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W.P.(MD)No.27523 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2022

DATE OF DECISION : 23.12.2022

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.27523 of 2022
and
W.M.P.(MD)No.21615 of 2022
in
W.P.(MD)No.27523 of 2022

S.Lawrence Vimalraj

.. Petitioner

Vs.

- 1.The Registrar (Judicial),
High Court of Madras,
Madurai Bench,
Madurai-623 023.
- 2.Permanent Secretariat for Designation of
Senior Advocate,
rep by The Registrar (Judicial),
High Court of Madras,
Chennai-600 104.
- 3.The Registrar (Admn.)
High Court of Madras,
Chennai-600 104.



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4.National Commission for Women,
377J+7J5, PWD Estate,
Chepauk,
Triplicane, Chennai-600 005

5.The Secretary to Government,
Law Department,
Fort St. George,
Chennai-600 009.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents 1 to 5 herein to specifically address the equal status or at least 30% of women amongst the advocates seeking conferment of SENIOR ADVOCATE status from the first list dated 31.10.2020 issued by the 2nd respondent herein and the second list dated 04.08.2022 by Notification in Roc.No.59095/2020/SCS & Roc.No.71228-A/2022/SSA issued by the 3rd respondent herein from among the advocates who are practising in Chennai and Madurai Bench within a time frame that may be stipulated by this Hon'ble Court and thus render justice.

For Petitioner : Mr.B.Ravi Raja
for Mr.R.R.Kannan and
Mr.M.Sivakumar



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For Respondents : Mr.M.Santhanaraman,
Panel Counsel for Madras High Court
for RR1, 2 and 3

For Intervenor : Ms.Chitra Sampath, Senior Advocate
for Ms.D.Prasanna
along with Ms.S.Vennila
Ms.D.Latha
Ms.T.K.S.Bharathi
Ms.A.Parveen
Ms.Sheik Mehrunnisa Kasim

- - - -

ORDER

M.SUNDAR, J.

Captioned Writ Petition and 'Writ Miscellaneous Petition'
['WMP' for the sake of brevity] thereat have been listed before this
Division Bench pursuant to an order made by Hon'ble Acting Chief Justice
being order dated 13.12.2022 on the administrative side.

2. Captioned Writ Petition has been filed by writ petitioner
seeking equal numbers or 30% reservation for women advocates in the
conferment of designation of Senior Advocates from the lists of candidates



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published vide notifications dated 31.10.2020 and 04.08.2022 being Notification No.1/2020/Permanent Secretariat for Designation of Senior Advocate and Notification No.2/2022/SSA respectively.

3. Mr.B.Ravi Raja, learned counsel along with Mr.R.R.Kannan and Mr.M.Sivakumar, counsel on record for writ petitioner, Ms.Chitra Sampath, learned Senior Advocate instructed by Ms.D.Prasanna, counsel on record for Women Lawyers' Association / intervenor and Mr.M.Santhanaraman, learned Standing Counsel for respondents 1, 2 and 3 were before this Court.

4. This order has to be read in conjunction with and in continuation of the proceedings made in the previous listing on 19.12.2022 in captioned Writ Petition and a separate order made in W.M.P.No.33409 of 2022 (impleading WMP) on the same day.

5. Proceedings made in captioned Writ Petition on 19.12.2022 reads as follows:

'These proceedings has to be read in conjunction with and in continuation of earlier proceedings made in the



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captioned matter in the previous listing on 14.12.2022 which reads as follows:

'Captioned matter has been listed before this Division Bench by way of an order dated 13.12.2022 made by Hon'ble Acting Chief Justice on the administrative side.

2 In the light of the earlier proceedings in the previous listing on 12.12.2022 made by a Division Bench presided by Hon'ble Acting Chief Justice, the matter was listed today for hearing.

3 Ms.Sudarshana Sunder, learned counsel who was before us submitted that though she represented the counsel for writ petitioner in the previous listing on 12.12.2022, she does not want to argue the matter now as a matter of propriety. This submission is owing to learned counsel being one of the applicants qua senior counsel designation. Thereafter, Mr.B.Ravi Raja, learned counsel who is before us submits that he is representing the counsel on record for writ petitioner. Learned counsel submitted that he is ready to advance submissions but Ms.D.Prasanna, learned counsel who is before us submits that Women Lawyers' Association, Madras High Court, Chennai-600 104 has filed a implead petition vide SR.No.140589/2022 dated 13.12.2022 (yesterday) and requests for rescheduling of the captioned



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matter and listing of the same on Monday saying that the implead application has to be brought on Board and a Senior Advocate has to be briefed. Ms.D.Prasanna, learned counsel made a request that the petitioner's counsel may also please be heard on Monday and made a fervent plea for rescheduling. To be noted, counsel on record for writ petitioner are not before this Court and we are informed that rescheduling/listing on Monday (19.12.2022) would enable second named counsel on record Mr.M.Sivakumar to travel from Madurai and be before this Court.

4 Learned counsel on record to remove the objections if any, Registry to process the aforementioned implead application (SR.No.140589/2022 dated 13.12.2022) and list it on Board if in order.

5 In the light of the narrative thus far, list this matter on Monday (19.12.2022) at 02.15 p.m.'

2 Pursuant to the aforementioned proceedings, W.M.P.No.33409 of 2022 with a implead prayer taken out by Women Lawyers' Association was on board. Ms.Chitra Sampath, learned Senior Advocate instructed by Ms.D.Prasanna for petitioner was before this Court. In and by a separate order made today, the petitioner Association was permitted to be heard as a intervenor and



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audience was accorded to learned Senior Advocate.

3 Mr.B.Ravi Raja, learned counsel along with Mr.R.R.Kannan and Mr.M.Sivakumar, counsel on record for writ petitioner who were before this Court made submissions. Thereafter, Ms.Chitra Sampath, learned Senior Advocate instructed by Ms.D.Prasanna, counsel on record for Women Lawyers' Association (represented by its Secretary) was given audience and learned Senior Advocate was heard.

4 Two aspects of the matter which were made clear by learned counsel for writ petitioner and learned Senior Advocate for intervenor were: (a) they are not challenging the notifications nor proceedings of the Permanent Committee and (b) neither of the parties (writ petitioner and implead petitioner, i.e., Women Lawyers' Association) have made any mention or filed any petition in Hon'ble Supreme Court pertaining to the subject matter on hand.

5 Mr.M.Santhanaraman, learned counsel who was waiting in Court says that he has instructions to represent respondents 1, 2 and 3. Considering the nature of the matter, i.e., considering the canvass and the matrix of the instant matter, we did give an audience to learned counsel who was waiting to take notice for respondents 1 to 3 also.

6 The matter will now stand over for consideration and verdict (CAV). Orders reserved.'

6. Order dated 19.12.2022 made in W.M.P.No.33409 of 2022



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(impleading WMP) reads as follows:

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'This order will now dispose of the captioned 'Writ Miscellaneous Petition' ('WMP' for the sake of brevity).

2 This order has to be read in conjunction with and in continuation of proceedings made in W.P.(MD)No.27523 of 2022 and W.M.P.(MD)No.21615 of 2022 in W.P.(MD)No.27523 of 2022 in the previous listing on 14.12.2022, which reads as follows:

'Captioned matter has been listed before this Division Bench by way of an order dated 13.12.2022 made by Hon'ble Acting Chief Justice on the administrative side.

2 In the light of the earlier proceedings in the previous listing on 12.12.2022 made by a Division Bench presided by Hon'ble Acting Chief Justice, the matter was listed today for hearing.

3 Ms.Sudarshana Sunder, learned counsel who was before us submitted that though she represented the counsel for writ petitioner in the previous listing on 12.12.2022, she does not want to argue the matter now as a matter of propriety. This submission is owing to learned counsel being one of the applicants qua senior counsel designation. Thereafter, Mr.B.Ravi Raja, learned counsel who is before us submits that he is representing the counsel on record for writ petitioner. Learned counsel



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submitted that he is ready to advance submissions but Ms.D.Prasanna, learned counsel who is before us submits that Women Lawyers' Association, Madras High Court, Chennai-600 104 has filed a implead petition vide SR.No.140589/2022 dated 13.12.2022 (yesterday) and requests for rescheduling of the captioned matter and listing of the same on Monday saying that the implead application has to be brought on Board and a Senior Advocate has to be briefed. Ms.D.Prasanna, learned counsel made a request that the petitioner's counsel may also please be heard on Monday and made a fervent plea for rescheduling. To be noted, counsel on record for writ petitioner are not before this Court and we are informed that rescheduling/listing on Monday (19.12.2022) would enable second named counsel on record Mr.M.Sivakumar to travel from Madurai and be before this Court.

4 Learned counsel on record to remove the objections if any, Registry to process the aforementioned implead application (SR.No.140589/2022 dated 13.12.2022) and list it on Board if in order.

5 In the light of the narrative thus far, list this matter on Monday (19.12.2022) at 02.15 p.m.'

3 Pursuant to the aforementioned



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proceedings, Women Lawyers' Association represented by its Secretary has taken out the captioned WMP which is on board before us. Ms.Chitra Sampath, learned Senior Advocate instructed by Ms.D.Prasanna and assisted by Ms.S.Vennila, Ms.D.Latha, Ms.T.K.S.Bharathi, Ms.A.Parveen and Ms.Sheik Mehrunnisa Kasim is before us on behalf of petitioner in captioned WMP.

4 Learned Senior Advocate submits that there are some factual errors in the support affidavit as regards prefix of the writ petitioner and the prayer in the writ petition. To be noted, the support affidavit erroneously says that prayer in writ petition challenges two notifications of Madras High Court. Learned counsel Mr.B.Ravi Raja, representing Mr.R.R.Kannan and Mr.M.Sivakumar, counsel on record for writ petitioner in his submissions on behalf of petitioner also made it clear that the notifications being Notification No.1/2020/Permanent Secretariat for Designation of Senior Advocate, dated 31.10.2020 and Notification No.2/2022/SSA, dated 04.08.2022 have not been assailed. Learned Senior Advocate submits that notwithstanding this position, the prayer in the captioned WMP may please be considered. It was emphasized that the petitioner Association espouses the cause of about 5000 women lawyers in the Principal Seat and the Madurai Bench of Madras High Court.

5 Owing to the nature of the matter, considering the facts and circumstances of the case, in the light of the obtaining position, it was submitted that it will suffice if the petitioner in captioned WMP is given audience as a



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intervenor. This request is acceded to.

6 Mr.B.Ravi Raja, representing the counsel on record for writ petitioner does not oppose the request of the petitioner in captioned WMP to be heard as a intervenor.

7 Petitioner in captioned WMP though not impleaded as party qua captioned main writ petition [W.P.(MD)No.27523 of 2022] will now be heard as a intervenor.

8 Captioned WMP ordered on above terms.
There shall be no order as to costs.'

7. For specificity, it is made clear that the above proceedings and order shall be read as an integral part and parcel of this order.

8. It is to be noted that in the hearing, learned counsel for writ petitioner has already submitted that writ petitioner is not challenging the notifications. However, on a perusal of the typed set of papers, it is noticed that the last page of the first notification dated 31.10.2020 is missing. Learned counsel for writ petitioner accepted this position in the hearing and expressed regret for the inadvertent error and therefore, this Court has taken out the same from the official Website of the High Court and a scanned reproduction of the same is as follows:



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S.No	Name of the Advocate	Enrolment No.
90	Abdel Saleem	450/1995
91	R. Sivaraman	1100/1995
92	Srinath Sridevan	1109/1995
93	H.Karthik Seshadri	705/1996
94	P.Valliappan	138/1997
95	K.P.S. Patanivel Rajan	294/1997
96	P.V. Balasubramanian	940/1997
97	B. Saravanan	1052/1997
98	Narmadha Sampath	450/1999
99	R. Karthik	1636/2004

9. Summation of submissions of learned counsel for writ petitioner are as follows:

Learned counsel submitted that he is not challenging the decision of Permanent Committee, he submitted that the total number of persons who are going to be selected should be set out first even when applications are invited. Of the candidates who are going to be selected, if a candidate is recommended by a High Court Judge, he is placed in higher pedestal, is learned



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counsel's say. It is further stated that the candidate requires to submit judgments in the preceding five years from the date of notification but there is a time gap of two years between the first notification and the second notification. Learned counsel relying on *Indira Jaising* case being *Indira Jaising Vs. Supreme Court of India* reported in *(2017) 9 SCC 766*, submitted that the guidelines issued by Hon'ble Supreme Court is being revisited.

10. Submissions of learned Senior counsel for intervenor are as follows:

(i) Learned Senior Advocate submitted that the remarks and views of Permanent Committee in respect of all 161 applicants should be placed before the Full Court and it is the Full Court which has to decide the conferment of designation of Senior Advocates. Learned senior Advocate cited the interpretation clause in Rule 11 of 'The Madras High Court Designation of Senior Advocates



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Rules, 2020' [hereinafter 'said Rules' for the sake of brevity and convenience] and submitted that Full Court's decision shall be final. Learned Senior Counsel further relied on Rule 7(5) of said Rules to say that all names that are listed before and cleared by Permanent Committee along with its recommendation of specific remarks if any shall be placed before the Full Court for approval. Learned Senior Advocate submitted that the rights of rejection or approval is only with the Full Court. If the Full Court rejects the application of a candidate, that candidate will not be able to apply for senior advocate designation for next two years, however if Permanent Committee rejects a candidate, that candidate will not be able to apply for next one year.

(ii) Learned Senior Advocate strongly relied on paragraph 62 of ***Indira Jaising*** case and submitted that the power of designating any person as a Senior Advocate is always vested in the Full Court. Learned Senior Advocate further submitted that a candidate can only be



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assessed by Full Court.

(iii) Learned Senior Advocate also relied on a decision of a Division Bench of Karnataka High Court in ***T.N.Raghupathy Vs. High Court of Karnataka and others*** reported in ***2020 SCC OnLine Kar 93*** and drew attention of this Court to paragraph 90 of the said decision to say that the overall assessment made by the Permanent Committee of all applicants has to be placed before the Full Court along with necessary details and Permanent Committee is not assigned with the duty of making any recommendation and the Full Court is not bound by the assessment made by the Permanent Committee of each and every candidate.

11. Submissions made by learned counsel for respondents 1, 2 and 3 are as follows:

Learned counsel for respondents 1 to 3 submitted that the captioned writ petition is not maintainable. Writ Petitioner has no locus to file the present writ petition. Writ Petitioner is neither a woman



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nor an applicant who applied for designation of Senior Advocate. Learned counsel stressed / emphasised that the writ petitioner has not filed Public Interest Litigation. Learned counsel further submitted that 30% reservation in Senior Advocate designation is practically not possible in the case on hand as only 9 women candidates have applied for Senior Advocate designation. Respondents 1 to 3 have strictly adhered to said Rules and followed the procedures in accordance with said Rules in the process of selection qua conferment of Senior Advocates designation and the entire exercise of selection has been done in a transparent manner. Learned counsel submitted that the intervenor has widened the scope of the writ petition. There is no violation of the decision of Hon'ble Supreme Court in ***Indira Jaising*** case, is learned counsel's further say.

12. Learned counsel for writ petitioner in the reply reiterated his earlier submissions and submitted that the issue relating to conferment of



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Senior Advocate designation is pending before Hon'ble Supreme Court.

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13. After carefully considering the submissions in the light of the case file and other relevant materials, we are of the considered view that the prayer in the captioned writ petition is not entertainable and the same deserves to be negatived for reasons adumbrated in sub paragraphs infra. Submissions made by the intervenor are completely outside the scope of the main writ petition and locus of writ petitioner is completely absent as he is neither a woman nor an applicant. This by itself drops the curtains on the captioned matter. However, considering the nature of the matter, we deem it appropriate to deal with / discuss the other points also (albeit on a demurrer) and give our dispositive reasoning qua the same also infra:

(i) Writ petitioner has not filed a Public Interest Litigation. This has been averred with clarity and specificity in the writ affidavit in paragraph No.1 which reads as follows:

'1. I am the petitioner herein I am a practicing advocate having enrolment Ms.No.2356/2013 I am practising in the Madurai Bench of Madras High Court and its Principal Bench at Chennai. As such I am well acquainted with the facts of the case. This is not a public interest litigation but only to espouse my own aspirations to seek fairness and transparency in the designation of Senior Advocates of this Hon'ble High Court.....'



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*(Underlining made by this Court to
supply emphasis and to highlight)*

This means that writ petitioner has no locus as he is neither an applicant nor an aggrieved person whose rights have been affected.

(ii) There can be no two opinion that the writ petitioner has no locus qua captioned writ petition as he is not a applicant and he has made a positive averment that captioned writ petition is not a Public Interest Litigation.

(iii) Conferring the status of Senior Advocate on a Advocate qua Section 16 of 'The Advocates Act, 1961 (25 of 1961)' (hereinafter 'said Act' for the sake of convenience and clarity) is clearly a privilege and not a post. Therefore, any prayer for reservation is misplaced. In a order authored by Hon'ble Mr.Justice V.Ramasubramanian (as His Lordship then was) in W.A.(MD)No.1260 of 2014 vide order dated 12.01.2016 speaking for Division Bench of this Court, the distinction between post and privilege was highlighted.



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(iv) The argument of learned counsel for writ

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petitioner that number of persons to be designated as Senior Advocates has to be first set out while inviting applications is floored as a corollary to the previous dispositive reasoning point that it is a privilege and not a post. Specifying number of posts, vacancies, etc., will arise only in the case of posts and not in the case of conferring a privilege.

(v) In the first notification, there were 99 names and in the second notification, there were 62 names, who have applied for Senior Advocate designation. Out of total 161 candidates who have applied, there were only 9 women candidates and we are informed that 2 of them chose not to go for the interaction with Permanent Committee. This leaves us with 7 women candidates. When there are only 7 women candidates out of total 161 candidates, even on a demurrer the plea for 50% or at least 1/3rd reservation for women has no legs to stand.

(vi) All the 9 women candidates submitted their papers as per the said Rules and this means that they have



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accepted to go by said Rules which does not provide for reservation of any kind. Therefore, the argument qua reservation is clearly a non starter.

(vii) **Indira Jaising** case, which is the substratum of said Rules also does not suggest any reservation and this by itself takes the wind out of the sails qua reservation argument.

(viii) Hon'ble Supreme Court in **Indira Jaising** in paragraph 74 had made it clear that the suggestion for rules may not be exhaustive and that the same may require reconsideration by suitable additions / deletions after operating the rules. To be noted, said Rules are yet to be operated and this is the first time Madras High Court has commenced the operation of said Rules.

(ix) The argument that Full Court alone has the prerogative to decide on the privilege of designation qua Senior Advocates though attractive in first blush, clearly is a argument which is clearly not good enough qua reservation prayer as Section 16 of the Act talks about High Court and if



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High Court has to be construed as Full Court, the first Law Officer, i.e., Advocate General under Article 165 of the Constitution of India and the designated Senior Advocate (in the case of this Court a former Advocate General of State of Tamil Nadu) do not form part of the Full Court. Therefore, Hon'ble Supreme Court in *Indira Jaising* has put in place a system by judicial pronouncement and the same has to be operated.

(x) The argument that candidates recommended by Judges should be placed on a different pedestal does not impress us as the said Rules envisages complete parity amongst candidates irrespective of whether they are recommended by the Chief Justice, a permanent Judge, proposed by two designated Senior Advocates with more than 15 years standing or on a self application endorsed by two designated Senior Advocates. This is amply clear from the plain language of sub rule (1) of Rule 5 of said Rules. One other significant aspect of the matter is, a careful perusal of Rule 5(1)(a) makes it clear that said Rules does not make a



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distinction even between a candidate recommended by the Hon'ble Chief Justice and a candidate recommended by a permanent Judge though the Hon'ble Chief Justice is the administrative head of the High Court and is first amongst equals only on the judicial side.

(xi) A further perusal of Rule 5 of said Rules makes it clear that there are four modes of proposals and methods of submission of application for designation and they are as follows:

- (a) Recommendation by the Hon'ble Chief Justice;
- (b) Recommendation by a Hon'ble Permanent Judge;
- (c) Proposal by two designated Senior Advocates who have been Senior Advocates for not less than 15 years;
- (d) Endorsement of the applicant's application by two designated Senior Advocates.

The scheme of the said Rules makes it clear that there is complete parity as between aforementioned four modes of proposals and methods of submission. In this regard, in answer to the suggestive argument that the recommendation



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by a sitting Hon'ble Judge should be at a different / higher pedestal, it is to be noted that vide sub rule (7) of Rule 7 of said Rules, in the Full Court, if there is a tie as regards the approval of names cleared by Permanent Committee, Hon'ble Chief Justice has the veto to break the tie but the recommendation by Hon'ble Chief Justice is also placed on par with the recommendation of other permanent Judges, proposal by designated Senior Advocates and endorsement of an application by designated Senior Advocates.

(xii) Said Rules were originally published on 15.07.2020 and it comes to light that it has been amended three times over on 20.01.2021, 15.09.2021 and 04.05.2022, all of which were obviously approved by the Full Court. Therefore, Hon'ble Full Court has put in place said Rules, wherein the remit of the Permanent Committee has been clearly / categorically set out and it is also to be borne in mind that not less than 20 High Courts have made rules which are in many ways similar to said Rules and are all modelled on ***Indira Jaising*** which was followed as / by template



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guidelines issued by Hon'ble Supreme Court. Some of the Rules made by High Courts in Jammu and Kashmir, Jharkhand, Madhya Pradesh, Orissa, etc., do not provide for proposals by designated Senior Advocates and Calcutta High Court provides for designation of those candidates who secure not less than 60 marks in the Permanent Committee and with a window to the Permanent committee to relax the benchmark of 60 marks in suitable cases. To be noted, this is by way of illustration and by no means exhaustive. Relevant Rule in Calcutta High Court is Rule 20 and the same reads as follows:

'20.Only those applicant Advocates who secure at least 60 marks shall be designated as Senior Advocates. However in a deserving case, for favourable consideration, the Permanent Committee may relax the benchmark of 60 marks upto a maximum of 10 marks and designate an applicant Advocate as Senior Advocate.'

Therefore, the **Indira Jaising** guidelines / template have been suitably adopted by various High Courts and in this High Court, Rule 7(5) operates.



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Court for discussion / approval. For further clarity, the candidates / applicants cleared by the Permanent Committee will have to be considered for approval by Full Court. The question as to clearing or not clearing of a candidate by the Permanent Committee will not before the Full Court. There is no reason to read the term 'All' to be qualifying only the expression 'names that are listed before Permanent Committee'. In other words, the expression 'listed before and cleared' read conjunctively is prefixed by 'All names' and followed by suffix 'Permanent Committee'.

(xiv) The scheme of said Rules is such that (a) the remit and prerogative of clearing / not clearing names (for being placed before the Full Court) is vested with the Permanent Committee [Sub Rules (1) to (4) of Rule 7 of said Rules]; that (b) the Permanent Committee can collect data by deploying the permanent secretariat [Sub Rule (3) of Rule 3 of said Rules]; that (c) the remit and prerogative to approve / disapprove the names cleared by the Permanent Committee is vested with the Full Court [Sub Rules (5) to (7) of Rule 7 of



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said Rules]; that (d) if a proposal is deferred by the Permanent Committee, there will be a cooling period of one year for consideration again [Sub Rule (4) of Rule 7 of said Rules]; that (e) if a candidate cleared by the Permanent Committee is not favourably considered by the Full Court, the same may be reviewed or reconsidered after expiry of a period of two years [Sub Rule (8) of Rule 7 of said Rules]; and that (f) the drill of the Full Court of considering names (favourably or otherwise) cleared by the Permanent Committee shall be qua simple majority. In this scheme, there is no provision for the Full Court to scrutinize the names not approved by the Permanent Committee. Therefore, the plea that all the 161 names should be placed before the Full Court for approval / scrutiny is misplaced.

(xv) Said Rules have been put in place by the Full Court and it has been amended thrice over as already alluded to supra which means 'said Rules' is a product of profound thought process of Hon'ble Full Court. Therefore, the submission predicated on reference under Rule 11 of said



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Rules does not persuade us to yield to the argument.

(xvi) In **Indira Jaising** (order dated 12.10.2017, reported in (2017) 9 SCC 766) when the guidelines were put in place, Madras High Court was heard. This is captured in paragraph 46.

(xvii) In paragraph 74 of **Indira Jaising**, it has been made clear that the rules made by High Courts will have to be operated for some time, so that the shortcomings if any are noticed and revisited / reconsidered. It is imperative that the rules are operated fully at least once before any further deliberation.

(xviii) Post **Indira Jaising**, Hon'ble Supreme Court had put in place guidelines [The Supreme Court Guidelines to Regulate Conferment of Designation of Senior Advocates, 2018]. In these guidelines also, there is no reference to reservation.

(xix) Said Rules having been made post **Indira Jaising** and guidelines issued by Hon'ble Supreme Court has



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made a provision for names cleared by Permanent Committee being placed before the Full Court for approval. The scheme is clear that the names cleared by Permanent Committee are to be placed before Full Court. In this view of the matter, if all names before the Permanent Committee are also taken up by the Full Court, that will tantamount to the Full Court scrutinizing the evaluation drill of Permanent Committee which includes interaction. This will mean that the wisdom of the Permanent Committee itself is being subjected to scrutiny (without the benefit of interaction) and that is certainly not the scheme of said Rules as it exists today. Therefore, the plea that all 161 names have to be placed before Full Court dehors Rule 7(5) of said Rules detracts the letter and spirit of said Rules rather than furthering the same.

(xx) A careful perusal of said Rules will make it clear that the Permanent Committee can collect material through permanent Secretariat and that will also be one of the determinants.

(xxi) Submissions made by the intervenor are



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completely outside the scope of the main writ petition as already alluded to supra. This by itself drops the curtains on the captioned matter. However, considering the nature of the matter, we have dealt with the other points also (albeit on a demurrer) and given our dispositive reasoning considering the nature of the matter as delineated supra.

14. Owing to the narrative, discussion and dispositive reasoning set out supra, we find no ground to issue notice to respondents 4 and 5.

15. In the light of the narrative thus far, captioned Writ Petition is dismissed. Connected Writ miscellaneous petition is also dismissed. There shall be no order as to costs.

(M.S., J.) (N.S.K., J.)
23.12.2022

Speaking order: Yes/No
Index: Yes/No
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1. I had the benefit of going through the thoughtful and well reasoned order of my esteemed Brother Hon'ble Mr.Justice M.Sundar. I entirely concur with the views and conclusions which my erudite Brother has drawn, based on a remarkable process of reasoning.

2. While concurring with my learned Brother Hon'ble Mr.Justice M.Sundar, I would all the same wish to trace the history and evolution of the powers of the High Court to designate an Advocate as a Senior Advocate right from the *Letters Patent, 1865* to the *Advocates Act, 1961*.

3. Before the Advocates Act, 1961 came into force, the power to admit and enroll Advocates, Vakeels and Attorneys vested with this Court under the **Letters Patent, 1865**. Clause 9 of the Letters Patent, 1865 reads as follows:

**"Clause 9: Powers of High Court
admitting Advocates, Vakeels and Attorneys:**
*And We do hereby authorise and empower the
said High Court of Judicature at Madras to*



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approve, admit and enrol such and so many Advocates, Vakeels and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakeels and Attorneys shall be and are hereby authorised to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court, may by its rules and directions determine, and subject to such rules and directions."

4. Even after the **Indian Bar Councils Act, 1926** came into force, the power to enroll Advocates were retained by the High Court under Section 9 of the said Act. Despite the above powers, 1926 Act did not make any distinction between Senior Advocates and other Advocates.

5. Further, the use of the expression "Senior Advocate" is found in the **Federal Court of India Rules, 1937**. Order VII Rules 2 to 4 of the Federal Court of India Rules, 1937 read as follows:

"Rule 2. *The Roll of Advocates shall be in two parts, one containing the names of Senior Advocates and the other the names of other Advocates.*



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Rule 3. *A Senior Advocate shall have precedence over other Advocates who are not Senior Advocates, and the provisions of the First Schedule to these Rules shall apply with respect to Senior and other Advocates.*

Rule 4. *A person shall not be entitled to be enrolled as an Advocate unless he is, and has been for not less than ten years in the case of a Senior Advocate or five years in case of any other Advocate, enrolled as an Advocate in the High Court of a Province."*

6. Thus, Rule 3 of Order VII of the Federal Court of India Rules, 1937 recognise the Senior Advocates right of precedence over other Advocates. How the system of designating Senior Advocates developed and flourished in England has been explained by the Hon'ble Supreme Court in ***Indira Jaising Vs. Supreme Court of India through Secretary General*** reported in (2017) 9 SCC 766 in paragraphs 8 to 16 and 20.

7. It is relevant to note that **All India Bar Committee in 1953** headed by Hon'ble Mr.Justice S.R.Das of the Hon'ble Supreme Court



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deliberated the issue as to whether a distinction should be maintained between Senior Advocates and other Advocates. Despite elaborate discussions the All India Bar Committee could not arrive at a consensus in taking a decision. Consequently, the Committee refrained from making any proposal either in favour or against such proposal.

