

IN THE SUPREME COURT OF INDIA  
EXTRAORDINARY WRIT JURISDICTION  
WRIT PETITION (CIVIL) No. 000809 OF 2021

IN THE MATTER OF:

DRT BAR ASSOCIATION, DELHI .....PETITIONER

VERSUS

UNION OF INDIA ..... RESPONDENT

With

I.A. No. of 2021 Application for *Stay*

PAPER BOOK

(KINDLY SEE INDEX INSIDE)

Advocate on Record for Petitioner Viresh B Saharya.

B

**SYNOPSIS AND LIST OF DATES**

The present petition has been filed under Article 32 of the Constitution of India by DRT Bar Association Delhi (“**Petitioner**”) to the very limited extent, in relation to exclusion of “Advocates” under The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021 notification dated 30.06.2021, [**In short hereinafter referred as RULES 2021**] for the post of Presiding Officer and chairman, Debts Recovery Tribunals and Appellate tribunals, being illegal and arbitrary, whereas by same notification/Rules 2021, the advocates are eligible for consideration for the post of Judicial Member/Presiding Officer/Chairman, for **Nine Tribunals and/or Appellate Tribunals** and further, above all, complete exclusion of advocates for the post of Presiding Officer and Chairman for Debts Recovery Tribunals and Debts Recovery Appellate Tribunals, despite the submissions made by Learned Attorney General, which are recorded in para No.41 and decision of this Hon’ble Court is recorded in para No.43; in the matter of Madras Bar Association vs Union of India, W.P.(c) No.804 of 2020, decided on 27.11.2020, which reads inter-alia as under:-

**“ADVOCATES AS JUDICIAL MEMBERS**

*41. In view of the submission of the learned Attorney General that the 2020 the Rules will be amended to make Advocates eligible for appointment to the post of judicial members of the Tribunals, the only question that remains is*

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regarding their experience at the bar. While the Attorney General suggested that an advocate who has 25 years of experience should be considered for appointment as a Judicial member, the learned Amicus Curiae suggested that it should be 15 years. An Advocate of a High Court with experience of ten years is qualified for appointment as a Judge of the High Court as per Article 217 (2) of the Constitution of India. As the qualification for an advocate of a High Court for appointment as a Judge of a High Court is only 10 years, we are of the opinion that the experience at the bar should be on the same lines for being considered for appointment as a judicial member of a Tribunal. Exclusion of Advocates in 10 out of 19 tribunals, for consideration as judicial members, is therefore, contrary to *Union of India v. Madras Bar Association* (2010)<sup>19</sup> and *Madras Bar Association v. Union of India* (2015)<sup>20</sup>. However, it is left open to the Search-cum-Selection Committee to take into account in the experience of the Advocates at the bar and the specialization of the Advocates in the relevant branch of law while considering them for appointment as judicial members.

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43. As we have already held that Advocates are entitled to be considered as judicial members of the Tribunals, we see no harm in members of the Indian Legal Service being considered as judicial members, provided they satisfy the criteria relating to the standing at the bar and specialization required. The judgment of *Union of India v. Madras Bar Association* (2010) (*supra*) did not take note of the above points relating to the experience of members of Indian Legal Service at the bar. The Indian Legal Service was considered along with the other civil services for the purpose of holding that the members of Indian Legal Service are entitled to be appointed only as technical

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*members. In the light of the submission made by the learned Attorney General and the Amicus Curiae, we hold that the members of Indian Legal Service shall be entitled to be considered for appointment as a judicial member subject to their fulfilling the other criteria which advocates are subjected to. In addition, the nature of work done by the members of the Indian Legal Service and their specialization in the relevant branches of law shall be considered by the Search-cum-Selection Committee while evaluating their candidature."*

Based upon above impugned Rules 2021, the Respondent has now issued notification/advertisement dated 12.07.2021 inviting applicants for the Post of Presiding Officers for Debts Recovery Tribunals all over India, excluding advocates completely contrary to the decision of this Hon'ble Court.

At present, in Delhi there are three Debts Recovery Tribunals, functioning i.e. DRT-I, DRT-II and DRT-III, Delhi.

The post of Ld. Presiding Officer DRT-I Delhi is lying vacant since 06/07 January, 2020.

The Post of Ld. Presiding Officer DRT-II Delhi is lying vacant since 03.03.2021.

The post of Ld. Presiding Officer DRT-III Delhi is lying vacant since 1<sup>st</sup> January, 2021.

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At present, the additional charge of DRT-I and DRT-III Delhi has been assigned to Learned Presiding Officer, DRT Allahabad.

At Present, the additional charge of DRT-II Delhi has been assigned to Learned Presiding Officer DRT Silliguri.

That Respondent by virtue of the notification dated 12.02.2020 framed fresh Rules by virtue of section 184 of Finance Act 2017 named as The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules 2020 (**In short Rules2020**), which were challenge by the petitioner before Hon'ble High Court of Delhi at New Delhi by way of writ petition being W.P.(c) No.4396 of 2020 and the same stood transferred before this this Hon'ble Court and finally this Hon'ble Court decided the matter titled as Madras Bar Association Versus Union of India W.P.(c) No.804 of 2020 decided on 27.11.2020.

Dates	Particulars
	That the petitioner is a constituted and elected body of lawyers being an association in the name & style of "DRT BAR ASSOCIATION, DELHI" at 4 <sup>th</sup> FLOOR, JEEVAN TARA BUILDING, SANSAD MARG, NEW DELHI.

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	The petition is being filed through its secretary who is competent to file and institute the present petition. True copy of the Resolution is annexed as Annexure P-1 (pages <u>54</u> to <u>-</u> ).
2017	The Finance Act, 2017, was passed which provided for Rule making power to the Central Government. But, the said Rules cannot be inconsistent to the DRT Act that has been passed by the Parliament. A legislation can only be amended by an Amendment or by a new legislation especially, in such cases where the appointment and qualification of the members of the Tribunal are held to be legislative functions.
1.06.2017	That pursuance to the Finance Act, 2017 the Respondent had published Rules 3 (referred to serial no. 8 & 9 of Schedule thereof) of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017, the advocates were eligible for the post of Presiding Officer DRTs and for Chairman DRATs. <b>[In short hereafter referred as Rules, 2017].</b> Copy of the Tribunal, Appellate Tribunal

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	and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017. A Copy of the Notification dated 01.06.2017 is annexed herewith as ANNEXURE P-2 (pages <u>55</u> to <u>97</u> ).
2019	That Rules, 2017 were challenged before the Hon'ble Supreme Court and were struck down in the decision of <b>Roger Mathew vs. South Indian Bank Ltd. and Others</b> , 2019 SCC OnLine SC 1456. The Hon'ble Apex Court while striking down the said Rules held that fresh set of Rules are to be framed and directed that the appointments to the Tribunals/Appellate Tribunals and term and condition of the appointment shall be in terms of the respective statutes before the enactment of Finance Bill, 2017 and more particularly, in consonance with Parent Act.
12.2.2020	That thereafter, the Respondent framed the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020, [in short hereafter referred as Rules, 2020]

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	<p>notified on 12.02.2020 under the Rule making provision of the Finance Act, 2017, similar was the position, in relation to exclusion of advocates for the Post of Presiding Officer for DRTs and Chairman for DRATs. Copy of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 is annexed herewith as ANNEXURE P-3 (pages <u>98</u> to <u>131</u>).</p>
27.11.2020	<p>That judgment dated 27.11.2020 was delivered in Madras Bar Association vs Union of India, W.P.(c) No.804 of 2020, is Annexure P - 4 (pages <u>132</u> to <u>199</u>).</p>
30.06.2021	<p>The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021, dated 30.06.2021, was passed, [In short hereinafter referred as RULES 2021] for the post of Presiding Officer, Debts Recovery Tribunals [in Short hereinafter referred as DRTs] and for the Post of Chairman, Debts Recovery Appellate</p>



