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Court : Allahabad

Decided On : May-11-1976

Reported in : [1977]110ITR549(All)

Judge : K.B. Asthana, C.J. and ;C.S.P. Singh, J.

Acts : Wealth Tax Act, 1957 - Sections 34AB; Wealth Tax Rules, 1957 - Rules 8; Estate Duty Act, 1953 - Sections 4(3)

Appeal No. : Civil Miscellaneous Writ No. 9290 of 1975

Appellant : S.K. Ahuja

Respondent : Central Board of Direct Taxes and anr.

Advocate for Def. : Deokinandan, Adv.

Advocate for Pet/Ap. : S.C. Khare and ;Rakesh Dwivedi, Advs.

Judgement :

C.S.P. Singh, J.

1. The petitioner by this petition has prayed for an order to modify the order passed by the Central Board of Direct Taxes dated 22nd June, 1975, and also for a writ quashing the order of the same authority dated 15th July, 1975, by which it rejected the registration of the petitioner as a valuer for the immovable properties.

2. The petitioner passed his Bachelor of Engineering degree in Electrical Engineering from the University of Rajasthan. It is averred in the writ petition that in passing this examination a candidate has also to study civil engineering and that a number of papers for Bachelor of Engineering (Civil) are common to the syllabus of the Bachelor of Engineering (Electrical). Thereafter, the petitioner passed various other post-graduate Diplomas and Courses from Universities in England, and qualified for Membership of the. Institution of Mechanical Engineers (London). He was subsequently appointed as a Chartered Engineer of various engineering institutions in London. On the 12th June, 1962, the petitioner was granted a Diploma of Membership by the Institution of Engineers (India) by virtue of his being elected as an Associate Member on the 10th December, 1961. On the 31st May, 1972, the petitioner was elected as a Member of the Institution of Engineers (India). The Diploma of Membership was also granted to the petitioner. It transpires that the petitioner is also a Member in Civil Division of the Institution of Engineers (India). It is averred that the Institution of Engineers (India) holds examinations including Civil Engineering called Sections A and B and awards Diplomas of Associate Membership to successful candidates. Candidates who qualify in the examination become full members of the Institution of Engineers (India) after the institution is satisfied as respects his training, professional experience, etc.. Under the bye-laws of the Institution, however, the Council of the Institution is entitled to exempt any person from passing Sections A and B of the examination and to award diploma after taking into consideration his qualifications and experience.

3. On the 5th July, 1968, the Central Board of Direct Taxes issued a notification that it proposed to appoint qualified persons as valuers under Section 4(3) of the Estate Duty Act and to fix the scale of charges for their remuneration. This notification set out the qualifications required for being appointed as a valuer of immovable properties other than agricultural land, etc. The petitioner applied for appointment as a valuer to the Commissioner of Income-tax, Kanpur, and was appointed as a valuer of immovable properties in the category of Engineer/Surveyor/Architect and his appointment was notified by Gazette dated 2nd April, 1969. This appointment was for a period of 5 years and was to continue till the 1st April, 1974. On the expiry of the term the petitioner applied for renewal

of his approval/appointment as a valuer in the same category. This application was sent to the Commissioner of Income-tax, Kanpur, some time in the month of January/February, 1974. On 22nd June, 1975, the petitioner received a letter from the Under-Secretary, Government of India, stating that his appointment as a valuer was approved for the purposes of proceedings under the Estate Duty Act, only in respect of valuation of machinery and plant.

4. The petitioner had also applied for being registered as a valuer of immovable property other than land and building/plant and machinery under Rule 8-B of the Wealth-tax Act, but was registered as a valuer of only plant and machinery. The petitioner, thereafter, made various representations for being registered as a valuer of immovable property also, but to no avail. On the 9th April, 1973, it is averred, the petitioner submitted a fresh application on the directions of respondent No. 1 for being registered as a valuer of immovable property but this application was rejected by orders dated 16th January, 1973, and 11th October, 1973. It appears that the petitioner sent a fresh representation on the 25th January, 1975, for reconsideration of the matter stating that as he was a member of the Institution of Engineers (India) in the Civil Division, which was equivalent to a degree in Civil Engineering, he was qualified for registration. Petitioner received information by letter dated 15th April, 1975, sent by respondent No. 1, that his representation was being considered but it transpires that it was ultimately rejected by an order of respondent No. 1, dated 15th July, 1975. The petitioner has now come up before us challenging the orders already enumerated above.

