

## General Studies-2; Topic– Structure, organization and functioning of the Executive and the Judiciary

### Post Retirement Jobs for Judges

#### 1) Introduction

- The debate regarding the judges accepting post-retirement jobs is an issue that recurs frequently.

#### 2) Judges accepting Post-retirement Jobs

- Since 1950, there have been 44 Chief Justices of India who have accepted post-retirement jobs.
- According to a study, as many as 70 of over 100 retired Supreme Court judges have taken up such assignments in organizations like NHRC, National Consumer Disputes Redressal Commission, Armed Forces Tribunal, Law Commission of India etc.
- Some have been appointed heads of commissions or as governors of states.
- About 36 per cent of the appointments were made by the central government, mainly to tribunals, commissions, ad hoc committees and government positions like that of Lokayukta.
- The study says that the statutes of these bodies have laid down that only candidates with specific qualifications will be considered.
- At least 56 per cent of the appointments were made because they were required by law, implying a structural problem.
- In some cases, Supreme Court judges have been appointed to commissions even four months ahead of retirement

#### 3) Arguments in favour of Post-retirement Jobs

- The valuable experience and insights that competent and honest judges acquire during their period of service cannot be wasted after retirement.
- Unlike abroad, a judge of the higher judiciary in India retires at a comparatively young age and is capable of many more years of productive work.
- However, government-sponsored post-retirement appointments will continue to raise suspicion over the judgments.
- Therefore, the viable option is to establish, through a statute, a commission made up of a majority of retired judges to make appointments of competent retired judges to tribunals and judicial bodies.
- Supreme Court can put in place a process to regulate post-retirement appointments for judges.

#### 4) Arguments against Post-retirement Jobs

- The immediate appointments suggest that decisions regarding their post-retirement assignments were already taken by the government.
- Immediate post-retirement appointments of the judges create a cloud over the sanctity of their judgments, irrespective of their merits.
- Judges accepting jobs under the Executive certainly creates situations of conflicts of interest.
- It tends to undermine public faith in judicial independence.
- In the recent 'master of roster case,' the Supreme Court reiterated that public confidence was the greatest asset of the judiciary.
- Judiciary and executive should remain mutual watchdogs than mutual admirers.

## 5) What Does Constitution Say?

- Article 124 states that “no person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.”
- Article 220 bars High Court judges from pleading before “any authority in India except the Supreme Court and the other High Courts.”

## 6) Practices Worldwide

- UNITED STATES: No Supreme Court judge retires lifelong. Done to prevent conflict of interest.
- UNITED KINGDOM: Supreme Court judges retire at the age of 70. No law stopping judges from taking post-retirement jobs but no judge has taken such a post.

## 7) First Law Commission Recommendations

- Judges of the higher judiciary should not accept any government job after retirement.
- Such judges must not forget that their conduct even post-retirement was crucial to preserve people’s faith in the judiciary.

## 8) Way Forward

- The judiciary needs a mechanism to regulate post-retirement government appointments
- The Tribunals should not be haven for retired persons.
- Appointment process should not result in decisions being influenced if the Government itself is a litigant and appointment authority at the same time.
- Former Chief Justice R M Lodha, says that judges should not take post-retirement government posts for at least two years of demitting office.
- This is necessary to prevent conflict of interest.
- An amendment to the Constitution can be done by incorporating a provision similar to Articles 148 or 319.
- A special law can also be passed by Parliament prohibiting retired judges from taking up any appointment for two years.
- There could be an increase in retirement age.
- **R M Lodha had suggested that**
  - a. Before a judge retires, the government should ask him whether he wanted to be a pensioner or continue to draw his existing salary.
  - b. Once he opts for pension, he should not have any engagement or post under the government.
  - c. Once a judge opted for full salary, that name should be put in a panel.
  - d. When a vacancy arises, appoint the man in consultation with the CJI, with the government’s consultation
  - e. This way all allegations of appeasement, favouritism, allegations that somebody was trying for a post will come to an end
  - f. Since statutes of some tribunals and quasi-judicial bodies mandate the appointment of retired judges, the practice would have to continue unless the laws were amended or some other method was found.