

## CHAPTER III

### Officers and Servants of the Supreme Court and the High Courts

Special provision has been made in the Constitution vide Articles 146 and 229 in the matter of appointment of officers and servants of the Supreme Court and the High Courts. The power is conferred on the Chief Justice of the Supreme Court in respect of appointment of officers and servants on the establishment of the Supreme Court and in respect of the High Courts in the States on the Chief Justice of the High Court. The Articles also provide that the power can be exercised by any other officer if directed by the Chief Justice. Subject to certain conditions prescribed in Articles 146 and 229 absolute power of recruitment, appointment and control over the staff of the Supreme Court and the High Court is conferred on the Chief Justice of the respective Court.

#### 1. Scheme and Object

Articles 146 and 229 has a distinct and different scheme. On a comparison of Article 148 relating to the service under the Comptroller and Auditor General of India and Articles 98 and 187 relating to the staff of the Secretariat of Parliament and the State Legislature respectively we find that Parliament and State Legislature respectively is given the power to regulate recruitment and conditions of service and subject to any such law the President or the Governor, as the case may be, is empowered to regulate recruitment and conditions of service of the respective Secretariats in consultation with the Auditor General or the Speaker, as the case may be. But under Articles 146 and 229 full freedom is given to the Chief Justice in the matter of appointment of officers and servants of the Supreme Court or the High Court, as the case may be. The approval of the President or the Governor is necessary only in so far it relates to matters specified in proviso to Clause (2) because the finances have to be provided by the Government. Subject to certain limitations as indicated in the Articles matters relating to appointment and conditions of service of officers and servants of the Supreme Court and the High Court is exclusively vested in the Chief Justice of the Supreme Court or the High Court, as the case may be. Unequivocal purpose and intention of the framers of the Constitution in enacting Articles 146 and 229 is that, in matters of appointment of officers and servants of the Supreme Court and the

High Court that the Chief Justice or his nominee should be the supreme authority and there can be no interference by the executive except to the extent provided in the Articles. This is essential to secure and maintain the independence of the Supreme Court and the High Courts. The anxiety of the Constitution makers to achieve that object is fully shown by putting the administrative expenses of the Supreme Court and the High Court including salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of judges and the amount as charged cannot be varied even by legislature.<sup>1</sup>

## 2. Direct Recruitment

The only restriction contained in proviso to Articles 146(1) and 229(1) regarding direct recruitment is that the President and the Governor respectively, may by rule require, that in such cases as may be specified in the rule, no person already attached to the Court shall be appointed to any office connected with the Court save after consultation with the concerned Public Service Commission. In view of the proviso only in matters relating to direct recruitment, it is competent for the President or the Governor, as the case may be, to provide for consultation with the Public Service Commission. Subject to such a provision if made, the power of the Chief Justice to regulate recruitment is absolute in relation to direct recruitment.<sup>1</sup>

## 3. Recruitment by Promotion Exclusively Vested in the Chief Justice

As far as promotions are concerned, the power to make appointment by way of promotion conferred on the Chief Justice of the Supreme Court and the High Court respectively is absolute. After direct recruitment of persons on the staff of the Supreme Court or the High Court, as the case may be, they become persons already attached to the Court and their further promotions are fully within the powers of the Chief Justice and cannot be regulated by rules framed by the President or the Governor and cannot be made the subject matter of consultation with the Public Service Commission.

## 4. Power of the Chief Justice to Regulate Conditions of Service

Clause (2) of Article 146 and Clause (2) of Article 229 provides that subject to the provisions of law made by the Parliament and the Legislature of the State respectively the conditions of service of officers and servants of the Supreme Court and the High Court respectively shall be such, as may be prescribed by the rules by the Chief Justice of the Supreme Court or the High Court, as the case may be, or by some other Judge or officer authorised by the Chief Justice. The only restriction contained in the proviso to Clause (2) of Article 146 and Clause (2) of Article 229 is that the rules made under Clause (2)

1. M. Gurumoorthy V. Accountant General—AIR 1971 SC 1850.

shall in so far it relates to salaries, allowances, leave or pension requires the approval of the President or the Governor, as the case may be. In other words, the matters relating to conditions of service in so far it affects the finances of the Union or the State is required to be approved by the President or the Governor as the case may be and in all other matters, the power of the Chief Justice to make appointment and to regulate conditions of service is absolute.

### 5. Power of Parliament and State Legislature

There is a significant difference between Article 309 and Articles 146 and 229. Clause (1) of Articles 146 and 229 deals with recruitment and the power is conferred exclusively on the Chief Justice subject only to the provision for consultation with the Public Service Commission if Rules are made by the President or Governor in so far it relates to direct recruitment as referred to earlier. Clause (2) of Articles 146 and 229 deals with conditions of service. According to these clauses, the Chief Justice of the Supreme Court and the High Court is given the power to regulate conditions of service subject to the law made by the Parliament and the State Legislature respectively regulating "conditions of service". On a comparison of Article 309 and Articles 146 and 229 we find that the two matters *viz.*, (i) Recruitment and (ii) Conditions of service which are dealt with jointly in Article 309 are separately dealt with under Clauses (1) and (2) respectively of Articles 146 and 229. The power of the Parliament and State Legislature is confined to regulating conditions of service and on matters relating to recruitment power is exclusively conferred on the Chief Justice.<sup>2</sup>

### 6. Government cannot Interfere with the Appointments

The power of appointment to an office under the High Court is exclusively vested in the Chief Justice. The power of the Governor is only limited to the giving of approval in so far it relates to rules relating to salary, leave and pension. Therefore, it is not open to the Government to interfere with the choice of an incumbent or appointment made by the Chief Justice.<sup>3</sup> Registrar of the High Court is an officer of the High Court. The power to make appointment to the said post can be exercised only by the Chief Justice.<sup>3</sup>

### 7. Disciplinary Matters Outside the Purview of Public Service Commission

The officers and members of the staff attached to the Supreme Court and the High Court clearly fall within the scope of the phrase "persons appointed to public services and posts in connection with the affairs of the State" and also of the phrase "a person who is a member of the civil service of Union or of a State" as used in Articles 310 and 311. But the phrase "persons serving under the Government of India or the Government of State" referred to in Article 320

<sup>2</sup> M. Gurumoorthy *V.* Accountant General—AIR 1971 SC 1850.

<sup>3</sup> State of Orissa *V.* Sudhansu Sekhar Misra—AIR 1968 SC 647 at 650.

seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Governments functioning in the name of the President or the Governor, as the case may be. The officers and the staff of the Supreme Court and the High Court cannot be said to fall within the scope of the above phrase because, in respect of them administrative control is vested in the Chief Justice, who according to the Constitution, has the power of appointment and removal and of making rules for the conditions of service.<sup>4</sup> Consultation with the Public Service Commission in respect of disciplinary matters as provided in Article 320(3)(c) of the Constitution is required in respect of persons "serving under the Government of India or the Government of a State" as specifically stated in the Article. Therefore, there is no requirement for the Chief Justice to consult the Public Service Commission in respect of disciplinary matters relating to officers and servants of the Supreme Court or the High Court as the case may be.<sup>4</sup>

<sup>4</sup> Pradyat Kumar *V.* C. J. of Calcutta—AIR 1956 SC 285—1955(2) SCR 1331.