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DOCTRINE OF PLEASURE AND ITS LIMITATIONS: PROTECTION OF CIVIL SERVANTS

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ABSTRACT

A civil Service Commission is a Government agency that is constituted by legislature to regulate the employment and working conditions of Civil servants, oversee hiring and promotion and promotes the values of public service. Its role is roughly analogous to that of the human resources department in corporations. Under the provisions of Article 309, Parliament is empowered to regulate the requirement and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union. Similarly State Legislatures are empowered to regulate recruitment and conditions of service of persons appointed to public service or posts in connection with affairs of the State. The agency's charter is granted by the Constitution of India, Article 315 to 323 of Part XIV of the constitution. The Commission consists of a Chairman and ten members. The terms and conditions of service of Chairman and members of the commissions are governed by the Union Public Service Commission (Members) Regulation 1969.

KEYWORDS: UPS Union Public Service Commission, Recruitment, Competitive Examination, Constitutional Provisions, Recommendations, Disciplinary Action, Safeguards, Enquiry Proceedings, Reasonable Opportunity and Service Tribunals

INTRODUCTION

The idea of establishing a Public Service Commission for the recruitment of Public Services in the country was first formulated in the memorandum presented by the Government of India in 1919 to the Committee on the division of functions. It is provided that "there shall be established in India a Public Service Commission which shall discharge in regard to the recruitment and control of the public services in India., such other functions as may be assigned thereto by rules made by the secretary of State in council" The Government of India considered this question and forwarded its recommendations to the Provincial Governments of their views. It also said that competitive examinations were going to be introduced; it must be subject to the following conditions.

First the candidates must be graduates; there should be a preliminary selection of candidates by a Committee to be constituted for the purpose; the Provincial Governments should decide upon the recommendations of the Committee; there should be some age limit. In 1924, the Royal Commission on public Services (Lee Commission) laid stress on the necessity for constituting without delay a Public Service Commission under the Government of India Act, 1919. They proposed to assign to the Commission four distinct functions; First, the recruitment of personnel for public services; Second, the establishment and the maintenance of proper standards of qualifications for admission to the services; Third, quasi-judicial functions relating to disciplinary control and protection of services and finally, advisory functions in regard to the general service problems.

The Government of India Act, 1935 accordingly provided in section 264 that, "there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province. After India attained her Independence in 1947 and proceeded to frame a constitution according to her own ideals, the Constituent Assembly, entrusted with this

responsibility, did not fail to appreciate the need of a Public Service Commission both for Union and for the Units for purposes of recruitment to the Civil Services as well as for the protection of the interests of the civil servants.

Accordingly, in Chapter I and II of Part XIV Articles 308 to 323 of the Constitution of India, provides provisions relating to services Under the Union and States and Public Service Commission. Article 315 (1) of the Constitution of India says that there shall be a Public Service Commission for each state. Two or more State may agree that there shall be one Public Service Commission for that group of States. In that case Parliament may be requested by the Governor to serve the needs of the state.

Public Service Commission

The Constitution of India, unlike the constitution of many other countries, has provided for public service commission at the Centre as well as in the States. In most Countries of the world such agencies are created by the legislature; they have no constitutional existence. Considered from this point of view, the commissions are only advisory bodies, and the governments may disregard their advice with impunity. Experience, however, reveals that the governments both at centre and in the states have been implementing the recommendations of the Commissions with all sincerity.

In a democratic state, like India, it is desirable that the government should be guided in respect of appointment and control of its officials by an impartial body of experts like the public service commission. It has been observed from the discussion in parliament and in state legislature over the years on the reports of the Commissions that only in a very few cases the government failed to accept the recommendations of the Commissions, and even for such few cases the government concerned has been bitterly criticised.

Recruitment and Conditions of Service

Under the provisions of Article 309, Parliament is empowered to regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union. Similarly, State Legislatures are empowered to regulate recruitment and conditions of service of persons appointed to public service or posts in connection with the affairs of the states. But according to the opinion of the Supreme Court, In the case of Rajinder Singh v State of Punjab AIR, 2001 S.C 1769, the executive instructions cannot amend the rules, where appointment or promotion is made without requisite qualifications prescribed by Rules only, relying upon notification the appointment or promotion shall be illegal.

