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W.A.No.2199 of 2023 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2024  
DELIVERED ON : 02.02.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE  
AND  
THE HON'BLE MR.JUSTICE BHARATHA CHAKRAVARTHY

W.A.Nos.2199, 3170, 1709, 1886, 3165 and 3167 of 2023  
and C.M.P.Nos.20952, 25973, 25990, 15127, 16344, 25966, 17621  
and 18986 of 2023

W.A.No.2199 of 2023:

CHAIRMAN AND MANAGING DIRECTOR  
UCO Bank, Head Office  
10 BTM Sarani  
Kolkata - 700 001.

.. Appellant

Vs

- 1 K.MARIMUTHU
- 2 The Secretary to Government  
Government Of India, Ministry Of Finance  
Department Of Economic Affairs, North Block  
Central Sectt. New Delhi - 110 001.
- 3 The Secretary To Government  
Government Of India, Ministry Of Home Affairs  
Department Of Economic Affairs  
North Block, Central Sectt., New Delhi-110 001.



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- 4 The General Manager  
Department Of Banking Operations and Development  
Reserve Bank Of India Central Office  
12th Floor Shahid Bhagat Singh Marg  
Fort, Mumbai - 400 001.
- 5 The Chairman  
National Commission For Scheduled Castes  
B Wing, 5th Floor, Lok Nayak Bhavan  
New Delhi - 110 003.
- 6 The Chairman  
National Commission For Scheduled Tribes  
B Wing 5th Floor Lok Nayak Bhavan  
New Delhi - 110 003.
- 7 The Director  
National Commission For Scheduled Castes  
Floor-2 Block-5 Shastri Bhavan  
Chennai - 600 006.
- 8 The Chairman And Managing Director  
Allahabad Bank Head Office  
No.2 N.S.Kolkatta - 700 001.
- 9 The Chairman and Managing Director  
Andhra Bank Head Office Dr.Pattabi Bhavan  
5-9-11 Secretariat Road Saifabad  
Hyderabad - 500 004.
- 10 The Chairman And Managing Director  
Bank Of Baroda Head Office  
Maganwadi Sayajiganj Baroda - 390 005.
- 11 The Chairman And Managing Director  
Bank Of India Head Office Star House  
C-5 G Block Bandra-Kurla Complex  
Bandra(East) Mumbai-400 051



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- 12 The Chairman and Managing Director  
Bank Of Maharashtra Head Office  
Lokmangal 1501 Shivaji Nagar  
Pune - 411 005.
- 13 The Chairman and Managing Director  
Canara Bank Head Office No.112  
JC Road Bangalore-560 002.
- 14 The Chairman and Managing Director  
Central Bank Of India Head Office  
Chandermukhi Nariman Point  
Mumbai - 400 021.
- 15 The Chairman and Managing Director  
Corporation Bank Head Office  
Mangaladevi Temple Road Pandeewar  
Mangalore-575 001, Karnataka State.
- 16 The Chairman and Managing Director  
Dena Bank Head Office C-10 G Block  
Bundra Kurla Complex Bandra East  
Mumbai-400 051.
- 17 The Chairman and Managing Director  
Indian Bank Head Office No.66  
Rajaji Salai Chennai-600001.
- 18 The Chairman and Managing Director  
Indian Overseas Bank Head Office 763  
Anna Salai Chennai-600 002.
- 19 The Chairman and Managing Director  
Oriental Bank Of Commerce Head Office  
Plot No.5 Sector 32 Institutional Area  
Gurgaon-122 001 Haryana State.
- 20 The Chairman and Managing Director  
Punjab National Bank Rajendra Bhavan  
Rajendra Place New Delhi-110 008



