IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31..07..2012

CORAM

THE HON'BLE Mr.M.Y.EQBAL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.23919 of 2011

Antony Lourdu Xavier Selvam .. Petitioner

Vs.

1.P.K.Ramaswamy Iyer,
Presiding Officer,
Debts Recovery Tribunal-1, Chennai.

2.Union of India,
Rep. by Under Secretary,
Ministry of Finance,
Department of Financial Services,
10, Jeevan Deep,
Sansad Marg, New Delhi 110 001. .. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of quo warranto to direct the first respondent above named requiring him to show cause by what authority he claims to have, use enjoy and perform the rights, duties privileges of the office of presiding officer Debts Recovery Tribunal-1, Chennai.

Mr.V.Selvaraj for
M/s.Devadasan and Sagar :: For Petitioner

Mr.A.L.Somayaji
Sr. Counsel for :: For Respondents

Mr.V.Perumal for R1
Mr.V.Parivallal for R2
SCGSC

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O R D E R

THE HON'BLE CHIEF JUSTICE &
T.S.SIVAGNANAM, J.

By this writ petition, the petitioner has sought for issue a writ of quo warranto, directing the first respondent, who is the Presiding Officer of Debts Recovery Tribunal, (DRT) Chennai – 1, to show cause by what authority, he claims to have right to discharge his duties in the office of Presiding Officer of the Debts Recovery Tribunal, Chennai – 1.

2. The petitioner is a practicing Advocate at Chennai. It is stated that the first respondent was an employee of the Bank of Baroda and he has been deputed by the bank to work as Presiding Officer of the Debts Recovery Tribunal and thus, the bank retains disciplinary powers and authority over the respondent and he continues to be an employee of the bank. Therefore, it is stated that his appointment is illegal.

3. Mr.V.Selvaraj, the learned counsel appearing for the petitioner placed reliance on the communication, dated 23.07.2011, addressed to the first respondent by the General Manager of Bank of Baroda and submitted that in the said communication, it has been stated that the first respondent shall be on deputation in the Debts Recovery Tribunal till the date of his superannuation from the bank's service i.e., 31.05.2013. The learned counsel submitted that after the first respondent was appointed as Presiding Officer of the Tribunal by the Government of India, vide their communication, dated 30.06.2011, he cannot be retained in the services of the Bank of Baroda and this would run directly contrary to the powers to be exercised by the Tribunal under Section 17 of the Recovery of Debt Due to Banks and Financial Institution Act, 1993, (RDDB Act) and therefore, the appointment is illegal. The learned counsel placed reliance on the decision of the Supreme Court in N.Kannadasan vs. Ajoy Khose and Ors., [(2009) 7 SCC 1] and submitted that independence and impartiality of judiciary is a basic feature of Constitution and when a candidate was found to be ineligible to be appointed, this Court could issue a writ of quo warranto.

4. Per contra, Mr.A.L.Somayaji, learned Senior counsel appearing for the first respondent by relying upon the counter affidavit filed by the Union of India as well as the counter filed by the first respondent, submitted that the first respondent practiced as an Advocate for 8 years after enrollment on 30.08.1976 and thereafter, worked as Law Officer in different Banks for 26 years and at the time of submitting his application for appointment as Presiding Officer, he was holding the post of Deputy General Manager (Legal) in Bank of Baroda and in view of the provisions of Article

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233 (2) of the Constitution read with the clarification issued by the Supreme Court, he was found eligible for appointment to the post of Presiding Officer, DRT. It is further submitted that the first respondent was found eligible for the post of Presiding Officer of the Tribunal and he was selected by a Selection Committee headed by a Hon'ble Judge of the Supreme Court and he was found fit and appointed based on the recommendations of the Selection Committee and after approval of the Government, he was appointed as Presiding Officer w.e.f., 27.07.2007, for a period of five years or till he attains the age of 62 years, whichever is earlier. By placing reliance on the decision of the Supreme Court in Union of India vs. Kali Dass Batish, [(2006) 1 SCC 779], it is submitted that when the appointment is made in consultation with the Hon'ble Chief Justice of India, the High Court may not take a judicial review in the matter. Further it is submitted that the first respondent would fall within the scope of the definition "Advocate" and his appointment is in exercise of the powers conferred by sub-section 1 of Section 4 r/w clause '(e)' of sub-section 2 of Section 36 of the Act and in accordance with the Debts Recovery Tribunal (Procedure for appointment as Presiding Officer of the Tribunal) Rules 1998. It is further submitted that the word 'deputation' used in the communication, dated 23.07.2011, sent by the Bank of Baroda to the first respondent is a mistake and the same would be evident from the fact that the terminal benefits due to the first respondent from the bank stands frozen as on 25.07.2011, the date on which the first respondent was relieved from the services of the bank. The learned counsel referred to Debts Recovery Tribunal (Procedure for Appointment as Presiding Officer of the Tribunal) Rules, 1998, more particularly, Rule 3 (5) and Rule 3 (6) of the said Rules and submitted that there is no error or illegality in the appointment of the first respondent and prayed for dismissal of the writ petition.

