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Views of K.L. Sharma, President of the Association about Judicial Reforms in the Higher Judiciary

SUGGESTION-A

Appointment of High Court Judges

PREFACE

1. The most important judicial reform required in the present context and the times is the need for devising a transparent and open procedure for the selection of competent, honest having good conduct and behavior and sensitive persons for appointment as Judges of the High Court. The President of India being the Constitutional Appointing Authority of the High Court Judges has got inherent constitutional power to prescribe the procedure for direct open recruitment of High Court Judges.
2. Article 217 of the constitution of India lays down that “every Judge of a High Court shall be appointed by the President by warrant under his hand and seal and in consultation with the Chief Justice of the High Court and the Chief Justice of India”.
3. Clause (2) of Article 217 aforesaid reads that
“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 of two or more such courts in succession”.
4. There is no mention under the aforesaid Article of any quota of eligible persons from the two sources. In practice the judicial officers under the first and prior category of eligible persons are being proposed only against 33% of the vacancies in the High Courts, but in actual practice they are never reaching the aforesaid quota of vacancies due to several reasons which are apparent but not required to be expressed.

(i) Judicial Officers

5. It is suggested that the quota for the judicial officers should be raised to 50% of the vacancies in the High Courts, so that the vacancies may be easily and quickly filled up from the category of judicial officers on the basis of their judicial records for long period of about 30 years.
6. It is suggested that the Chief Justice of the High Court must consider the names of all the eligible judicial officers in the first week of January/July every year and forward the same to (i) State Vigilance Department, (ii) State CID, (iii) State Intelligence and (iv) Intelligence Bureau of the Central Government for inquiries into antecedents, reputation, conduct and behavior.
7. It is suggested that the aforesaid inquiry agencies must submit online their reports to the Chief Justice of the High Court by the last day of February/August every year.
8. It is suggested that the Chief Justice and the two senior most judges of the High Court must consider all the records of the eligible judicial officers and the inquiry reports and formalize its recommendations by 15th March/15th September and send online to the Governor of the State for onwards transmission to the Ministry of Law and Justice and the Chief Justice of India by 30th March/30th September.
9. It is suggested that the Ministry of Law and Justice should transmit all the records by 15th April/15th October to the Chief Justice of India.
10. It is suggested that the Chief Justice of India and two Judges of the Supreme Court must consider all the recommendations and the reports of each candidate and submit its recommendations to the Ministry of Law and Justice by the 30th April/30th October.
11. The Ministry of Law and Justice must submit by 15th day of May/November to the President of India the complete records of all the recommendations, inquiry reports, comments and data of each candidate for final decision regarding appointment of each candidate.
12. The Ministry of Law and Justice must communicate latest by 30th May/November the notification of appointment of the candidates to the vacancies of the High Court.

(i) Advocates

13. It is suggested that the High Court should open a portal as “High Court Judges” for 15 days right from January 1 to January 15 and July 1 to July 15 of every year inviting applications from eligible advocates in the prescribed format online with scanned copies of all the essential documents required for objective assessment.
14. All the applications received online should be forwarded online on 16th day of the month to the (i) State Vigilance Department, (ii) State CID, (iii) State Intelligence and (iv) Intelligence Bureau of the Central Government for making inquiries and submit by the last day of the next month February/August online reports about every applicant relating to antecedents, reputation, conduct and behavior and overall suitability.
15. All the applications received online should also be forwarded online by 16th day of the month to the (i) sitting permanent High Court Judges (ii) President and the Secretary of the Bar Associations attached with the High Courts for inviting comments if any online against each of the candidates by the last day of the next month February/August online reports about every applicant relating to antecedents, reputation, conduct and behavior and overall suitability.
16. The Chief Justice and the two senior most Judges must meet together on the first day of March/September every year to consider the data of the applicants, the inquiry reports and the comments received from the Judges and the bar and sort out the suitable candidates on objective assessment for personal interaction on the 10th day of March/September. The committee must formalize and send online the recommendations about the suitable candidates by the 20th day of March/September (i) to the Governor of the State, (ii) Ministry of Law and Justice and (iii) the Chief Justice of India.
17. The Governor of the State must send online its views about each candidate recommended by the collegium of the High Court to the Ministry of Law and Justice and the Chief Justice of India by the 30th day of March/September every year.
18. The Ministry of Law and Justice must send online its views about the suitability of each of the candidates to the Chief Justice of India by the 15th day of April/October.

19. The Chief Justice of India and two senior most Judges of the Supreme Court must send online its views about each candidate to the Ministry of Law and Justice by the 30th day of April/October.
20. The Ministry of Law and Justice must submit by 15th day of May/November to the President of India the complete records of all the recommendations, inquiry reports, comments and data of each candidate for final decision regarding appointment of each candidate.
21. The Ministry of Law and Justice must communicate latest by 30th May/November the notification of appointment of the candidates to the vacancies of the High Court.

SUGGESTION-B

Regarding disposal of Judicial Work in the High Courts and the Supreme Court

22. In order to save precious time of the bench, it is suggested that all the fresh cases should be listed before the bench at the time of admission and at the time of final hearing only and in the intermediate stages of the cases, the Chief Justice of the High Court and the Chief Justice of India should authorize the officers of the higher judicial service posted in the High Court and the Supreme Court to deal with all judicial matters of the following nature:
 - (a) Applications for extension of time for filing counter affidavit/other affidavit/ rejoinder affidavit/replication affidavit.
 - (b) Applications for filing of documents by either of the parties to the case.
 - (c) Applications of impleadment/withdrawal/abatement/and the alike.
 - (d) Applications for substitution of the legal heirs
 - (e) Applications for adjournment
 - (f) Applications for exemption of personal appearance on the medical ground/official occupation of the Government Servant, if the bench has not directed personal appearance before it.
 - (g) Other applications specifically directed by the bench for disposal by the authorized judicial officer.

23. It is suggested that the cases involving the following parties should be granted priority for final hearing and disposal:

- (a) Retired personnel/pensioners/senior citizens/physically handicapped.
- (b) Women and Children.
- (c) Defense personnel
- (d) Family members
- (e) Employees

24. It is suggested that the roster of the benches should not be frequently changed and it must be kept continuing for at least four months so that the hon'ble Judges may be able to dispose of the cases heard by them.

25. It is also suggested that the benches should be formed of those Judges only who have got long experience and expertise in respect of the subject matters assigned to the bench.

26. It is also suggested that the bench should itself fix the next date of hearing of the case instead of giving general direction like – “list after two weeks or three weeks” which gives full liberty to the officials for listing on any date thereafter, on the approach of the party”.

Justice K.L. Sharma