

ITEM NO.302

Court 7 (Video Conferencing)

SECTION PIL-W

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Miscellaneous Application No. 111/2021 in W.P.(C) No. 804/2020

(Arising out of impugned final judgment and order dated 27-11-2020
in W.P.(C) No. No. 804/2020 passed by the Supreme Court Of India)

MADRAS BAR ASSOCIATION

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(IA No. 2727/2021 - CLARIFICATION/DIRECTION)

Date : 25-01-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESW RA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For the Parties :

Mr. Arvind P. Datar, Senior Adv. (A.C.)
Mr. Rahul Unnikrishnan, Adv.
Mr. T.V.S. Raghavendra Sreyas, AOR
Mr. K. K. Venugopal, AG
Mr. Balbir Singh ASG
Mr. R. Bala Subramaniun, Sr. Adv.
Ms. Shraddha Deshmukh Adv.
Ms. Chinmayee Chandra, Adv.
Mr. Zoheb Hossain Adv.
Mr. Ankur Talwar Adv.
Mr. Shyam Gopal Adv.
Mr. A. K. Sharma AOR
Mrs. Anil Katiyar, AOR

Mr. Aruneshwar Gupta, Sr. Adv.
Mr. Surajit Samanta ,Sr Adv.
Ms. Swati Arya, Adv.
Ms. Anika Dhingra, Adv.

Mr. Abhishek Sharma, Adv.
Mr. Rajeev Singh, Adv.

Mr. Sidharth Luthra, Sr. Adv.
Ms. Sakshi kakkar AOR
Mr. Shakti singh, Adv.
Mr. Ayush kaushik, Adv.
Ms. Ankita Tiwari, Adv.
Mr. Lakshay Mehta, Adv.

UPON hearing the counsel the Court made the following ORDER

1. This Miscellaneous Application has been filed for clarification of the judgment of this Court dated 27.11.2020 in W.P.(C) No. 804/2020. Learned Attorney General for India submitted that the direction given in para 53(ii) of the judgment pertaining to constitution of Search-cum-Selection Committee needs modification. It is submitted that the Secretary to the Ministry of Law and Justice, Government of India who is made a member of the Search-cum-Selection Committee should be substituted by a Secretary to the Government of India nominated by the Cabinet Secretary from a Department other than the parent or sponsoring department.

2. Learned Attorney General submitted that there are 19 Tribunals and it will be difficult for the Secretary to the Ministry of Law and Justice to act as a Member of every Search-cum-Selection Committee which might hinder his other duties. He suggested that the composition of the Search-cum-Selection Committee should be changed and the Cabinet Secretary

may be permitted to nominate two Secretaries to the Government of India from a Department other than the parent or sponsoring department instead of Secretary to Ministry of Law and Justice and another Secretary for a Department other than the parent or sponsoring department. Learned Amicus Curiae has no objection for this modification. Therefore, the constitution of the Search-cum-Selection Committee shall be as follows:

(a) The Chief Justice of India or his nominee- Chairperson (with a casting vote).

(b) The out-going Chairman or Chairperson or President of the Tribunal in case of appointment of the Chairman or Chairperson or President of the Tribunal (or) the sitting Chairman or Chairperson or President of the Tribunal in case of appointment of other Members of the Tribunal (or) a retired Judge of the Supreme Court of India or a retired Chief Justice of a High Court in case the Chairman or Chairperson or President of the Tribunal is not a Judicial member or if the Chairman or Chairperson or President of the Tribunal is seeking re-appointment - Member;

(c) Two Secretaries to the Government of India nominated by the Cabinet Secretary from a Department other than the parent or sponsoring department - Members.

(d) Secretary to the sponsoring or parent

Ministry or Department - Member Secretary/Convener
(without a vote).

3. Para 53(vi) of the judgment dated 27.11.2020 deals with the eligibility of Advocates for appointment as Judicial Members in the Tribunals.

Advocates with 10 years' experience were held to be eligible for appointment as Judicial Members and entitled for re-appointment for at least one term by giving preference to the service rendered by them.

The modification sought by learned Attorney General for India is that instead of the word "entitled", the

word "eligible" may be substituted as it would provide more clarity for the Search-cum-Selection Committee when advocates are considered for re-appointment. Mr. Arvind Datar, learned Amicus Curiae

does not have any objection for such modification to be made. The last sentence of Para 53(vi) which is as follows:

"They shall be entitled for reappointment for at least one term by giving preference to the service rendered by them for the Tribunals."

shall be substituted as under:

"They shall be eligible for being considered for re-appointment for at least one term by giving preference to the service rendered by them for the Tribunals."

4. Para 53 (xv) pertains to the tenure of the Chairpersons, Vice Chairpersons and members of the Tribunals appointed prior to 12.02.2020 which shall

be governed by the parent statute and Rules. Learned Attorney General for India seeks clarification of the direction relating to the tenure of the Members appointed prior to 12.02.2020 as, according to him, Section 184 of the Finance Act, 2017 which has been upheld by this Court in *Roger Mathew v. South Indian Bank Ltd.* reported in (2020) 6 SCC 1, provides that a Member cannot continue beyond a period of five years. Whereas, on the other hand certain statutes provide for continuance of a Member of a Tribunal till he/she attains 62 years. A list of 7 Members appointed as Members of the Income Tax Appellate Tribunal and Central Sales Tax Appellate Tribunal has been annexed to the Miscellaneous Application who would have a tenure between 8 years to 15 years according to the parent statutes and the Rules. The learned Attorney General submitted that the Members cannot have a tenure beyond five years.

5. We direct the learned Amicus Curiae to submit his response to the above suggestion made by the learned Attorney General for India regarding the tenure of members.

6. Issue notice to the 7 Members whose names figure in Annexure-I of the Miscellaneous Application. They are permitted to file their response before the next date of hearing.

7. If it is not possible to provide housing to the

members of the tribunal, the UOI was directed to pay an amount of Rs. 1.5 lakhs as HRA to the Chairman & Vice-Chairman and Rs. 1.25 lakhs per month to the members of the Tribunals. The Learned Attorney General submitted that standard HRA for all members is not appropriate. Fixation of a static amount may lead to HRA becoming inadequate after a few years due to inflation, according to him. A clarification is sought in respect of Para 53 (v) by fixing HRA payable to members at twice the HRA payable to the Secretary to Government of India.

8. The UOI is directed to place on record the particulars of the members of the Tribunals working in X, Y, Z cities/towns and the amounts paid to them as HRA. Details of the accommodation provided to the members of the Tribunal shall also be provided. The UOI shall submit a proposal as to what amount would be reasonable towards HRA in case accommodation cannot be provided to members of the Tribunal.

List on 15.02.2021 for further consideration.

(Geeta Ahuja)
Court Master

(Anand Prakash)
Court Master