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

Date of decision: 20th March, 2023

\+ **W.P.(C) 14140/2021 & CM APPL. 13274/2023**

ANIL KUMAR GUPTA ..... Petitioner

Through: Mr. Anup Kumar, Mr. Sumit Kausal, Ms. Shruti Singh & Mr. Shubham Rajhans, Advocates

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Ms. Pooja M. Saigal, Mr. Simrat Singh Pasay, Mr. Abhay Singla, Ms. Tanya Pandey, Advocates for R-2.
Mr. Ajay Digpaul CGSC alongwith Ms. Swati Kwatra & Mr. Kamal Digpaul, Advocates.
(Mob. No. 9811157265)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Anil Kumar Gupta seeking the restoration of his original membership and Certificate of Practice with the Respodent No. 2- Institute of Chartered Accountants of India (ICAI).

3. The Petitioner in the present case is a practicing Chartered Accountant and is stated to be a part of a CA Firm, namely, M/s ASPN & Co. He became a member of the ICAI on 18th July, 1988, with membership no. 087284 and has also become a Fellow Chartered Accountant after completing five years as an Associate Chartered Accountant. His firm Kumar Narang & Co. now is called M/s ASPN & Co. and having all the

required recognitions.

4. According to the Petitioner, his membership fee and COP fee was always deposited in time and being a Senior Member of the firm, usually his associates would take care of depositing the membership fee every year. Inadvertently, during the financial year 2019-20, there was a delay in submission of the fee. It is the submission of ld. Counsel for the Petitioner that during March to June of 2020, lockdown was announced due to the COVID-19 pandemic. During that period, initially, the ICAI had extended the time for deposit of fee till 31st March, 2020 and thereafter till 31st May, 2020.

5. According to the Petitioner, he had suffered personally due to the untimely death of one of his close friends during COVID-19. It is the claim of the Petitioner that he finally re-joined official work in July, 2020 and deposited the fee on 9th July, 2020. It is the case of the Petitioner that despite depositing the requisite fee, the ICAI had not restored his membership, and consequently his seniority was also not maintained. Thereafter, in October, 2020, he found that the name of the firm itself was not listed anymore on the ICAI's website.

6. The Petitioner sent an email dated 14th October, 2020 to Dr. Shivam Kumar (Additional Secretary-Member and Student Services/Regional Head, NRO, ICAI), seeking redressal for his grievances. On the same day, Mr. Neeraj Verma (Member Section, ICAI), replied to the email and stated that the last date for retrospective restoration was extended only upto 31st May, 2020 and given that the Petitioner application for membership restoration was made on 09th July, 2020, a retrospective restoration was not possible and thus, a new COP dated 28th August, 2020 was granted to him.

7. After correspondence, the requisite forms were filed. However, the status was shown of his firm was still reflecting as inactive. A representation dated 16th December, 2020 was also made by the Petitioner, which did not bear any fruition. Hence the present writ petition was filed by the Petitioner. The prayers sought in this petition are as under:

> *"I. Issue a writ in the nature of Mandamus or an appropriate writ(s)/order (s)/direction(s) commanding the Respondent No.2 to restore Petitioner's original membership and Certificate of Practice w.e.f. 18th July, 1988 while revoking the new Certificate of Practice dated 28.08.2020; and*
> *II. Issue a writ in the nature of Mandamus or an appropriate writ(s)/order (s)/direction(s) commanding the Respondent No.2 to restore the registration and FRN No. 004148N of the Firm ASPN & Co; and*
> *III. confirm rule nisi after hearing the respondents; and*
> *IV. Pass such other and further order (s) as this Hon'ble Court may deem fit under the circumstances."*

8. Ld. counsel for the Petitioner submits that a perusal of the notice itself shows that the initial notice dated 14th May, 2020 shows that the last date for filing of fee was extended till 31st May, 2020. He submits that this was during pandemic, and the delay is of less than 40 days. It is the contention of the Petitioner that since the fee has been deposited on 9th July, 2020, the suspension, even during the period while the fee had not been paid, ought not to be permitted as the same would have adverse consequences on the Petitioner's professional standing.

9. Ms. Sehgal, ld. Counsel appearing on behalf of the Respondent submits that the fee was due way back in September, 2019. It is her submission that there was no excuse of the pandemic since there has been a

delay in payment, the Petitioner is not entitled to restoration of membership and benefit of consequential seniority during the period when the fees was not paid. Thus there would be a suspension of the membership of the Petitioner for the interregnum period.

10. Heard. The notice dated 14th May, 2020 issued by the ICAI by the Additional Secretary M&C-MSS Section ICAI Noida is extracted as under:

> *"The sudden developments in regard to corona virus pandemic in the country have resulted in an extended lockdowns since 22nd March, 2020 by the Government of India. This lock down brought with it restrictions on physical mobility and availability of limited communication modes. This has resultantly led to situation wherein many of ICAI stakeholders were unable to complete the requirements of making the application complete in all respects for submission of Membership/COP fees and retrospective restoration for the year 2019-2020 by the last date of 31st March 2020.*
>
> *To mitigate the hardships, the application(s) in Form 9 and Form 101 for retrospective restoration of membership / certificate of practice complete in all respects and applicable fee for the year 2019-2020 can now be submitted by filing until the midnight of 31st May 2020.*
>
> *The system modification is underway to accommodate this window and is expected to be available in your SSP login profile on the 20th of May 2020.*
>
> *Meanwhile, Members who have not registered themselves till now on the New Self Service Portal are requested to do their one-time registration immediately by visiting https://eservices.Icai.org (https://eservices.icai.org).*
>
> *The step by step procedure about the registration process can be referred at https://resource.cdn.icai.org/55774sspfaq-45144c.pdf*

(https://resource.cdn.icai.org/55774sspfaq-45144c.pdf)"

11. It is observed that the notice dated 14th May, 2020 clearly shows that time was extended till 31st May, 2020. The fact that the Petitioner has deposited the fee on 9th July, 2020 would show that the reasons given by the Petitioner are *bona fide* and genuine. It appears to have been a mere inadvertent error wherein the Petitioner has not deposited the fee for only the year of 2019-20. The Court also notes that the suspension of the membership of any chartered accountant merely on the ground of delay of deposit of fees during the pandemic, can have an adverse impact not merely for the CA himself but also his clients for whom returns may have been filed and audits may have been conducted. Suspension of this nature thus has a cascading effect. The Court also notes that the period when the fees was to be paid was also during the peak of the Covid-19 pandemic.

12. Under such circumstances, the delay in the deposit of the membership fee with the ICAI shall stand condoned in the facts and circumstances of this case. It is clarified that there shall be no interruption in the Petitioner's professional standing as a Chartered Accountant merely on the ground of late deposit of fee and his consequential seniority shall also be restored.

13. The petition is disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

MARCH 20, 2023
Rahul/AM