5. Counsel for the petitioner has submitted that he was fully qualified to be registered as an approved valuer of immovable property both under the Estate Duty Act and under the Wealth-tax Act. On the contrary, it has been contended on behalf of the respondents that the petitioner did not possess the necessary qualifications for being appointed as a valuer of immovable property.

6. Before we consider these rival contentions, it will be necessary to refer to the relevant provisions of the two Acts. So far as appointment of valuers under the Estate Duty Act is concerned, that is dealt with by Section 4(1) and (3), This section may be extracted.

' 4. (1) Estate Duty Authorities.--There shall be the following authorities for the purposes of this Act, namely :

(a) the Board,

(b) Controllers of Estate Duty,

(bb) Appellate Controllers of Estate Duty,

(c) Valuers.....

(3) The Central Government shall, within 12 months after the commencement of this Act and may thereafter, from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act and shall fix a scale of charges for the remuneration of such persons. '

7. Under the Wealth-tax Act, the relevant provision is Section 34AB(1). Rule 8A(2) sets out the qualifications of a valuer of immovable property, which are :

' 8A. (2) A valuer of immovable property (other than agricultural lands, plantations, forests, mines and quarries) shall have the following qualifications, namely :

(i) he must either be a graduate in civil engineering, architecture or town planning of a recognised university or possess a qualification recognised by the Union Public Service Commission as equivalent to a degree in civil engineering or architecture ; 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 Rs. 1,000 per month, and, in either case, must have retired or resigned from such employment after having rendered service for not less than 5 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 anyother institution preparing students for a degree in civil engineering,architecture or town planning, or for an equivalent qualification referred toin Clause (i), and must have retired or resigned from such employment afterhaving taught for not less than five years any of the subjects of valuation,quantity surveying, building construction, architecture, or town planningor

(B) he must have been in practice as a consulting engineer, surveyor, or architect for a period of not less than five years and must have, in the opinion of the Board, acquired sufficient experience in any of the following fields :

(a) valuation of buildings and urban lands ;

(b) quantity surveying in building construction ;

(c) architectural or structural designing of buildings or townplanning ; or

(d) construction of buildings or development of land.'

8. So far as the qualification for appointment of valuers under Section 4(3) of the Estate Duty Act is concerned, the matter was, up to 21st November, 1969, governed by the notification issued by the Government of India, Ministry of Finance dated 6th July, 1968. This notification classified properties under 11 heads, one of them being immovable property. The category of valuers for such properties were engineer, surveyor or architect, mining engineer for mines and quarries. The qualifications so far as engineer, surveyor or architect were concerned, were modified by another notification dated 21st November, 1969, and certain other qualifications were laid down therein. But we are not directly concerned with that notification in the present case. On the 1st August, 1975, another notification under Section 4(3) of the Estate Duty Act was issued by the Government of India superseding the previous notifications. Under this notification, valuer of immovable property other than agricultural land, plantations, forests, mines and quarries was to be either a graduate in civil engineering, architecture or town-planning of a recognised university or possesses a qualification recognised as sufficient qualification for the purposes of recruitment to superior posts and

services under the Central Government and also to possess certain other qualifications set out in Clause (ii) thereof. By this notification a separate category of valuers for machinery and plant was also set out. This was under para. 7 of that notification. It is not necessary to quote the qualifications required for a valuer of machinery and plant as the petitioner has already been appointed as such.

9. We will take up the case of the petitioner as regards his claim for being appointed as a valuer for immovable property under the Wealth-tax Act. We have already extracted the relevant provisions of the Wealth-tax Act and the Rules framed thereunder. A bare perusal of Section 34AB of the Act indicates that in case a person possesses the qualifications prescribed under the Rules he can apply for being registered as a valuer under this section. Section 34AB does not confer any jurisdiction on the Board to refuse registration in case the person has the requisite qualifications and makes an application under Sub-section (3) in the prescribed manner, i.e., in accordance with Rules 8B and 8C.

