

# **MEMORANDUM SHOWING THE PROCEDURE FOR APPOINTMENT AND TRANSFER OF CHIEF JUSTICES AND JUDGES OF HIGH COURTS**

## **APPOINTMENT OF CHIEF JUSTICE**

The Government have, in consultation with the Chief Justice of India, decided as a matter of policy to appoint the Chief Justice of all High Courts from outside.

2. In case of initial appointment of a Chief Justice of a High Court, the provisions of Article 217 will have to be followed. In the case of Jammu & Kashmir High Court, appointment of Chief Justice shall be made in accordance with section 95 of the Constitution of Jammu & Kashmir. Transfer of Chief Justice from one High Court to another will be governed by the provision of Article 222. Transfer of a Chief Justice to and from Jammu & Kashmir High Court shall be made in accordance with clause (1) of Article 222 of the Constitution of India read with Article 222(1A) of the Constitution (Application to Jammu & Kashmir) Order, 1954.

3. For purposes of elevation as Chief Justices the inter-se seniority of puisne Judges will be reckoned on the basis of their seniority in their own High Courts and they will be considered for appointment as Chief Justices in other High Courts when their turn would normally have come for being considered for such appointment in their own High Courts.

4. A puisne Judge in a High Court who has one year or less to retire when his turn for being considered for elevation as Chief Justice arrives may be considered for appointment as Chief Justice in his own High Court if vacancy is to occur in the office of the Chief Justice in that High Court during that period.

**5. Initiation of the proposal for the appointment of Chief Justice of a High Court would be by the Chief Justice of India. The process of appointment must be initiated well in time to ensure the completion at least one month prior to the date of anticipated vacancy for the Chief Justice of the High Court. The Chief Justice of India would ensure that when a Chief Justice is transferred from one High Court to another simultaneous appointment of his successor in office should be made and ordinarily the arrangement of appointment of an acting Chief Justice should not be made for more than one month.**

**5.1 The Chief Justice of India would send his recommendation for the appointment of a puisne Judge of the High Court as Chief Justice of that High Court or of another High Court, in consultation with the two senior-most Judges of the Supreme Court. He would also ascertain the views of the seniormost colleague in the Supreme Court who is conversant with the affairs of the High Court in which the recommendee has been functioning and whose opinion is likely to be significant in adjudging the suitability of the candidate. It is of no consequence whether the Judge of the Supreme Court, so consulted, had that High Court as Parent High Court or was transferred there from any other High Court.**

**5.2 The views of the Judges of the Supreme Court thus consulted would then be sent by the Chief Justice of India alongwith his proposal, to the Union Minister of Law, Justice and Company Affairs.**

**6. After receipt of the recommendation of the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs would obtain the views of the concerned State Government. After receipt of the views of the State Government, the Union Minister of Law, Justice and Company Affairs, will submit proposals to the Prime Minister, who will then advise the President as to the selection.**

7. As soon as the appointment is approved by the President, the Department of Justice will announce the appointment and issue necessary notification in the Gazette of India.

### **APPOINTMENT OF ACTING CHIEF JUSTICE**

8. Appointment of Acting Chief Justices is to be made by the President under Article 223 of the Constitution. Intimation from the Chief Justice about his proceeding on leave or being unable to perform the duties of the Office of Chief Justice must be sent to all concerned well in advance to make arrangement for appointment of Acting Chief Justice.

9. When it is proposed to appoint the seniormost puisne Judge on duty, as Acting Chief Justice, as soon as above intimation is received, the Union Minister of Law, Justice and Company Affairs in the Central Government would appoint the seniormost puisne Judge and the Secretary to the Government of India in the Department of Justice will, inform the Chief Minister and announce the appointment and issue the necessary notification in the Gazette of India.

10. Where, however, it is proposed to appoint an Acting Chief Justice, other than the seniormost puisne Judge the procedure for appointment of a regular Chief Justice as prescribed above will have to be followed.

