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Date 13.06.2021

To,

The Hon'ble Chief Justice of India
Supreme Court of India
New Delhi.

Subject: For taking judicial notice of unconstitutional and demeaning Statement Given by Sri Vikas Singh, Senior Advocate, President SCBA “Advocates Practicing at Supreme Court are more meritorious than advocates at High Court” and directing the President SCBA to withdraw the same.

For seeking further benevolence of Your Lordship in refusing any proposal of SCBA for elevation of Advocates practicing at Supreme Court to the Office of Judge High Court.

Your Lordship,

On behalf of all the lawyers of State of Uttar Pradesh and on my own behalf, I first express my deep regards to your Lordship and pray for your healthy and prosperous life.

Being the Chief Justice of India your Lordship is the guardian of the entire legal fraternity in the country. It is my firm belief that as a father doesn't discriminate between his two sons or showers his love

and affection on all his children equally your Lordship also doesn't have a different image of lawyers on the basis of their place of practice.

However the recent statement made by Senior Advocate Sri Vikas Singh in his capacity as President, Supreme Court Bar Association (SCBA) has given origin to this discussion. It is reported that in his statement he said that *Your Lordship should consider the appointment of Supreme Court Advocates for elevation as Judges of High Court because Advocates Practicing at Supreme Court are more meritorious than Advocates practicing at High Court.*

Sir though the *passions should not blind the logic and express provisions of the Constitution*, however the statement made by Sri Vikas Singh, Sr. Advocate with regard to boastful analysis of the capability and merit of advocates at Supreme Court could have been considered his passion towards his post of President and a mode of appeasement for his future election. However when he circulated the letter in open public platforms that Your Lordship has agreed to his proposal and in fact the SCBA has constituted as "Search Committee" for finding out the meritorious candidates practicing at Supreme Court for elevation to the High Courts, the issue became a question of common concern in the legal fraternity. Thus being a Former Additional Advocate General of the State of Uttar Pradesh it became my bounden duty to write this letter to Your Lordship.

Your Lordship at the very outset I wish to state that the undersigned has been a practicing advocate for more than 35 years. During my practice I have been appearing before different High Courts and I have been privileged enough to appear before the Supreme Court of India also. Sir it is to state that I have reached to an age, when elevation as High Court Judge has no charm and therefore my concerns by this letter may not be seen in order to gain any personal interest. I

am writing this letter to your Lordship only as my bounden duty towards the legal fraternity and towards my colleagues practicing in various courts of State of Uttar Pradesh.

Your Lordship the request or proposal made by Sri Vikas Singh, Senior advocate is not only indiscreet, unmindful but also derogatory towards the entire legal fraternity. It is humbly stated that the merit does not increase or decrease by place of practice. Particularly in legal profession the merit is directly proportionate to the efforts, dedication and patience of an advocate. In response to the criteria of merit stated by President, SCBA I am unable to refraining myself in giving the example of **Late Pandit Kanahiya Lal Mishra**, Advocate General State of Uttar Pradesh, who mainly practiced at Allahabad High Court. I quote some few remarks which may reflect the merit of a High Court Advocate.

Justice S.R. Das, Chief Justice of India

Mr. Misra, why don't you more often appear in the Supreme Court? In the cases in which you appear it raises the standard of our judgments.

Mr. Sheerwai, Senior Advocate

When Mr. Misra arrived and we had consultations, he was quite. I thought the bulk of the argument is going to fall on my shoulders. But after hearing his brilliant arguments for several days, my feeling is, even if I add something more than what has been submitted, I would only be able to scratch or wash off the beautiful varnish put by him.

Sri. S.N. Mulla, Senior Criminal Advocate

Mr. Misra never clamoured for the front line. He took his seat wherever he found one. But he never knew – it was not the front bench but wherever he sat became the focus of attraction.

Your Lordship, Pandit Kanihiya Lal Mishra was not the only one instead of writing down the name of advocates of Uttar Pradesh who have marked their eminence and potential not only High Court but also at Supreme Court, I can only say that the *pages are few names are more.*

Reiteration of names is also not important because as I have stated that merit has no relationship with the place of practice and therefore the statement given by the President SCBA out of his passion is not only bogus but also shows his lack of exposure towards meritorious advocate. He must know that there are several advocates who possess unmatched merit but practice at their native places. It may not be out of place to mention at this stage that several Senior Advocates, who are considered as pillars of the Supreme Court practiced at their native High Court for several year and thereafter shifted to the Supreme Court. They shifted to the Supreme Court and could make their own place because they were meritorious they do not became meritorious because they shifted to Supreme Court.

Therefore though it would be a fruitless effort say the President, SCBA, how also holds the position of Senior Advocate to withdraw his statement. But I will request him to withdraw his statement about merit of the Advocate.

So far as the issue of elevation of advocates practicing at Supreme Court as High Court Judge is concerned I can only say the *Passion of President SCBA towards his future elections had made him blind even towards provisions of the Constitution of India.*

Part VI Chapter V Article 214 to 232 of the Constitution of India deals with the provisions of High Court. Article 217 of the Constitution of India provides for appointment and condition of the

office of a Judge of a High Court. For kind convenience of Your Lordship Article 217 (2) is being reproduced:

217. Appointment and conditions of the office of a Judge of a High Court.—

(1) XXXXXXXXXXXX

2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession;

Explanation.—For the purposes of this clause—

[(a)in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;]

[(aa)]in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person [has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law] after he became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court,

there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

[(3) xxxxxxxxxxxxxxxx

Thus the proposal placed by the President SCBA that Advocates practicing at Supreme Court be considered for elevation for High Court Judge, is against the provision of the Constitution of India, as the qualification provided for office of a High Court Judge is that the Advocate must have practice at High Court. Therefore the advocate practicing at Supreme Court cannot be said to advocate having practice of 10 years at High Court.

Your Lordship the High Court of Uttar Pradesh is having largest strength of judges in the country. However the Court is functioning with almost half of the strength of Hon'ble Judges at High Court. The names of the meritorious advocates practicing at High Court for elevation as High Court judge is pending consideration and in such a time the statement given by the President SCBA, who himself holds the position of Senior Advocate is not only derogatory, damaging but has also created a confusion amongst the common advocate. The statement that the advocates practicing at Supreme Court are more meritorious than that of High Court therefore they should be considered for elevation as High Court Judge and your Lordship has given consent to it, is a devastating statement. It has not only demoralized and demeaned the Advocates practicing at various High Courts. Such king of statement does not suit either to the Office of SCBA or to the person like President, SCBA, who is designated Senior Advocate.

Thus it has necessitated the intervention by your Lordship. It is therefore most humbly prayed that Your Lordship may take notice of the statement of President, SCBA and direct him to withdraw such an unconstitutional, illegal, and demeaning statement for advocates as class. Further your Lordship may kindly be pleased to withdraw your Lordship's assent if given to any such proposal. Your Lordship may kindly be pleased to refuse any such proposal of SCBA for elevation of Advocate practicing at Supreme Court to the office of High Court Judge.

With Regards



(RAKESH KUMAR CHAUDHARY)
ADVOCATE
FORMER ADDITIONAL ADVOCATE GENERAL
STATE OF UTTAR PRADESH

Copy to following for perusal and necessary action:

1. Hon'ble Chief Justice, High Court of Uttar Pradesh
2. Registrar General, Supreme Court of India with a request to place this letter before the Hon'ble Chief Justice of India.



(RAKESH KUMAR CHAUDHARY)
ADVOCATE
FORMER ADDITIONAL ADVOCATE GENERAL
STATE OF UTTAR PRADESH