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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 30.10.2018
% ***Judgment Pronounced on: 13 .11.2018***

+ LPA 450/2017

DEEP SINGH **..... Appellant**
Through: Appellant in person

Versus

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA **..... Respondent**
Through: Mr. G.S. Chaturvedi, Advocate

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present appeal is directed against the judgment dated 27.02.2017 whereby the learned Single Judge has dismissed the writ petition bearing W.P.(C) No. 6772/2014 upholding the action of the respondents in denying exemption to the appellant from appearing in the Business Valuation Paper in the 'Cost and Management Accountants Examination' (hereinafter referred to as 'CMA') conducted in June, 2014. Although, the appellant had in the writ petition sought a declaration that he was entitled for the exemption and he should be declared a successful candidate in the final CMA Examination but at the time of admission of this appeal on 11.07.2017, the appellant had only contended that he had applied for exemption but was not informed of its outcome. This according to him had prejudiced him as else he could have appeared in the said examination.

Notice was thus issued on this limited ground. Hence, this Court is adjudicating only this limited aspect.

2. Facts necessary and relevant to deal with the issue are that the CMA Examination is conducted in three stages. Stage I is called foundation course, Stage II is intermediate course and Stage III is called final course.

(1) Foundation Course	-	Paper 1: Origination and Management Fundamentals
		Paper 2: Accounting
		Paper 3: Economics and Business Fundamentals
		Paper 4: Business Mathematics and Statistics Fundamental
(2) Immediate Course	Group I	Paper 5: Financial Accounting
		Paper 6: Commercial and Industrial Laws and Auditing
		Paper 7: Applied Direct Taxation
	Group II	Paper 8: Cost and Management Accounting
		Paper 9: Operation Management and Information Systems
		Paper 10: Applied Indirect Taxation
(3) Final Course	Group III	Paper 11: Capital Market Analysis & Corporate Laws
		Paper 12: Financial Management & International Finance
		Paper 13: Management Accounting-Strategic Management
		Paper 14: Indirect & Direct- Tax Management
	Group IV	Paper 15: Management Accounting-Enterprise Performance Management
		Paper 16: Advanced Financial Accounting & Reporting
		Paper 17: Cost Audit & Operational Audit
		Paper 18: Business Valuation Management

3. After having cleared the intermediate course, the appellant registered himself in 2011 for the final course under the syllabus of 2008. The appellant then appeared in the June, 2011 examination and then for the final examination in December, 2011. In the said examination, the appellant scored more than 60% in paper '18' i.e. 'Business Valuation Management of Group – IV', whilst he could not clear the Group – IV. At this point in time, the Regulations applicable to the Institute were Cost and Works Accountants Regulations, 1959. Regulation 41(2) of the Cost and Works Accountants Regulations, 1959 granted an exemption to those students who scored 60% marks in a given paper from appearing in that paper in subsequent attempts and this was for an unlimited period.

4. The appellant again appeared in the examination conducted in June, 2012, wherein he was granted exemption in Paper No. '18' having scored over 60% marks. In the meantime, a Notification dated 25.05.2012 was issued by The Institute of Cost Accountants of India amending the regulations of 1959. By virtue of this amendment to Regulation 41(2) the benefit of exemption to a student who scored over 60% marks was now restricted to three consecutive terms only, immediately succeeding the term in which such exemption had accrued. For an easy reference, the extract of the pre amended and the amended provisions are as under :-

> *"Pre-amended Regulation:*
>
> *(2) A candidate who is not declared successful in a Stage or Group under the Old syllabus of any examination but-*

(i) <u>obtains 60 per cent or more of the total marks in any paper or papers shall be exempted in subsequent examinations from that or those papers in which he secured 60 percent or more marks: or</u>

(ii) obtains 60 per cent or more of the total marks in any paper and a minimum of 40 percent of the total marks (under the revised syllabus) or 35 per cent of the total marks (under the old syllabus) in each of the remaining papers of that stage or Group (under the old Syllabus), shall be allowed the benefit of carry forward of the actual marks so obtained by him in the papers in which he had obtained 60 per cent, or more marks for the purpose of computing his result in the subsequent examinations:

PROVIDED that if the benefit of exemption or carry forward mentioned in clauses (i) and (ii) above is voluntarily withdrawn by a candidate, he shall not be entitled to such benefit in his future attempts.