10. Under Rule 8A, which we have already extracted, he must either be a graduate in civil engineering, architecture or town-planning of a recognised university or possess a qualification recognised by the Union Public Service Commission as equialvent to a degree in civil engineering or architecture. The Case of the petitioner is that he possesses qualifications which are recognised by the Public Service Commission as equivalent to a degree in civil engineering or architecture. In paragraph 29 of the petition it is averred that the petitioner is a holder of a diploma granted by the Institution of Engineers (India), Calcutta, and is a Member in the Civil Engineering Division which is equivalent to a degree in civil engineering as recognised by the respondent No. 1, vide Notification No. 5/77/68 dated 6th July, 1968, under the Estate Duty Act, and in paragraph 30 it is averred that the Union Public Service Commission has also recognised the Membership of Civil Division of Institution of Engineers (India) as equivalent to a degree in civil engineering. In para. 26 of the counter-affidavit it is stated that the Central Government in the Ministry of Education and Ministry of Home Affairs in consultation with the Union Public Service Commission have set up a Board of Assessment for technical and professional qualifications, under the aegis of the Ministry of Education, to advise as to what recognition be awarded to the technical

and professional qualifications for employment purposes under the Central Government. This Board is headed by a Member of the Union Public Service Commission. The Ministry of Education issued orders recognising the various qualifications which are automatically recognised by the Union Public Service Commission and all the Ministries and the Departments of the Central Government. The Central Board of Direct Taxes was informed by a letter dated 11th September, 1973, from the Ministry of Education that a candidate who is declared as an Associate/Graduate member of the professional institution after passing the examination would be recognised for employment purposes. But a person who is exempted from passing the examinations and is then placed on the membership of the Institution of Engineers in the Civil Division does not qualify to be treated as having passed the Bachelor of Engineering Degree in civil engineering. It is averred that the petitioner is only an electrical engineer and, as such, the mere fact that he is an associate member of the Institution of Engineers does not render him qualified for being registered. In the rejoinder affidavit filed by the petitioner, a counter-affidavit filed on behalf of the Central Board of Direct Taxes in a similar case in Writ Petition No. 3580 of 1973 [C. R. Venkatesha Rao v. Central Board of Direct Taxes : [1975]99ITR94(KAR) before the Karnataka High Court has been annexed. In para. 10 of the affidavit of V.D. Waharkar, Under-Secretary, Central Board of Direct Taxes, Ministry of Finance, Government of India, New Delhi, it is averred that the Union Public Service Commission has treated a qualification exempting the person from passing Sections A and B of the associate membership examination of the Institution of Engineers as equivalent to a degree in engineering. The Karnataka High Court on a consideration of a similar matter and on the statement of facts contained in the counter-affidavit filed on behalf of the Central Board of Direct Taxes, treated an associate member of the Institution of Engineers, who is exempted from passing Sections A and B of the examination, as being equivalent to a degree in engineering. The Karnataka High Court has, in the course of its judgment, referred to the bye-laws made by the Institution of Engineers (India). Under these bye-laws a person can become its associate member either by passing Sections A and B of the institution examination or by possessing an educational qualification recognised by the council as exempting a person from passing the examination. In the present case

there is no dispute that the petitioner is an associate member of the Institution of Engineers in the civil division and he was exempted from passing Sections A and B prescribed by the Institution of Engineers (India). This being so, he holds a qualification which is recognised by the Union Public Service Commission as being equivalent to a degree in civil engineering. The single judge of the Karnataka High Court took the same view. This view was affirmed in Special Appeal No. 773 of 1974 by a Division Bench of the Karnataka High Court. We are in respectful agreement with their views.

11. After the hearing of the case was over, an application was filed on behalf of the respondent No. 1 with an affidvit, and a prayer that the affidavit be treated as a supplementary counter-affidavit. This affidavit was filed avowedly with a view to get over the decision of the Karnataka High Court. However, even after taking into account the affidavit now filed, the position does not change a wit. Annexure ' E ' is a letter sent by the Central Board of Direct Taxes to the Union Public Service Commission enquiring as to whether the norms prescribed by the Ministry of Education for the purpose of recruitment to superior posts and services under the Central Government are also followed by the Union Public Service Commission. In reply to this letter, the Under-Secretary of the Union Public Service Commission informed the Secretary to the Government of India, Ministry of Finance, that the Ministry of Education and Social Welfare were concerned with the subject, who may be contacted for the required information. It appears, thereafter, the Ministry of Education and Social Welfare sent a letter informing the Board that the Central Government in the Ministry of Education and Home Affairs in consultation with the Union Public Service Commission had set up a Board of Assessment, for technical and professional qualifications under the aegis of the Ministry of Education, to advise as to what recognition be accorded to technical and professional qualifications for employment under the Central Government. It further stated thai the Board was headed by a Member of the Union Public Service Commission, and on the advise of the Board, the Ministry issues orders which are automatically recognised by the Union Public Service Commission and all Ministries and Departments of the Government of India. Annexure ' H ' to the supplementary counter-affidavit is a copy of the letter sent by the Under-Secretary, Central Board of Direct Taxes, to the Secretary of the Institution of Engineers (India) enquiring as

