

To be or not to be

**Dr. G.Jayachandran, MA.,ML., Ph.D.,
District Judge,
Law Secretary(On deputation)
Government of Tamilnadu.**

A brilliant lawyer with considerable good practice, once solicited my suggestion to his idea of responding to the advertisement calling for applications from prospective candidates to fill up the post of District Judge through direct recruitment. I told him to go ahead since I honestly felt that in view of his educational qualification (Master Degree in Law), age (hardly 32 years) and his calibre, if he get selected he will have a good chance of entering higher judiciary some time down the lane. That lawyer took my suggestion positively and applied. He was very successful in the written test by scoring high marks and stood one among the top ten. His name was short listed for viva voce. However he was not selected. Probably he did not fare well in the interview. But he is under the impression that he was not selected because he was underage (32 years) for the post of district Judge.

A senior most District Judge, whose name was in the zone of consideration for elevation could not make through since he was nearing superannuation. It is widely believed that he was not elevated because in case of elevation he will be hardly left with less than 2 years service.

Almost during the same point of time, a Civil Judge aged about 27 years, who completed his training at Judicial Academy was inducted into service and

posted near Tiruchy made a courtesy call. In the course of our conversation, he said, he is contemplating to quit the service since he has come to understand that his career prospect is not very attractive as he thought. He said at the end of his service he may not even become a District Judge drawing Super time Scale pay (10% of the total District Judges cadre who have completed eight years and above as District Judge are entitle for this pay scale). I am reminded of these incidents, in a different context which arose in the following manner.

Indian Judicial system envisages 5 tier hierarchy. The Indian Constitution speaks about Subordinate Judiciary in Chapter VI of Part VI. While the lower entry point is Munsif / Magistrate Court (presided by Civil Judges), the Apex point is the Supreme Court of India. There is no constitutional or statutory bar for a Civil Judge rising to the level of Supreme Court Judge, and it has occurred in few occasions earlier. But of late this has become near to impossibility for one singular reason namely inadequate representation of subordinate judiciary while filling up the vacancies in High Courts.

For the post of Civil Judge even a fresh graduate without a day's experience at bar is eligible for this post. The upper age limit varies for State to State and also based on the community the candidate belong. In the present scenario the average age of entry into the judicial service as Civil Judge is in between 27 to 30 years. It takes at least 10 years to get promotion as Senior Civil Judge. The District Judges are appointed both through direct recruitment and by promotion. In the All India Judges Case the Apex Court has prescribed the ratio for direct recruitment and promotion from Senior Civil Judges as 25% and 75% respectively. Generally promotion is based on seniority. However, for meritorious officers in the cadre of Senior Civil Judges who have completed 5 years service in that cadre 10% vacancies are earmarked for out of turn

promotion. In Tamilnadu most of the officers who enter the subordinate judicial service as Civil Judge end up their career as Senior Civil Judge or District Judge and they seldom reach the higher judiciary, because of the bench and bar share is in the ratio of 1:2 in the High Courts strength. A Civil Judge who enters the service at the age of 28 years will get his first promotion as Senior Civil Judge after 10 years. Suppose at the age of 38 to 40 years he becomes Senior Civil Judge, it takes another 10 to 12 years to get promoted as District Judge (entry level). So, at his early 50's he will be promoted as District Judge. After 8 years of service as District Judge when he reach near the zone of consideration based on seniority, he will not be considered for elevation because he is likely to retire within a year or two. Thus a judicial officer who has put forth nearly 30 years as a judge will not be able to reach the Higher judiciary just because the space for his cadre in the higher judiciary is limited to 1/3rd of the total strength.

Except Writ Petitions and matters related to Admiralty Jurisdiction, Testamentary Jurisdiction, Ecclesiastical Jurisdiction and few special matters as specified in the Letters Patent which fall within the exclusive jurisdiction of the High courts, rest of the matters originate from the Subordinate Courts and passes through the hands of the Subordinate Judges. The knowledge and experience they have gained over the years cannot be brushed aside for entrusting them with the responsibility of deciding the matters at the higher level.

If one have a look at Article 217 and 233 of the Indian Constitution , it reads as follows:-

Appointment of High Court judges.

Article 217: (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a

Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty- two years:

Provided that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession;

Appointment of District Judges.

Article 233 : (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Article 217 of the Constituion does not prescirbe quota between bench and bar in respect of appointment of judges for the High Court. Neither does Article 233 say about the minimum age for appointment for the post of District judge. To draw best talent from among the promising young lawyers into Judiciary their career prospect should be certain and encouraging. If service conditions are not fair and encouraging, it will be difficult to get good talent for the judiciary and even if they come they may not stay with us for long.

In my opinion unless the representation of subordinate judiciary in the Higher Judiciary is increased to 50% and more, the real talents may hesitate to enter into subordinate judicial service and even if they come, they may always be toying with the idea **“to be or not to be”**.

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