Politics in Judicial Appointments

What is the issue?

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- The Union government has taken a stand against the elevation Chief Justice of Uttarakhand High Court K.M. Joseph on seemingly silly grounds.
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- This raises suspicion that the government's stand is politically motivated, an approach that could prove dangerous for judiciary's independence.
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What were the stated reasons for turning down the appointment?

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- The government has given out two broad reasons for freezing the elevation of Justice K.M. Joseph to the Supreme Court.
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- **Seniority -** Government has stated that Justice Joseph is too junior in the all-India list of High court judges, and 11 Chief Justices ranked above him.
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- But seniority is not the sole consideration while elevating a High Court judge to the apex court and multiple other factors are factored in.
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- In fact, there have been multiple instances were senior judges have been overlooked in favour of a more deserving candidate of outstanding merit.
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- **Proportionality –** It has been asserted that there are regional imbalances in the Supreme Court as Kerala is disproportionately better represented.
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- Kerala already has 1 judge in the Supreme Court and it has been stated that a 2nd judge from there would make the region over-represented.
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- This is again a false notion as Kerala has in the past had as many as 3 judges in the apex court and other regions like Maharashtra are also over-represented.

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- While it is desirable that regional imbalances are not glaring, this is not a valid ground in the current case, as the situation is not overly skewed.
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What are the suspicions?

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- Justice Joseph in his capacity as a Chief Justice of the Uttarakhand High Court had delivered a verdict that lifted president's rule in Uttarakhand.
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- This restored the Congress government headed by "Harish Rawat", which was earlier suspended on seemingly frivolous grounds.
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- Some suspect that this had annoyed the Modi government and it is now extracting its vengeance by denying Justice Joseph his deserved promotion.
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- Such an action could be a disaster to judiciary's independent functioning and might lead to rampant politicisation of jurists.
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- The fact that Justice Joseph's career seems impeccable thus far only adds fuel to the suspicion that the current episode has been triggered due to politics.
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What is the way ahead?

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- **Present Case -** Silly factor should not be made to shoot down the candidature of a person otherwise qualified and validly recommended.
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- As the collegium has already vouched strongly for Mr. Joseph's credentials, it is likely that his name would be recommended again.
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- Convention mandates the union government to accept the names that are recommended again (despite their objections).
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- Hence, it would be prudent for the government clear Justice Joseph's appointment (if recommended again) and put an end to the controversy.
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- **Overall -** There is a strong perception, that the government is much too slow when it comes to approving judicial appointments.
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- A conflict between the judiciary and the executive over particular appointments is not in the public interest.
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- To evolve a sustained solution, the government needs to finalise the “Memorandum of Procedure” (MoP) for appointments, which is long overdue.
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Source: The Hindu

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