Judges pro tem - SC Decision

Why in news?

The Supreme Court recently decided to invoke a “dormant provision” in the Constitution (Article 224A) to clear the way for appointment of retired judges as ad hoc judges.

What is the rationale?

- The objective is to clear the mounting arrears in various High Courts.
- The numbers both in respect of pendency of cases and vacancies in the High Courts are quite concerning.
- There exists a backlog of over 57 lakh cases, and a vacancy level of 40%.
- Five High Courts account for 54% of these cases.
- Therefore, it is welcome that the Court has chosen to activate Article 224A of the Constitution.
- Article 224A provides for appointment of ad hoc judges in the High Courts, based on their consent.

What is the concern?

- The move reflects the extraordinary delay in filling up judicial vacancies.
- The fault may lie with the Collegium system or the Centre’s tardiness.
- But, there is little doubt that the unacceptable delay in the appointment process in recent times has caused huge vacancies in the High Courts.
- On the other hand, interestingly, official data suggests that there need not be a correlation between the number of vacancies and the large backlog.
- The Madras High Court has 5.8 lakh cases against a relatively low level of vacancy at 7%.
- As many as 44% of the posts in the Calcutta High Court are vacant, but the cases in arrears stand at 2.7 lakh.

What are the guidelines provided?

- The provision (Article 224A) has been utilised only sparingly in the past.
- It has been used for the limited purpose of disposing of particular kinds of cases.
- So, the endeavour to appoint ad hoc judges will have to come with some guidelines.

- The Court has made a beginning by directing that the trigger point for such an appointment will be -
    1. when the vacancies go beyond 20% of the sanctioned strength, (or) when more than 10% of the backlog of pending cases are over 5 years old
    2. when cases in a particular category are pending for over 5 years, or when the rate of disposal is slower than the rate of institution of fresh cases
- The Bench has ruled that the current Memorandum of Procedure be also followed for appointing ad hoc judges with a suggested tenure of 2 to 3 years.
    - This is a process initiated by the Chief Justice of a High Court.
- The Court has also clarified that this is a "transitory methodology" and does not constrain the regular appointment process.

What should the government do now?

- Roping in retired HC judges to clear backlog should not be at the cost of regular appointments.
- So, the government would do well to expedite the regular appointment process from its end.
- It should give up its tendency to hold back some recommendations selectively.
- The judiciary too should ensure that only retired judges with experience and expertise are offered the temporary positions, and there is no hint of favouritism.

Source: The Hindu