to whether any person who did not possess the educational qualifications for exemption from Sections A and B of the institution examination has been elected as associate member of the Institution. Annexure ' I' is a letter sent by H. S. Kapoor, Assistant Education Officer to the Under-Secretary, Central Board of Direct Taxes. It sets out that the Board as a matter of policy had decided that only membership gained after passing the examination of the institution be recognised for employment purposes under the Central Government. Annexure 'J' is a letter sent by one S. Bapu, Under-Secretary, Central Board of Direct Taxes, to Sri H. S. Kapoor, Assistant Education Officer, Ministry of Education and Social Welfare, stating that it had been ascertained from the Institution of Engineers (India) that every candidate for election as an associate member should have passed Sections A and B of the institution examination or possesses an educational qualification recognised as exempting him therefrom. The qualifications recognised for the purpose of exemption from Sections A and B of the institution examination were recognised for the purpose of recruitment to superior posts and services under the Central Government. In this view, he added it was necessary to seek clarification again as to whether associate membership of the Institution of Enginners by election was recognised for purposes of recruitment to superior posts and services. None of these letters lead to the inference that the Union Public Service Commission has not recognised associate membership obtained by exemption as equivalent to holding a degree in civil engineering. This being so, it must be held that the petitioner possessed the necessary qualifications for being registered as a valuer under the Wealth-tax Act, of immovable property, and the impugned order of respondent No. 1 refusing to do so cannot be sustained.

12. We now turn to the claim for being appointed as a valuer of immovable property under the Estate Duty Act. We have already extracted Section 4(1) to (4) of the Act. The relevant provision is Section 4(3). Under Section 4(3), as we read it, no person has a right to be appointed as a valuer. The number of valuers to be appointed depends upon the number which the Central Government think are sufficient to effectuate the purposes of the Act. The petitioner has not laid proper factual foundation for holding that in case he was not appointed sufficient number of valuers would not be available for effectuating the purposes of the Act. This apart, the notification of the lst August, 1975, settles the controversy. Formerly, by

the notification dated 6th July, 1968, immovable property of all types, which may possibly have included fixed machinery and plant, was put in one category, and the category of valuers for such property were engineers, surveyors or architects, mining engineers for mines and quarries. The petitioner is an engineer in electrical engineering and as the word ' engineer ' used in the first notification would also include a person who has a degree in electrical engineering, and he was qualified to be appointed as valuer of immovable property of all types. By the amended notification machinery and plant has been put in a separate category, and for that category the qualification of an electrical engineer satisfies the purpose. The petitioner has already been appointed as a valuer of machinery and plant. However, for a valuer of immovable property, it is necessary to be a graduate in civil engineering. The petitioner has a bachelor's degree only in electrical engineering. The fact that some of the subjects taught in electrical engineering are also taught in civil engineering does not make him a graduate engineer in civil engineering. The claim of the petitioner, as such, for being appointed as a valuer for immovable property cannot be accepted. The placing of the petitioner in the civil engineering division by the Institution of Engineers (India) is also not conclusive of the matter, as the requirement of the notification is that he should hold a bachelor's degree in civil engineering which he does not.

13. Counsel also urged that one Sri R. D. Agarwal, who had a degree in engineering from the Banaras Hindu University, had been registered as a valuer both in the category of valuers for plant and machinery and immovable property and the case of the petitioner is identical. This is denied in the counter-affidavit. It is also not clear that Sri R. D. Agarwal did not hold a degree in civil engineering. Thus, the stand of discrimination taken is also not established.

14. In the result the petition is partly allowed. The respondent No. 1 is directed to register the petitioner as a valuer of immovable property under the Wealth-tax Act. The claim of the petitioner for being appointed as a valuer of immovable property under the Estate Duty Act is rejected. In view of the partial success of parties, there will be no order as to costs.

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