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	<p>Tribunals [<b>in short hereinafter referred as DRAT</b>], The same are illegal and arbitrary, whereas for other <i>nine</i> Tribunals/Appellate Tribunals under same impugned Rules 2021, the advocates have been included, even for zone of consideration being eligible for the post of Judicial Member/Presiding officer/Chairman.</p> <p>Thus, Rules 2021, are arbitrary, discriminatory and illegal, as far as the exclusion of advocates for the post of Presiding Officer of DRTs and Chairman of DRATs, despite the submissions made by Learned Attorney General, which are recorded in para No.41 and also decision of this Hon'ble Court in para No.43; in the matter of Madras Bar Association vs Union of India, W.P.(c) No.804 of 2020, decided on 27.11.2020. Copy of The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021, dated 30.06.2021, is annexed as <b>Annexure P-5</b> (pages <u>250</u> to <u>214</u>).</p>
12.07.2021	The respondent issued advertisement dated 12.07.2021 inviting applications for the post of

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	<p>the Presiding Officers, Debts Recovery Tribunals all over India for various states of Debts Recovery Tribunals. Copy of advertisement dated 12.07.2021 issued by respondent herein is Annexure P-6 (pages <u>215</u> to <u>218</u>).</p>
14.07.2021	<p>The respondent issued advertisement dated 14.07.2021 inviting applications for the post of the Chairman, Debts Recovery Appellate Tribunals all over India for various states of Debts Recovery Tribunals. Copy of advertisement dated 14.07.2021 issued by respondent herein is Annexure P-7 (pages <u>219</u> to <u>222</u>).</p>
14.07.2021	<p>That, thereafter, in recent Judgment of this Hon'ble Court in the matter of Madras Bar Association Versus Union of India &amp; Another W.P.(c) No. 502 of 2021 decided on 14.07.2021, the contentions of the Petitioner that the advocates who are eligible for consideration for the post of Judicial Member/Presiding Officer/Chairman, should be considered, is reiterated. A copy of Judgment of this Hon'ble Court in the matter of Madras Bar Association</p>

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	Versus Union of India & Another W.P.(c) No. 502 of 2021 decided on 14.07.2021 is <b>Annexure P – 8</b> (pages <u>223</u> to <u>380</u> ).
<u>19</u> .07.2021	Hence, the present Writ Petition.

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IN THE SUPREME COURT OF INDIA

EXTRA-ORDINARY CIVIL WRIT JURISDICTION

WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2021

(under Article 32 of the Constitution of India)

**IN THE MATTER OF :**

DRT BAR ASSOCIATION, DELHI

(THROUGH ITS SECRETARY)

4<sup>th</sup> FLOOR, JEEVAN TARA BUILDING,

5, SANSAD MARG, NEW DELHI

...PETITIONER

**VERSUS**

UNION OF INDIA

(SERVICE THROUGH ITS SECRETARY)

DEPARTMENT OF FINANCIAL SERVICES,

MINISTRY OF FINANCE, 137, NORTH BLOCK,

NEW DELHI-110001

**ALSO AT:**

DEPARTMENT OF FINANCIAL SERVICES,

3RD FLOOR, JEEVAN DEEP BUILDING,

SANSAD MARG, NEW DELHI-110001

... RESPONDENT

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WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT AND/OR ORDER(S) AND/OR DIRECTION(S) TO QUASH RULES 3 (REFERRED TO SERIAL NO. 8 & 9 OF SCHEDULE THEREOF) OF THE TRIBUNAL, APPELLATE TRIBUNAL AND OTHER AUTHORITIES (QUALIFICATIONS, EXPERIENCE AND OTHER CONDITIONS OF SERVICE OF MEMBERS) RULES, 2021, NOTIFIED ON 31.06.2021, AND ALSO ADVERTISEMENT DATED 12.07.2021 THEREOF, BEING ARBITRARY, DISCRIMINATORY, ILLEGAL AND UNCONSTITUTIONAL, WHEREBY PRACTICING ADVOCATES WHO ARE QUALIFIED TO BE A DISTRICT JUDGE FOR THE POST OF PRESIDING OFFICER DEBTS RECOVERY TRIBUNAL, AND QUALIFIED TO BE A HIGH COURT JUDGE, FOR THE POST OF CHAIRMAN DEBTS RECOVERY APPELLATE TRIBUNAL HAS BEEN EXCLUDED.

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

THE PETITIONER ABOVENAMED HUMBLY SUBMITS AS UNDER:-

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**MOST RESPECTFULLY SHOWETH:-**

1. That the petitioner is a constituted and elected body of lawyers being an association in the name & style of "DRT BAR ASSOCIATION, DELHI" at 4<sup>th</sup> FLOOR, JEEVAN TARA BUILDING, SANSAD MARG, NEW DELHI. The petition is being filed through its secretary who is competent to file and institute the present petition. True copy of the Resolution is annexed as Annexure P-1 (pages 54 to 5).
2. That, at present, in Delhi there are three Debts Recovery Tribunals, functioning i.e. DRT-I, DRT-II and DRT-III, Delhi.
3. That the post of Ld. Presiding Officer DRT-I Delhi is lying vacant since 06/07 January, 2020.
4. That the post of Ld. Presiding Officer DRT-III Delhi is lying vacant since 1<sup>st</sup> January, 2021.
5. That at present, the additional charge of DRT-I and DRT-III Delhi has been assigned to Learned Presiding Officer, DRT Allahabad for the last six months.

6. That the post of Presiding Officer, DRT-II Delhi is lying vacant since 02.03.2021. Additional Charge has been assigned to the Ld. Presiding Officer, DRT Silliguri, for the last five months.
  
7. That, the present petition has been filed under Article 32 of the Constitution of India by DRT Bar Association Delhi (“**Petitioner**”) to the very limited extent, in relation to complete exclusion of “Advocates” under The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021 notification dated 30.06.2021, [**In short hereinafter referred as RULES 2021**] for the post of **Presiding Officer**, Debts Recovery Tribunals [**In Short hereinafter referred as DRTs**] and for the Post of Chairman, Debts Recovery Appellate Tribunals [**in short hereinafter referred as DRAT**], being illegal and arbitrary, whereas for other *nine* Tribunals/Appellate Tribunals under same impugned Rules 2021, the advocates have been included, even for zone of consideration being eligible for the post of Judicial Member/Presiding officer/Chairman. Thus, arbitrary, discriminatory and illegal exclusion of advocates for the post of Presiding Officer of DRTs and Chairman of DRATs, despite the submissions made by Learned Attorney General, which are recorded in para No.41 and also decision of this Hon’ble Court in para No.43; in the

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matter of Madras Bar Association vs Union of India, W.P.(c) No.804 of 2020, decided on 27.11.2020, which reads inter-alia as under:-

**“ADVOCATES AS JUDICIAL MEMBERS**

39. *The learned Amicus Curiae complained of the deliberate exclusion of the Advocates from being considered for appointment as judicial members in a majority of Tribunals by the 2020 Rules. It was argued that in respect of seven tribunals (such as Central Administrative Tribunal, Income Tax Appellate Tribunal, Customs Excise and Sales Tax Appellate Tribunal, etc.), the 2020 Rules impose a new condition whereby Advocates without 25 years of experience are ineligible. It is submitted that there is nothing in the provisions of the Finance Act, 2017, with respect to exclusion, from consideration, of Advocates, nor any restrictive condition and, on the other hand, the parent enactments and previously existing rules enabled Advocates (who were eligible to be appointed as Judges of High Courts) to be considered for appointment for these tribunals. The learned Amicus curiae argued that it would be very difficult for competent and successful Advocates, in the concerned field, to uproot themselves and accept membership of tribunals, if they are to be eligible at the late age of 50 years and resultantly, those less competent would be willing, contrary to public interest. The Attorney General had submitted that exclusion of Advocates was a matter of policy and that the eligibility condition wherever they could be considered, in some tribunals of 25 years practice, was to bring about parity with members of the Indian Legal Service, who could, in some instances be considered for appointment as judicial members. During the submissions, the Attorney General had fairly stated that the 2020 Rules will be amended making Advocates eligible for appointment in the*



*tribunals where they are presently excluded under the 2020 Rules as judicial members provided, they have 25 years of experience. This is in line with the previous rulings of this Court that advocates and retired judges are to be considered as judicial members of tribunals. Furthermore, this Court notices that the 2017 Rules did not exclude Advocates from consideration; nor did they impose restrictive eligibility conditions, such as 25 years of experience.*

