

WPC 804/2020

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ITEM NO.2

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

M.A. No.111/2021 In W.P.(C) No.804/2020

MADRAS BAR ASSOCIATION

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With IA No.27760/2021 - APPLICATION FOR TAKING ON RECORD, IA No. 27542/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No.58960/2021 - APPROPRIATE ORDERS/DIRECTIONS and IA No.2727/2021 - CLARIFICATION/DIRECTION)

Date : 03-03-2023 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s)

Mrs. Anil Katiyar, AOR

For Respondent(s)

Mr. Balbir Singh, ASG
Mr. R Balasubramaniam, Sr. Adv.
Mr. Chinmayee Chandra, Adv.
Mrs. Shradha Deshmukh, Adv.
Mr. Shyam Gopal, Adv.
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Mr. Ankur Talwar, Adv.
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Mr. Balbir Singh, A.S.G.
Mr. R Bala, Sr. Adv.

Ms. Chinmayee Chandra, Adv.
Ms. Shraddha Deshmukh, Adv.
Mr. Ankur Talwar, Adv.
Mr. Zoheb Hossain, Adv.
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Ms. Gayatri Gulati, Adv.
Mr. Siddharth Vasudev, Adv.

Mr. Sidharth Luthra, Sr. Adv.
Ms. Sakshi Kakkar, AOR

Mr. P.S. Patwalia, Sr. Adv.
Mr. Shyam Diwan, Sr. Adv.
Mr. Rupesh Kumar, AOR
Ms. Pankhuri Shrivastava, Adv.
Ms. Neelam Sharma, Adv.
Mr. Rajeev Sharma, Adv.

Mr. P S Patwalia, Sr. Adv.
Mr. Bijan Ghosh, Adv.
Mr. Surjit Samanta, Adv.
Mr. Samant Singh, Adv.
Mr. Rajeev Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

IA No 27542/2021 In WP (C) No 804 of 2020

- 1 The applicant is a Member of the Income Tax Appellate Tribunal¹.
 - 2 On 17 April, 2013, the Union Government issued a circular to fill up 48 vacant posts of Members of the ITAT. The applicant applied in the unreserved
- 1 "ITAT"

category. Interviews were held, following which a panel of names was prepared for appointment on 31 May 2014. Since the applicant was not included in the panel, she moved the Central Administrative Tribunal. The tribunal rejected her OA² on 9 November 2016. The applicant then moved the High Court of Calcutta. By its judgment dated 28 June 2017, the High Court allowed the petition³ in the following terms:

“For the reasons discussed above, we set aside the impugned order dated 9th November 2016 passed by the learned Tribunal in OA 350/00979/2016 and direct the ACC to consider the petitioner’s candidature afresh for appointment to the post of Judicial Member under unreserved category in the Income Tax Appellate Tribunal in the light of the observations made above and to take a final decision and to communicate the same to the petitioner within a period of six weeks from date. It is made clear that the petitioner’s candidature should not be rejected on the ground that the petitioner’s income tax return for the assessment year 2010-2011 is not available as reported by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, Till such decision of ACC is communicated to the petitioner and for a week thereafter one post of Judicial Member under unreserved category shall be kept vacant.”

- 3 Following the above judgment of the High Court, a letter of offer was issued to the applicant on 24 December 2017 followed by a letter of appointment dated 19 March 2018.
- 4 On 20 April 2018, the applicant submitted a representation to the Secretary in the Department of Justice to the effect that her appointment was in pursuance of a vacancy of 2013 which was governed by the parent act,

2 OA 350/00979/2016

3 WPCT No 281/2016

namely, the Income Tax Act 1961. Consequently, the contention of the applicant was that the tenure of her appointment should operate until the age of 62 and not for a period of three years as stated in the letter of appointment.

- 5 On 6 July 2018, vacancies were declared under the 2017 Rules.
- 6 On 13 November 2019, this Court rendered judgment in ***Rojer Mathews vs South Indian Bank Limited and Others***⁴. While striking down the 2017 Rules, this Court directed that appointments shall be made in terms of the respective statutes before the enactment of Finance Bill 2017. Subsequently, on 27 November 2020, this Court delivered its judgment in ***Madras Bar Association vs Union of India and Another***⁵.
- 7 The applicant once again submitted a representation on 3 December 2020. It may also be noted at this stage that on 9 March 2021, an interim order was passed by this Court directing the continuation of the applicant as a Member of the ITAT until 17 March 2023.
- 8 On 14 July 2021, this Court clarified its decision in ***Madras Bar Association vs Union of India***⁶ to the effect that all appointments made before 4 April 2021 would be governed by the parent statutes in terms of the interim orders passed by this Court earlier on 16 July 2018 and 21 August 2018.

4 (2020) 6 SCC 1

5 (2021) 7 SCC 369

6 2021 (8) SCALE 174

- 9 The issue which arises for determination in the Interlocutory Application is as to whether the applicant would be governed by the provisions contained in the Income Tax Act 1961. Rule 11 of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules 1963 stipulated that the age of retirement of the Members of the ITAT would be 62 years. In terms of those provisions, the applicant would have been entitled to continue in service until the age of 62 years.
- 10 The applicant had offered her candidature for appointment in pursuance of the circular of 2013. The selection process which was conducted in pursuance of the circular ended in the grant of letters of appointment to those who were found to be qualified and were selected. The applicant was deprived of the selection at that stage only on the ground that she had not filed her income tax return for the relevant assessment year. The applicant pursued her claim before the Calcutta High Court.
- 11 In the judgment of the Calcutta High Court dated 28 June 2017, it was held that the candidature of the applicant shall not be rejected on the ground that her income tax return for Assessment Year 2010-2011 was not available, as reported by the Under Secretary to the Government of India in the Ministry of Finance, Department of Revenue. This judgment of the Calcutta High Court attained finality.

- 12 Consequently, it is apparent that the only ground which weighed in the rejection of her candidature was found to be untenable by the Division Bench of the Calcutta High Court. Though the appointment letter was issued to the applicant on 19 March 2018 (in pursuance of the letter of offer dated 24 October 2017), the appointment of the applicant was pursuant to the selection process which had been initiated with the circular of 17 April 2013. It is not in dispute that other persons who were selected in pursuance of that process were issued with letters of appointment much before the 2017 Rules came into effect. The clear position on the facts of this case is that the right of the applicant to appointment had been crystallized even before the 2017 Rules. Therefore, the appointment of the applicant would be governed by the position as it existed prior to the 2017 Rules. In other words, her tenure shall be extended until she attains the age of 62 years.
- 13 The Interlocutory Application is accordingly disposed of.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar