

CHAPTER XVIII

THE JUDICIARY

THE INDEPENDENCE OF THE JUDICIARY

151. (1) The Chief Justice shall be appointed by the President of the Republic by warrant under the hand of the President.

Appointment
&c. of Judges of
the Supreme
Court and the
Court of Appeal.

(2) Every other Judge of the Supreme Court, the President of the Court of Appeal and every other Judge of the Court of Appeal shall be appointed by the President of the Republic by warrant under the hand of the President after ascertaining the views of the Chief Justice.

(3) The Chief Justice and every Judge referred to in paragraph (2) of this Article—

(a) shall be an attorney-at-law who is a citizen of Sri Lanka and who, in the opinion of the President, has reached eminence in the legal profession, the judiciary or the academic field of law and has maintained high standards of conduct and professional rectitude ; and

(b) shall hold office during good behaviour, and shall not be removed except by an order of the President made after an address of Parliament supported by a majority of the total number of Members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehavior or incapacity.

(4) A resolution for the presentation of such an address shall not be entertained by the Speaker or placed on the Order Paper of Parliament unless —

(a) notice of such resolution is signed by not less than one-third of the total number of Members of Parliament and sets out full particulars of the alleged misbehavior or incapacity ; and

(b) an inquiry has been held –

(i) in the case of the Chief Justice by a committee consisting of three persons each of whom hold, or have held, office as a judge in the highest court of any Commonwealth country;

(ii) in the case of any other judge referred to in paragraph (2) of this Article, by a committee consisting of three persons who hold, or have held, office as a Judge of the Supreme Court or the Court of Appeal created and established by the Constitution, the 1978 Constitution or any other law,

and appointed by the Speaker to inquire into allegations of misbehaviour or incapacity made against the Chief Justice or such Judge, as the case may be, and such committee has found that the allegation of misbehaviour or incapacity has been established against such Judge.

(5) Parliament shall by law or by Standing Orders provide for all matters relating to the presentation of such an address including the procedure for the passing of such resolution, the holding of inquiries by a committee appointed as provided for in sub-paragraph (b) of paragraph (4) of this Article for the investigation and proof of the alleged misbehavior and incapacity and the right of the Chief Justice or such Judge to appear before and be heard by such committee in person or by representative.

(6) Every person appointed to be or to act as Chief Justice, President of the Court of Appeal or a Judge of the Supreme Court or Court of Appeal shall not enter upon the duties of office as Chief Justice, President of the Court of Appeal or Judge until the person makes and subscribes, or takes and subscribes, the affirmation or oath set out in the Fifth Schedule, before the President.

(7) Subject to paragraph (8) of this Article, a Judge of the Supreme Court shall be entitled to hold office until the Judge reaches the age of sixty five years and a Judge of the Court of Appeal shall be entitled to hold office until the Judge reaches the age of sixty three years.

(8) Any such Judge may opt to retire on completion of such period of service as would entitle the judge to the grant of a pension under the Minute on Pensions or resign from office by a writing addressed to the President, prior to reaching the age of retirement.

Salaries of Judges of the Supreme Court and the Court of Appeal.

152. (1) The salaries of the Judges of the Supreme Court and of the Court of Appeal shall be determined by Parliament and shall be charged on the Consolidated Fund of Sri Lanka.

(2) The salary payable to, and the pension entitlement of, a Judge of the Supreme Court and a Judge of the Court of Appeal shall not be reduced after appointment, and the pension entitlement of a Judge of the Supreme Court and the Court of Appeal shall not be less than the salary drawn by the Judge at the time of retirement.

Acting appointments.

153. (1) If the Chief Justice or the President of the Court of Appeal is temporarily unable to exercise, perform and discharge the powers, duties and functions of the office for any period by reason of illness, absence from Sri Lanka or any other cause, the President of the Republic shall appoint another Judge of the Supreme Court or of the Court of Appeal, as the case may be, to act in the office of Chief Justice or President of the Court of Appeal, as the case may be, during such period.

(2) If any Judge of the Supreme Court or of the Court of Appeal is temporarily unable to exercise, perform and discharge the powers, duties and functions of the office for any period by reason of illness, absence from Sri Lanka or any other cause, the President of the Republic may appoint another person to act as a Judge of the Supreme Court or Court of Appeal, as the case may be, during such period.

