Post-retirement Appointment of Judges

What is the issue?

- Controversies around appointments of judges post-retirement have been a recurring one.
- The judiciary needs a firm mechanism to regulate the issue of post-retirement government appointments.

In law, justice must not only be done but also be seen to be done.

What are the notable instances?

- Recently, Justice A.K. Sikri, a well-regarded judge of the Supreme Court of India, accepted a post offered by the government while being a judge of the court.
- But controversy erupted over it and so he turned down the offer.
- Many judges and Law Commission members have for long denounced the act of judges accepting post-retirement jobs sponsored by governments and have called for an end to it.
- But unfortunately, Justice M.C. Chagla, who advocated this, violated the very same.
- After retirement, he accepted a government appointment to serve as Indian Ambassador to the U.S. (1958-61) and later as Indian High Commissioner to the U.K (1962- 1963).
- He also served as Education Minister (1963-66) and then as Minister for External Affairs (1966-67).

What are the observations in this regard?

- Law Commission had consistently maintained that judges accepting employment under the government after retirement was undesirable.
- It had felt that this could affect the independence of the judiciary.
- A Vidhi Centre for Legal Policy's study pointed out that as many as 70 out of 100 Supreme Court retired judges have taken up some or the other assignments.
- These include those in National Human Rights Commission, National

Consumer Disputes Redressal Commission, Armed Forces Tribunal, and the Law Commission of India, etc.

- It is largely observed that tribunals are getting to be havens for retired judicial persons.
- This could result in decisions being influenced if the Government itself is a litigant and appointment authority at the same time.

What is the complexity?

- Unlike abroad, a judge of the higher judiciary in India retires at a comparatively young age.
- So s/he is capable of many more years of productive work.
- The valuable experience and insights that competent and honest judges acquire during their service period cannot be wasted after retirement.
- But government-sponsored post-retirement appointments are likely to be looked upon with suspicion.
- As the saying goes, in law, justice must not only be done but also be seen to be done.

What should be done?

- The viable option is to expeditiously establish a commission, through a properly enacted statute.
- It should be made up of a majority, if not exclusively, of retired judges to make appointments of competent retired judges to tribunals and judicial bodies.
- But for the time being, the Supreme Court can invoke its power to provide an interim solution till a legislation is passed in this regard.
- It should put in place a process to regulate post-retirement appointments for judges, which ensures judiciary's independence.

Source: The Hindu

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