

Vacancies in high courts touch 470 as govt.-judiciary logjam continues

Differences over appointments process has meant 45% of sanctioned judges' posts are empty

Amid the continuing tussle between the government and the judiciary over the contentious clause in the Memorandum of Procedure (MoP) on appointment of judges, the number of vacancies of High Court judges has grown to 470 out of the sanctioned strength of 1079.

In other words over 45 per cent of the positions of High Court judges are vacant.

Contrary to the assertion by the government that it is expediting the process of filling up vacancies in the High Courts, the trend in the last six months shows that the process has come to a virtual standstill.

At the root of the problem is the clause in the MoP (which outlines the modus operandi to be followed in appointment of judges) that gives the government the right to reject names suggested by the Supreme Court Collegium system.

Tussle over veto

The judiciary has been at loggerheads with the legislature/executive since the Supreme Court in October 2015 struck down the National Judicial Appointments Commission (NJAC) Act and the 99th Constitutional Amendment which envisaged a role for the government in the appointment of judges to the highest courts.

As a compromise it was agreed that the government would draft a revised Memorandum of Procedure on appointment of judges which would address the concerns of the government and legislature.

However, a clause in the revised draft MoP empowering the government to reject the names suggested by the Supreme Court Collegium was not acceptable to the judges. In May, Chief Justice of India T.S. Thakur is understood to have conveyed his views on the Centre's proposal.

The clause on the right to reject a recommendation on grounds of national security gives primacy to the government on appointment of judges unlike the current practice where government is bound to accept a

recommendation by the Collegium — comprising four senior-most judges of the Supreme Court and the CJI — if a recommendation is sent again.

The revised MoP further provides that once the Centre has rejected a recommendation it will not be bound to reconsider it even after reiteration by the collegiums.

Allahabad tops list

Data on vacancies in the High Court as on July 1, released by the Ministry of Law and Justice, shows that against the approved strength of 1079 judges, the 24 high courts are functioning with 609 judges.

The Allahabad High Court has the maximum of 82 vacancies against the sanctioned strength of 160 judges.

The Punjab and Haryana High Court with 39 (sanctioned strength of 85) and Madras High Court with 37 (against sanctioned strength of 75) vacancies each come second and third respectively.

High Court of Judicature at Hyderabad, which at the moment functions as High Court of Telangana and Andhra Pradesh, has 36 vacancies as against the sanctioned strength of 61 judges. An agitation is underway in Telangana demanding a separate High Court for the State.

The data also states that eight high courts — Andhra Pradesh/Telangana, Allahabad, Punjab and Haryana, Kerala, Madhya Pradesh, Manipur, Patna and Rajasthan — are functioning with acting Chief Justices.

The judiciary and the government have also been engaged in a tug of war over the number of vacancies at the lower courts and its impact on the backlog of cases.