Article 311 expressly imposes restrictions upon the pleasure of the president or the Governor, as the case may be, and provisions of clause (1) and (2) of it come within the ambit of the words “Except as otherwise provided by this constitution” which qualify Article 310(1). However, opening words of Article 309 make it expressly subject to other provisions of the constitution and therefore it cannot operate as an exception to pleasure doctrine. Rules made under the proviso to article 309 or Acts referable to it would be subject to both Articles 310 and 311 decided in Union of India v Tulsiram Patel, AIR,1985 S.C. 1416. Where however, no law is made by Parliament or State Legislature for such regulation, President can make rules in connection with the Union Public Services and posts and Governor in connection with State Public Services and posts. The President and Governors have also been given power to delegate their rule making power to any other person.

The law made by Parliament or legislature of a state under this article is subject to restrictions in other provisions of the constitution, for example, fundamental rights or restrictions in Article311 and the rules made by the president and Governors have been expressly made subject to Act of Parliament and State legislatures’ respectively. Thus, if there is no

law made by Parliament and rules are made by the president or person authorised by him and later on Parliament passes an Act and the provisions of which are inconsistent with such rules, the rules will cease to be effective.

In A. B. Krishna v State of Karnataka, AIR,1998 S.C.1050, it has been held that the Governor cannot exercise power under article 309 if the legislature has already made a law and occupied the field. In this case Mysore Fire Force (Cadre Recruitment) Rules, 1971, which were made under Mysore Fire Force Act, 1964 provided for examination to be held for promotion, but Karnataka Civil Service (General Recruitment) Rules, 1971, which were made under Article 309, were amended after policy decision in 1982 that promotions to the post of Heads of the Departments and Additional Heads of Departments should be made by selection but promotions to other posts should be made on the basis of seniority-cum-merit, not by selection.

In 1986, appellants were promoted on the basis of seniority to the post of leading firemen. The promotions were challenged on the ground that they should have been made in accordance with the provisions of rules under Mysore Fire Force Act, not under Karnataka Civil Service (General Recruitment) Rules,. The contention was upheld by Karnataka Administrative Tribunal. From the decision of the Tribunal, appeals were made to the Supreme Court. The Supreme Court dismissed the appeals.

Doctrine of Pleasure

In England the rule is that a civil servant of the Crown holds office during the pleasure of the Crown and his services can be terminated by the Crown at any time without assigning any reason and without giving any compensation except where it is otherwise provided by a statute. The Crown is not bound by the contract of employment between it and a civil servant and therefore in the case of dismissal, a civil servant is not entitled to damages for premature termination of his services. The doctrine of pleasure is based on the public policy. Its operation, however, can be modified by an act of Parliament.

In India the doctrine of pleasure has been incorporated in Article 310 of the Constitution of India. Article 310 provides that except as expressly provided by the Constitution, every person, who is a member of defence service or of a civil service of the Union or of an All India Service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President and every person who is a member of a civil service of a State or holds any civil post under a state holds office during the pleasure of the Governor of the State.

It was decided in the case of Shyam v Union of India AIR, 1987 S.C. 1137, Pleasure under Article 310 is not required to be exercised by the president or the Governor personally. It may be exercised by the president or the Governor acting on the advice of the Council of Ministers. In another case of Union of India v Tulsiram, AIR 1985 SC 1416, it was decided that pleasure of the President or the Governor under Article 310 is not subject to any contract and cannot be fettered by contract, ordinary legislation or the rules made under Article 309.

Exceptions to Doctrine of Pleasure

The Doctrine of pleasure is subject to other express provisions of the Constitution. Article 310(1) will not apply where the constitution expressly provides for secured tenure. Article 124 and Article 217 guarantee a secured tenure to the judges of the Supreme Court and the High Courts. Similarly, the Comptroller and Auditor-General of India (Article148), Chairman and Members of Public Service Commission (Article 317) and the Chief Election Commissioner (Article324) also have constitutionally secured tenure. Doctrine of pleasure does not apply to the holders of these offices. They can be

removed from office on the ground of 'Proved misbehaviour' or 'incapacity' by observing the procedure contemplated by the constitution.

Other Offices Subject to Doctrine of Pleasure

The executive power of the Union and of a state has been vested in the President and the Governor of the State concerned respectively. The President has a fixed term and he does not hold office at pleasure. The Governor is the executive head of a state and has a term of five years. But he can be removed from his office earlier because he holds his office during the pleasure of the president. This doctrine of pleasure has no safeguards and in a number of cases the Governors have been dismissed by the president arbitrarily.

There are no safeguards available to him. The ministers of the Union and of various States have real executive powers with respect to their ministers. But all the ministers hold office during the pleasure of the president or a Governor as the case may be. Factually, all ministers hold office during the pleasure of the Prime Minister or the Chief Minister which is exercised formally in the name of the President or Governor.

The Council of Ministers of National Capital Territory of Delhi holds office during the pleasure of the President though it is accountable to the Legislative Council. The Attorney General of India and the Advocate General of each state also hold office during the pleasure of the President or the Governor as the case may be.

Doctrine of Pleasure under Article 310 and Common Law

In Britain, the doctrine of pleasure is a common law doctrine. It can be modified by parliament by law. In India, it is a constitutional doctrine and cannot be changed by ordinary legislation (decided in the case of Sampuran Singh v State of Punjab, AIR 1982 SC 1407). In Britain, a civil servant has no right to bring suit against the Crown for arrears of salary. In India, a civil servant will get his arrears of salary if his dismissal is found to be unlawful. The pleasure of the President/Governor is subject to other provisions of the Constitution. In our Republic where the rule of law prevails, even pleasure is canalised. Viewed from this perspective, security of tenure is a value itself.

Clause (2) of Article 310 again makes an exception to the doctrine of pleasure. The state can enter into service contracts with new entrants, other than those covered by Clause (1), having special qualifications and such agreements will not be subject to the doctrine of pleasure where such contracts make provision for compensation in case of premature termination of contract,, except the cases of misconduct on the part of the employee, the Government shall be bound to pay compensation. Payment of compensation under clause (2) of Article 310 is not implicit. It can be made only when the contract of service makes specific provision for such compensation. Being an enabling provision in the matter of payment of compensation on the basis of a contractual obligation, it cannot be said that even when there is no stipulation in a contract of employment, the same is implicit, decided in the case of J.P. Bansal v State of Rajasthan, AIR 2003 SC 1405.

Save Guards to Civil Servants (Article 311)

Article 311 is a bulwark of civil servants. This is an important guarantee which severely restricts the doctrine of pleasure contained in Article 310 (1) of the Constitution. Article 311 envisages three major penalties which may be inflicted on a civil servant. They are dismissal, removal and reduction in rank. Dismissal and removal from service are grave penalties which end the services of an employee. Article 311 gives more protection to a civil servant against these penalties. Reduction in rank does not end the services of an employee and, has been treated differently. Article 311 (1) provides that no person who is a member of a civil service of a state or holds a civil post under the union or a state shall be dismissed or removed by an authority subordinate to that by which he was appointed.

Reasonable Opportunity of Hearing

A civil servant cannot be dismissed, removed or reduced in rank unless: (a) an inquiry is made in which (b) he is informed of the charges against him; and (c) given a reasonable opportunity of being heard in respect of those charges. Procedural defect in the inquiry proceedings does not set aside the order of dismissal etc. and reinstate the employee. In such cases, the enquiry proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced. Decided in the case of (Union of India v Y.S. Sandhu, Air,2009 SC 162; U P State Spining Co. Ltd. V R.S Pandey, (2005) 8 SCC 264)

The protection given to a civil servant by Article311 (20 is that he cannot be dismissed, removed or reduced in rank by way of punishment without : (a) an inquiry informing him of (b) the charges against him and without (c) giving a reasonable opportunity of being heard in respect of those charges.

In cases where the basis on which the employee obtained the employment is false, no inquiry is required. In Superintendent of Post Offices v R. Valasina Babu, AIR 2007 SC 1126, the respondent secured Government Job by producing false certificate. On inquiry the Collector cancelled the certificate. After disciplinary proceedings he was dismissed from service. It was held that in case of this nature, it might not have been necessary to initiate any disciplinary proceedings against the respondent. He could be dismissed withot an inquiry.

Departmental proceedings are said to have been initiated only when a charge-sheet is issued (Coal India Ltd. V Saroj Kumar Mishra,AIR 2007 SC 1707) Departmental proceedings and criminal proceedings are different. Unless the charge in criminal trial is of grave nature with complicated facts and law, departmental inquiry can be held separately, decided in the case of NOIDA Entrepreneurs Association v NOIDA, AIR 2007 SC 1161.

