

PART—IV

TENURE OF OFFICE

CHAPTER I

Tenure at Pleasure

(1) *Pleasure Doctrine* : Article 310 of the Constitution provides that except as expressly provided in the Constitution every person who is a member of the defence service or of a civil service of the Union or of an All-India service or holds any post connected with the defence or holds any civil post under the Union, holds office during the pleasure of the President and that 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.

(2) *Origin of pleasure doctrine* : The rule that a civil servant holds office during the pleasure of the Crown has its origin in the Latin phrase '*durante bene placito*' (during pleasure) meaning thereby that the tenure of office of a civil servant except where it is otherwise provided by statute can be terminated at any time without assigning any cause. The true scope and effect of this expression is that even if a special contract has been made with the civil servant the Crown is not bound thereby. In other words, civil servants are liable to be dismissed without notice and there is no right of action for wrongful dismissal *i.e.*, they cannot claim any relief against termination of their services.¹

(3) *Limitations on pleasure under the Indian Constitution* : The rule of English law relating to pleasure has not been fully adopted under the Indian Constitution. Article 311(2) places restrictions and limitations on the exercise of that pleasure. Those restrictions are imperative and mandatory and must be given effect to. While Articles 309 and 310 are subject to Article 311, Article 311 is not subject to any other provision of the Constitution. Therefore, whenever there is a breach of the restriction contained in Article 311(2) of the Constitution and a civil servant is removed from the service, the matter becomes justiciable in a court of law and the party is entitled to suitable relief at the hands of the court.²

1 (a) *Shelton V. Smith*—1895 AC 229 at 234.

(b) *Dunn V. The Queen*—(1896) 1 QB 116.

2 (a) *State of Bihar V. Abdul Majid*—AIR 1954 SC 245—1954 SCR 786.

(b) *Purushotham Lal Dhingra V. Union of India*—AIR 1958 SC 36—1958 SCR 828.

(c) *Moti Ram V. N. E. Frontier Rly.*—AIR 1964 SC 600—1964(5) SCR 683.

(d) *N. Ramanatha Pillai V. State of Kerala*—AIR 1973 SC 2641.

(4) *Three exceptions to the provisions of Article 311(2)*: Article 311(2) of the Constitution, however, provides three exceptions to the general rule that no person holding a civil post under the Union or a State should be dismissed or removed or reduced in rank without holding a regular enquiry. They are:—

(a) *Exception (i)*: Clause (a) of Article 311(2) dispenses with the holding of a departmental enquiry in cases where the punishment is sought to be imposed on the basis of the conduct which has led to the conviction on a criminal charge. The reason for this Clause is obvious. When an official is convicted on a criminal charge, if the conduct which results in such conviction is sufficient basis to impose the punishment, there is no necessity to give any further opportunity as he would have had the benefit of a full-fledged trial before a criminal court.

(b) *Exception (ii)*: Clause (b) of Article 311(2) dispenses with the holding of an enquiry, if disciplinary authority is satisfied for recorded reasons that it is impracticable to hold an enquiry, for instance, where the official is absconding or becomes a lunatic. In such cases after passing an order as to the impracticability of holding an enquiry the competent authority can proceed to pass an order of removal or dismissal.

(c) *Exception (iii)*: Clause (c) of Article 311(2) empowers the President or the Governor to dismiss or remove a civil servant if he is satisfied that in the interest of the security of the State, it is not expedient to hold an enquiry. This is the only instance of absolute pleasure of the President or the Governor, as the case may be, which in respect of civil servants could be exercised in the interest of the security of the State which is of paramount importance.

(5) *Absolute pleasure of the President in respect of defence personnel*: The pleasure doctrine under Article 310 is applicable to the members of the civil service as well as defence services. But Article 311(2) which places a restriction on the pleasure is applicable only to the members of civil service. Therefore, in the case of persons in the defence services or civilians in defence services they hold their office under the pleasure of the President; in other words, the pleasure of the President, insofar it relates to the tenure of office of the members of defence services is absolute.³

(6) *Pleasure cannot be curtailed in any other manner*: Subject to the following of the procedure contained in Article 311(2) of the Constitution, the pleasure of the President or the Governor under Article 310 to bring about the termination of a civil servant at any time for good and sufficient reason is absolute. This pleasure of the President or the Governor, as the case may

3 J. M. Ajwani *V.* Union of India—SLR 1967 SC 471.

be, cannot be curtailed by rules framed under Article 309 or even by legislation.⁴

Illustration : (a) If by a provision made by a legislative enactment or by rules, the decision of a disciplinary authority is made final and is not liable to review by the President or Governor, such a provision will be invalid and not binding on the President or the Governor, as the case may be.