154. (1) A Judge of the Supreme Court or Court of Appeal may be required by the President of the Republic to perform or discharge any other appropriate duties or functions under any written law.

Performance or discharge of other duties or functions by Judges.

(2) A Judge of the Supreme Court or Court of Appeal shall not perform any other office (whether paid or not) or accept any place of profit or emolument, except as authorized by the Constitution or by written law or with the written consent of the President.

(3) Any person who had held office as a permanent Judge of the Supreme Court or of the Court of Appeal created and established by the Constitution, the 1978 Constitution or any other law may not appear, plead, act or practise in any court, tribunal or institution as an attorney-at-law at any time after retirement or resignation, without the written consent of the President of the Republic, or accept any place of profit in the service of the State.

155. (1) Every Judge of a Regional High Court shall be appointed by the President of the Republic by warrant under the hand of the President after ascertaining the views of the Chief Justice, and shall be removable, and be subject to disciplinary control, by the President on the recommendation of the Judicial Service Commission.

Regional High Court Judges.

(2) Every person appointed as a Judge of a Regional High Court shall not enter upon the duties of the office until the person makes and subscribes or takes and subscribes the affirmation or oath set out in the Fifth Schedule before the Chief Justice.

(3) Subject to paragraph (4) of this Article, a Judge of a Regional High Court shall be entitled to hold office until the Judge reaches the age of sixty one years.

(4) Any Judge of a Regional High Court may opt to retire on completion of such period of service as would entitle the Judge to the grant of a pension under the Minute on Pensions, or resign from the office by a writing addressed to the President, prior to reaching the age of sixty one years.

(5) A Regional High Court Judge may be transferred from one Regional High Court to another by the Chief Justice.

(6) The Chief Justice shall, from time to time, determine the place of sitting of each Judge of a Regional High Court.

156. (1) There shall be a Judicial Service Commission (in this Chapter referred to as the "Commission") which shall consist of the Chief Justice who shall be the Chairperson and two other Judges of the Supreme Court appointed by the President of the Republic, after ascertaining the views of the Chief Justice, and one of whom shall have performed duties as a judicial officer of a court of first instance.

Judicial Service Commission.

(2) The quorum for a meeting of the Commission shall be two members.

(3) The Commission shall have power to act notwithstanding any vacancy in its membership, and any act or proceeding of such Commission shall not be, or shall not be deemed to be, invalid by reason only of any such vacancy or any defect in the appointment of a member.

(4) A Judge of the Supreme Court appointed as a member of the Commission shall, unless the Judge earlier resigns from office or is removed therefrom as hereinafter provided or ceases to be a Judge of the Supreme Court, hold office for a period of five years from the date of appointment but shall be eligible for reappointment.

(5) The President may, for cause assigned, remove from office, any member of the Commission.

(6) The President may grant to any member of the Commission leave from the duties of the member and may appoint another Judge of the Supreme Court to be a temporary member of the Commission for the period of such leave.

(7) A member of the Commission may be paid such salary or allowance as may be determined by Parliament and any salary or allowance so payable to a member shall be charged on the Consolidated Fund and shall not be reduced during the term of office of the member.

(8) The salary or allowance payable under paragraph (7) of this Article to a member of the Commission shall be in addition to the salary or other emoluments attached to, and received from, the substantive appointment of the member.

(9) The Commission may make –

- (a) rules regarding schemes for recruitment and procedure for the appointment of judicial officers and specified public officers; and
- (b) provisions for such matters as are necessary or expedient for the exercise, performance and discharge of the powers, duties and functions of the Commission.

(10) The Chairperson of the Commission or any Judge of the Supreme Court or Court of Appeal authorized by such Chairperson, shall have full power and authority to inspect any court of first instance or the records, registers or other documents maintained in such court and to hold such inquiry as may be necessary.

Secretary to the
Judicial Service
Commission.

157. There shall be a Secretary to the Commission who shall be appointed by the Commission from among senior judicial officers of the courts of first instance.

158. (1) The appointment, promotion, transfer, dismissal and disciplinary control of all judicial officers and of all specified public officers is vested in the Commission.

Appointment &c of judicial officers and specified public officers.

(2) It shall be competent for the Commission by Order published in the Gazette to delegate any of the Commission's powers under paragraph (1) of this Article in respect of such class or categories of judicial officers or specified public officers as may be specified therein, to a committee of not less than three Judges, each of whom shall be a Judge of the Supreme Court or of the Court of Appeal and one of whom shall be nominated by the Chief Justice as Chairperson.

(3) Any judicial officer or specified public officer may resign by writing addressed to the Chairperson of the Commission.

(4) The Commission may by Order published in the *Gazette*, delegate to the Secretary to the Commission the power to make all transfers (including transfer from one Region to another Region) in respect of specified public officers, other than transfers involving increase of salaries or the power to make acting appointments in such cases and subject to such limitations as may be specified in the Order.

159. (1) (a) In Articles 156, 157 and 158 "judicial officer" means any person who holds office as judge, presiding officer or member of any court of first instance, tribunal or institution created and established for the administration of justice or for the adjudication of any labour or other dispute but does not include a Judge of a Regional High Court or a person who performs arbitral functions or a public officer whose principal duty is not the performance of functions of a judicial nature.

Interpretation.

(b) No court, tribunal or institution shall have jurisdiction to determine the question whether or not a person is a judicial officer within the meaning of the Constitution but such question shall be determined by the Commission whose decision thereon shall be final and conclusive.

(c) No act of such person or proceeding held before such person, prior to such determination as is referred to in sub-paragraph (b) shall be deemed to be invalid by reason of such determination.

(2) In this Chapter, "specified public officer" means the Registrar of the Supreme Court, the Registrar of the Court of Appeal, the Registrar, Deputy Registrar or Assistant Registrar of any court of first instance, the Fiscal, the Deputy Fiscal of the Court and Appeal and any court of first instance, any national or regional public officer employed in the Registry of the Supreme Court, Court of Appeal or any court of first instance included in any of the following categories, namely, clerks, interpreters, stenographers, typists and binders or in such other categories as may be specified by Order made by the Minister of the Cabinet of Ministers in charge of the subject of Justice and approved by Parliament.

Interference with
Judicial Service
Commission &c
an offence.

160. (1) Every person who, otherwise than in the course of the person's duty, directly or indirectly, alone or by any other person, in any manner whatsoever, influences or attempts to influence any decision of the Commission, a committee appointed by the Commission or any member thereof, shall be guilty of an offence and shall on conviction by a Regional High Court, be liable to a fine not exceeding ten thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Anything in paragraph (1) of this Article shall not prohibit any person from giving a certificate or testimonial to any applicant or candidate for any judicial office.

Interference with
judiciary an
offence.

161. (1) Every judge, presiding officer, public officer or other person entrusted by law with judicial powers or functions or with functions under this Chapter or with similar functions under any law enacted by Parliament shall exercise and discharge such powers and functions without being subject to any direction or other interference proceeding from any other person except a superior court, tribunal, institution or other person entitled under law to direct or supervise such judge, presiding officer, public officer or such other person in the exercise or discharge of such powers or functions.

(2) Every person who, without legal authority, interferes or attempts to interfere with the exercise or discharge of the judicial powers or functions of any judge, presiding officer, public officer or such other person as is referred to in paragraph (1) of this Article, shall be guilty of an offence and shall on conviction by a Regional High Court be liable to a fine not exceeding ten thousand rupees or to imprisonment of either description for a term not exceeding five years or with both such fine and imprisonment and may, in addition, be disqualified for a period not exceeding seven years from the date of such conviction from being an elector and from voting at a Referendum or at any election of Members of Parliament or Members of a Regional Council or any local authority or from holding any public office and from being employed as an officer in the service of the State.

Immunity of
members of
Judicial Service
Commission &c.

162. Any suit or proceedings shall not lie against any member of the Commission or any committee appointed by the Commission for any act which in good faith is done or is purported to be done by the member in the performance of the duties or discharge of the functions under the Constitution.

Fiscal.

163. There shall be a Fiscal who shall be the Fiscal for the whole Island and shall exercise supervision and control over Deputy Fiscals attached to all courts.