

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3299 OF 2016**

Shri Vasant Narayan Lothey-Patil }	Petitioner
versus	
Union of India }	Respondents

Mr. Sandeep V. Marne for the petitioner.

Mr. Anil C. Singh - Additional Solicitor
General with Mr. A. R. Kapadnis and
Mr. Yash Momaya for the respondent.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- DECEMBER 9, 2016

P.C. :-

1. Heard Mr. Marne appearing for the petitioner.
2. The petitioner is a serving presiding officer of DRT-III, Mumbai, a tribunal established and functioning under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act) and exercising powers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
3. The petitioner was appointed on 7th February, 2013. The appointment letter/order, copy of which is at page 18 of the paper book reads thus:-

“No. 7/6/2012 – DRT
Government of India
Ministry of Finance
Department of Financial Services
“Jeevan Deep, 10, Sansad Marg,
New Delhi – 110 001
Dated: 7th February, 2013

To,
Shri V. N. Lothey Patil,
E-501, Srihari Residency, Near Sarkar School,
Near C. G. Road,
Chandkheta,
Ahmedabad, Gjjarat

Subject: Appointment to the post of Presiding Officer,
Debts Recovery Tribunal – III, Mumbai.

Sir,

I am directed to refer to DRAT, Mumbai's letter No.DRAT/MUM/2012/1031 dated 11.7.2012 forwarding your bio-data for consideration for appointment to the post of Presiding Officer, Debts Recovery Tribunals and to say that you have been selected for appointment to the post of Presiding Officer, Debts Recovery Tribunal-III, Mumbai.

2. The post of Presiding Officer carries the pay in the Pay Band of Rs.37,400-67,000 (PB-4) + Grade pay Rs.10000. You will hold the office of presiding Officer, Debts Recovery Tribunal-III, Mumbai, for a period of five years with effect from the date of assumption of the charge of the post or till you attains the age of 62 years or until further orders, whichever is the earliest. You will be governed by the terms and conditions as stipulated in Debts Recovery Tribunal (Salaries, Allowances and other terms and conditions of service of Presiding Officer) Rules, 1993, as amended from time to time.

3. You are requested to take over the charge of the office of Presiding Officer, Debts Recovery Tribunal-III, Mumbai latest by 8.3.2013 after getting relieved from your present post, under intimation to this Ministry. A copy of relieving order may also kindly be sent to this Ministry.

4. You are also requested to fill up the enclosed Forms I & II of Oath and Secrecy to the post of Presiding Officer and

forward the same alongwith your joining report to this Ministry and to the Chairperson, Debts Recovery Appellate Tribunal, Mumbai.

Yours faithfully,

(Rajiv Sharma)

Under Secretary to the Govt. of India
Tel No. 2374 8775 Fax No. 2374 8776”

4. Mr. Marne submits that the Act has been since amended and the retirement age is 65 years or five years tenure, whichever is earlier. The petitioner was appointed when the terms and conditions were that he would stand retired on attaining the age of 62 years. The petitioner was born on 14th December, 1954. He would, on account of attaining 62 years of age, demit his office on 13th December, 2016. However, by virtue of the amendment to section 6 of the RDDB Act, the selected candidate can hold office for a term of five years from the date he enters the office or till the age of 65 years, whichever is earlier. In pursuance of the fresh advertisement inserted on 29th September, 2016, the petitioner having made an application does not mean that he should be denied the benefit of the amended provision. Reliance is placed upon certain orders passed by other High courts in India. They have protected, by appropriate interim orders, the tenure of the incumbent or existing presiding officer of the DRT functioning in that State. Mr. Marne would submit that similar order be passed.

5. Mr. Singh, learned Additional Solicitor General, however, dis-agrees and submits that the law is very clear. The petitioner has no vested right to continue in office. More so, when he understood the terms and conditions of his appointment made on 7th February, 2013. He was aware that he would be demitting office on attaining the age of 62 years. Now that the law is amended does not mean that he can claim as of right to continue till the age of 65 years. Though clause (2) of his appointment letter envisages that the terms and conditions of the service would be as per amended law, still, the petitioner cannot claim continuance till that time. More so, when he has applied in pursuance of the fresh advertisement and his application is under consideration.

6. After having heard both sides, we are inclined to agree with the learned Additional Solicitor General. We need not reiterate the settled principle of law that the holder of a public post or public office does not have a vested right to continue in office and beyond stipulated age of retirement. Merely because during the tenure or holding a office the law is amended and benefit of extended age of retirement is available does not mean that this court should direct the respondent to continue the present incumbent, namely, the petitioner, in office. In the present case,

we have found that on 29th September, 2016, an advertisement was issued. The petitioner, knowing fully well that he would have to demit office on attaining the age of 62 years as per the existing terms and conditions, submitted his application. He also submitted a representation dated 5th December, 2016. Both, his application pursuant to the fresh advertisement and his representation are under consideration of the competent authority, namely, the Ministry of Finance, Department of Financial Services, New Delhi. The petitioner denotes his willingness to work beyond 13th December, 2016, which is his regular date of retirement. In these circumstances, without expressing any opinion on the merits of these applications and the decision to be taken thereon, we are not inclined to allow the petitioner to continue in office. That would not be proper given the understanding of the petitioner himself.

7. In the light of the above discussion, the writ petition is dismissed.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)