8. Thereafter, the issue was taken up by the Law Commission of India. The **Law Commission of India** in its **14th Report (1956)** did not accept the views of the All India Bar Committee. However, the Law Commission was of the view that it should be left to the Hon'ble Supreme Court and the High Court to invite a member from the Bar for conferring such a designation instead of asking the Advocates to make an application. In its Fourteenth Report, the Law Commission made the following observations in paragraphs 34, 35, 36 and 38, which is extracted hereunder:

"Para 34. Division Desirable: A division of the Bar such as we envisage should, therefore, result in achieving several objectives. To the seniors it will mean the recognition of a successful career at the Bar by the conferment of a privilege which will give



them an honoured position among members of the profession and enable them to concentrate on important work yielding as large or perhaps a larger income. It should result in putting work in the hands of the junior members of the Bar. This should hearten them and raise their morale, which in its turn should attract an abler class of men to the profession. As stated earlier, it is the long period of waiting at an over-crowded Bar that operates as the chief deterrent to many who are otherwise anxious to enter upon a legal career. The distribution of work among a larger number should also help to prevent delays caused by adjournments.

Para 35.*That appears to us to be too pessimistic a view. The Formulation of all schemes must be based on the assumption of the existence of certain standards of integrity and character. In England the system of Queen's Counsel being chosen by the Lord Chancellor has prevailed for many years and appears to have worked satisfactorily. We do not see any reason why such a system should not be capable of being worked in India.*

Para 36. *Instead, however, of leaving*



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it to the members of the Bar to make an application for enrollment in the Senior List as is done in England for being enrolled as Queen's Counsel, we recommend that it should be left to the Chief Justice and the Judges of the High Court or the Supreme Court to invite a member of the Bar to put himself on the list of senior advocates. In making an offer to an advocate to be enrolled on the list of senior advocates, the Chief Justice and the Judges will doubtless be guided by the consideration that the advocate invited deserves the distinction by virtue of his ability, status and reputation at the Bar.

Para 38. *The question of the designation to be given to the senior advocates was canvassed before us in evidence. It was suggested that following the practice in England they may be designated 'President's Counsel' or 'Republic Counsel'. Our inclination is to adhere to the nomenclature which has been in vogue ever since the establishment of the Federal Court in 1937 and give them the designation of 'Senior Advocates'."*



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9. The Report of the Law Commission of India and its observations finally culminated in statutory division into Senior Advocates under Section 16 of the **Legal Practitioners Bill, 1959**, which was later enacted as Section 16 of the **Advocates Act, 1961**.

10. It is relevant to note that the Hon'ble Supreme Court in the Judgment *In re T.V.Choudhary* reported in (1987) 3 SCC 258 in paragraph 10 has held as follows:

"Para 10. By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honour and privilege conferred on advocates of standing and experience by the Chief Justice and the Judges of this Court. They thus become leading counsel and take precedence on all counsel not having that rank. A senior counsel though he cannot draw



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up pleadings of the party, can nevertheless be engaged “to settle” i.e. to put the pleadings into “proper and satisfactory form” and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors.”

11. It is relevant to note that designating an Advocate as a Senior Advocate is a matter of honour and privilege conferred upon a Member of the Bar. This Court is of the view that such privilege and honour cannot be based on reservation. It must be purely based on the merit cum ability and successful career of the Member of the Bar irrespective of the gender of the Member at the Bar.

12. In ***Adv.P.B.Sahasranaman Vs. Kerala High Court***, reported in ***AIR 2018 Kerala 105*** in paragraph 8 the Kerala High Court has held as follows:

"8. The first question that would arise is whether an Advocate can consider it to be his right to be declared as a Senior Advocate or can he claim as a matter of right to be declared



as a Senior Advocate? The answer would clearly be in the negative, if we closely read the provisions of Section 16(2) of the Advocates Act. This Section clearly emphasis, firstly, that it is a distinction conferred and not something that comes about automatically upon achieving known or predetermined standards. It is a privilege based upon the opinion of the Court considering ability, standing at the Bar or special knowledge or experience in law. Thus, it is a subjective decision though based on objective considerations. It is in view of this, we consider it appropriate to hold that such a claim cannot be made as a matter of right."

13. From the above, it is clear that Section 16(2) of the Advocates Act clearly emphasis, firstly, that it is a distinction conferred and not something that comes about automatically upon achieving known or predetermined standards. It is a privilege based upon the opinion of the Court considering ability, standing at the Bar or special knowledge or experience in law. Thus, it is a subjective decision though based on objective considerations. Such view of the matter, this Court considers it appropriate to hold that such a claim cannot be made as a matter of right.



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14. Similarly, in ***T.N.Raghupathy Vs. High Court of Karnataka*** reported in ***2020 SCC OnLine Kar 93*** the High Court of Karnataka has held in paragraph 151 (d) to (n) as follows:

"Para 151.(d) The power to designate an Advocate as a Senior Advocate vests only in a Full Court of a High Court;

(e) The Chief Justice of a High Court, the two senior most judges and the Advocate General of the State are ex-officio members of the Permanent Committee and they cannot be replaced by anyone else, so long as the directions contained in Indira Jaising (supra) are not modified or amended;

(f) The function of the Permanent Committee Constituted by the High Court is firstly, to direct its Permanent Secretariat to collect certain information/data from certain sources about the Advocates who have applied for designation, if the Permanent Committee finds it necessary. The second function of the Permanent Committee is to examine each case in the light of the data compiled by the Secretariat of the Permanent Committee, hold



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interactions / interviews with each candidates and to make overall assessment of all candidates by assigning points/marks out of 100, as provided in the table, forming a part of paragraph 73.7 of the directions issued by the Apex Court. The Apex Court has not conferred any specific power on the Permanent Committee to make any recommendation of any particular candidate. At highest, the points assigned by the Permanent Committee to the candidates will constitute its recommendation;