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- 21 The Chairman and Managing Director  
Punjab And Sind Bank Head Office  
Bank House 21 Rajendra Place  
New Delhi-110 125
- 22 The Chairman and Managing Director  
Syndicate Bank Head Office  
Manipal-576 104.
- 23 The Chairman and Managing Director  
Union Bank Of India Head Office  
Union Bank Bhavan No.293  
Vidhanm Bhavan Mag  
Nariman Point Mumbai-400 021.
- 24 The Chairman and Managing Director  
United Bank Of India Head Office No.11  
Hemanta Basu Sarani Kolkatta-700 001.
- 25 The Chairman and Managing Director  
Vijaya Bank Head Office 41/2 M G Road  
Bangalore-560 001.
- 26 The Chairman and Managing Director  
State Bank Of India Head Office  
State Bank Bhawan Madam Cama Road  
Mumbai-400 021.
- 27 The Chairman And Managing Director  
State Bank Of Bikaner and Jaipur  
Head Office Tilak Marg C-Scheme  
Jaipur - 302 0025.
- 28 The Chairman and Managing Director  
State Bank Of Hyderabad Head Office  
Gunfoundry Hyderabad-500 001.



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29 The Chairman and Managing Director  
State Bank Of Mysore Head Office  
K.G.Road Bangalore-560 254.

30 The Chairman and Managing Director  
State Bank Of Patiala Head Office  
The Mall Patiala-147 001 Punjab State.

31 The Chairman and Managing Director  
State Bank Of Travancore Head Office  
Poojapura Trivandrum-695012 Kerala.

32 The Chairman and Managing Director  
Industrial Development Bank Of India(IDBI)  
Head Office IDBI Tower WTC Complex  
Cuffe Parade Mumbai-400 005.

33 The Chairman and Managing Director  
Small Industries Development Bank Of India (SIDBI)  
Head Office SIDBI Towers 15 Ashok Marg  
Lucknow - 226 001.

34 The Managing Director  
REPCO Bank Head Office REPCO Towers  
33 North Usman Road T.Nagar  
Chennai - 600 017.

.. Respondents

Prayer in W.A.No.2199 of 2023: Appeal under Clause 15 of the Letters Patent against the order dated 31.3.2023 made in W.P.No.13832 of 2013 by the learned Single Judge.

For the Appellant in : Mr.Srinath Sridevan  
W.A.No.2199 of 2023 Senior Counsel  
for M/s.Aishwarya S.Nathan

For the Respondents in : Mr.F.B.Benjamin George  
W.A.No.2199 of 2023 for 11<sup>th</sup> respondent



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- : Mr.T.Poornam  
for 4<sup>th</sup> respondent
- : No appearance  
for Respondents 1 and 7
- : Respondents 8 to 34  
- Given up
- : Not ready in notice  
- Respondents 2, 3, 5 and 6

and batch cases

### COMMON JUDGMENT

#### THE HON'BLE CHIEF JUSTICE

Calling into question the judgment and order dated 31.3.2023 passed by the learned Single Judge in W.P.No.13832 of 2013, the respondents in the writ petition have filed these writ appeals.

2. The first respondent has filed a writ petition assailing the communication issued by the Reserve Bank of India dated 18.12.2006, thereby withdrawing the circular issued by the Reserve



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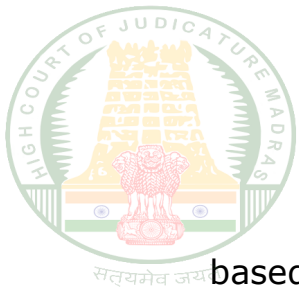
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Bank of India dated 4.1.1991 in the matter of appointment of panel advocates for the Nationalized Banks in All India Level/State Level/Regional Level/Zone Level. The first respondent further sought directions to empanel the advocates by following the established principles of law and to provide adequate representation to the candidates belonging to SC/ST/OBC communities.

3. It was the case of the first respondent that he was deprived of his opportunity to be empaneled as an advocate in banks despite his applications to the banks.

4. The respondents in the writ petition were nationalized banks, so also other public sector banks.

5. The learned Single Judge directed respondents 7 to 34 in the writ petition [the present appellants herein] to review the existing procedure of their respective banks for empanelment of lawyers and suitably alter/amend/frame new rules/procedures in consonance and in compliance with the constitutional mandate and



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based on the established principles to be adopted for appointment/empanelment.

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6. The learned Single Judge in the impugned judgment observed that the prevailing procedure adopted by the banks for empanelment of lawyers is not in consonance with the established principles to be followed for appointment/empanelment. The procedure; method of selection; and merit assessment are to be made and the guidelines or procedure should contemplate the same for empaneling the lawyers. The learned Single Judge further observed that adequate representation is to be provided for candidates belonging to SC/ST/OBC communities, without compromising on the merits.

7. The banks have challenged the said judgment in the present appeals.

8. As the present appeals are filed impugning the same judgment, all the appeals are decided by the common judgment.





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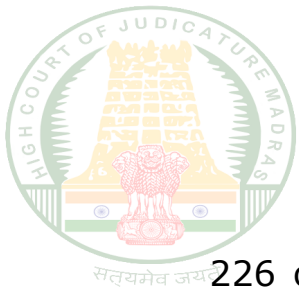
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9. The first respondent/original writ petitioner was issued with the notice by this court. In many of the appeals notice is served on the first respondent, but he remained absent.

10. We have heard learned Senior Advocates and advocates for the respective appellants and respondents, except the first respondent/original writ petitioner.

11. The contour of the submissions of learned counsel for the appellants is that the bank has its own procedure for empanelment of lawyers. The empanelment of lawyers is not to a civil post so as to attract Article 16 of the Constitution of India. Reservation is not contemplated while empaneling the lawyers. The engagement is merely contractual.

12. The Apex Court in a catena of judgments has laid down the scope and ambit of the powers of judicial review under Article



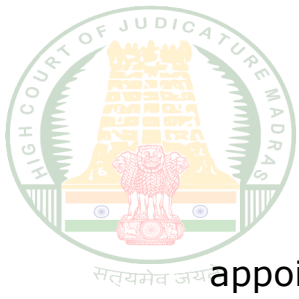
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226 of the Constitution of India. It is well established that the power of judicial review is not intended to assume a supervisory role. For a public law remedy enforceable under Article 226 of the Constitution of India, the actions of the authority need to fall in the realm of public law. The courts will not have jurisdiction to entertain a writ petition in a matter governed by contract, wherein public law element would not be involved.

13. The empanelment of lawyers by the banks cannot be on the pedestal of an employment for holding a civil post. The lawyers empaneled by the bank are not governed by the service rules of the bank. The conditions of appointment of the empaneled lawyers are not governed by any statute, rules or regulations.

14. Article 16 of the Constitution of India would apply in matters of public employment or appointment to any office under the State. We may extend the concept of employment or

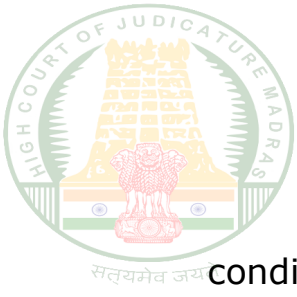


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appointment under the office of the State to the instrumentalities of the State also. However, for invoking Article 16 of the Constitution of India, it will have to be demonstrated that the matter is in the realm of public employment or appointment to any office under the State. As the lawyers engaged by the bank do not hold a civil post, nor the relationship of master and servant exists, Article 16(4) of the Constitution of India would not be applicable. The criterion to apply the reservation policy would not be attracted.

15. Each bank has its own procedure for empanelment of the lawyers. The learned Single Judge in the impugned judgment has referred to the circulars issued by the respective nationalized banks and public sector banks providing for the process of empanelment. The procedure prescribed in the said circulars contemplates the criteria for empanelment; process of empanelment; authority for empanelment; preparation of revised list by the zones; distribution/ allocation of works, other



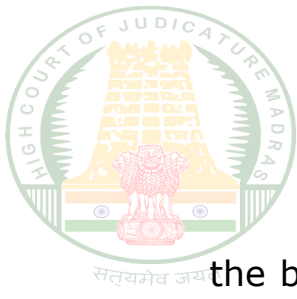
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conditions for empanelment; review of the performance; parameters for reviewing the performance of the panel advocate; de-paneling of advocate; and review at head office level.

