IN THE SUPREME COURT OF INDIA

(ORIGINAL CIVIL WRIT JURISDICTION)

WRIT PETITION (CIVIL) NO._____2007

IN THE MATTER OF:

1. SHANTI BHUSHAN,
   C-67,
   SECTOR-14,
   NOIDA,
   U.P.

2. KAMINI JAISWAL
   E-77 (FF)
   SAKET,
   NEW DELHI .....PETITIONERS

VERSUS

1. UNION OF INDIA
   THROUGH SECRETARY
   DEPARTMENT OF JUSTICE,
   MINISTRY OF LAW AND JUSTICE,
   4TH FLOOR, A-WING,
   SHASTRI BHAWAN,
   NEW DELHI-110 001

2. JUSTICE S. ASHOK KUMAR,
   JUDGE,
   HIGH COURT OF JUDICATURE
   AT MADRAS, CHENNAI,
   TAMILNADU .....RESPONDENTS

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

To,
Hon'ble The Chief Justice of India and
his companion Justices of the Supreme Court of India

Most respectfully showeth:

1. That this Writ Petition is being filed under Article 32 of the Constitution of India in public interest seeking appropriate declarations and issuance of writ of quo-warranto or any other writ or direction by this Hon'ble Court for quashing the appointment of Justice S Ashok Kumar i.e Respondent No. 2 as a Judge of the Madras High Court.
2. The appointment of Respondent No. 2 made in February 2007 is unconstitutional, illegal and in contravention of the law laid down by this Hon'ble Court which is binding on all constitutional authorities including the Chief Justice of India while exercising the power of recommending the

appointment of High Court Judges. The act of Respondent No. 1 in appointing Respondent No. 2 as a Judge is unconstitutional and arbitrary and thus, in violation of Article 14 of the Constitution.

3. The Petitioners are seeking the aforementioned relief from this Hon'ble Court as Justice S Ashok Kumar has been appointed as a Permanent Judge of the Madras High Court by Respondent No. 1 in total violation of the law, regarding the appointment of Judges of the High Courts, as laid down by this Hon'ble Court, first in Supreme Court in Advocates-on-Record Association vs. UOI, (1993) 4 SCC 441 and then in Special Reference No. 1 of 1998, (1998) 7 SCC 739. This Hon'ble Court, in the aforementioned cases, clearly laid down that the opinion of the Hon'ble Chief Justice of India has primacy in the matter of appointments to the Judges of the Supreme Court and the High Courts and the primacy of the opinion of the Chief Justice of India in this context is, in effect, primacy of the opinion of the Chief Justice of India formed collectively, that is to say, after taking into account the views of his senior colleagues who are required to be consulted by him for the formation of his opinion and no appointment can be made by the Respondent, unless it is in conformity with the final opinion of the Chief Justice of India, formed in the aforesaid manner. In the case of the appointment of High Court judges, any such recommendation to appoint a judge of a High Court is to be made by the Hon'ble Chief Justice of India in consultation with the two senior most pusine Judges of the Supreme Court as well as with the Chief Justice and the senior judges of the concerned High Court and also with the Supreme Court Judges, who are having knowledge of the concerned High Court. Thus, unless and until, the opinion of the Chief Justice of India is formed in accordance with the norms and requirements of the consultation process, as aforesaid, the same would not be considered as final opinion of the Hon'ble Chief Justice and therefore, no appointment can be made by the Respondent on the basis of any such recommendation.

4. The Hon'ble Supreme Court in a case reported at (1992) 2 SCC 428 at 457 (Shri Kumar Padma Prasad v. UOI) quashed the appointment of K. N.

Srivatava as a Judge of the Gauhati High Court. The Hon'ble Supreme Court in Prem Chand Garg vs. Excise Commissioner, AIR 1963 SC 996 has also struck down as invalid and unconstitutional its own rules.