(g) The overall assessment made by the Permanent Committee in respect of every candidate shall be placed before the Full Court for decision, as the decision making authority vests in the Full Court;

(h) The Full Court is not bound by the overall assessment or points/marks assigned by the Permanent Committee. The Full Court may agree or may not agree or may partially agree with the overall assessment made by the Permanent Committee. The members of the Full Court can always ignore the point based overall assessment of the



Permanent Committee and call for the records of each candidate and take appropriate decision;

(i) As per the directions of the Apex Court, the Permanent Committee is required to make a broad or overall assessment by assigning points out of 100. The exercise undertaken by the Permanent Committee cannot be treated as a conduct of an examination of the candidates or conduct of a selection process. The interview/interaction conducted by the Permanent Committee cannot be treated as a vivo voce conducted for the purposes of a selection process. The interview/interaction is not vitiated only because it is done for few minutes or only because few questions were asked during interaction;

(j) A writ Court, while exercising its power of judicial review under Article 226 of the Constitution, cannot go into the correctness or merits of the marks or points assigned to the candidates unless the process is vitiated by gross illegality or proved bias or



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mala fides or the assessment is so arbitrary or capricious that no reasonable person can make such an assessment. The writ Court cannot sit over in appeal on the point based overall assessment made by the Permanent Committee;

(k) The decision of the Full Court on the question of granting designation or declining to grant designation is not taken in exercise of quasi judicial or judicial power. The Full Court is not supposed to conduct an examination of the candidates or to conduct a selection process. The decision of the Full Court is based on the formation of an opinion in accordance with sub-section (2) of Section-16 of the Advocates Act, 1961 that by virtue of his ability, standing at the Bar or special knowledge or experience in law, a particular Advocate deserves designation. The formation of opinion must be based on materials. The Full Court is not bound to record reasons for grant of designation or for declining to grant designation;



(l) When a writ Court is called upon to exercise its power of judicial review under Article-226 of the Constitution of India against the decision of the Full Court, it cannot go into the merits of the decision and it can examine only the decision making process. Unless the decision is vitiated by gross illegality apparent on the face of the record or it is a case of established mala fides or established bias, a writ court cannot interfere. A writ Court can interfere when the decision is so capricious or arbitrary that no reasonable person can arrive at such a decision. The test is not what the Court considers reasonable or unreasonable. While exercising its power under Article-226, the High Court has to keep in mind that the decision is taken by the constitutional functionaries, namely, the Judges of the High Court. A writ Court cannot go into the adequacy of material before the Full Court;

(m) As directed by the Apex Court in paragraph 73.9, the general rule is that voting by secret ballot will not be normally be resorted to by the Full Court. The voting by secret ballot will be resorted to by the Full



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Court only in exceptional circumstances and when it is un-avoidable. Merely because few members of the Full Court who are in minuscule minority seek secret ballot, recourse to secret ballot cannot be taken, as it will defeat the directions of the Supreme Court contained in paragraph 73.9 of the directions;

(n) The Full Court is not bound to record reasons for not accepting the dissent expressed by few Members;"

15. From the above, it is clear that after discussing at length, the Karnataka High Court has concluded that the Permanent Committee only makes an overall assessment of the candidates. The ultimate power to designate an Advocate as a Senior Advocate lies with the Full Court. The Full Court can take a contrary view if necessary. It is also further held that even the Writ Court cannot sit in appeal over the marks given by the Permanent Committee, more specifically, the Writ Court will also not go into the adequacy of the material before the Full Court.

16. Considering the above judgments, the designation of Senior Advocate is only a honour and privilege based on various criteria as set



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out in the Rules and the directions issued by the Hon'ble Supreme Court in

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766. One cannot claim as a matter of right to designate him/her as a Senior Advocate. Similarly the conferment of the designation as Senior Advocate is not a post, for that one cannot seek reservation. Accordingly, I am fully concurring with the views and opinion of my learned Brother Hon'ble Mr.Justice M.Sundar and dismiss the writ petition.

23.12.2022
(N.S.K.J.)

Index : Yes / No
kk



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W.P.(MD)No.27523 of 2022
and
W.M.P.(MD)No.21615 of 2022
in
W.P.(MD)No.27523 of 2022

M.SUNDAR, J.
and
N.SATHISH KUMAR, J.

(Proceedings of the Court was made by M.SUNDAR, J.)

Captioned matter was listed under the cause list caption 'FOR PRONOUNCING ORDERS'.

2.We pronounced orders dismissing the captioned main writ petition and writ miscellaneous petition. Immediately thereafter, Mr.B.Ravi Raja, learned counsel representing the counsel on record for the writ petitioner made a oral application seeking Certificate for appeal to Hon'ble Supreme Court under Article 134-A(b) of the Constitution of India.

3.Learned counsel in his aforementioned oral application immediately after passing order sought Certificate for appeal to Hon'ble Supreme Court on three grounds (orally raised) and they are as follows:



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(a)Whether captioned matter could have been

transmitted from Madurai Bench to the Principal Seat of this Court without assigning cogent reasons?

(b)Whether the captioned writ petition could

have been dismissed at the preliminary stage without issuing notice to the 4th respondent?

(c)Whether a view said to have been

expressed by Hon'ble Chief Justice of India said to have been reported is binding?

4.According to learned counsel Mr.B.Ravi Raja, the above three questions are substantial questions of law of general importance and the oral application for Certificate for appeal was predicated on this threefold plea.

5.We have carefully considered the oral application for Certificate for appeal to Hon'ble Supreme Court. A oral application for Certificate for appeal to Hon'ble Supreme Court is under Article 134-A(b) of the Constitution of India as already alluded to supra. A careful perusal of the Article 134-A(b) leaves us with the considered view that there are two circumstances under which Certificate can be granted and they are as



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follows:

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(i)Where a substantial question of law as to the interpretation of the Constitution is involved [Article 132(1) of the Constitution];

(ii)Where a High Court certifies that a case involves a substantial question of law of general importance [Article 133(1)(a) of the Constitution] and when this Court (High Court) is of the opinion that the said question needs to be decided by Hon'ble Supreme Court [Article 133(1)(b) of the Constitution].