In view of this position, we find that specific power for review is reserved for the President under the Central Civil Services (Classification, Control and Appeal) Rules, and there are similar provisions in the corresponding rules framed by the States reserving power of review for the Governor.⁵

(b) Similarly, if by such a provision it is provided that no civil servant is liable for removal from service unless he has put in 10 years of service, such a provision impinges on the pleasure of the President or Governor and so is invalid and unenforceable.

(7) *Pleasure relates to tenure and not to other conditions of service :* The pleasure of the President or the Governor under Article 310 of the Constitution only relates to tenure of office and does not extend to other matters relating to conditions of service. Therefore, every rule regulating recruitment and conditions of service framed under Article 309 of the Constitution which confers rights on civil servants is enforceable.⁶ As the power to prescribe rules regulating conditions of service under Article 309 is subject to the other provisions of the Constitution, no rule framed by the Governor or law made by the legislature can impinge upon the power of the President or the Governor, as the case may be, regarding the exercise of his pleasure subject to Article 311(2) of the Constitution. Subject to this condition, the rules regulating conditions of service are enforceable.^{6-d}

(8) *No power to continue after superannuation :* Pleasure does not empower continuance of a civil servant beyond the age of superannuation. A civil servant holds office during the pleasure of the President or the Governor, as the case may be. But when according to the conditions of service, he has reached the age of superannuation, he ceases to hold office from that date. The pleasure of the President or the Governor, as the case may be, does not

4 State of Uttar Pradesh *V.* Baburam—AIR 1961 SC 751.

5 (a) Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.
(b) Rule 26 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957.

6 (a) State of Bihar *V.* Abdul Majid—AIR 1954 SC 245—1954 SCR 786.
(b) Lachman Prasad *V.* Superintendent G. H. & S. Factory—AIR 1958 All. 345.
(c) Malleshappa H. Bellary *V.* State of Mysore—1961 *Mys. L. J.* 1 (FB).
(d) State of Uttar Pradesh *V.* Baburam—AIR 1961 SC 751.
(e) State of Mysore *V.* M. H. Bellary—AIR 1965 SC 868.

empower to continue the civil servant beyond the age of superannuation for purposes of holding disciplinary proceedings.⁷

(9) *Distinction between the power of disciplinary authority and pleasure under Article 310* : Under Article 310 the tenure of a civil servant in the service of the Union or the State is subject to the pleasure of the President or the Governor, as the case may be. The power to remove or dismiss a civil servant at pleasure is outside the general executive power of the Union which is vested in the President under Article 73 and the general executive power of the State which is vested in the Governor under Article 154. The power to remove a civil servant at pleasure is committed personally to the President and the Governor. Therefore, the said power cannot be delegated.⁸ Apart from the power conferred on the President or the Governor, as the case may be, to remove or dismiss at pleasure a civil servant of the Union or the State respectively, the power to dismiss or remove a civil servant can be exercised by the authority empowered to appoint the civil servant concerned under the rules regulating recruitment as also by any other authority authorised by the provisions made under Article 309 which authority should not however be lower in rank than the appointing authority in view of Article 311(1). The power so conferred is separate and distinct from the power to remove a civil servant at pleasure conferred on the President and the Governor under Article 310. The power exercisable by the appointing authority or any higher authority to remove or dismiss a civil servant is the power available under the provisions made under Article 309 read with Article 311(1) and not under Article 310. For instance, the power under Article 311(2)(c) can be exercised only by the President or the Governor and not by the authority named in Article 311(1).

(10) *Exception to the pleasure tenure* : Even the pleasure doctrine with the restriction contained in Article 311 is made inapplicable to certain very important offices under the State. Opening words of Article 310 expressly make it clear that the principle that a Government servant holds office during the pleasure has no application to cases for which specific provision has been made in the Constitution itself. The specific provisions made in the Constitution are with reference to (1) the tenure of office of the judges of the Supreme Court (*vide* Article 124), (2) of the Auditor General of India (*vide* Article 148), (3) of judges of the High Courts (*vide* Articles 217 and 218), (4) Chairman and Members of the Public Service Commission (*vide* Articles 317), and (5) of the Chief Election Commission, Election Commissioner and Regional Election Commissioner (*vide* Article 324 of the Constitution). These articles provide a special procedure for removing persons appointed to those posts. The provision of Article 310 has no application to those cases.⁹

7 (a) *State of West Bengal V. Nripendranath*—AIR 1966 SC 447.

(b) *Pratap Singh V. State of Punjab*—AIR 1964 SC 72.

8 *State of Uttar Pradesh V. Babu Ram*—AIR 1961 SC 751—1961(2) SCR 679.

9 *P. L. Dhingra V. Union of India*—AIR 1958 SC 36 at 41 para 9.