## **APPOINTMENT OF PERMANENT JUDGES**

**11.** The Chief Justice and Judges of the High Courts are to be appointed by the President under clause (1) of Article 217 of the Constitution. The Judges of the Jammu & Kashmir High Court are to be appointed by the President under section 95 of the Constitution of Jammu & Kashmir. Appointments to the High Court should be made on a time bound schedule so that the appointments are made well in advance preferably a month before the occurrence of the anticipated vacancy.

**12.** When a permanent vacancy is expected to arise in any year in the office of a Judge, the Chief Justice will as early as possible but at least 6 months before the date of occurrence of the vacancy, communicate to the Chief Minister of the State his views as to the persons to be selected for appointment. Full details of the persons recommended, in the format given in **Annexure-I**, should invariably be sent. Before forwarding his recommendation, the Chief Justice must consult two of his seniormost colleagues on the Bench regarding the suitability of the names proposed. All consultation must be in writing and these opinions must be sent to the Chief Minister along with the recommendations.

**13.** The Chief Justice while sending his recommendation for appointing an additional Judge as a permanent Judge, must along with his recommendation furnish statistics of monthwise disposal of cases and judgments rendered by the Judge concerned as well as the number of cases reported in the Law Journal duly certified by him. The information would also be furnished regarding the total number of working days, the number of days he actually attended the court and the days of his absence from the Court during the period for which the disposal statistics are sent.

**14.** The proposal for appointment of a Judge of a High Court shall be initiated by the Chief Justice of the High Court. However, if the Chief Minister desires to recommend the name of any person he should forward the same to the Chief Justice for his consideration. Since the Governor is bound by the advice of the Chief Minister heading the Council of Ministers, a copy of the Chief Justice's proposal, with full set of papers, should simultaneously be sent to the Governor to avoid delay. Similarly, a copy thereof may also be endorsed to the Chief Justice of India and the Union Minister of Law, Justice and Company Affairs to expedite consideration. The Governor as advised by the Chief Minister should forward his recommendation along with the entire set of papers to the Union Minister of Law, Justice and Company Affairs as early as possible but not later than six weeks from the date of receipt of the proposal from the Chief Justice of the High Court. If the comments are not received within the said time frame, it should be presumed by the Union Minister of Law, Justice and Company Affairs that the Governor (i.e. Chief Minister) has nothing to add to the proposal and proceed accordingly.

**15.** The Union Minister of Law, Justice and Company Affairs would consider the recommendations in the light of such other reports as may be available to the Government in respect of the names under consideration. The complete material would then be forwarded to the Chief Justice of India for his advice. The Chief Justice of India would, in consultation with the two seniormost Judges of the Supreme Court, form his opinion in regard to a person to be recommended for appointment to the High Court. The Chief Justice of India and the collegium of two Judges of the Supreme Court would take into account the views of the Chief Justice of the High Court and of those Judges of the High Court who have been consulted by the Chief Justice as well as views of those Judges in the Supreme Court who are conversant with the affairs of that High Court. It is of no consequence whether that High Court is their parent High Court or they have functioned in that High Court on transfer.

**15.1** After their consultations, the Chief Justice of India will in course of 4 weeks send his recommendation to the Union Minister of Law, Justice and Company Affairs. Consultation by the Chief Justice of India with his colleagues should be in writing and all such exchange of correspondence with his colleagues would be sent by the Chief Justice of India to the Union Minister of Law, Justice and Company Affairs. Once the names have been considered and recommended by the Chief Justice of India, they should not be referred back to the State Constitutional authorities even if a change takes place in the incumbency of any post. However, where it is considered expedient to refer back the names, the opinion of Chief Justice of India should be obtained. The Union Minister of Law, Justice and Company Affairs would then put up as early as possible, preferably, within 3 weeks, the recommendation of the Chief Justice of India to the Prime Minister who will advise the President in the matter of appointment.

**16.** The correspondence between the Chief Justice and the Chief Minister and the correspondence between the Chief Minister and the Governor, if any, should be in writing and copies of the correspondence should invariably be forwarded along with the Chief Minister's recommendations.