16. It would appear that the banks have laid down the procedure for empanelment. Certainly, the banks have to adhere to the said procedure. It would be stretching Article 16 of the Constitution of India too far to apply it for the empanelment of the lawyers by the banks. By not providing for the reservation in empaneling the lawyers, no provision of the Constitution of India is violated.

17. The relationship between the banks and the empaneled lawyers is purely a professional relationship and not that of a master and servant. The lawyers empaneled by the banks, during their performance of the duty, are not holding any civil post. They are not government servants and/or government employees. The empanelment of lawyers is at the pleasure of



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the bank. The *sine qua non* is that the lawyers selected by the bank should be duly qualified, competent and worthy to represent it. The determination of their engagement is also at the pleasure of the bank. So also, the lawyer engaged by the bank has a right to terminate his services with the bank. It cannot be said that their appointment is a tenure appointment.

18. The Apex Court in the case of *State of Uttar Pradesh v. Ramesh Chandra Sharma and others*, AIR 1996 SC 864, observed that the appointment of a legal practitioner as a District Government Counsel is only a professional engagement terminable at will and is not appointment to a post under the government.

19. The Apex Court in the case of *State of U.P. and others v. U.P. State Law Officers Association and Others*, (1994) 2 SCC 204, observed that the government and the public bodies engage the services of lawyers purely on contractual basis either for a



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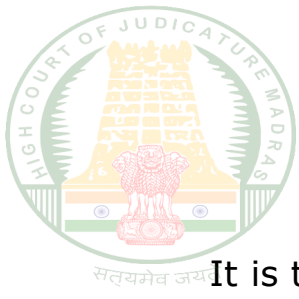
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specified case or for a specified or an unspecified period. The nature of the contract is one of professional engagement and not of employment.

20. The Apex Court in a case of *State of U.P. and another v. Johri Mal*, (2004) 4 SCC 714, observed that the appointment of a Public Prosecutor/District Government Counsel is a professional engagement and not an appointment to a civil post.

21. This Court in the case of *Thol. Thirumaavalavan v. The Principal Secretary, Department of Law, and others*, 2024-1-Writ LR 1: 2024 (1) LW 353, held that reservation – vertical and/or horizontal need not be provided while appointing Law Officers by the Government.

22. It also needs to be appreciated that the relationship between the advocate and his client is *uberrima fides*, i.e., one of active confidence and trust. The banks deal with public money.



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It is the obligation and the duty of the banks to protect the public money to its optimum extent and in the best possible manner.

This duty mandates the banks to engage the most proficient, competent and capable persons to represent it. Ergo, in the selection of the lawyers, the bank is duty-bound to make earnest efforts to choose the best. In empaneling the lawyers, merit ought to be the sole consideration.

23. Though the expectations of the learned Single Judge in the impugned judgment are appreciable, issuing directions to the banks to provide for representation to the advocates belonging to SC/ST/OBC communities would be beyond the realm of judicial review. In the absence of any constitutional or statutory mandate providing for reservation, it would not be possible for the courts to issue writs directing the banks to provide for reservation and/or representation to the members of SC/ST/OBC communities in empanelment of lawyers. Nonetheless, it would be appreciable if the banks follow the broad-based procedure for



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selecting the best and the meritorious lawyers for empanelment.  
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24. We hope and trust that the banks would select the most meritorious lawyers as their empaneled lawyers, so as to safeguard the public moiety, of which the banks are custodians.

Resultantly, we allow these writ appeals and set aside the judgment passed by the learned Single Judge with the aforesaid observations. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(D.B.C., J.)

02.02.2024

Index : Yes  
Neutral Citation : Yes  
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THE HON'BLE CHIEF JUSTICE  
AND  
D.BHARATHA CHAKRAVARTHY,J.

(sasi)

W.A.Nos.2199, 3170, 1709, 1886, 3165 and 3167 of 2023

02.02.2024