5. However, in the present case, the recommendation to make Respondent No.2, who had been the Additional Judge for almost four years, as a permanent Judge of the Madras High Court was made without any consultation with the collegium of judges as required by the aforementioned judgements of this Hon'ble Court. Thus, despite the fact that the aforementioned recommendation was not in conformity with the final opinion of the Hon'ble Chief Justice of India, formed in the manner as laid down in the aforementioned judgements, the appointment of Respondent No.1 was made on 2nd February 2007 as a Permanent Judge of the Madras High Court, which is clearly illegal and arbitrary and thus, clearly violative of Article 14 of the Constitution of India and is subversive of the independence of Judiciary.

6. The law as declared by the Hon'ble Supreme Court requires the ascertainment of views of various judges (apart from the Chief Justice of India) as mentioned above. Further, as held by the Supreme Court in Special Reference No. 1 of 1998, (1998) 7 SCC 739, all these views should be expressed in writing and conveyed to the Government of India.

7. Petitioner No. 1 is a former Union Law Minister and also a senior advocate and has vast experience as a practicing lawyer for more than 55 years. Petitioner No. 2 is also an advocate. Both the Petitioners are members of the Committee of Judicial Accountability (COJA) which was constituted in April, 1990 to discuss the appointments, transfers and accountability of judges of the higher judiciary. Both the Petitioner through COJA and also individually have been raising the issues of accountability of the Judges, their appointments etc. from time to time. Further, both the Petitioners, through COJA, were involved in the initiation of the impeachment proceeding of the Former Judge of the Supreme Court namely Justice V. Ramaswami.

8. The brief relevant facts are as under:

I. In April 2003, Respondent No. 2 was appointed as an Additional Judge of the Madras High Court under Article 224 (1) of the Constitution which reads as under:

"*If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be Additional Judges of the Court for such period not exceeding two years as he may specify."*

Thereafter, extensions/reappointments were given/made from time to time reappointing Respondent No. 2 as Additional Judge until 2nd /3rd February 2007 when he was purported to be appointed and sworn in as a permanent Judge of the Madras High Court.

II. In August 2005, the then Chief Justice of India and the two senior most Judges of this Hon'ble Court were Justice R. C. Lahoti, Justice Y.K. Sabharwal and Justice Ruma Pal and the said Judges refused to recommend the appointment of Respondent No. 2 as a permanent Judge of the Madras High Court due to adverse reports. Consequently, Respondent No. 2 should have ceased to be a Judge on expiry of his term as Additional Judge. However, despite the above refusal, the then Chief Justice of India recommended extension/reappointment of Respondent No. 2, to continue him as an Additional Judge in contravention and breach of the law declared by the Supreme Court in the aforesaid two judgments and Respondent No. 1 reappointed him as Additional Judge for a short period.

III. Respondent No. 2 was extended/reappointed as Additional Judge by Respondent No. 1 upto 3rd February 2007. These extensions/reappointments were not in conformity with the final opinion of the then Chief Justice of India formed in consultation with

other Judges as laid down in the above Judgements. Thus Respondent No. 2 unconstitutionally continued as an Additional Judge for almost four years before his appointment as a Permanent Judge in February 2007.

IV. Finally, on February 2/3, 2007, Respondent No.2 was purported to be appointed and sworn in as Permanent Judge of the Madras High Court by Respondent No. 1. The recommendation to appoint him as a permanent Judge was not based on the final opinion of the Hon'ble Chief Justice of India, Shri K. G. Balakrishnan formed in the manner as required in the aforementioned judgements namely Supreme Court Advocates-on-Record Association v. UOI, (1993) 4 SCC 44 and Special Reference No. 1 of 1998, (1998) 7 SCC 739.

