision of the Tribunal was set aside and the appellant was to be considered for appointment if he satisfied the other conditions.

In **D.Stephen Joseph Vs. Union of India 1997 (4) SCC 753** the view followed in the case of **M.B.Joshi** (supra) was preferred and it was held that it would not be appropriate to count the experience only from the date of acquisition of a superior educational qualification. The view of the Tribunal that the experience of 3 years was not to be counted from the date of acquisition of the degree in Electrical Engineering, was upheld.

In **Anil Kumar Gupta & others Vs. Municipal Corporation of Delhi & others (2000) 1 SCC 128**, the question for consideration by the Apex Court was framed as under:

“Whether, while deciding whether the respondents had two years' experience, the experience gained while holding diplomas could also be counted in addition to the experience gained after obtaining degree?”

The said question was answered by holding that the language of the notification was not as such that the two years' professional experience had to be gained after obtaining the degree. The qualifications for appointment were (a) degree in Civil Engineering and

(b) two years professional experience. The qualifications are, therefore, similar to those in the case before us. Moreover, the word “and” and not the word “with” connects the two qualifications which makes this case closer to the case before us than the one in *N.Suresh Nathan's* case (supra). The Supreme Court has held as under:

“20. We may at the outset state that the provision regarding experience speaks only of "professional experience" for two years and does not, in any manner, connect it with the degree qualification. In our view, the case on hand is similar to Subhash Vs. State of Maharashtra (1995 Supp.(3) SCC 332) where, while considering Rule 3(e) of the relevant Recruitment Rules, namely, the Maharashtra Motor Vehicles Department (Recruitment) Rules, 1991, this Court pointed out that the rule 3(e) which required one year experience in registered Automobile Workshop did not make any difference between acquisition of such experience prior to or after the acquisition of the basic qualification.

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24. Therefore, on the language of the notification dated 30.6.89, we are of the view that the 2 years professional experience need not entirely be experience gained after obtaining the degree.

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26. For the aforesaid reasons, we hold that the service rendered by the Diploma holders before obtaining degree can also to be counted.”

A similar view was taken in **A.K.Raghumani Singh & others**

Vs. Gopal Chandra Nath & others 2000 (4) SCC 30. The issue therein

was also question of promotion to the post of the Superintending Engineer from the post of Executive Engineer and apart from the qualifications, 6 years regular service in the grade was the requirement. The writ petitioner had more than the required service but it was only after little over 2 years of service that he had been granted the AIME Diploma. It was, accordingly, held that the Courts would not be justified in reading a qualification into the conjunctive word and imply the word 'subsequent' after the word 'with'. The view of the High Court which had held that the professional experience meant not only experience gained after obtaining the degree, was, accordingly, upheld.

A perusal of the Rule 8A would show that there was a requirement of being a graduate in Civil Engineering, Architecture or Town Planning of a recognized university and ten years experience as a valuer, architect or town planner having earned not less than ₹ 2,000/- per month in the field of construction of buildings, designing of structures under any other employer as per Rules 8A(a) & 8A(b), respectively, from which he would have retired or resigned. As per Rule 8A(c), if the person had worked as a Professor or Reader or Lecturer in the University, College or any other institution preparing students for a degree in the said field, also ten years experience was required.

In case the said experience was not there of employment as noticed above with the Government or other employer or educational institution, the experience as a professional and having practice of not less than ₹ 50,000/- as a Consulting Engineer for a period of not less than ten years was required in the fields pertaining to valuation of the

buildings and urban lands, quantity in surveying building construction, architectural or structural designing of buildings and town planing or construction of buildings and development of land under Rule 8B.

Counsel for the respondents has laid great stress on the judgment of the Apex Court in ***Indian Airlines Limited and Others v. S.Gopalakrishnan 2001(1) R.S.J. 455.***

A perusal of the said judgment would go on to show that in addition to the wording of the rule, it was noticed that in the general information instructions at item No.6, the experience was to be computed after the date of acquiring the necessary qualifications which also weighed with the Apex Court. The case is, therefore, clearly distinguishable from the case before us.

In ***Shailendra Dania & others Vs. S.P.Dubey & others 2007 (5) SCC 535***, a Three Judges Bench considered that whether the Diploma holder Engineer who obtains a degree while in service, becomes eligible for promotion to the post of Assistant Engineer on completion of three years of service after he obtains the Engineering degree or on completion of three years of service prior to obtaining the degree in Engineering. Accordingly, it was held that the classification between the Diploma holders and the Graduate Engineers have been upheld on the basis of the requirements of the promotional posts, in the interest of efficiency and service. The argument that there was any discrimination in the different period of experience for the two categories of Degree holders and Diploma holders, was rejected and it was held to be a valid classification for promotion to the higher post.

Very recently, the same issue again came up before the Apex Court in **K.K.Dixit Vs. Rajasthan Housing Board & others 2014 (4) SCT 219** wherein the promotions were to the posts of Project Engineer (Senior) from amongst the Project Engineer (Juniors) who were Diploma holders with 7 years total experience of service. The dispute was again between Diploma holders and the Degree holders. Accordingly, it was held that the qualifications of AIME and the experience of service had to be post the acquisition of the degree. In the present case, as noticed, the issue is not of any dispute *inter se* the Diploma holders and Degree holders. The Rules provide that a person has to be a graduate in Civil Engineering and he must have the experience of working either under Government, private employment or on the academic side. In the alternative, the experience as a Consulting Engineer, Valuer of not less than 10 years, has been made mandatory, subject to certain conditions.

The observations made by the Apex Court in the case of **A.K.Raghumani Singh** (supra) and **Anil Kumar Gupta** (supra) would squarely apply and the respondents were not justified in reading the qualification into the conjunctive word and implying that experience had to be subsequent to the acquisition of the degree.

In such circumstances, the question of law is answered in favour of the writ petitioners that it is not necessary to gain the experience under the Rules, after the acquisition of the educational qualifications and accordingly, the order dated 31.12.2014 (Annexure P11), is quashed and the writ petition is allowed. The respondents shall reconsider the applications of the petitioners, afresh and decide the

same within a period of 2 months from the receipt of a certified copy of this order.

(S.J. Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

October 1st, 2015
“sailesh”

Note: Whether reportable: YES