*40. The learned Amicus Curiae submitted that stipulation of 25 years of experience would be a serious handicap in selecting meritorious candidates from among advocates. He suggested that Advocates with the standing of 15 years at the bar should be made eligible for being considered for appointment as judicial members to the Tribunals. The learned Amicus Curiae further submitted that Advocates should be made eligible for appointment to Single Member Tribunals, particularly to the Debt Recovery Tribunals as their experience in law can be suitably utilized. It is the submission of learned Attorney General that though the Constitution prescribes that an Advocate having experience of 10 years can be considered for appointment as a Judge of a High Court, normally an Advocate is considered only after he attains the age of 45 years. He suggested that an experience of 25 years at the Bar would make Advocates at the age of 47-48 years eligible for appointment as judicial members of the Tribunals. It would be attractive for the Advocates to apply for appointment to the post of judicial members of the Tribunals after having experience of 25 years, especially due to the provision for re-appointment.*

*41. In view of the submission of the learned Attorney General that the 2020 the Rules will be amended to make Advocates eligible for appointment to the post of judicial members of the*

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*Tribunals, the only question that remains is regarding their experience at the bar. While the Attorney General suggested that an advocate who has 25 years of experience should be considered for appointment as a Judicial member, the learned Amicus Curiae suggested that it should be 15 years. An Advocate of a High Court with experience of ten years is qualified for appointment as a Judge of the High Court as per Article 217 (2) of the Constitution of India. As the qualification for an advocate of a High Court for appointment as a Judge of a High Court is only 10 years, we are of the opinion that the experience at the bar should be on the same lines for being considered for appointment as a judicial member of a Tribunal. Exclusion of Advocates in 10 out of 19 tribunals, for consideration as judicial members, is therefore, contrary to **Union of India v. Madras Bar Association (2010)**<sup>19</sup> and **Madras Bar Association v. Union of India (2015)**<sup>20</sup>. However, it is left open to the Search-cum-Selection Committee to take into account in the experience of the Advocates at the bar and the specialization of the Advocates in the relevant branch of law while considering them for appointment as judicial members.*

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*43. As we have already held that Advocates are entitled to be considered as judicial members of the Tribunals, we see no harm in members of the Indian Legal Service being considered as judicial members, provided they satisfy the criteria relating to the standing at the bar and specialization required. The judgment of **Union of India v. Madras Bar Association (2010)** (supra) did not take note of the above points relating to the experience of members of Indian Legal Service at the bar. The Indian Legal Service was considered along with the other civil services for the purpose of holding that the members of Indian Legal Service*

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*are entitled to be appointed only as technical members. In the light of the submission made by the learned Attorney General and the Amicus Curiae, we hold that the members of Indian Legal Service shall be entitled to be considered for appointment as a judicial member subject to their fulfilling the other criteria which advocates are subjected to. In addition, the nature of work done by the members of the Indian Legal Service and their specialization in the relevant branches of law shall be considered by the Search-cum-Selection Committee while evaluating their candidature.”*

8. That, in recent Judgment of this Hon'ble Court in the matter of **Madras Bar Association Versus Union of India & Another W.P.(c) No. 502 of 2021 decided on 14.07.2021**, it has been held; which reads inter-alia as under:-

*“48. The first proviso of Section 184(1) provides minimumage for appointment as Chairperson or Member as 50 years. One of the issues considered in MBA-III was the correctness of the condition imposed in the 2020 Rules that an advocate is eligible for appointment as a Member only if he has 25 years of experience. It is relevant to state that advocates were ineligible for most of the tribunals. The learned Attorney General fairly submitted in his arguments that suitable amendment will be made to make advocates eligible, subject to their having 25 years' experience. The learned Amicus Curiae contended in MBA-III that in order to attract competent advocates to apply for appointment as Members in tribunals, it is necessary that they should be made eligible for appointment on the same criteria as applicable for appointment of a High Court Judge. The learned Amicus Curiae suggested that advocates with a standing of 15 years at the bar should be made eligible for appointment as Members of tribunals. In MBA-III, exclusion of advocates from being appointed as Members was found to be contrary to the judgment of this Court in MBA-I and MBA-II. While recording the submission of the learned*

Attorney General that Rules shall be amended to make advocates eligible for appointment as Members, it was held in *MBA-III* that experience at the bar for advocates to be considered for appointment as Members should be the same as is applicable for appointment as High Court Judges, i.e., 10 years. In such view of the matter, a direction was given in *MBA-III* to amend the 2020 Rules to make advocates with at least 10 years of experience at the bar eligible for appointment as Members in tribunals. The experience of advocates at the bar and their specialization in the relevant branch of law was directed to be taken into account by the Search-cum-Selection Committee (hereinafter referred to as *SCSC*) while considering their appointment. Advocates were held to be entitled for reappointment for at least one term by giving preference to the service rendered by them in the tribunals. Thereafter, an application was filed by the Union of India for modification of the direction aforementioned by substituting the word, "eligible for reappointment" in the place of "entitled for reappointment". The said request of the Union of India was acceded to by this Court.

49. The direction given by this Court in the nature of *mandamus* in *MBA-III* is to the effect that advocates are entitled for appointment as Members, provided they have experience of 10 years. The first proviso to Section 184 which prescribes a minimum age of 50 years is an attempt to circumvent the direction issued in *MBA-III* striking down the experience requirement of 25 years at the bar for advocates to be eligible. Introduction of the first proviso to Section 184(1) is a direct affront to the judgment of this Court in *MBA-III*. This Court in *MBA-I* and *Roger Mathew (supra)* underlined the importance of recruitment of Members from the bar at a young age to ensure a longer tenure. Fixing a minimum age for recruitment of Members as 50 years would act as a deterrent for competent advocates to seek appointment. Practically, it would be difficult for an advocate appointed after attaining the age of 50 years to resume legal practice after completion of one term, in case he is not reappointed. Security of tenure

*and conditions of service are recognised as core components of independence of the judiciary. Independence of the judiciary can be sustained only when the incumbents are assured of fair and reasonable conditions of service, which include adequate remuneration and security of tenure. Therefore, the first proviso to Section 184(1) is in violation of the doctrine of separation of powers as the judgment of this Court in **MBAIII** has been frustrated by an impermissible legislative override. Resultantly, the first proviso to Section 184 (1) is declared as unconstitutional as it is violative of Article 14 of the Constitution. Selections conducted for appointment of Members, ITAT pursuant to the advertisement issued in 2018 should be finalized and appointments made by considering the candidates between 35 to 50 years as also eligible."*

9. That as per Rules 2021, for the post of Presiding Officer/Judicial Member/Chairman, practicing **advocates** with 10 year experience in that particular Tribunals with certain other qualifications amongst others, are eligible for the following Tribunals/Appellate Tribunals, and the details are as under:-

Sr. No.	Name of Tribunal, Appellate Tribunal or Authority	Qualification for appointment of Chairperson, Chairman, President, Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert

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		Member or Technical Member or Member
1	Income Tax Appellate Tribunal under Income Tax Act 1961	<b>Clause 3(c) of Rule 2021</b> he has been an <b>advocate</b> for ten years with substantial experience in litigation under Income-tax laws in Income-tax Appellate Tribunal, High Court or Supreme Court.
2	The Custom, Excise and Service Tax Appellate Tribunal under Customs Act 1962	<b>Clause 2 (c) of Rule 2021</b> he has been an <b>advocate</b> for ten years with substantial experience in litigation under indirect tax laws in Customs, Excise and Service Tax Appellate Tribunal, High Court or Supreme Court.
3	Central Administrative Tribunals under Administrative Tribunals Act 1985	<b>Clause 2 (a)(v) of Rule 2021</b> has, for ten years, been an <b>advocate</b> with substantial experience in litigation in service matters in Central Administrative

		Tribunal, Armed Forces Tribunal, High Court or Supreme Court
4	Railways Claim Tribunal under Railways Claims Tribunal Act 1987	<b>Clause 4 (c) of Rules 2021</b> has been an <b>advocate</b> for ten years with substantial experience in litigation in claim settlements pertaining to damage to life and property in Railway Claims Tribunal, High Court or Supreme Court.
5	Securities Appellate Tribunal under the Securities Exchange Board of India Act, 1992	<b>Clause 1(b)(ii) of Rules 2021</b> has been an <b>advocate</b> for ten years with substantial experience in litigation in matters relating to financial sector before Securities Exchange Board of India, Securities Appellate Tribunal, High Court or Supreme Court.
6	National Company Law Appellate Tribunal under the	<b>Clause 2(c) of Rules 2021</b> (c) has been an <b>advocate</b> for

	Companies Act, 2013	ten years with substantial experience in litigation in matters relating to company affairs before National Company Law Tribunal, National Company Law Appellate Tribunal, High Court or Supreme Court
7	Appellate Tribunal for Electricity under the Electricity Act 2003.	<b>Clause 2 (c) of Rules 2021:</b> has been an <b>advocate</b> for ten years with substantial experience in litigation in matters relating to power sector before Central Electricity Regulatory Commission, State Electricity Regulatory Commission, Appellate Tribunal for Electricity, High Court or Supreme Court
8	Armed Forces Tribunal under the Armed Forces Act, 2007	<b>Clause 2(b) of Rules 2021</b> has, for ten years, been an <b>advocate</b> with substantial



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		experience in litigation in service matters in Central Administrative Tribunal, Armed Forces Tribunal, High Court or Supreme Court
9	National Green Tribunal under the National Green Tribunal Act, 2010	<b>Clause 2(b) of Rules 2021</b> has, for ten years, been an <b>advocate</b> with substantial experience in litigation in matters relating to environment and forest in National Green Tribunal, High Court or Supreme Court.