<u>Amended Regulation</u>:-

(2) A candidate who is not declared successful in a Stage or Group under the old syllabus of any examination but who has appeared in all the papers of that stage or group-

(i) obtains 60 per cent or more of the total marks in any paper or papers shall be exempted in subsequent examinations from that or those papers in which he secured 60 per cent or more marks; or

(ii) obtains 60 per cent or more of the total marks in any paper and a minimum of 40 per cent of the total marks (under the revised syllabus) or 35 per cent of the total marks (under the syllabus) in each of the remaining papers of the Stage or Group (under the old syllabus), shall be allowed the benefit of carry forward of the actual marks so

> *obtained by him in the papers in which he had obtained 60 per cent, or more marks for the purpose of computing his result in the subsequent examinations:*
>
> *Provided that he shall not be entitled to the benefit of exemption or carry forward mentioned in clause (i) and clause (ii) above if he has appeared for the paper in which he has the benefit of exemption or carry forward.*
>
> *Provided further that the candidate shall not be entitled to the benefit of exemption or carry forward on and from the examination in which he appears for the same papers or as the case may be the exemption in which he appears after the withdrawal of the exemption or carry forward.*
>
> *Provided also that any benefit of exemption or carry forward shall be available to a student for three consecutive terms immediately succeeding the term in which such exemption or carry forward has accrued."*

5. Although, the amendment had come into force, the appearance of the appellant in June, 2012 was not counted as a chance and he was granted exemption for three consecutive terms in December, 2012, June, 2013 and December, 2013, respectively. Therefore, as per the Amendment, the appellant exhausted his three chances of exemption in December, 2013.

6. In June, 2014, the appellant again appeared in the final CMA Exam but did not appear for Paper '18'. When the result was published on 23.08.2014, he was shown absent in this paper. The case set up by the appellant in the writ petition before the learned Single Judge was that on seeing that he was marked 'Absent', he made oral and written representations to the Institute, that the amendment of 2012 would

only apply prospectively and he should be given further exemption under the old Regulations. The appellant was, according to him, informed by the Institute vide certain e-mails that the result was correctly published and he was not entitled to exemption under the Amended Regulations. Having failed in receiving any redressal from the Institute despite several representations, the appellant filed a writ petition before the learned Single Judge claiming the following reliefs:-

> *"The present petition has been filed by the petitioner with the following prayers:-*
>
> *Therefore, in the facts and circumstances, it is humbly prayed before this Hon'ble Court that this Hon'ble Court may graciously be pleased to:*
>
> *a) Pass a writ of mandamus, or a writ, order or direction in the nature of mandamus declaring the petitioner entitled for exemption from appearance in the business valuation paper for final CMA exam conducted in June, 2014 by the Respondent (the institute):*
>
> *b) Pass a writ of mandamus, or a writ, order or direction in the nature of mandamus directing the Respondent (the Institute) to declare the petitioner as a successful candidate in the final CMA exam conducted in June, 2014;*
>
> *c) Pass any other and such order(s) that this Hon'ble Tribunal may deem fit in the interest of justice."*

7. The learned Single Judge has upheld the action of the respondent and has dismissed the writ petition on the grounds that the appellant had not challenged the power of the respondent to amend the Regulations

and the amendment has not been applied retrospectively. The learned Single Judge has further observed that the limited exemptions given in December, 2012, June, 2013 and December, 2013 were consistent with the amendment and therefore could not be faulted. The Court has further relied on a judgment of the Gujarat High Court in ***Bimal Patel, Director & Anr. Vs. Pushkar Santosh Kumar Mehrotra & Ors.***, *2013 SCC OnLine Guj 92* to support his view and additionally also observed that the appellant was given the benefit of not counting his appearance in June, 2012 towards three chances, despite the amendment as this was a transition phase.

8. We need not, however, trouble ourselves with the issue of prospectivity of the amendment for the reason that notice in this appeal was issued in a narrow compass vide order dated 11.07.2017 as mentioned above. The appellant has appeared in person and has contended before us that he had applied for exemption in the June, 2014 Examination but he received no communication from the Institute regarding the same and therefore, being under an impression that he was exempted, he did not appear in the said examination. In support of his contention, he has drawn attention of this Court to an Online Application Form placed at Page No. 364 of the paper book. It was pointed out that in the column relating to exemption, he has filled in the figure '18' indicating that he had sought exemption in this paper. Scanned copy of the said document is reproduced herein below:-

364

[illegible] Annexure-P-5

⑤ 324

REVISED SYLLABUS - 2008

The Institute of Cost Accountants of India

(Statutory body under an Act of Parliament)

FINAL APPLICATION FORM FOR THE JUNE-2014 EXAMINATION

LAST TERM OF EXAMINATION APPEARED DEC-2013

Application No.: 140144
Registration No.: [illegible]
Old Registration No.: [illegible]

