

Nikkitha K J Vs. The Union Of India

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Court : Karnataka

Decided On : Dec-07-2023

Judge : M.Nagaprasanna

Appeal No. : WP 10759/2023

Appellant : Nikkitha K J

Respondent : The Union Of India

Advocate for Def. : Sri. Vaibhav Malimath

Judgement :

- 1 - NC:

2023. KHC:44281 WP No.10759 of 2023 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE7H DAY OF DECEMBER, 2023 BEFORE THE HON'BLE MR JUSTICE M.NAGAPRASANNA WRIT PETITION No.10759 OF2023(GM-RES) BETWEEN: NIKKITHA K.J., D/O K. JANAKIRAMAN, AGED ABOUT23YEARS, R/AT NO.107/2, 2ND CROSS, 4TH MAIN, SAMPIGE LAYOUT, BENGALURU - 560 079. PETITIONER (BY SRI. SOMASHEKHARAI AH R.P., ADVOCATE) AND:

1. THE UNION OF INDIA, MINISTRY OF CORPORATE AFFAIRS, NEW DELHI - 110 011, REPRESENTED BY ITS SECRETARY.

2. THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, ICAI BHAVAN, POST BOX NO.7100, INDRAPRASHTA MARG, NEW DELHI - 110 002, REPRESENTED BY AUTHORIZED OFFICER.

3. THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, - 2 - NC:

2023. KHC:44281 WP No.10759 of 2023 MC AND MSS SECTION, ICAI BHAVAN, A-29, SECTOR-62, NOIDA-201309, U.P., REPRESENTED BY AUTHORISED OFFICER.

4. THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, MEMBER SECTION, (FRESH ENROLMENT), ICAI BHAVAN, PLOT NO.9, BLOCK NO.A-1, LAKHANPUR, KANPUR - 208 024, REPRESENTED BY AUTHORIZED OFFICER. RESPONDENTS (BY SRI. VAIBHAV MALIMATH, ADVOCATE FOR R1; SRI. SHRIRAJA S., ADVOCATE FOR M/S. JUST LAW, ADVOCATES FOR R2 TO R4) THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE COMMUNICATION /

ORDER

DATED 10.5.23, ISSUED BY THE RESPONDENT NO.3 SENT THROUGH E-MAIL, DENYING MEMBERSHIP TO THE PETITIONER TO PRACTICE CHARTERED ACCOUNTANT, UNDER ANNEXURE-S AND ETC. THIS PETITION, COMING ON FOR

ORDER

S, THIS DAY, THE COURT MADE THE FOLLOWING: - 3 - NC:

2023. KHC:44281 WP No.10759 of 2023

ORDER

The petitioner is before this Court calling in question an order/communication dated 1-05-2023 issued by the 3rd respondent declining to accede to the request of the petitioner for membership to practice as a Chartered Accountant and has sought a consequential direction to register the petitioner as a Member of the Institute of Chartered Accountants of India.

2. Heard Sri. Somashekharaiyah R.P., learned counsel appearing for the petitioner, Sri. Vaibhav Malimath, learned counsel appearing for respondent No.1 and Sri. Shriraja S., learned counsel appearing for respondent Nos.2 to 4.

3. Facts adumbrated are as follows:- The petitioner is a student. In the month of May 2017, she joins B.Com degree at ASC Evening Degree College. Simultaneously, she enrolled herself for a course in CMA Foundation. After joining B.Com degree course, the petitioner completes CMA Foundation course and intermediate course as well in the month of June, 2018 and had pursued her CS-Executive Course which also gets completed in June 2018. Therefore, the petitioner had enrolled herself to several courses - 4 - NC:

2023. KHC:44281 WP No.10759 of 2023 and completed all of them except B.Com. degree course which she is pursuing.

4. On 27-08-2018, the petitioner joins Chartered Accountant Articleship training. She then seeks permission to continue her B.Com. degree course by submitting necessary application in Form No.112 under the Chartered Accountants Regulations, 1988 (the Regulations for short) for grant of permission to pursue additional courses. The permission was granted. The petitioner completes her B.Com degree in September, 2020. After completion of B.Com. degree, she seeks permission to write CMA final exam and the respondent permitted additional course also to be taken. The petitioner in December, 2020 completes her CMA final exam as well. After its completion, the petitioner on 30-03-2021 seeks permission to pursue additional course - CS professional again seeking permission by submitting application in Form No.112. Permission is granted. On completion of all the courses and Articleship, the petitioner then files application seeking enrollment as Member of the 2nd respondent to become a Chartered Accountant. Certain clarifications were sought from the hands of the petitioner as to how she pursued multiple - 5 - NC:

2023. KHC:44281 WP No.10759 of 2023 courses by submitting Form No.112 and later it was informed that the decision is that the petitioner would not be permitted to enroll as a Chartered Accountant for two years and would be imposed a fine of Rs.10,000/- for having pursued multiple courses on every occasion which the 2nd

respondent says it was without permission. Correspondences between the petitioner and the respondents galore, clarifications are sought and replies were given by the petitioner. On 01-05-2023, the membership is categorically denied to the petitioner. It is challenging that action the student is before this Court in the subject petition.

5. Learned counsel appearing for the petitioner submits that at every point in time has sought permission to pursue multiple courses and permission has been granted. It is not a case where she has pursued courses without permission being granted and therefore, there should be no impediment for the petitioner to practice as Chartered Accountant by registering the petitioner as a Chartered Accountant by respondent No.2.-. 6 - NC:

2023. KHC:44281 WP No.10759 of 2023 6. Learned counsel, Sri. Shriraja S., representing respondent Nos.2 to 4 would vehemently refute the submission to contend that what the petitioner had applied was for final courses and not the foundation or intermediate course, the petitioner has violated Regulation 65 of the Regulations that operate the field, which bars the multiple courses being pursued by a student, who has enrolled for Articleship with respondent No.2. Learned counsel would take this Court through the statement of objections and a tabular column found in the statement of objections to contend that the petitioner has pursued multiple courses without adequate permission and therefore, the action of the respondents cannot be found fault with. If at all the petitioner would become entitled to, it would be only from the month of February, 2025 and not any day earlier.

7. Learned counsel, Sri. Vaibhav Malimath, appearing for respondent No.1 would submit that no prayer is sought against him and he has no submissions to make.-. 7 - NC:

2023. KHC:44281 WP No.10759 of 2023 8. I have given my anxious consideration to the submissions made by the learned counsel for both the parties and perused the material on record.

9. The afore-narrated facts are not in dispute. The petitioner joins B.Com degree course in May 2017 in an evening College. Simultaneously, the petitioner had enrolled in several courses, according to her counsel, to study. She completes CMA foundation course; CMA intermediate course and CS-Executive course before the petitioner joins Chartered Articleship training which she joins on 27-08-2018. Before joining Articleship training, since she had already enrolled to B.Com degree course, she sought permission by submitting Form 112 in terms of Regulations 65 and 78 of the Regulations. The petitioner was granted permission. This is for the first time the petitioner seeks permission under Form 112 and it is granted to the petitioner to pursue additional course. The permission was sought on 11.05.2019 by the petitioner and was granted by the following communication:

"Dear, This refers to Form 112 of the Student Registration No SRO0609486, articled assistant received in our office on 11/05/2019. The council is pleased to permit to attend/pursue one additional - 8 - NC:

2023. KHC:44281 WP No.10759 of 2023 course i.e. outside the normal working hours of the office provided his/her attendance does not in anyway interfere with his/her training as an Article Assistant. Regards, ICAI" The petitioner then writes to the 2nd respondent seeking permission to pursue additional course - CMA final by submitting an application on 24-10-2020. This is also permitted by the following communication:

"Dear NIKKITHA K J, This refers to Form 112 of the Student Registration No SRO0609486, articled assistant received in our office on 24/10/2020. The council is pleased to permit NIKKITHA K J to attend/pursue one additional course i.e. outside the normal working hours of the office provided his/her attendance does not in anyway interfere with his/her training as an Article Assistant. Regards, ICAI" The petitioner again submits form No.112 seeking permission to pursue additional course i.e., CS-Professional on 30-09- 2021. This is also permitted by the following communication:

"Dear NIKKITHA K J, This refers to Form 112 of the Student Registration No SRO0609486, articled assistant received in our office on 30/03/2021. The council is pleased to permit NIKKITHA K J to attend/pursue one additional course i.e.

outside the normal working hours of the office provided his/her - 9 - NC:

2023. KHC:44281 WP No.10759 of 2023 attendance does not in anyway interfere with his/her training as an Article Assistant. Regards, ICAI

10. The petitioner then submits necessary application to become a Member of the Indian Institute of Chartered Accountants under the Chartered Accountants Act, 1949 by submitting necessary application on 10-02-2023. Here begins the problem. On 15-02-2023, a clarification is sought from the hands of the petitioner with regard to additional courses that the petitioner had pursued during the period when she was doing her Articleship. The petitioner immediately replies. What comes about is the decision that the petitioner should wait for two more years to get membership and imposition of fine of Rs.10,000/- all for the reason that the petitioner has pursued multiple courses. The decision of the Chartered Accountants Council reads as follows:

"DRAFT GIST OF DECISIONS ON MSS ITEMS Item No 111: Reconsideration on Condonation fee under Regulation 65 for delay in submission of Form 112 for pursuing other courses - Recommendation of Management Committee Gist of Decision: The Council was apprised on current condonation provisions on delayed filing of various forms related to the students and specifically on breach of - 10 - NC:

2023. KHC:44281 WP No.10759 of 2023 Chartered Accountants regulations 65 due to delay in filing of form 112 after one year in the consequent levy of condonation fee as well as extension in granting membership various views came out of the discussion regarding amount of condonation fee and period of extension for granting of membership. After deliberations the Council decided as under:

1. If delay in filing of Form 112 is beyond one year and no overlapping is between articulated training and academic classes and only one course pursued as per Regulation 65 - Condonation fee of Rs. 2,500/- only and no delay in granting membership.

2. If delay in filing of Form 112 is beyond one year and pursuing multiple courses (two or more courses) courses including regular / part time or correspondence - Condonation fee of Rs. 10,000/- and two years delay in granting membership as per recommendation of Management Committee.

3. The Form 112 is required only when the other course is pursued during the articleship training as no Form 112 is required if other course has completed before joining the articleship training or after completion of articleship training.

4. If delay in filing of form 112 within one year, current condonation provisions will remain continue as it is. The Council also decided to expand Form 112 by inserting a separate clause for taking certification from Principal as well as from student regarding pursuing only one course during articleship training as per Regulation 65 by directing the office to work out on the same. This decision will be applicable from the applications received on 1 April 2019 or thereafter."

- 11 - NC:

2023. KHC:44281 WP No.10759 of 2023 11. The petitioner again communicates by capturing the entire gamut of circumstances and permissions granted from time to time in her mail on 09-03-2023, which reads as follows:

"Respected Sir, I am Nikkitha K J (SRO0609486). I qualified CA Final examinations in November 2022. Post qualification, I applied for my membership on 10th February 2023. I received a call back from the concerned authority raising an issue with my having completed other professional courses during my articleship tenure. I had completed CA Intermediate, CS Executive & CMA Intermediate (AIR26 in may and June 2018. My articleship commenced on 27th August 2018. With my articleship commencement form, I filled out form 112 for my B.com course and have received permission for the same. Post completion of the exams of my B.com course in September 2020, I applied for permission to continue pursuing CMA Finals on 24th October 2020 and have received the approval for the same. I then proceeded a writ the CMA Final Examinations in December 2020 term. Post completion of the CMA Final in the December 2020 term, I applied for permission to continue pursuing CS professional on 30th March

2021 and have received the approval for the same. I then proceeded to write the CS professional Examinations in July 2021 and cleared the same. Please find the attached documents (Form 112, Documents attached to Form 112, Permission letters, Registration forms, and Marksheets for the courses) that are needed to support my above statements. Now, the authorities are stating the delay in filing Form 112 as a reason for the application of a penalty of Rs.-. 12 - NC:

2023. KHC:44281 WP No.10759 of 2023 10,000 and a delay in grant of membership by 2 years as per Draft Gist of Decision on MSS Items, Item No.111. The highlighted section of the draft shared with me by the concerned authority states the following:

2. If delay in filing of Form 112 is beyond one year and pursuing multiple courses (two or more courses) courses including regular / part time or Correspondence Condonation fee of Rs. 10,000/- and two years delay in granting membership as per recommendation of management committee. As per my understanding of the above provision, I have taken prior permission for every course that I have completed during my articleship tenure (One after the other), and the question of delay in filing Form 112 beyond one year does not arise since I have taken prior permissions. Had the permission not been granted, I would have waited for the completion for my articleship tenure and would have abided by the reasons quoted for the rejection of Form 112. Delaying the grant of membership post qualification of CA Final examinations quoting reasons which are not applicable to my case makes me feel that I am being penalised for being well-educated and law abiding. As a student from a middle-class background, I have put in my heart had soul into completing all the courses. As a person who has qualified CA Final exams, I am eagerly waiting for my membership and COP to start practising to be able to support my family and myself. Kindly guide me through the further course of action that is necessary.

12. The 2nd respondent has not acceded to the request and has stuck to its stand that it would not permit the - 13 - NC:

2023. KHC:44281 WP No.10759 of 2023 petitioner to become a Member in terms of its decision earlier. The decision reads as follows:

"Dear Student, On examination of the documents submitted by you, you were pursuing multiple courses along with articleship, hence, your case falls under the following category; "If delay in filing of Form 112 is beyond one year and pursuing multiple courses (two or more courses) courses including regular / part time or correspondence - Condonation fee of Rs.10,000/- and two years delay in granting membership.

13. What would unmistakably emerge from the afore-quoted communications and the act of the student is that on every occasion, the student has diligently sought permission from the 2nd respondent to pursue the course and on every occasion, the student has been permitted to pursue the course. Now, when time came to register her as a Member of the Council to practice as a Chartered Accountant, the 2nd respondent wants to put the clock back by four years tinkering with the permissions that are already granted from time to time. It would have been an altogether different circumstance, if the student was not diligent in seeking permissions from time to time to pursue extra courses. It is not the allegation that forms the issue in the lis. The petitioner/student has been - 14 - NC:

2023. KHC:44281 WP No.10759 of 2023 diligent in securing permissions. The mighty respondent now wants to jeopardize the career of a student on the score that it had not properly accorded permission or permission was not properly sought by the student. This act of the 2nd respondent sans countenance.

14. This Court is dealing with the fervent cry of the student who sought to pursue multiple courses to develop such acumen and she has completed all those courses with the permission of the 2nd respondent. A student will not know the implications of law. A student knows only to study and ponder over the study material. She has studied and completed the courses. It is rather surprising that the 2nd respondent wants to stifle the career of a student, who has pursued multiple courses and gained such acumen to practice as a Chartered Accountant. It would be helpful to the Institute of Chartered Accountants, and the Society, if a student has extra acumen, than the chartered accountantship alone. Such acts of the 2nd respondent against a student who has only studied and done nothing else, that too after seeking permission would not behove the 2nd respondent to be a

State under Article 12 of the - 15 - NC:

2023. KHC:44281 WP No.10759 of 2023 Constitution of India. Whatever defence that the council for the 2nd respondent seeks to project, by invoking Regulation 65 of the Regulations by contending that the permission that was granted was for final courses and not foundation courses that precedes those final courses is a contention skating on thin ice, as the foundation courses gets subsumed in the final courses, and permission is granted for pursuing final courses. Therefore, this Court repels those submissions of the learned counsel for 2nd respondent, for the praedictus reasons, I deem it appropriate to bend the arc of justice for a student and direct grant of Membership of the petitioner to the Institute without brooking any further delay.

15. For the praefatus reasons, the following:

ORDER

(i) The petition is allowed. (ii) The communication/order dated 01-05-2023 issued by the 3rd respondent stands quashed. (iii) A mandamus issues to the 2nd respondent to consider addressing of the grievance of the petitioner in accordance with law and enrolling her - 16 - NC:

2023. KHC:44281 WP No.10759 of 2023 as a Member of the Institute bearing in mind the observations made in the course of the order. (iv) The order shall be passed within 4 weeks from the date of receipt of a copy of this order. Sd/- JUDGE SJK List No.:

1. SI No.:

1.

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