10. That as per Rule 1(3) of Rules 2021, it shall apply to the *Chairman*, Vice-Chairman, Chairperson, Vice-Chairperson, President, Vice-President, *Presiding Officer*, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member, Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority as specified in column (2) of the Eighth Schedule to the Finance Act, 2017 (7 of 2017).

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11. That now under the Impugned Rules 2021; the advocates has been excluded and eligibility clause in Debts Recovery Tribunals and Debts Recovery Appellate Tribunals, which are as under:-

**Rules 3 the Rules, 2021**

Sl. No.	Name of Tribunal, Appellate Tribunal or Authority	Qualification for appointment of Chairperson, Chairman, President, Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member or Technical Member or Member
8	Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)	A person shall not be qualified for appointment as Presiding Officer of the Debts Recovery Tribunal, unless he, is, or has been, a District Judge
9	Debts Recovery Appellate Tribunal under the Recovery of Debts Due to Banks and Financial	A person shall not be qualified for appointment as Chairperson, unless he, — (a)

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	Institutions Act, 1993 (51 of 1993)	is, or has been, a <b>Judge of a High Court;</b> or (b) has been a member of the Indian Legal Service and has held a post of Additional Secretary or any equivalent or any higher post for two years; or (c) has held office as the Presiding Officer of a Debts Recovery Tribunal for three years.
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12. That it is relevant to mention here that the Finance Act, 2017 provides for Rule making power to the Central Government. But, the said Rules cannot be inconsistent to the DRT Act that has been passed by the Parliament. A legislation can only be amended by an Amendment or by a new legislation especially, in such cases where the appointment and qualification of the members of the Tribunal are held to be legislative functions.
13. That earlier also, the respondent framed the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020, [**in short hereafter referred as Rules, 2020**] notified on 12.02.2020 under the Rule making

provision of the Finance Act, 2017, similar was the position, in relation to exclusion of advocates for the Post of Presiding Officer for DRTs and Chairman for DRATs.

14. That it is relevant to mention here that in pursuance to the Finance Act, 2017 the Respondent had earlier published Rules 3 (referred to serial no. 8 & 9 of Schedule thereof) of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017, the advocates were eligible for the post of Presiding Officer DRTs and for Chairman DRATs. **[In short hereafter referred as Rules, 2017]**. Copy of the Notification dated 01.06.2017 of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 is annexed herewith as **ANNEXURE P-2 (pages \_\_55\_\_ to \_\_97\_\_)**. Copy of the Notification dated 12.02.2020 of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 is annexed herewith as **ANNEXURE P-3 (pages 98 to 131 )**.

**Rules 3 of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017**

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Sl. No.	Name of Tribunal, Appellate Tribunal or Authority	Qualification for appointment of Chairperson, Chairman, President, Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member or Technical Member or Member
8	Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)	A person shall not be qualified for appointment as Presiding Officer of the Debts Recovery Tribunal, unless he,- <b>(a) is, or has been, or is qualified to be, a District Judge; or</b> <b>(b) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, banking, debt recovery or any other matter, which in the opinion of the Central Government is useful to the Debt Recovery Tribunal.</b>
9	Debts Recovery Appellate Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)	A person shall not be qualified for appointment as Chairperson, unless he,- <b>(a) is, or has been, or is qualified to be, a Judge of a High Court; or</b>

		<p>(b) has been a member of the Indian Legal Service and has held a post in Grade I of that service; or</p> <p>(c) has held office as the Presiding Officer of a Debts Recovery Tribunal for at least three years.</p>
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15. That yet again, now, as per the Rules 3 of the Rules, 2021, the eligibility criteria for the post of Chairperson of DRATs and Presiding Officer of DRTs have remained unamended/unchanged, by completely excluding the Advocates, overlooking paras No.41 and 43 of Judgment in the matter of Madras Bar Association decided on 27.11.2020 [supra]. As per these new Rules 2021, the words/phrase “*or is qualified to be*” stands been omitted, meaning thereby the Advocates are specifically made not eligible for the post of Presiding Officer for DRTs and Chairperson for DRATs, even those who are qualified to be eligible for the these posts by virtue of to be qualified to be a District Court and to be a Judge of a High Court.
16. That it is submitted that the omission of the words/phrase “*or is qualified to be*” by the

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Respondent is in contravention and cannot to be said to be in consonance with the section 5 and section 10 of the *Recovery of Debts due to the Banks and Financial Institutions Act 1993*; [now known as *Recovery of Debts and Bankruptcy Act 1993*] [in short hereinafter referred as *DRT Act 1993*]. The DRT Act is the Parent/Principal Act that regulates the functioning and procedure for DRTs and DRATs.

17. That the following table demonstrates the amendments *vide* Rules 3 of the Rules, 2021 vis-à-vis the parent DRT Act:

DRT ACT, 1993	RULES, 2021
<p><b>Section 5: Qualifications for appointment as Presiding Officer-</b></p> <p>A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless he is, or has been, <i>or is qualified to be</i>, a District Judge.</p>	<p><b>Rule 3 of the Schedule-</b></p> <p>A person shall not be qualified for appointment as Presiding Officer of the Debts Recovery Tribunal, <b>unless he, is, or has been, a District Judge.</b></p>

<p><i>“Section 10. Qualifications for appointment as [Chairperson of the Appellate Tribunal]-</i></p> <p><i>A person shall not be qualified for appointment as [the Chairperson of an Appellate Tribunal] unless he:-</i></p> <p><i>(a) is, or has been, or is qualified to be, a Judge of a High Court; or</i></p> <p><i>(b) has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years; or</i></p> <p><i>(c) has held office as the Presiding Officer of a Tribunal for at least three years.</i></p>	<p><b>Rule 3 of the Schedule-</b></p> <p>A person shall not be qualified for appointment as Chairperson, unless he, — (a) is, or has been, a Judge of a High Court; or</p> <p>(b) has been a member of the Indian Legal Service and has held a post of Additional Secretary or any equivalent or any higher post for two years; or</p> <p>(c) has held office as the Presiding Officer of a Debts Recovery Tribunal for three years.</p>
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18. That it is a settled proposition of law that the language employed in a Statute is determinative factor of legislative intent and not the Rules, which are to regulate to substantive provisions under Act and cannot curtail or run contrary to the provisions of Act. Therefore, in the case of DRT Act,



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the legislative intent is vivid as to the legislature intended to specifically keep the words/phrase “*or is qualified to be*” intact in the legislation. It is thus, submitted that there is no ambiguity in the qualifications provided for appointment of Presiding Officer or that for Chairperson under the DRT Act and as such the Rules, are against the very legislative intent of the Parliament.

19. That it is submitted that a Rule 2021 cannot override the Act/legislation and moreover, contrary to paras No.41 and 43 of the judgment i.e. Madras Bar Association [supra]. In the present case, the Respondent has sought to change the very core structure of the DRT Act itself by passing Rules, 2021. This is a clear case of abuse and/or misuse of authority by the Respondent as it has taken the aid of the provisions of Finance Act, 2017 to circumvent and usurp the legislating power which is exclusive to the Parliament, while enacting the DRT Act 1993 and also to the judgment of this Hon’ble Court in the matter of Madras Bar Association Versus UOI decide don 27.11.2020 [supra]. True Copy of the judgment dated 27.11.2020, delivered in Madras Bar Association vs Union of India, W.P.(c) No.804 of 2020, is Annexure P-4 (pages 132 to 199).