Name:	[illegible] SINGH	Gender:	Male
Address Line 1:	[illegible] DELHI	Line 2:	
Line 3:	[illegible]	City:	Delhi
Pin:	110083	Mobile No:	[illegible]
E-mail:	[illegible]	Phone:	
Physically Challenged:	No	Group:	4
Date of Birth:	[illegible]	Qualification:	[illegible]
Medium:	English	Exam Centre Code:	400
Coaching Obtained:	Delhi [illegible]	Mode of Coaching:	Postal
Payment Details			
I enclose demand draft no. [illegible] dated [illegible] for Rs. [illegible] drawn in favour of "The Institute of Cost Accountants of India" drawn on CANARA BANK, payable at Kolkata.			
Details of Examination Passed			
Final			
Group III	[illegible]-2013	Roll	[illegible]
Group IV	-	Roll	-
Details of Exemption By Qualification			
[illegible]	-	Subject Code	
Details of Exemption By Examination			
Exemption Subject Code	-	Exemption Subject Code	- 7 [illegible]
Term	-	Term	-
Roll	-	Roll	-
Carry Forward Subject Code	-	Carry Forward Subject Code	-
Term	-	Term	-
Roll	-	Roll	-

I declare that to the best of my knowledge and belief the information given above are correct and complete in all respects. In the event of [illegible] found otherwise, I shall abide by the decision of the Institute to summarily reject my application / withhold my result. I also undertake to [illegible] the payment, which is non refundable and agree to abide by the rules and regulations framed by the council for the guidance to the candidate appearing for the examination.

Candidate's Signature [illegible]

8 of 7

True Copy

T.C

9. The respondents on the other hand vehemently contended that the appellant could not have sought exemption by writing the figure '18' in hand as this was an Online Form and writing by pen or pencil could not be done. He also submitted that in view of this position, there was no request for exemption at all made by the appellant to the Institute. In so far as the non-communication of the exemption not being granted is concerned, the learned counsel for the respondent argued that firstly, since there was no request for exemption, there was no question of responding to the same and secondly, since the appellant was not entitled to the same having exhausted his three chances in December, 2013, there was no reason why the Institute should have entered into any correspondence with him in this regard. The learned counsel vehemently contended that when this Amendment was brought in, it was through a Notification which was Gazetted and Gazettes are available in the public domain. He also brought to the notice of this Court, the prospectus at Page 303 wherein, it was clearly mentioned has under:-

> *"Syllabus and its contents, scheme and/or pattern of examination are subject to modifications from time to time. Reference should be made to relevant notifications in this regard, as may be issued by the Institute from time to time."*

10. The attention of this Court was also drawn to Page No. 305 of the same prospectus wherein it was further stipulated that if a student obtains 60% marks in any examination, the benefit of exemption will

be allowed only for three successive terms of the examination. He pointed out to a document at Page 307 which were FAQ's and wherein in an answer to question No. 11, it was clarified that the exemptions would only be for three successive terms. It was further argued that the appellant had infact applied even for the December, 2014 Examination on 07.10.2014 and therefore, it is obvious that he knew that he was not given any exemption for June, 2014.

11. Having heard both the sides, we are of the view that the appellant is not entitled for the exemption sought in Paper '18' of Group IV of the final CMA Examination. The appellant has not been able to prove that he had sought any exemption in Paper '18' for the June, 2014 as contended by him at the time of admission of this appeal. The form shown to us at Page 364 is an Online Form and as rightly contended by the learned counsel for the respondent, no pen or pencil could have been used and therefore, the figure '18' appearing in the said document is of no help to the appellant. We do not want to concern ourselves with the issue as to how the said figure is appearing in the hard copy filed in the petition. Moreover, a reading of the writ petition also shows that there is no averment whatsoever that any such exemption was sought prior to the Examination through an Online Form. The writ petition only has averments referring to representations and correspondence post the Examination of June, 2014. Hence, this Court rejects the contention of the appellant that any exemption in Paper '18' was sought by the appellant.

12. Having perused the various documents pointed out to us by the

learned counsel for the respondents, this Court finds force in the contention of the respondent that the amendment was duly notified in the Gazette as well the prospectus and the appellant ought to have been vigilant to find out the Rules and Instructions relating to the examination. Having not acted with due diligence, appellant cannot be given the benefit of the exemption and can neither be permitted to appear in the Examination of the final court at this stage. In any case, even assuming that he had applied for exemption, he was not entitled having exhausted three attempts under Regulations of 2012. The learned Single Judge has rightly held that the amendment has been correctly applied and benefit of three exemptions having been granted to the appellant, he cannot be granted any further exemption. We find no merit in the appeal and the judgment of the learned Single Judge is hereby upheld.

13. The present appeal is dismissed with no orders as to costs.

JYOTI SINGH, J.

G.S. SISTANI, J.

November 13, 2018
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