V. The Chief Justice of India did not form his opinion by consulting the two senior-most Judges, nor did he consult other Judges of the Supreme Court "who are conversant with the affairs of the High Court concerned"- a category which would include serving Supreme Court Judges who were pusines Judges or Chief Justices of Madras High Court even though the Madras High Court was not their parent High Court and they were transferred to that High Court. The views of these concerned Judges are required to be expressed in writing and conveyed to the Government of India along with the recommendation of the Chief Justice of India which procedure was not followed.

VI. A notification to appoint Respondent No. 2 as permanent Judge was issued on 2nd February 2007 and next morning he was sworn in on Saturday 3rd February 2007. A copy of a detailed newspaper report in the Times of India dated 24th February 2007 (which has not been controverted) regarding the appointment of Respondent No. 2 is annexed hereto as **Annexure A.**

9. It is submitted that this Hon'ble Court, as stated above, first in Supreme Court in Advocates-on-Record Association v. UOI, (1993) 4 SCC 44 and then in

Special Reference No. 1 of 1998, (1998) 7 SCC 739, laid down, in detail, the law regarding the appointment of the Judges of the Supreme Court and the High Courts. This Hon'ble Court in its later judgment of 9 Judges Bench, while approvingly referring to the earlier judgment in SC Advocates on Record case, held

> *"12. The majority view in the Second Judges case is that in the matter of appointments to the Supreme Court and the High Courts, the opinion of the Chief Justice of India has primacy. The opinion of the Chief Justice of India is "reflective of the opinion of the judiciary, which means that it must necessarily have the element of plurality in its formation". It is to be formed "after taking into account the view of some other Judges who are traditionally associated with this function." The opinion of the Chief Justice of India "so given has primacy in the matter of all appointments". For an appointment to be made, it has to be "in conformity with the final opinion of the Chief Justice of India formed in the manner indicated"……"*

In S.C. Advocates-On-Records case, it was held in clear terms at page 703 that,

> *"478(5) The opinion of the Chief Justice of India, for the purposes of Articles 124 (2) and 217 (1), so given, has primacy in the matter of all appointments; and no appointment can be made by the President under these provisions to the Supreme Court and the High Courts, unless it is in conformity with the final opinion of the Chief Justice of India, formed in the manner indicated."*

Regarding the procedure of formation of the final opinion of the Chief Justice of India, this Hon'ble Court in Special Reference case held (at page no. 767 &768);

> *"29. ……. The Chief Justice of India should, therefore, form his opinion in regard to a person to be recommended for appointment to a High Court in the same manner as he forms it in regard to a recommendation for appointment to the Supreme Court, that is to say, in consultation with his senior most pusine Judges. They would in making their decision take into*

account the opinion of the Chief Justice of the High Court which "would be entitled to the greatest weight", the views of other Judges of the High Court who may have been consulted and the views of colleagues on the Supreme Court Bench "who are conversant with the affairs of the High Court concerned." Into the last category would fall Judges of the Supreme Court who were pusine Judges of the High Court or Chief Justices thereof, and it is of no consequence that the High Court is not their parent High Court and they were transferred there. The objective being to gain reliable information about the proposed appointee, such Supreme Court Judge as may be in a position to give it should be asked to do so. All these views should be expressed in writing and conveyed to the Government of India along with the recommendation.

30. Having regard to the fact that information about a proposed appointee to a High Court would best come from the Chief Justice and Judges of that High Court and from Supreme Court Judges conversant with it, we are not persuaded to alter the strength of the decision making collegium's size; where appointments to the High Courts are concerned, it should remain as it is, constituted of the Chief Justice of India and the two senior most pusine Judges of the Supreme Court."

10. Further, in both the aforementioned cases, this Hon'ble Court has also discussed the grounds under which the appointment of any judge can be reviewed. To quote from S.C. Advocates-on-Record case (at page no. 708);

"482…….Except on the ground of want of consultation with the named constitutional functionaries or lack of any condition of eligibility in the case of appointment, or of a transfer being made without the recommendation of the Chief Justice of India, these matters are not justiciable on any other ground, including that of bias, which in any case is excluded by the element of plurality in the process of decision-making."