5. We have heard Mr.V.Parivallal the learned counsel appearing for the second respondent, Union of India.

6. The short question which falls for consideration is as to whether the appointment of the first respondent as Presiding Officer, DRT, Chennai -1, is illegal as it has been stated in a communication sent by the Bank of Baroda that the first respondent will be on deputation to the Tribunal till the date of his superannuation from the bank's service i.e., 31.05.2013. Before, we go into this aspect, it would be beneficial to refer to the procedure to be followed, while appointing Presiding Officer to the Tribunal. In the instant case, a sitting Hon'ble Judge of the Supreme Court headed the Committee and the other committee members being Secretaries to Government of India, viz., Ministry of Finance, Ministry of Law and Justice, Deputy Governor of RBI and the Joint Secretary of the Ministry of Finance. The Selection Committee appears to have short listed 22 candidates and the first respondent was one among them and after personal interview, the Committee headed by the Hon'ble Judge

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of Supreme Court recommended the name of the first respondent, the Government of India has issued an order of appointment. The order of appointment dated 30.06.2011, states that the first respondent shall be relieved immediately from the services of the Bank of Baroda and take over charge as Presiding Officer, DRT, Chennai-1, and he will be governed by the terms and conditions as stipulated in the 1993 Rules. Further, the first respondent's salary was drawn from the Pay and Allowance Department of the Government of India.

7. In terms of Sub-Rule 6 of Rule 3, the Central Government shall on the basis of the recommendations of the Selection Committee constituted under Rule 3(1) make a list of persons, selected for appointment as Presiding Officer and the appointment of a Presiding Officer shall be made from the list so prepared.

8. The scope of judicial review in matters concerning the appointment of the judicial member in the General Administrative Tribunal made after taking concurrence of the Hon'ble Chief Justice of India was considered in Union of India vs. Kali Dass Batish, [(2006) 1 SCC 779]. Their Lordships after taking note of the scope of review, held as hereunder:-

> 14. Unfortunately, the High Court seems to have proceeded on the footing that the appointment was being made on its own by the Central Government and that there was an irregular procedure followed by the Secretary by giving undue importance to the IB report. It was most irregular on the part of the High Court to have sat in appeal over the issues raised in the IB report and attempted to disprove it by taking affidavits and the oral statement of the Advocate General at the Bar. We strongly disapprove of such action on the part of the High Court, particularly when it was pointed out to the High Court that along with the proposals made by the Government, the Minister of State had specifically directed for submission of the IB report to the Chief Justice of India for seeking his concurrence, and that this was done. We note with regret that the High Court virtually sat in appeal, not only over the decision taken by the Government of India, but also over the decision taken by the Chief Justice of India, which it discarded by a side wind. In our view, the High Court seriously erred in doing so. Even assuming that the Secretary of the department concerned of the Government of India had not apprised himself of all necessary facts, one cannot assume or impute to a high constitutional authority, like the Chief Justice of India, such procedural or substantive error. The argument made at the Bar that the Chief Justice of India might not have been supplied with the necessary inputs has no merit. If Parliament has reposed faith in the Chief Justice of India

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as the paterfamilias of the judicial hierarchy in this country, it is not open for anyone to contend that the Chief Justice of India might have given his concurrence without application of mind or without calling for the necessary inputs. The argument, to say the least, deserves summary dismissal.

15. In this matter, the approach adopted by the Jharkhand High Court commends itself to us. The Jharkhand High Court approached the matter on the principle that judicial review is not available in such a matter. The Jharkhand High Court also rightly pointed out that mere inclusion of a candidate's name in the selection list gave him no right, and if there was no right, there could be no occasion to maintain a writ petition for enforcement of a non-existing right.

23. We have carefully perused the written arguments filed by the second respondent. Reliance on the judgment in Sarwan Singh Lamba v. Union of India (1995) 4 SCC 546 helps in no way. Sarwan Singh (1995) 4 SCC 546 is not an authority which militates against the view we are inclined to take. On the other hand, even this judgment suggests that where the candidates were duly qualified and eligible for the posts against which they were appointed, and all of them had been appointed after consultation with the Chief Justice of India, there was no violation of any law or procedure in their appointments.

9. The only difference in the present writ petition and that of the case before the Supreme Court is that the challenge in the said case related to appointment of a judicial member in the Central Administrative Tribunal and in the present case, the challenge is to an appointment of Presiding Officer, DRT, Chennai.-1. The appointment of the first respondent is in accordance with the Rules and such appointment is based on the recommendations of a committee chaired by the Chief Justice of India or a Judge, Supreme Court of India as nominated by the Chief Justice of India and this Court is not justified in exercising its power of judicial review in such matters.

10. Further on facts, the petitioner's case is solely based upon a communication sent by Bank of Baroda to the first respondent, stating that he is on deputation to DRT. This statement made by the Bank of Baroda appears to be a mistake, since after, the order of appointment dated 30.06.2011, issued by the Government of India, appointing the first respondent as Presiding Officer, he has been relieved from the services of the bank and his terms and conditions are governed by the Debts Recovery Tribunal (Salaries, Allowances and

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other terms and conditions of services of Presiding Officer) Rules, 1993. Further more, the first respondent has been drawing salary from the Government of India and his terminal benefits due from the Bank of Baroda has been frozen as on 25.07.2011, the date on which, the first respondent was relieved from the services of Bank of Baroda.

11. For all the above reasons, the petitioner has not made a case for interference with the appointment of the first respondent as Presiding Officer, Debt Recovery Tribunal-I, Chennai. Accordingly, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Asst. Registrar

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Sub Asst.Registrar

Pbn
Copy to:

The Under Secretary to the Government of India
Ministry of Finance,
Department of Financial Services,
10, Jeevan Deep,
Sansad Marg, New Delhi 110 001.

+ 1 cc to M/s. Devadasan, Sr.45697
+ 2 cc to Mr. V. Parivallal, Sr.45475

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JRG(CO)c
Eu 14.8.12

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