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20. That Rules, 2017 were challenged before the Hon'ble Supreme Court and were struck down in the decision of **Rojer Mathew vs. South Indian Bank Ltd. and Others**, 2019 SCC OnLine SC 1456. The Hon'ble Apex Court while striking down the said Rules held that fresh set of Rules are to be framed and directed that the appointments to the Tribunals/Appellate Tribunals and term and condition of the appointment shall be in terms of the respective statutes before the enactment of Finance Bill, 2017 and more particularly, in consonance with Parent Act.
21. That it is relevant to mention here that the words/clause/phrase "*or is qualified to be*" finds mention in Rules, 2017 like all the previous Rules published in pursuance to the previous Finance Act(s). The Hon'ble Apex Court was conscious of this factum but, chose to not alter the Rules as it directed to maintain the position as it was prior to Finance Bill, 2017 i.e. which existed in the Parent Act 2017.
22. That in **Rojer Mather (supra)**, the *vires* of Rules, 2017, were challenged on multiple grounds. One of the pertinent aspect was that the Qualification of the persons manning the Tribunals. *Apropos* this aspect, the Hon'ble Apex Court *inter-alia* held that:

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“257. Though the legislature is empowered to prescribe qualifications for members, the Court held that superior courts in the country retain their power of judicial review over the prescribed qualifications to ensure that judicial functions are discharged effectively. The Court surveyed various enactments and the qualifications prescribed in them for appointment as judicial and technical members and noted that the ‘speed at which the qualifications for appointment as members is being diluted is, to say the least, a matter of great concern for the independence of the judiciary.’ The Court cautioned that tribunals cannot become providers of sinecure to members of civil services, by appointing them as technical members. The Court emphasised that ‘impartiality, independence, fairness and reasonableness in decision making are the hallmarks of judiciary’ and laid down the eligibility criteria for judicial and technical members...”

23. That it is pertinent to mention here that the Hon’ble Apex Court in **Roger Mathew (supra)**, held that Rules, 2017 are violative of ‘impartiality, independence, fairness and reasonableness in decision making are the hallmarks of judiciary’. Commenting on the independence of Tribunals, the Hon’ble Supreme Court *inter-alia* held that:

“154. Independence of a quasi-judicial authority like the tribunal highlighted in the above decisions would be, therefore, read as the policy and guideline applicable. Principle of independence of judiciary/tribunal has within its fold two broad concepts, as held in Supreme Court Advocates-On-Record Association and Another v. Union of India<sup>40</sup>

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*{See paragraph 714}, (i) independence of an individual judge, that is, decisional independence; and (ii) independence of the judiciary or the Tribunal as an institution or an organ of the State, that is, functional independence. Individual independence has various facets which include security of tenure, procedure for renewal, terms and conditions of service like salary, allowances, etc. which should be fair and just and which should be protected and not varied to his/her disadvantage after appointment. Independence of the institution refers to sufficient degree of separation from other branches of the government, especially when the branch is a litigant or one of the parties before the tribunal. Functional independence would include method of selection and qualifications prescribed, as independence begins with appointment of persons of calibre, ability and integrity. Protection from interference and independence from the executive pressure, fearlessness from other power centres – economic and political, and freedom from prejudices acquired and nurtured by the class to which the adjudicator belongs, are important attributes of institutional independence.”*

24. **That by omission of words/ clause/ phrase “or is qualified to be a District Judge”, by the Respondent herein, appears to have been derived its power virtue of Section 187 of the Finance Act 2017, without amendment to parent DRT Act 1993, read with Debts Recovery Appellate Tribunal (Procedure For Appointment As Chairperson of The Appellate Tribunal) Rules, 1998 and Debts Recovery**

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Tribunal (Procedure For Appointment As Presiding Officer of The Appellate Tribunal) Rules, 1998. Accordingly, a notification dated 30.06.2021 has been issued by the Respondent pertaining to Rules 2021, whereby person(s) falling, as per serial No. 8 of schedule to Rule 3 of Rules 2021 being the serving or retired District Judges for the post of Presiding officer(s) for DRTs and person(s), as per serial No. 9 of Schedule to Rule 3 of Rules 2021, being the serving or retired Judges of a High Court for the post of Chairperson for DRATs are to be considered for appointment, are illegal and unconstitutional and there appears to be no reasonable nexus with an object of such Rule 3, Rule 2021 can be achieved.

25. That by omission of words/phrase/clause "*or is qualified to be a judge of a High Court*", by the Respondent herein by virtue of section 187 of the Finance Act 2017, notification dated 30.06.2021 issued by respondent pertaining to **Rules 2021**, whereby only serving or retired District Judges for Presiding officer for DRTs at serial No. 8 of Schedule to Rule 3 of Rules 2021, and serving or retired Judges of the High Court, with other category of person(s) falling in clauses (b) & (c) at serial No. 9 of Schedule to Rule 3 of Rules 2021, which excludes and rather debars the advocate, is nothing short of changing the basic structure of the one of the pillars of the Constitution of India, without any

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amendment in section 5 and 10 of the DRT Act, 1993, and further it is admitted position of law that Rules 2021 cannot prevail or override the sections of the DRT Act 1993.

26. That it is most respectfully submitted that there appears to be no *bona fide* and legitimate genuine intention or reason to for omission of words/phrase/clause "*or is qualified to be*", by the Respondent herein by virtue of section 187 of the Finance Act 2017, notification dated 30.06.2021 issued by respondent pertaining to **Rules 2021**, to disqualify the advocates for consideration for the Post of "Presiding Officer" for DRTs and "Chairperson" for DRATs.
27. That it is most respectfully submitted that the present case clearly falls within the category of irrational and/or unreasonable act by the respondent, whereby the Advocates have been denied even the basic right of being considered for any post of the Tribunals i.e. Debts Recovery Tribunal and Appellate Tribunals i.e. Debts Recovery Appellate Tribunal, by virtue of Rules 2021. This is against the principles of Article 14 of the Constitution of India as there is no plausible bonafide reason that can be deduced from such Rules 2021 as to why the Advocates are being excluded and for what reasons there is departure from the existing provisions under DRT Act 1993.

28. That it is thus, profitable to refer to the relevant Article 233 of the Constitution of India that provides for Appointment of District Judges:

**“233. Appointment of *district judges-***

*(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State*

*(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.”*

29. That it is submitted that in view of the Constitutional provisions, the Rules 3 (referred to serial no. 8 & 9 of Schedule thereof) of Rules, 2021 are arbitrary, discriminatory, unreasonable and unconstitutional and as such the Rules cannot override the Constitution and the Advocates ought to be considered for the appointment for the post of Chairperson and Presiding Officer of DRTs/DRATs and above all in contravention of the decision of this Hon’ble Court in Madras Bar Association [supra] decided on 27.11.2020.
30. That the Hon’ble Supreme Court in **Roger Mathew (supra)** has accepted the correctness of law laid down in **Union of**

**India vs, R. Gandhi, (2010) 11 SCC 1 and L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261.**

31. That **R. Gandhi (supra)**, the Hon'ble Apex Court while discussing the interference of the Executive in the Selection process of the Appointments *inter-alia* held that:

*“(i) Only Judges and advocates can be considered for appointment as judicial members of the Tribunal. Only High Court Judges, or Judges who have served in the rank of a District Judge for at least five years or a person who has practised as a lawyer for ten years can be considered for appointment as a judicial member. Persons who have held a Group A or equivalent post under the Central or State Government with experience in the Indian Company Law Service (Legal Branch) and the Indian Legal Service (Grade I) cannot be considered for appointment as judicial members as provided in sub-sections (2)(c) and (d) of Section 10-FD. The expertise in Company Law Service or the Indian Legal Service will at best enable.*

*(xii) The administrative support for all Tribunals should be from the Ministry of Law and Justice. Neither the Tribunals nor their members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or Department concerned.”*

32. That that the Hon'ble Supreme Court in **R. Gandhi (supra)** also held that the rule making power *qua* the qualifications of the persons manning the Tribunals lies with the legislature whereas, the Superior Courts exercise the power of Judicial



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Review to examine such eligibility criteria framed by the legislature.