**17.** As soon as the appointment is approved by the President, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of the High Court, who will obtain from the person selected (i) a certificate of physical fitness as in **Annexure II** signed by a Civil Surgeon or District medical officer, and (ii) a certificate of date of birth as in **Annexure III**. A copy of the communication will also be sent simultaneously to the Chief Minister of the State. The medical certificates should be obtained from all persons selected for appointment whether they are at the time of appointment in the service of the State or not. When these documents are obtained, the Chief Justice will intimate the fact to the Secretary to the Government of India in the Department of Justice and also forward these documents to him.

**18. As soon as the warrant of appointment is signed by the President, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice and a copy of such communication will be sent to the Chief Minister. He will also announce the appointment and issue necessary notification in the Gazette of India.**

**APPOINTMENT OF PERMANENT JUDGES IN A HIGH COURT HAVING JURISDICTION OVER MORE THAN ONE STATE:**

**19. For appointments in these High Courts, the Chief Justice would initiate proposal in a manner prescribed in para 12 above and forward his recommendations to the Governor of the State where the seat of High Court is situated, and in the case of High Court of Punjab & Haryana, to the senior of the two Governors of these States, who would do the coordination and obtain the views of other Governor and Chief Ministers concerned in writing and forward the same along with the recommendations of the Chief Justice of the High Court to the Union Minister of Law, Justice and Company Affairs for further appropriate action as prescribed in para 15 above. In case, any of the State authorities wishes to recommend a name different from the one recommended by the Chief Justice of the High Court, he should send the same to the Chief Justice of the High Court concerned for his consideration. The initiation of a recommendation for filling up of a vacancy would be made only by the Chief Justice of the High Court concerned.**

### **APPOINTMENT OF ADDITIONAL JUDGES**

**20. Additional Judges can be appointed by the President under clause (1) of Article 224 of the Constitution. When the need for this arises, the State Government should first obtain the sanction of the Central Government for the creation of such additional posts. The correspondence relating to this should be in the normal official form. After the post is sanctioned the procedure to be followed for making the appointment will be same as given in paragraphs 12 to 18 for the appointment of a permanent Judge, except that a medical certificate will not be necessary from the person being appointed as an Additional Judge.**

**21. When an Additional Judge is being considered for confirmation as an Additional Judge for a fresh term, the relevant documents as mentioned in para 13 above also must be sent by the Chief Justice of the High Court concerned along with such recommendation.**

**22. The Chief Justice of the High Court, however, should not make a recommendation for appointment of an Additional Judge when a vacancy of a permanent Judge is available in that High Court.**

### **APPOINTMENT OF ACTING JUDGES**

**23. Acting Judges can be appointed by the President under clause (2) of Article 224 of the Constitution. Such appointments will not, however, be made for periods of less than three months unless there are special reasons for doing so. When occasion arises for making such an appointment, the same procedure will be followed, as given in paragraphs 12 to 18 for the appointment of a permanent Judge, except that a medical certificate will not be necessary from the person appointed as Acting Judge.**

Ordinarily, members of the Bar should for obvious reasons not be suggested for appointment as Acting Judges.

....9/-

- 9 -

### **ATTENDANCE OF RETIRED JUDGES AT SITTINGS OF HIGH COURTS**

24. Under Article 224A of the Constitution, the Chief Justice of a High Court may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that court or of any other High Court to sit and act as a Judge of the High Court of that State. Whenever the necessity for such an appointment arises, the Chief Justice will after obtaining the consent of the person concerned, communicate to the Chief Minister of the State the name of the retired Judge and the period for which he will be required to sit and act as Judge of the High Court. The Chief Minister will, after consultation with the Governor, forward his recommendation to the Union Minister of Law, Justice and Company Affairs. The Union Minister of Law, Justice and Company Affairs would then consult the Chief Justice of India in accordance with the prescribed procedure. On receipt of CJI's advice, the same would be put up to the Prime Minister, who will then advise the President as to the person to be appointed to it and act as a Judge of the High Court. As soon as the President gives his consent to the appointment, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of the High Court and the Chief Minister(s) and will issue the necessary notification in the Gazette of India.

