

HC Judge Appointment Raises Eyebrows

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The Times Of India

Delhi Edition: February 24, 2007: Page 12

New Delhi: The appointment of Justice S Ashok Kumar as a permanent judge of the Madras High Court has raised eyebrows in legal circles. Justice Kumar had been on probation for almost four years when the outer limit within which a judge is supposed to be confirmed is two years.

The new chief justice of India, Justice K G Balakrishnan recommended the confirmation of Justice Kumar bypassing other members of the Supreme Court collegium. Justice Balakrishnan cleared the file within a day of assuming office on January 14 since the thrice-extended probation of Justice Ashok Kumar — an unusual fact in itself — was due to expire on February 3. And while granting the last extension to Justice Kumar in August 2006 for six months, President A P J Abdul Kalam had specifically recorded that it was being done “only” for six months.

When the new CJI’s recommendation was placed before him, President Kalam gave his approval for the government to issue the necessary notification on February 2 and for Justice Kumar to be sworn in the next morning, the last day of his probation, a weekend holiday.

Justice Balakrishnan was, however, not the first CJI to bypass the collegium in Justice Kumar’s case. When he got his second extension in August 2005, it was because the then CJI, R C Lahoti, disregarded the collegium’s recommendation to terminate Justice Kumar’s tenure as an additional judge (which is what a judge on probation is formally called). The 2005 collegium, comprising Justices Lahoti, Ruma Pal and Y K Sabharwal, had turned down the proposal to confirm Justice Kumar on the basis of an adverse IB report. The collegium had ordered an IB probe following a note from the then chief justice of the Madras High Court, Justice Markandeya Katju (who is now in the Supreme Court).

If Justice Kumar still got an extension it was reportedly because of pressure from DMK, because of which the UPA government sent the file to Justice Lahoti requesting him to grant at least another extension. In the event, Justice Lahoti’s file noting granting an extension of one year superseded the collegium’s disapproval.

This despite the fact that under the law laid down by the Supreme Court all recommendations related to judicial appointments will have to be of the collegium and not of the CJI alone.

The departures made in Justice Kumar’s case constitute an example of the manner in which the executive still manages to have its way under the collegium system introduced

in 1993 to grant “primacy” to the judiciary in selecting judges. DMK is learnt to have lobbied heavily for Justice Kumar right from the time of his elevation to the high court from the subordinate judiciary in April 2003.

The cause for such affinity is said to be the bail he granted to DMK supreme K Karunanidhi soon after his infamous midnight arrest in 2001.

When his two-year probation was due to expire in April 2005, Justice Kumar was first given an extension of four months. The second extension, which was recommended by Justice Lahoti, was for a year from Aug 2005. And then in Aug 2006, he got an extension of six months courtesy of the then CJI, Justice Y K Sabharwal.