Reasonable Opportunity

Reasonable Opportunity is a facet of natural justice. Natural Justice has no fixed meaning. The basic object is to ensure fairness, impartiality and reasonableness In the case of Uma Nath Pandey v State of U.P. AIR 2009 SC 2375, it was held by the Supreme Court that the very purpose of the following principles of natural justice is the prevention of miscarriage of justice. Broadly reasonable opportunity may include the following:

- The employee against whom action for either of three punishments (removal, dismissal or reduction in rank) is proposed should be informed of the charges;
- The charges must be clear, precise and accurate;
- The delinquent employee should be informed of the evidence by which those charges are sought to be substantiated against him;
- Copies of relevant document must be supplied to the employee;
- If charges are framed on the basis of evidence of witnesses examined in the absence of delinquent employee, copies of statements of witnesses must be given to him;
- Personal hearing if demanded by the delinquent servant, must be given;
- The employee charged must be given an opportunity to cross-examine the witnesses produced against him;
- All the witness should be examined in the presence of delinquent and he should be given an opportunity to cross-examine them;

- The employee against whom an inquiry is being held has a right to argue his own case. It is a part of personal hearing;
- Inquiry officer should not be biased;
- Reasons must be given by an inquiry officer for his decision;
- Inquiry officer cannot be a witnesses himself.

It was decided in the case of Secretary A P Social Welfare Residential Educational Institutions v pindigee Sridher, AIR 2007 SC 1527, that no hearing is required where the employee has secured the employment by fraud. If a case is made out of such an inquiry for imposing penalty, the punishment, would be given on the basis of evidence adduced during such inquiry and the employee will not be entitled to make representation against the penalty proposed.

Service Tribunals

One of the recommendations of the Swaran Singh Committee was to have special tribunals for resolving the disputes of civil servants which had resulted in backlog of cases in High Courts. Article 323-A was inserted in the Constitution as a follow-up measures by the Constitution (forty-Second Amendment) Act, 1976. The purpose of service Tribunals is to deal exclusively with service matters and to provide to persons covered by them, speedy relief in respect of their grievances. Article 323-A is not self-executor. Parliament 'may', by law provide for the adjudication of or trial by administrative tribunals of disputes and complaints with respect to recruitment and condition of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. By virtue of this authorisation Parliament in 1985 has enacted The Administrative Tribunals Act providing for the establishment Central/State/Joint Administrative Tribunals. It is clear from the language of Article 323-A that Parliament alone has power to establish such tribunals. The object was to equate these tribunals with the High Court so that the burden of the later could be reduced.

CONCLUSIONS

Experience of democratic countries underlines the importance of an efficient and independent civil service. The Constitution of India assures reasonable security of tenure to civil servants. The Recruitment to important civil services becomes vital for an independent, efficient and impartial administration. The values of independence, impartiality and integrity are the basic determinants of the constitutional conception of Public Service Commissions and their rule and functions. It is mandatory for the Commission to present annual reports to the president Or Governor as the case may be. The President and the Governor shall cause to be laid before each House of Parliament and the State Legislature a copy of the report and a memorandum explaining the reasons where the advice of the commission was not accepted. These reports are discussed in the respective Houses and the Government explains the reasons for not accepting the advice of the Commission. Cases of non-acceptance of advice are also subjected to judicial review and action of the Government in not accepting the advice has been struck down primarily on the basis of arbitrariness or malafide.

REFERENCES

1. Basu, Durga Das, Introduction to the Constitution of India, New Delhi, Prentice Hall of India,1987
2. Joshi, K.C, The Constitutional law of India, Central law publication, First edition 2011.
3. Johari, J.C., Indian Government & politics Fourth edition 1979, Vishal publication Delhi- Jallandhar.

4. Jain, M.P, Indian constitutional law, Wadhwa, Nagpur 2005.
5. Pande, G.S Constitutional law of India, Eleventh edition, 2009 university Book House, Jaipur.
6. Pandey ,J.N., Constitutional law of India C.L.A Allahabad,2006
7. Pylee, M.V., An introduction to the Constitution of India, New Delhi,1998
8. Rai Kailash , The Constitutional law of India ,C.L.A Allahabad , seventh edition, 2008.
9. Shukla, V.N., Constitutional law of India E.V.C, Lucknow , 2004.
10. Hazarika, Niru,Public Service Commission, A Study, New Delhi, Leela Devi Publications,1979
11. Jois, Justice M. Rama, Services under the State, New Delhi, The Indian Law Institute, 2007
12. Kumar, Narender, Law relating to Government Servants and Management of Disciplinary Proceedings, Faridabad, Allahabad Law Agency,2003
13. Roy, Naresh Chandra, Civil Service, Calcutta, Firma K.L.Mukhopadhyay,1958
14. D.K.Sharma, Political Science, New Delhi, New Age International (p) limited, 2007 p 309
15. Statutes
16. The Constitution of India, 1950