In Special Reference case, this Hon'ble Court has stated (at page no. 768);

"32. Judicial review in the case of an appointment or a recommended appointment, to the Supreme Court or a High Court is, therefore, available

if the recommendation concerned is not a decision of the Chief Justice of India and his senior most colleagues, which is constitutionally requisite. They number four in the case of a recommendation for appointment to the Supreme Court and two in the case of a recommendation for appointment to a High Court. Judicial review is also available if, in making the decision, the views of the seniormost Supreme Court Judge who comes from the High Court of the proposed appointee to the Supreme Court have not been taken into account. Similarly, if in connection with an appointment or a recommended appointment to a High Court, the views of the Chief Justice and senior Judges of the High Court, as aforestated, and of Supreme Court Judges knowledgeable about that High Court have not been sought or considered by the Chief Justice of India and his two senior most pusine Judges, judicial review is available. Judicial review is also available when the appointee is found to lack eligibility."

11. It would be pertinent here to mention that this Hon'ble Court earlier in S.P.Gupta vs. Union of India, (1981) Supp. SCC 87 had specifically dealt with the case of the appointment and or reappointment of the Additional Judge of the High Courts and laid down law which has not been overruled by the aforementioned two judgements of this Hon'ble Court. To quote from S.P. Gupta's case (at page no.241 & 242);

"39. It is clear on plain reading of Article 217 clause (1) that when an additional judge is to be appointed, the procedure set out in that article is to be followed. Clause (1) of article 217 provides that "Every judge" of a High Court shall be appointed after consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High court. The expression "Every Judge" must on a plain natural construction include not only a permanent Judge but also an additional Judge. It is significant to note that whenever the Constitution makers intended to make a reference to a permanent Judge, they did so in clear and explicit terms as in clause (2) of Article 224. Moreover, there is inherent evidence in Article 217 clause (1) itself which shows that the expression "Every Judge" is intended

to take in an additional Judge as well. Clause (1) of Article 217 says that "Every Judge shall hold office in case of an additional Judge…….as provided in Article 224 which clearly suggests that the case of an additional Judge is covered by the opening words "Every Judge". We may also consider what would be the consequence of construing the word "Every Judge" as meaning only a permanent Judge. On that construction, clause (1) of Article 217 will not apply in relation to appointment of an additional Judge and it would be open to the Central Government under Article 224 clause (1) to appoint an additional Judge without consulting any of the constitutional functionaries specified in clause (1) of Article 217. This could never have been intended by the Constitution makers, who made such elaborate provisions in the Constitution for safeguarding the independence of the judiciary. We must therefore, hold that no additional Judge can be appointed without complying with the requirement of clause (1) of Article 217.

Now, when the term of an additional Judge expires he ceases to be a Judge and therefore, if he is to continue as a Judge, he must be either reappointed as an additional Judge or as a permanent Judge. In either case, clause (1) of Article 217 would operate and no reappointment as an additional Judge or appointment as a permanent Judge can be made without going through the procedure set out in Article 217 clause (1)."

Thus, it is apparent that even the appointment as well as reappointment of the Additional Judge of any High Court cannot be done without proper consultation as required in Article 217(1) of the Constitution and the true import of the term 'consultation' has been laid down in the aforementioned two judgments of this Hon'ble Court.

12. Thus, the law regarding the appointment of the High Court Judge, as laid down in the aforementioned three judgements of this Hon'ble Court, is as follows:

a. The opinion of the Chief Justice of India has primacy;

b. The opinion of the Chief Justice of India must necessarily have the element of plurality in its formation;

c. The collegium for such appointment comprises of the Chief Justice of India and two senior most pusine Judges of the Supreme Court. The said collegium, in making their opinion, should take into account the opinion of the Chief Justice of the concerned High Court, the views of other Judges of the High Court who may have been consulted by the Chief Justice of the High Court and the views of colleagues on the Supreme Court Bench “who are conversant with the affairs of the High Court concerned;

d. No appointment can be made unless it is in conformity with the final opinion of the Chief Justice of India, formed in the manner indicated above;

e. The views of the other Judges consulted should be in writing and should be conveyed to the Government of India by the Chief Justice of India along with his views to the extent set out in the body of this opinion;

f. Even the appointment as well as reappointment as Additional Judge of any High Court can be done only in consultation with the final opinion of the Chief Justice of India in consultation with the Judges as indicated in the aforesaid judgements.

g. Judicial review in the case of an appointment of a High Court Judge is available if the recommendation of his appointment is not a decision of the Chief Justice of India and two senior most pusine Judges of the Supreme Court or if it is not made in consultation with the senior most Supreme Court Judges who comes from the concerned High Court and also if the views of the Chief Justice of the High Court and senior Judges of the High Court have not been take into account. Judicial review is also available when the appointee is found to lack eligibility.

13. It is submitted that as there was no consultation as required by law such views were not expressed in writing and were not conveyed to the Government of India. The relevant records with the Government of India will clearly substantiate the above averments and be produced for the examination of this Hon’ble Court.

14. In view of the above discussed law regarding the appointment of the Judges of the High Courts, it is more than apparent that the appointment of Justice S Ashok Kumar as a Judge of the Madras High Court is unconstitutional and suffers from the following illegalities and infirmities:

- Respondent No. 2 was reappointed as an Additional Judge in April 2005, and repeatedly thereafter without consultation being made in accordance with the law laid down in the aforementioned judgments.
- In fact, in August 2005, he was granted extension as an additional Judge, even though the collegium had disapproved his appointment as permanent Judge because of adverse reports.
- On 2nd February 2007, Justice S Ashok Kumar was appointed as a Permanent Judge despite the fact that the recommendation of his confirmation as a Permanent Judge was made without taking opinion of then two senior most Judges of the Supreme Court.
- Consultation was not done even with the other Judges of the Supreme Court who were conversant with the affairs of the High Court concerned.
- Thus, the appointment of Respondent No. 2 as a permanent Judge was not in accordance with the final opinion of the Chief Justice of India, formed in the manner as specified in the aforementioned two judgments.

The Petitioner is, therefore, filing this petition on the following grounds among others:

GROUNDS

A. That the act of Respondent No.1 in appointing Justice S Ashok Kumar as a Permanent Judge of the Madras High Court is unconstitutional, illegal and arbitrary and thus violative of Article 14 of the Constitution of India and subversive of Independence of Judiciary. The appointment of Respondent No. 2, as a permanent Judge of the Madras High Court, is not in conformity with the final opinion of the Chief Justice of India,

formed in the manner as required in both the abovementioned judgements of this Hon'ble Court. This Hon'ble Court, in the aforementioned cases, clearly laid down that the opinion of the Hon'ble Chief Justice of India has primacy in the matter of appointments to the Judges of the Supreme Court and the High Courts and the primacy of the opinion of the Chief Justice of India in this context is, in effect, primacy of the opinion of the Chief Justice of India formed collectively, that is to say, after taking into account the views of his senior colleagues and other Judges from the Supreme Court who are required to be consulted by him for the formation of his opinion. No appointment can be made by the Respondent, unless it is in conformity with the final opinion of the Chief Justice of India, formed in the aforesaid manner. It is further submitted that, in the aforementioned judgments, it has been clearly held that views of the collegium of the judges should expressed in writing and should be conveyed to the Government of India along with the recommendation.

B. That the act of Respondent No.1 in giving repeated extensions to the afore-named Judge as an additional Judge itself was unconstitutional arbitrary and illegal, since even the said extensions were not in conformity with the final opinion of the Chief Justice of India, formed in the manner indicated above. In fact, in August 2005, the collegium of the then Chief Justice of India and the then two senior most Judges of the Supreme Court did not recommend his appointment as a permanent Judge due to adverse reports. The collegium was also not consulted and did not form any opinion on his reappointment as an Additional Judge. In S.P. Gupta's case it was clearly held that even when an additional judge is to be appointed, the procedure set out in Article 217 (1) is to be followed and when the term of an additional Judge expires he ceases to be a Judge and therefore, if he is to continue as a Judge, he must be either reappointed as an additional Judge or as a permanent Judge. In either case, clause (1) of Article 217

would operate and no reappointment as an additional Judge or appointment as a permanent Judge can be made without going through the procedure set out in Article 217 clause (1) and the entire procedure has been laid down in the aforementioned two judgments of this Hon'ble Court which was clearly not followed in the present case.

It is submitted that the Petitioner has not filed any other similar petition before this Hon'ble Court or any other Court of the country.

PRAYERS

In view of the above, it is most respectfully prayed that this Hon'ble Court maybe pleased to issue:

a) a declaration that the recommendation of the Hon'ble Chief Justice of India to appoint Respondent No. 2 as a permanent Judge of the Madras High Court is unconstitutional, ultra-vires and void as being in contravention of the law laid down by the Supreme Court which is binding on all constitutional authorities under Article 141 and 144 of the Constitution;

b) a writ order or direction quashing the appointment of Respondent No. 2 as a permanent Judge of the Madras High Court;

c) a writ of Quo-Warranto removing/restraining Respondent No. 2 from acting as a Judge of the Madras High Court; and

d) pass any other or further orders, as this Hon'ble Court may deem fit and proper.

PETITIONER

DRAWN BY: ROHIT KUMAR SINGH
DRAWN ON:
FILED ON :

THROUGH: PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONERS

NEW DELHI

IN THE SUPREME COURT OF INDIA
(ORIGINAL CIVIL WRIT JURISDICTION)
WRIT PETITION (CIVIL) NO._____2007

IN THE MATTER OF:

SHANTI BHUSHAN
&ANR. …PETITIOENRS

VERSUS

UNION OF INDIA & ANR. …RESPONDENTS

APPLICATION FOR INTERIM DIRECTION

To,

Hon'ble The Chief Justice of India and
his companion justices of the Supreme Court of India

Most respectfully showeth:

1. The Petitioners have filed the accompanying writ petition under Article 32 of the Constitution of India in public interest seeking appropriate declarations and issuance of writ of quo-warranto or any other writ or direction by this Hon'ble Court for quashing the appointment of Justice S Ashok Kumar i.e Respondent No. 2 as a Judge of the Madras High Court. The Petitioners crave leave to refer to and rely upon the contents of the accompanying petition for this application.
2. From the facts set out in the accompanying petition, it is clear that the Petitioners have an excellent case and have every hope of succeeding in the petition. It is submitted that irreparable injury would be done to public interest, if Respondent No. 2 is allowed to function as a Judge of the Madras High Court. On the other hand, there will be no damage to public interest, in case Respondent No. 2 is not allowed to function as a Judge of the Madras High Court.The appointment of Respondent No. 2 made in February 2007 is unconstitutional, illegal and in contravention of the law laid down by this Hon'ble Court which is binding on all constitutional authorities including the Chief Justice of India while exercising the power of recommending the appointment of High Court Judges. The Petitioners are seeking the aforementioned relief from this Hon'ble Court as Justice S

Ashok Kumar has been appointed as a Permanent Judge of the Madras High Court by Respondent No. 1 in total violation of the law, regarding the appointment of Judges of the High Courts, as laid down by this Hon'ble Court, first in Supreme Court in Advocates-on-Record Association vs. UOI, (1993) 4 SCC 441 and then in Special Reference No. 1 of 1998, (1998) 7 SCC 739.

3. The law as declared by the Hon'ble Supreme Court requires the ascertainment of views of various judges (apart from the Chief Justice of India) as mentioned above. Further, as held by the Supreme Court in Special Reference No. 1 of 1998, (1998) 7 SCC 739, all these views should be expressed in writing and conveyed to the Government of India.
4. It is submitted that as there was no consultation as required by law such views were not expressed in writing and were not conveyed to the Government of India. The relevant records with the Government of India will clearly substantiate the above averments and be produced for the examination of this Hon'ble Court.

In view of the abovementioned facts it is respectfully submitted that this Hon'ble Court may be pleased to pass the following orders during the pendency of the accompanying writ petition:

PRAYERS

a) restrain Respondent No. 2 from functioning as a Judge of the Madras High Court;

b) direct Respondent No. 1 to produce all the records regarding the appointment/reappointment of Respondent No. 2 as Additional judge and also as the Permanent judge; and

c) pass any other or further orders, as this Hon'ble Court may deem fit and proper.

PETITIONER

THROUGH: PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONERS

NEW DELHI
DT.

IN THE SUPREME COURT OF INDIA
(Civil Original Writ Jurisdiction)
WRIT PETITION (CIVIL) NO._____ OF 2007

IN THE MATTER OF:

SHANTI BHUSHAN & ANR …PETITIONERS

VERSUS

UNION OF INDIA & ANR. …RESPONDENTS

AFFIDAVIT

I, Kamini Jaiswal , D/o Sh. R.S. Jaiswal, E-77 (FF), Saket, New Delhi, do hereby solemnly state and affirm as under:

1. That I am Petitioner No. 2 and being familiar with the facts and circumstances of the case and am competent and authorized to swear this Affidavit.

2. That I have read and understood the accompanying Brief Synopsis & List of dates (from pages __to__), Writ Petition (from pages____to____) and the Application for Interim Directions (from pages___to___) and I state that the contents of List of Dates, Writ Petition and application for Interim Directions are based on information from the newspaper report and from other reliable sources which I believe to be true and correct.

3. That the annexure annexed to the Writ Petition is true copy of its respective original.

DEPONENT

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this 16th day of July 2007.

DEPONENT

IN THE SUPREME COURT OF INDIA

(ORIGINAL CIVIL WRIT JURISDICTION)

WRIT PETITION (CIVIL) NO._____2007

IN THE MATTER OF:

SHANTI BHUSHAN AND ANR. .... PETITIONERS

VERSUS

UNION OF INDIA AND ANR. ...RESPONDENTS

I.A._____OF 2007

(APPLICATION FOR INTERIM DIRECTION)

PAPER BOOK

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PRASHANT BHUSHAN : COUNSEL FOR THE PETITIONERS

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Synopsis and List of Dates

That this Writ Petition is being filed under Article 32 of the Constitution of India in public interest seeking appropriate declarations and issuance of writ of quo-warranto or any other writ or direction by this Hon'ble Court for quashing the appointment of Justice S Ashok Kumar i.e Respondent No. 2 as a Judge of the Madras High Court. The Petitioners are seeking the aforementioned relief from this Hon'ble Court as Justice S Ashok Kumar has been appointed as a Permanent Judge of the Madras High Court on 2nd February 2007 by Respondent No. 1 in total violation of the law, regarding the appointment of Judges of the High Courts, as laid down by this Hon'ble Court, first in Supreme Court in Advocates-on-Record Association vs. UOI, (1993) 4 SCC 441 and then in Special Reference No. 1 of 1998, (1998) 7 SCC 739. This Hon'ble Court, in the aforementioned cases, clearly laid down that the opinion of the Hon'ble Chief Justice of India has primacy in the matter of appointments to the Judges of the Supreme Court and the High Courts and the primacy of the opinion of the Chief Justice of India in this context is, in effect, primacy of the opinion of the Chief Justice of India formed collectively, that is to say, after taking into account the views of his senior colleagues who are required to be consulted by him for the formation of his opinion and no appointment can be made by the Respondent, unless it is in conformity with the final opinion of the Chief Justice of India, formed in the aforesaid manner. In the case of the appointment of High Court judges, any such recommendation to appoint a judge of a High Court is to be made by the Hon'ble Chief Justice of India in consultation with the two senior most pusine Judges of the Supreme Court as well as with the Chief Justice and the senior judges of the concerned High Court and also with the Supreme Court Judges, who are having knowledge of the concerned High Court. Thus, unless and until, the opinion of the Chief Justice of India is formed in accordance with the norms and requirements of the consultation process, as aforesaid, the same would not be considered as final opinion of the Hon'ble Chief Justice and therefore, no appointment can be made by the Respondent on the basis of any such recommendation. However, in the present case, the recommendation to make Respondent No.2, who had been the Additional Judge for

almost four years, as a permanent Judge of the Madras High Court was made without any consultation with the collegium of judges as required by the aforementioned judgements of this Hon'ble Court. Thus, despite the fact that the aforementioned recommendation was not in conformity with the final opinion of the Hon'ble Chief Justice of India, formed in the manner as laid down in the aforementioned judgements, the appointment of Respondent No.1 was made on 2nd February 2007 as a Permanent Judge of the Madras High Court, which is clearly illegal and arbitrary and thus, clearly violative of Article 14 of the Constitution of India and is subversive of the independence of Judiciary.

April 2003	Respondent No. 2 was appointed as an Additional Judge of the Madras High Court under Article 224 (1) of the Constitution of India.
August 2005	The then Chief Justice of India and the two senior most Judges of this Hon'ble Court were Justice R. C. Lahoti, Justice Y.K. Sabharwal and Justice Ruma Pal and the said Judges refused to recommend the appointment of Respondent No. 2 as a permanent Judge of the Madras High Court due to adverse reports. Consequently, Respondent No. 2 should have ceased to be a Judge on expiry of his term as Additional Judge. However, despite the above refusal, the then Chief Justice of India recommended extension/reappointment of Respondent No. 2, to continue him as an Additional Judge in contravention and breach of the law declared by the Supreme Court in the aforesaid two judgments and Respondent No. 1 reappointed him as Additional Judge for a short period. Respondent No. 2 was extended/reappointed as Additional Judge by Respondent No. 1 upto 3rd February 2007. These extensions/reappointments were not in conformity with the final opinion of the then Chief Justice of India formed in consultation with other Judges as laid down in the above Judgements. Thus Respondent No. 2 unconstitutionally continued as an Additional

Judge for almost four years before his appointment as a Permanent Judge in February 2007.

02/03.02.2007 Respondent No.2 was purported to be appointed and sworn in as Permanent Judge of the Madras High Court by Respondent No. 1. The recommendation to appoint him as a permanent Judge was not based on the final opinion of the Hon'ble Chief Justice of India, Shri K. G. Balakrishnan formed in the manner as required in the aforementioned judgements namely Supreme Court Advocates-on-Record Association v. UOI, (1993) 4 SCC 44 and Special Reference No. 1 of 1998, (1998) 7 SCC 739. The Chief Justice of India did not form his opinion by consulting the two senior-most Judges, nor did he consult other Judges of the Supreme Court "who are conversant with the affairs of the High Court concerned"- a category which would include serving Supreme Court Judges who were pusines Judges or Chief Justices of Madras High Court even though the Madras High Court was not their parent High Court and they were transferred to that High Court. The views of these concerned Judges are required to be expressed in writing and conveyed to the Government of India along with the recommendation of the Chief Justice of India which procedure was not followed. A notification to appoint Respondent No. 2 as permanent Judge was issued on 2nd February 2007 and next morning he was sworn in on Saturday 3rd February 2007.

16.07.2007 Hence, the instant writ petition.