It was *inter-alia* held that:

*“96. The question is whether a line can be drawn, and who can decide the validity or correctness of such action. The obvious answer is that while the legislature can make a law providing for constitution of tribunals and prescribing the eligibility criteria and qualifications for being appointed as members, the superior courts in the country can, in exercise of the power of judicial review, examine whether the qualifications and eligibility criteria provided for 774 of members are proper and adequate.”*

33. That, as per Rules 2021, those Presiding Officer(s), whether continuing in service or not, who have/had completed three years as Presiding officer(s) of the DRTs [and there may be advocates as per earlier appointments as per DRT Act 1993], by virtue of clause (c) of serial No.9 of Schedule of Rules 2021, prior to the date of notification i.e. 30.06.2021, would now be qualified to be eligible for the Post of Chairman of DRATs and practising advocates at present has not been eligible for DRTs/DRATs.
34. That a peculiar situation has arisen by Rules 2021, to the effect, that who is District Judge, means even at present by virtue of the provision of section 5 of the DRT Act, Additional District Judge(s) though without any minimum

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number of years as serving experience in that post, would be eligible for the Post of Presiding Officer(s), and then upon completion of three years of service as Presiding Officer would be eligible for the post of Chairperson, which is equivalent to the Post as qualified to be a Judge of a High Court, gets appointed. Thus, without any minimum period of service as District Judge, by virtue of serial No.9 of the Schedule to Rule 3 of Rules 2021, he or she being as District Judge, upon completion of the period of period three years as Presiding Officer of DRT, would be eligible for the Post of Chairperson of DRAT, which according to clause (a) of serial No.9 of Schedule to Rule 3, is meant for Sitting or Retired Judge of High Court, and this itself shows the complete lack of application of mind, in view of the status and sanctity of the Post of Chairperson of DRATs. Further, things do not rest here, upon the completion of the tenure of Chairperson, DRAT, the said District Judge would return to the parent department as District Judge. Copy of The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021, dated 30.06.2021, is annexed as **Annexure P-5** (pages 250 to 214 ).

35. That, the Practicing Advocates ought to be considered for the Post of Presiding Officer(s) and Chairpersons(s) of DRTs and DRTATs respectively, being eligible pursuant to

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existing provisions in DRT Act 1993. Thus, the act of the Respondent to carve out the Advocates specifically is violative of Article, 14 and 21.

36. That, now, on 12.07.2021, the respondent has issued advertisement dated 12.07.2021 inviting applications for the post of Presiding Officers, Debt Recovery Tribunals for various States all of India. Copy of advertisement dated 12.07.2021 issued by respondent herein is annexed as ANNEXURE P-6 (pages 215 to 218).
37. That, now, on 14.07.2021, the respondent has issued advertisement dated 14.07.2021 inviting applications for the post of Chairperson, Debt Recovery Tribunals for various States all of India. Copy of advertisement dated 14.07.2021 issued by respondent herein is annexed as ANNEXURE P-7 (pages 219 to 222).
38. That, thereafter, in recent Judgment of this Hon'ble Court in the matter of Madras Bar Association Versus Union of India & Another W.P.(c) No. 502 of 2021 decided on 14.07.2021, the contentions of the Petitioner that the advocates who are eligible for consideration for the post of Judicial Member/Presiding Officer/Chairman, should be considered, is reiterated. A copy of Judgment of this Hon'ble Court in

the matter of Madras Bar Association Versus Union of India & Another W.P.(c) No. 502 of 2021 decided on 14.07.2021 is Annexure P – 8 (pages 223 to 380).

39. That assailing the constitutionality of this Rules, 2021, it is submitted that the said Rules are passed with non-application of mind without any cogent reasons. It is discriminatory and falls foul of Article 14 of the Constitution of India.
  40. That in any case, the Rules, 2021 are in contravention to the Principal Act and as such is liable to be struck down. It is well recognised principle that conferment of rule making power by an Act does not enable the rule making authority to make rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.
  41. That Article 13 of the Constitution would get attracted if any law is inconsistent with or in derogation of the Fundamental Rights. In that case, such a law would be void to the extent of inconsistency. By virtue of clause (3), the word “law”, used in Article 13, also encompasses a statutory “rule” and thus, the constitutionality of Rules, 2021, as being violative of Article 14 and 21, ought to be struck down.
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42. That thus, in the earlier Rules 2017 also, the Advocates who were qualified to be eligible a District Judge for the Post of Presiding Officer(s) for DRT and who were qualified to be eligible a Judge of a High Court for the Post of Chairperson(s) for DRATs, fell under the bracket of zone of consideration for these posts, but now the same has been removed/eliminated from such bracket of even consideration. This is unconstitutional and in complete violation of decision of **Roger Mathew (supra)** and various other decisions of Hon'ble Apex Court. Thus, Rules 3 of Rules 2021 is unconstitutional, *ultra vires* and liable to be struck down.
43. That it is further submitted that prior to the notification of Rules 2021 on 30.06.2021, all those Presiding Officer(s) who completed the service of three years as on 30.06.2021, including but not limited to advocates also, were eligible at earlier point of time prior to 30.06.2021 for the Post of Chairperson for DRAT, by way of such qualification that he or she has held office as the Presiding Officer of a Tribunal for at least three years, would now be considered for the Post of Chairperson for DRATs. But, at present, under Rules 2021, those advocates who are eligible to be a Judge of a High Court, has been excluded, and the same is a cause of great concern, and it has no reasonableness with object

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sought to be achieved and as such is violative of the Constitution of India.

44. It is submitted that, now by clause (b) at Serial No.9 in Schedule Pertaining to Rule 3 of Rules 2021, those practicing advocates, who are qualified to be eligible, having ten years or more experience, to be qualified to be a judge a High Court, for appointment as Chairperson for DRATs, the same is now reserved for a member of Indian Legal Service who has held a post of Additional Secretary or equivalent or any higher post for two year and also the Presiding Officer(s) having three years serving experience can be appointed as the Chairman and at present under Rules 2021, even practicing advocates having qualified to be eligible as being, qualified to be judge of a High Court, has been completed debarred/eliminated from even Zone of Consideration and the same is Unconstitutional.
45. Thus it is further submitted that the qualifications to appoint a person, who is or has been a member of Indian Legal Service as envisaged in section 10(b) of the DRT Act 1993 as well as at serial No.9 of the Schedule to Rule 3 of Rules 2021 is unconstitutional. It has been held by the Hon'ble Supreme Court in the case of *Union of India vs R. Gandhi, (2010) 11 SCC 1*, that:-

*“112.6. The next dilution is by insertion of Chapters 1B in the Companies Act, 1956 with effect from*

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1.4.2003 providing for constitution of a National Company Law Tribunal with a President and a large number of Judicial and Technical Members (as many as 62). There is a further dilution in the qualifications for members of National Company Law Tribunal which is a substitute for the High Court, for hearing winding up matters and other matters which were earlier heard by High Court. A member need not even be a Secretary or Addl. Secretary Level Officer. All Joint Secretary level civil servants (that are working under Government of India or holding a post under the Central and State Government carrying a scale of pay which is not less than that of the Joint Secretary to the Government of India) for a period of five years are eligible. Further, any person who has held a Group-A post for 15 years (which means anyone belonging to Indian P&T Accounts & Finance Service, Indian Audit and Accounts Service, Indian Customs & Central Excise Service, Indian Defence Accounts Service, Indian Revenue Service, Indian Ordnances Factories Service, Indian Postal Service, Indian Civil Accounts Service, Indian Railway Traffic Service, Indian Railway Accounts Service, Indian Railway Personal Service, Indian Defence Estates Service, Indian Information Service, Indian Trade Services, or other Central or State Service) with three years' of service as a member of Indian Company Law Service (Account) Branch, or who has dealt with any problems relating to Company Law can become a Member. This means that the cases which were being decided by the Judges of the High Court can be decided by two-members of the civil services - Joint Secretary level officers or officers holding Group 'A' posts or equivalent posts for 15 years, can now discharge the functions of High Court. This again has given room for comment that qualifications prescribed are tailor made to provide sinecure for a large number of Joint Secretary level officers or

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*officers holding Group 'A' posts to serve up to 65 years in Tribunals exercising judicial functions.*

*112.7. The dilution of standards may not end here. The proposed Companies Bill, 2008 contemplates that any member of Indian Legal Service or Indian Company Law Service (Legal Branch) with only ten years service, out of which three years should be in the pay scale of Joint Secretary, is qualified to be appointed as a Judicial Member. The speed at which the qualifications for appointment as Members is being diluted is, to say the least, a matter of great concern for the independence of the Judiciary."*