6.At the outset, it is to be noted that we have concluded (in the order in the captioned matter qua which Certificate for appeal is sought) that the writ petitioner does not have locus as he is neither a applicant nor aggrieved person qua reservation that has been claimed. We have returned this finding in captioned writ petition as the writ petitioner has categorically averred in the writ affidavit that he has not filed a Public Interest Litigation and that it is his assertion of rights qua Article 226. Article 134-A(b) of the Constitution of India makes it clear that a oral



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application can be made 'by or on behalf of the party aggrieved' (immediately after passing / making of final order). Therefore, a oral application made by the writ petitioner cannot be treated as a application made by a party aggrieved by us. Be that as it may, we proceed to examine on a demurrer the three grounds on which Certificate for appeal has been sought.

7.The three grounds which turn on sub clause (1) of Article 132, sub-clauses (1)(a) and (1)(b) of Article 133 of the Constitution of India would take one to Article 134(1)(c) which in turn would lead to examining the plea for granting a Certificate for appeal to Hon'ble Supreme Court qua an oral application under Article 134-A(b).

8.We carefully considered the three questions raised by learned counsel for writ petitioner. As regards the first question, in the opening paragraph, we have referred to an order dated 13.12.2022 made by Hon'ble Acting Chief Justice on the administrative side. This is a determination placing captioned matter before this Bench. The case file placed before us shows that another file note order dated 22.04.2021 /



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20.04.2021 made by then Hon'ble Chief Justice of this Court and another

Hon'ble Judge of this Court has been annexed. A perusal of this note order

on the administrative side brings to light that it is traceable to an order dated 04.03.2021 made in W.P.(MD)No.4725 of 2021 on the judicial side.

A careful perusal of this note order makes it clear that writ petitions relating to Pan-State matters or the subject matter of any litigation (including Public Interest Litigations) pertaining to districts covered by the Madurai Bench of Madras High Court shall be transferred to the Principal Seat and writ petitions of this nature if filed in future will also be transmitted to the Principal Seat at Madras as and when filed. This by itself answers the first question raised by learned counsel and therefore, as regards the first question we find no ground to grant Certificate for appeal.

9.The next question is regarding dismissal of writ petition purportedly at preliminary stage without issuing notice to 4th respondent. Writ petition was listed in the admission Board and therefore, the writ petition has been dismissed at the admission stage and that may not really qualify as preliminary stage. Assuming for a moment (on a demurrer) even if it is construed as preliminary stage, we have discussed and given our



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dispositive reasoning in various paragraphs before coming to the conclusion that we find no ground to issue notice to respondents 4 and 5.

This is articulated in paragraph 14 of the lead order of this Bench made by one of us (M.SUNDAR, J.) and the discussion and dispositive reasoning is set out in the preceding paragraphs thereat. The concurring order made by one of us (N.SATHISH KUMAR, J.) also buttresses this dispositive reasoning.

10.The third question raised, in our respectful view is a non starter as it does not turn on any judicial pronouncement. We do not want to make a venture and we do not want to embark upon the adventurous exercise of examining or going into any speech said to have been made by Hon'ble Chief Justice of India in a public forum, more so on the basis of what according to the writ petitioner is a press report. This answers the third question also against the writ petitioner.

11.The further buttressing features with regard to the second and third questions are, *Indira Jaising Vs. Supreme Court of India* reported in (2017) 9 SCC 766 case regarding designation of Senior Advocates is the substratum of the matter. We have also referred to a judgment of



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Hon'ble Supreme Court reported in **(1987) 3 SCC 258 [In re T.V.Choudhary]** as regards the character of designation of Senior Advocates, i.e., that it is a privilege / honour and not a post. Therefore, Certificate for appeal to Supreme Court is a non starter.

12. Another buttressing feature is, the expression 'substantial question of law' has been elucidatively explained in a long line of case laws (albeit on Section 100 of the Code of Civil Procedure, 1908) by Hon'ble Supreme Court starting from ***Sir Chunilal V.Mehta and Sons Ltd., Vs. Century Spinning and Manufacturing Co. Ltd.***, reported in ***AIR 1962 SC 1314***, ***Santosh Hazari Vs. Purushottam Tiwari*** reported in ***(2001) 3 SCC 179*** and ***Hero Vinoth Vs. Seshammal*** reported in ***(2006) 5 SCC 545*** and therefore, we do not want to delve into the same. Suffice to say that we draw inspiration from this instructive line of ratios and say that 'substantial question of law' is one where the issue is open / not concluded.

13. Hon'ble Supreme Court in ***Indira Jaising*** case supra has put in place a framework for designation of Senior Advocates holding that time has come for uniform parameters / guidelines qua all Courts in the



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Country including Supreme Court and has emphasised that maximum objectivity to be the sublime philosophy underlying this. As this is the substratum of the matter, the purported substantial questions of law do not find favour with us.

14. Sequitur of narration, discussion and dispositive reasoning supra is, oral application on behalf of the writ petitioner for Certificate for appeal to Supreme Court under Article 134-A(b) is not acceded to. To put it differently, oral application is negatived / rejected.

(M.S., J.) (N.S.K., J.)
23.12.2022

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To

1. The Registrar (Judicial),
High Court of Madras,
Madurai Bench,
Madurai-623 023.
2. The Registrar (Judicial),
Permanent Secretariat for Designation of
Senior Advocate,
High Court of Madras,
Chennai-600 104.
3. The Registrar (Admn.)
High Court of Madras,



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Chennai-600 104.

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4.National Commission for Women,
377J+7J5, PWD Estate,
Chepauk,
Triplicane, Chennai-600 005

5.The Secretary to Government,
Law Department,
Fort St. George,
Chennai-600 009.



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M.SUNDAR.J.
and
N.SATHISH KUMAR, J.

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order in
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and
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