### **TRANSFER OF A JUDGE (INCLUDING CHIEF JUSTICE) FROM ONE HIGH COURT TO ANOTHER HIGH COURT :**

25. Article 222 of the Constitution makes provision for the transfer of a Judge (including Chief Justice) from one High Court to any other High Court. The initiation of the proposal for the transfer of a Judge should be made by the Chief Justice of India whose opinion in this regard is determinative. Consent of a Judge for his first or subsequent transfer

would not be required. All transfers are to be made in public interest i.e. for promoting better administration of justice throughout the country.

....10/-

- 10 -

**25.1** In the formation of his opinion for the transfer of a Judge, other than the Chief Justice, the Chief Justice of India is expected to take into account the views of the Chief Justice of the High Court from which the Judge is to be transferred, as also the Chief Justice of the High Court to which the transfer is to be effected. The Chief Justice of India should also take into account the views of one or more Supreme Court Judges who are in a position to offer his/their views which would assist in the process of deciding whether or not a proposed transfer should take place.

**25.2** In the case of transfer of a Chief Justice, only the views of one or more knowledgeable Supreme Court Judges need to be taken into account.

**25.3** The views on the proposed transfer of a Judge or a Chief Justice of a High Court should be expressed in writing and should be considered by the Chief Justice of India and the four seniormost Judges of the Supreme Court. The personal factors relating to the concerned Judge, including the Chief Justice, and his response to the proposal, including his preference of places, should invariably be taken into account by the Chief Justice of India and the first four puisne Judges of the Supreme Court before arriving at conclusion on the proposal.

**25.4** The proposal for transfer of the Judge, including the Chief Justice should be referred to the Government of India alongwith the views of all those consulted in this regard.

**26.** After the recommendation of a transfer is received from the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs would submit the recommendation alongwith relevant papers to the

**Prime Minister who will then advise the President as to the transfer of the Judge concerned. After the President approves the transfer, the Secretary to the Government of India in the Department of Justice will**

.....11/-

- 11 -

**inform the Chief Justice of the High Courts and the Chief Ministers of concerned States and will announce the transfer and issue the necessary notification in the Gazette of India.**

**27. Transfer of Judge to or from Jammu & Kashmir High Court shall be made in accordance with clause (1) of Article 222 of the Constitution of India read with Article 222 (1A) of the Constitution (Application to Jammu & Kashmir) order, 1954. Therefore, when it is proposed to transfer a Judge from or to the Jammu & Kashmir High Court, the Minister of Law and Justice in the Central Government will consult the Governor (Chief Minister) of Jammu & Kashmir for his views before putting up the relevant papers to the Prime Minister for advising the President. In case there is a difference of opinion, the Union Minister of Law, Justice and Company Affairs will consult the Chief Justice of India again before putting up the papers to the Prime Minister for advising the President on the matter of Transfer. On approval of the President, the transfer will be announced in the usual manner.**

....12/-

**Annexure- I (i)**

(Para-12)

1. Full Name
2. Sex
3. Date of Birth
4. Family background
5. Marital status
6. Educational qualifications  
(Mention award of prize, scholarship, fellowship or any other distinction)
7. Practice:
  - (a) Date of enrolment
  - (b) Actual number of years of practice
  - (c) Places and/or the courts before whom Practised and the period
  - (d) Nature of practice –  
  
Civil, Criminal, Constitutional, Taxation, Labour, Company, Service etc.
  - (e) The field of specialization, if any-
  - (f)
    - (i) Professional income for the last three years –gross and taxable
    - (ii) Year in which first assessed to Income Tax -gross professional income in that year be furnished
  - (g) Reported judgments of Supreme Court and High Courts, for the last five years, in which argued independently (give citations).
  - (h) Unreported judgments of Supreme Court and High Courts, for the last five years, in which argued independently (annex certified/attested copies)
8. Association, if any, with any political party
  - (a) Name of the party
  - (b) Period of association
  - (c) Whether held any organizational office and, if so, period.

(d) Whether held elective office in any legislative or local authority and, if so, the period.