46. That it has been held in the matter of Union of India v. Delhi High Court Bar Assn., (2002) 4 SCC 275 at page 285:

*"12. It has thus been clearly enunciated that the power of Parliament to enact a law, which is not covered by an entry in List II and List III, is absolute. While Articles 323-A and 323-B specifically enable the legislatures to enact laws for the establishment of tribunals, in relation to the matters specified therein, the power of Parliament to enact a law constituting a Tribunal, like the Banking Tribunal, which is not covered by any of the matters specified in Article 323-A or 323-B, is not taken away. With regard to any of the entries specified in List I, the exclusive jurisdiction to make laws with respect to any of the matters enumerated in List I is with Parliament. The power conferred by Article 246(1) can be exercised notwithstanding the existence of Article 323-A or 323-B of the Constitution.*

*Articles 323-A and 323-B are enabling provisions which specifically enable the setting up of tribunals contemplated by the said articles. These articles, however, cannot be interpreted to mean that they prohibit the legislature from establishing tribunals not covered by these articles, as long as there is legislative competence*



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*under an appropriate entry in the Seventh Schedule. Articles 323-A and 323-B do not take away that legislative competence. The contrary view expressed by the Karnataka High Court in D.K. Abdul Khader case [AIR 2001 Kant 176] does not lay down the correct law and we expressly disapprove of the same."*

47. That it is most respectfully submitted that it cannot be the case of the Respondent that there is or was no provision for Advocates to become Presiding Officer of the DRT/Tribunal and/or Chairperson of the DRAT Appellate Tribunal under DRT Act 1993, for the reasons that the section 5 and 10 of the DRT 1993 and Rules 1993 thereof, still holds good and are in existence.
  
48. That it is further submitted that sub-section (b) of Section 10 of DRT Act 1993, which envisages i.e. has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; and now by virtue of serial No.9 in Schedule to Rule 3 of Rules 2021, a qualification i.e. he has been a member of the Indian Legal Service and has held a post of Additional Secretary or any equivalent or any higher post for two years; for the post of chairperson would be illegal and contrary to the decision of the Hon'ble Supreme Court of India in the matter of Union of India v. R. Gandhi, (2010) 11 SCC 1.

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49. It is further submitted that the respondent has failed to appreciate that the Post of the Presiding Officer(s) in DRTs as well as Chairperson(s) in DRATs, are one man/person Tribunal and appointment of a person by virtue of section 10(b) as well as, now under Rule 3(b) of Rules 2021 would be against the basic structure of the independence of Judiciary and Constitution of India and as such the same are liable to be struck down.
50. That the Petitioner is filing the present Petition on the following amongst other grounds :

**GROUND FOR WRIT PETITION:**

- A. **Because**, exclusion of “Advocates” under The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2021 notification dated 30.06.2021, [**In short hereinafter referred as RULES 2021**] for the post of Presiding Officer and Chairman, Debts Recovery Tribunals and Debts Recovery Appellate Tribunals, being illegal and arbitrary, whereas by same notification/Rules 2021, the advocates are eligible for consideration for the post of Judicial Member/Presiding Officer/Chairman, for Income Tax Appellate Tribunal under Income Tax Act 1961, The Custom, Excise and Service Tax Appellate Tribunal under Customs Act 1962, Central Administrative

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Tribunals under Administrative Tribunals Act 1985, Railways Claim Tribunal under Railways Claims Tribunal Act 1987, Securities Appellate Tribunal under the Securities Exchange Board of India Act, 1992, National Company Law Appellate Tribunal under the Companies Act, 2013, National Consumer Disputes Redressal Commission under the Consumer Protection Act, 2019, Appellate Tribunal for Electricity under the Electricity Act, 2003, Armed Forces Tribunal under the Armed Forces Act, 2007 and National Green Tribunal under the National Green Tribunal Act, 2010 and further, above all, the complete exclusion of advocates for the post of Presiding Officer and Chairman of Debts Recovery Tribunals/ Appellate Tribunals, despite the submissions made by Learned Attorney General, which are recorded in para No.41 and decision of this Hon'ble Court is recorded in para No.43; in the matter of Madras Bar Association vs Union of India, W.P.(c) No.804 of 2020, decided on 27.11.2020 [supra].

B. **Because**, the Rules 3 (referred to serial no. 8 & 9 of Schedule thereof) of Rules, 2021 are arbitrary, discriminatory, unreasonable and unconstitutional and as such the Rules cannot override the Constitution and the Advocates ought to be considered for the appointment for the post of Chairperson and Presiding Officer of DRTs/DRATs and above all in contravention of the decision

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of this Hon'ble Court in Madras Bar Association [supra] decide don 27.11.2020.

C. **Because**, as per Rules 2021, those Presiding Officer(s), whether continuing in service or not, who have/had completed three years as Presiding officer(s) of the DRTs [and there may be advocates as per earlier appointments as per DRT Act 1993], by virtue of clause (c) of serial No.9 of Schedule of Rules 2021, prior to the date of notification i.e. 30.06.2021, would now be qualified to be eligible for the Post of Chairman of DRATs and practising advocates at present has not been eligible for DRTs/DRATs.

D. **Because**, a peculiar situation has arisen by Rules 2021, to the effect, that who is District Judge, means even at present by virtue of the provision of section 5 of the DRT Act, Additional District Judge(s) though without any minimum number of years as serving experience in that post, would be eligible for the Post of Presiding Officer(s), and then upon completion of three years of service as Presiding Officer would be eligible for the post of Chairperson, which is equivalent to the Post as qualified to be a Judge of a High Court, gets appointed. Thus, without any minimum period of service as District Judge, by virtue of serial No.9 of the Schedule to Rule 3 of Rules 2021, he or she being as District Judge, upon completion of the period of period three years

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as Presiding Officer of DRT, would be eligible for the Post of Chairperson of DRAT, which according to clause (a) of serial No.9 of Schedule to Rule 3, is meant for Sitting or Retired Judge of High Court, and this itself shows the complete lack of application of mind, in view of the status and sanctity of the Post of Chairperson of DRATs. Further, things do not rest here, upon the completion of the tenure of Chairperson, DRAT, the said District Judge would return to the parent department as District Judge.

- E. **Because**, the Practicing Advocates ought to be considered for the Post of Presiding Officer(s) and Chairpersons(s) of DRTs and DRTATs respectively, being eligible pursuant to existing provisions in DRT Act 1993. Thus, the act of the Respondent to carve out the Advocates specifically is violative of Article, 14 and 21.
- F. **Because**, assailing the constitutionality of this Rules, 2021, it is submitted that the said Rules are passed with non-application of mind without any cogent reasons. It is discriminatory and falls foul of Article 14 of the Constitution of India.
- G. **Because**, in any case, the Rules, 2021 are in contravention to the Principal Act and as such is liable to be struck down. It is well recognised principle that conferment of rule making

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power by an Act does not enable the rule making authority to make rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

H. **Because**, Article 13 of the Constitution would get attracted if any law is inconsistent with or in derogation of the Fundamental Rights. In that case, such a law would be void to the extent of inconsistency. By virtue of clause (3), the word “law”, used in Article 13, also encompasses a statutory “rule” and thus, the constitutionality of Rules, 2021, as being violative of Article 14 and 21, ought to be struck down.

I. **Because**, in the earlier Rules 2017 also, the Advocates who were qualified to be eligible a District Judge for the Post of Presiding Officer(s) for DRT and who were qualified to be eligible a Judge of a High Court for the Post of Chairperson(s) for DRATs, fell under the bracket of zone of consideration for these posts, but now the same has been removed/eliminated from such bracket of even consideration. This is unconstitutional and in complete violation of decision of **Roger Mathew (supra)** and various other decisions of Hon’ble Apex Court. Thus, Rule 3 of Rules 2021 are unconstitutional, *ultra vires* and liable to be struck down so far as these excludes “advocates” for the Post of Presiding Officer for DRTs and Chairman for DRATs.

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J. **Because**, prior to the notification of Rules 2021 on 30.06.2021, all those Presiding Officer(s) who completed the service of three years as on 30.06.2021, including but not limited to advocates also, were eligible at earlier point of time prior to 30.06.2021 for the Post of Chairperson for DRAT, by way of such qualification that he or she has held office as the Presiding Officer of a Tribunal for at least three years, would now be considered for the Post of Chairperson for DRATs. But, at present, under Rules 2021, those advocates who are eligible to be a Judge of a High Court, has been excluded, and the same is a cause of great concern, and it has no reasonableness with object sought to be achieved and as such is violative of the Constitution of India.

K. **Because**, by clause (b) at Serial No.9 in Schedule Pertaining to Rule 3 of Rules 2021, those practicing advocates, who are qualified to be eligible, having ten years or more experience, to be qualified to be a judge a High Court, for appointment as Chairperson for DRATs, the same is now reserved for a member of Indian Legal Service who has held a post of Additional Secretary or equivalent or any higher post for two year and also the Presiding Officer(s) having three years serving experience can be appointed as the Chairman and at present under Rules 2021, even practicing advocates having qualified to be eligible as being, qualified to be judge of a High Court, has been completely debarred/eliminated from

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even Zone of Consideration and the same is Unconstitutional.

L. **Because, by omission of words/clause/phrase “*or is qualified to be a District Judge*”**, by the Respondent herein, appears to have been derived its power virtue of Section 187 of the Finance Act 2017, without amendment to parent DRT Act 1993, read with Debts Recovery Appellate Tribunal (Procedure For Appointment As Chairperson of The Appellate Tribunal) Rules, 1998 and Debts Recovery Tribunal (Procedure For Appointment As Presiding Officer of The Appellate Tribunal) Rules, 1998. Accordingly, a notification dated 30.06.2021 has been issued by the Respondent pertaining to Rules 2021, whereby, person(s) falling, as per serial No. 8 of Schedule to Rule 3 of Rules, 2021, being the serving or retired District Judges for the post of Presiding officer(s) for DRTs and person(s), as per serial No.9 of Schedule to Rule 3 of Rules, 2021, being the serving or retired Judges of a High Court for the post of Chairperson for DRATs are to be considered for appointment, are illegal and unconstitutional and there appears to be no reasonable nexus with an object of such Rule 3, Rule 2021 can be achieved.

M. **Because, by omission of words/phrase/clause “*or is qualified to be a judge of a High Court*”**, by the Respondent



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herein by virtue of section 187 of the Finance Act 2017, notification dated 30.06.2021 issued by respondent pertaining to **Rules 2021**, whereby only serving or retired District Judges for Presiding Officer for DRTs at serial No. 8 of schedule to Rule 3 of Rules, 2021, and serving or retired Judges of the High Court, with other category of person(s) falling in clauses (b) & (c) at serial No. 9 of Schedule to Rule 3 of Rules 2021, which excludes and rather debars the advocates, is nothing short of changing the basic structure of the one of the pillars of the Constitution of India, without any amendment in section 5 and 10 of the DRT Act, 1993, and further it is admitted position of law that Rules 2021 cannot prevail or override the sections of the DRT Act 1993.

N. **Because**, it is most respectfully submitted that there appears to be no *bona fide* and legitimate genuine intention or reason to for omission of words/phrase/clause "***or is qualified to be***", by the Respondent herein by virtue of section 187 of the Finance Act, notification dated 30.06.2021 issued by respondent pertaining to **Rules 2021**, to disqualify/exclude the advocates for consideration for the Post of "Presiding Officer" for DRTs and "Chairperson" for DRATs.

O. **Because**, the present case clearly falls within the category of irrational and/or unreasonable act by the respondent,

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whereby the Advocates have been denied even the basic right of being considered for any post of the Tribunals and Appellate Tribunals by virtue of Rules 2021. This is against the principles of Article 14 of the Constitution of India as there is no plausible bonafide reason that can be deduced from such Rules 2021 as to why the Advocates are being excluded and for what reasons there is departure from the existing provisions under DRT Act 1993.

P. **Because**, it is a settled proposition of law that the language employed in a Statute is determinative factor of legislative intent and not the Rules, which are to regulate to substantive provisions under Act and cannot curtail or run contrary to the provisions of Act. Therefore, in the case of DRT Act, the legislative intent is vivid as to the legislature intended to specifically keep the words/clause/phrase "*or is qualified to be*" intact in the legislation. It is thus, submitted that there is no ambiguity in the qualifications provided for appointment of Presiding Officer or that for Chairperson under the DRT Act and as such the Rules, are against the very legislative intent of the Parliament.

Q. **Because**, Rule 2021 and advertisement dated 12.07.2021 cannot override the Act/legislation and moreover, contrary to paras No.41 and 43 of the judgment i.e. Madras Bar Association [supra]. In the present case, the

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Respondent has sought to change the very core structure of the DRT Act itself by passing Rules, 2021. This is a clear case of abuse and/or misuse of authority by the Respondent as it has taken the aid of the provisions of Finance Act, 2017 to circumvent and usurp the legislating power which is exclusive to the Parliament, while enacting the DRT Act 1993 and also to the judgment of this Hon'ble Court in the matter of Madras Bar Association Versus UOI decide don 27.11.2021 [supra].

R. **Because**, it is most respectfully submitted that there appears to be no *bona fide* and legitimate genuine intention or reason to for omissionof words/phrase/clause "*or is qualified to be*", by the Respondent herein advertisement dated 12.07.2021 issuedbyrespondentbased upon impugned **Rules 2021**,todisqualify/exclude the advocates for consideration for the Post of "Presiding Officer" for DRTs.

S. **Because**, advertisement dated 12.07.2021 is bad in law and ex-facia unconstitutional and in contravention of the decision of this Hon'ble Court in the matter of Madras Bar Association [supra].

51. **NON-FILING PARA:** The Petitioner has not filed any other similar petition, before this Hon'ble Court or any other

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Court in India for the relief claimed in the present Writ Petition.

52. That, the Writ Petitioner submits that there is no other alternative equally efficacious remedy available to them in view of the peculiar facts of the case and the decision of this Hon'ble Court in the matter of Madras Bar Association decided on 27.11.2020 [supra].
53. That, the Petitioner states they are approaching this Hon'ble Court as expeditiously as possible and there is no delay or laches in filing the present Writ Petition.
54. That, this Hon'ble Court has jurisdiction to entertain, try and dispose of this Writ Petition under Article 32 of the Constitution of India in view of peculiar facts of the case and also, in view of the decision of this Hon'ble Court in the matter of Madras Bar Association [decided on 27.11.2020 [supra].
55. That, the Annexures produced herewith are true copies of their respective originals.
56. That, this Writ Petition is *bona fide*.
57. **PRAYERS:-**

It is therefore, most respectfully and humbly prayed that this Hon'ble Court may gracefully be pleased to:-

A. Allow the Present writ petition;

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B. Issue appropriate Writ and/or any other order(s) and/or directions to declare the Rules 2021 prescribed at *Serial No. 8* for the post of “Presiding Officer” in the Schedule pertaining to Rule 3 of The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules 2021 by virtue of Notification dated 30.06.2021 excluding “practicing ADVOCATES”, for the post of appointment as Presiding officer, for Debts Recovery Tribunal, under The Recovery of Debts and Bankruptcy Act 1993, being arbitrary, discriminatory, illegal and unconstitutional and accordingly may please kindly be set aside;

C. Issue appropriate Writ and/or any other order(s) and/or directions to declare the Rules 2021 prescribed at *Serial No. 9* for the post of “Chairman” in the Schedule pertaining to Rule 3 of The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules 2021 by virtue of Notification dated 30.06.2021, excluding “practicing ADVOCATES”, for the post of appointment as Chairman, for Debts Recovery Appellate Tribunal, under The Recovery of Debts and Bankruptcy Act 1993, being arbitrary, illegal and

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unconstitutional and accordingly may please kindly be setaside;

D. Issue appropriate Writ and/or any other order(s) and/or directions to declare advertisement dated 12.07.2021, being arbitrary, illegal and unconstitutional and accordingly may please kindly be setaside

E. Issue appropriate Writ and/or any other order(s) and/or directions to respondents to comply and/or implement paras No.41 and 43 of the decision of this Hon'ble Court in the matter of Madras Bar Association [supra]. *The Same as (Annexure P-4)*.

F. Any such appropriate Writ and/or any other order(s) and/or directions to respondents under the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND, SHALL EVER PRAY.

Drawn by :

(SANJEEV BHANDARI)  
Advocate

Drawn on : 16-07-21

Filed by :-

Filed on : 19-07-21  
New Delhi

[VIRESH B. SAHARYA]  
Advocate -On-Record For The Petitioner