- 13 -

9. Whether held any position in the Bar Council and the Bar Association(s) and the period.
10. Whether member of any club or educational, cultural or social organization (give particulars).
11. Whether held any office as Advocate General, Government Advocate or Standing Counsel for the State or Union or any statutory authority or public undertakings (give particulars).
12. In the case of a Judicial Officer, details of the posts held during the last ten years with dates, any departmental inquiry held or contemplated, with particulars as to the nature of charges and period or periods involved and the outcome thereof, should in indicated. \*
13. Whether spouse or any blood relation is practising in this High Court or any Court subordinate to it. If so, give particulars.
14. Whether spouse or any blood relation is working with a law firm having office(s) within the jurisdiction of this High Court. If so, give particulars.
15. Whether spouse or any blood relation practising in this High Court or a Court subordinate to it or working with a law firm having its office(s) within the jurisdiction of this High Court is living with you. If so, give particulars.
16. Whether you consent for transfer to a High Court other than this High Court, for a cooling off period of two years or till your spouse or any of your blood relation is practising in this High Court or a Court subordinate to it or is working with a law firm having office(s) within the jurisdiction of this High Court.
17. Whether related to any sitting Judge of High Court/Supreme Court. If so, state relationship.
18. Whether party to any civil, criminal or other litigation. If so, the nature of involvement.
19. Whether employed at any time either on part-time or full-time basis. If so, give status and period and the reasons for leaving.

20. Whether appointed as Receiver/Commissioner/Observer/Court Officer in any case. If so, give full particulars thereof.
21. Whether investigated and/or prosecuted for any criminal offence. If so, details thereof.
22. in case of a Judicial Officer, whether committed breach of any Conduct-Rule. If so, give particulars.
23. Whether any proceedings were initiated or are pending against you before Bar Council of India or State Bar Council. If so, particulars thereof.
24. General state of health.
25. Name of the High Courts (other than this High Court) for which there is preference for appointment. \*\*

\* Confidential Reports of last 15 years, to the extent written, should invariably be annexed by the High Court.

\*\* Preference indicated, however, would not restrict appointment/transfer to any other High Court.

1. Age
2. Academic attainments
3. Standing and experience
4. Specialisation, if any
5. Gross Professional Income for last 3 years.
6. Competence:
  - (i) Equipment in law
  - (ii) Perception
  - (iii) Ability to deal with complex legal problems
  - (iv) Grasping capacity
  - (v) May be treated as :  
(Excellent, Very Good, Good, Average)
7. Judicial Potential :
  - (a) Maturity
  - (b) Poise and equanimity of temperament
  - (c) Does he subscribe to the Constitutional values
  - (d) Capacity to persuade and to be persuaded
  - (e) Patience
  - (f) Team Spirit
  - (g) Objectivity
  - (h) Analytical mind
  - (i) Fairness

(May be rated as: Excellent; Very Good; Good; Average)

8. Integrity and Character

(a) Reputation

(i) In legal fraternity

(ii) In Society

(b) Antecedents

(c) Any affiliation/association which renders him unsuitable for the office of a Judge

(d) Any habits or aberrations which render him unsuitable for the office of a Judge.

9. Need of the court of a Judge in any specialised branch against the background of the present composition

10. Need to maintain the conventional ratio between Bar and Service Judges and Appellate and Original side Judges.

11. Any other matter to be borne in mind having regard to the peculiar circumstances of the court/person under consideration.

(Chief Justice of the High Court)

.....17/-

**FORM OF MEDICAL CERTIFICATE  
(Please see paragraph 17)**

I hereby certify that I have examined Shri.....  
and cannot discover that he has any disease (communicable or otherwise);  
constitutional weakness or bodily infirmity, which would disqualify\* him  
except ..... I do not consider  
this disqualification\* for employment as Judge of a High Court.

**Signature:**

**Date:**

**Designation:**

**Signature of Candidate:**

\* **Note:** This certificate should take into account the fact that a High Court Judge retires at the age of 62 years.

**Annexure- III**

I hereby certify that my date of birth is .....  
..... (here enter date of birth according to the English calendar) and in support thereof, I enclose ..... the following documents:-

I shall submit separately.

A certified extract from: -

- (a) the Birth Register;
- (b) the School Register;
- (c) the College Register; and
- (d) the Service Book.

**Signature of candidate**

**Date:**

**Note: If any of the documents is not available, please say so against it.**

