

PART—VI

PUBLIC SERVICE COMMISSION

Having regard to the great importance of the services under the State, with the object of providing an assurance to the services that matter concerning them have been considered by an independent body and making available the best unbiased advice to the Union and the State Governments in all matters relating to recruitment and other matters relating to civil services and posts under the Union and the States, the Constitution of India has provided for the constitution of an independent body in the form of Union Public Service Commission for advising the Union Government and also Public Service Commission for each State for advising the respective State Governments *vide* Article 315.¹ Clause (2) of the said Article also provides that if two or more States agree for having a joint Public Service Commission for that group of States by passing a resolution to that effect in the respective State Legislature, the Parliament may provide for the appointment of a joint Public Service Commission. Clause (4) of Article 315 provides that the Union Public Service Commission, if requested by the Governor of a State, may serve all or any of the needs of that State with the approval of the President.

1. Term of Office and Security of Tenure

(1) Article 316 fixes the tenure of the Chairman and Members of the Public Service Commission and Article 317 provides security of tenure, by providing that a Chairman or a Member of the Public Service Commission may be removed only after a reference is made about the misbehaviour, to the Supreme Court and on the basis of recommendation of the Supreme Court. The security of tenure is given to ensure independence on the part of the Chairman and Members of the Public Service Commission in discharging the very important functions entrusted to them under the Constitution. Article 319 contains prohibition against the re-employment of Chairman and Members of Public Service Commission after their term of office to the same office under the same Commission and for any employment under the Government of India or State Government. According to that Article:—

- (i) the Chairman of a State Public Service Commission is eligible only to be appointed as Chairman or Member of the Union Public Service

¹ State of Uttar Pradesh *V.* Manbodhanlal Srivastava—AIR 1957 SC 912.

Commission or as Chairman of any other State Public Service Commission (*vide* Clause *b*);

- (ii) a Member of Union Public Service Commission is eligible to be appointed as Chairman of that body or as Chairman of a State Public Service Commission (*vide* Clause *c*);
- (iii) a Member of a State Public Service Commission is eligible to be appointed as Member of Union Public Service Commission or as Chairman of that or any other State Public Service Commission (*vide* Clause *d*).

Except the offices to which they are rendered eligible, they are disqualified for appointment to any other post under the Union or the State.

As far as the office of Chairman of Union Public Service Commission is concerned, once a person occupies that post he is rendered ineligible for any further employment under the Union or the State Government (*vide* Clause *a*).

(2) *The tenure of office of a member appointed as Chairman* ; Clause (2) of Article 316 fixes the tenure of office of a member of the Public Service Commission at 6 years from the date of entering the office or the age of 65 years in respect of a member of the Union Public Service Commission or the age of 60 years in respect of a member of the State Public Service Commission whichever is earlier. A member of a Public Service Commission is eligible for appointment as Chairman of the same Public Service Commission of which he was a member in view of Clause (*d*) of Article 319 of the Constitution. A Chairman and a member of the Public Service Commission are both members of the Commission. But they hold different offices. The tenure of office either as Chairman or as Member commences from the date on which he enters upon that office. A Member of a Public Service Commission can fill one of the two offices *viz.*, (i) as an ordinary member, (ii) as a member-chairman and the disability for re-appointment prescribed by Article 316(3) attaches to the specific office. Therefore, the appointment of an ordinary member of a Public Service Commission as Chairman is not a re-appointment to the same office but a fresh appointment to the office of the Chairman. Therefore, he is entitled to be a Chairman for the full period of 6 years from the date he assumes office as Chairman and cannot be asked to quit the office of Chairman taking into account the period for which he has served as an ordinary member at the end of 6 years. The 6 year term provided under the Article is for each office. Therefore, the term of a Member of the Public Service Commission appointed as Chairman is 6 years from the date he assumes office as Chairman subject to his being within the age limit of 60 years prescribed in the Article.²⁻³

2 *State of Mysore V. R. V. Bidap*—AIR 1973 SC 2555 at 2573—1973(2) *Mys. L. J.* 54 affirmed—AIR 1966 Cal. 290 (FB) overruled.

3 *R. V. Bidap V. State of Mysore*—1973(2) *Mys. L. J.* 54.

2. Functions of the Public Service Commission

(1) Article 320 of the Constitution makes it the duty of the Union and the State Public Service Commission to conduct examinations for purposes of appointment to the services of the Union or State, as the case may be. As it is competent for the Union Public Service Commission to assist the States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required if so requested by two or more States,

(2) *Matters on which consultation is provided* : Clause (3) of Article 320 provides that the State Public Service Commission shall be consulted in the following matters:—

- (i) Matters relating to method of recruitment (*vide* Clause a).
- (ii) Principles to be followed in making appointments to the civil services and posts and also relating to promotion and transfer from one service to another and regarding suitability of candidates for such appointments (*vide* Clause b).
- (iii) Regarding disciplinary matters (*vide* Clause c).
- (iv) Regarding settling of claims relating to all costs in respect of legal proceedings spent by a Government servant in defending his actions as an officer of the State Government (*vide* Clause d).
- (v) Regarding claims of pension in respect of injuries sustained by a person while serving under the Government of India or the State Government in civil capacity and as to the amount of any such award (*vide* Clause e).

The Article makes it the duty of the Public Service Commission to advise on any matter referred to it by the President or the Governor as the case may be.

(3) *Dispensing with consultation* : Proviso to Article 320 of the Constitution provides that the President or the Governor, as the case may be, may make regulations specifying the matters in which generally or in any particular class of cases or in any particular circumstances, it is not necessary to consult the Public Service Commission. Clause (5) of Article 320 provides for the laying of the regulations so made before each house of Parliament or the State Legislature as the case may be for 14 days and it further provides that the regulations will have effect thereafter subject to such modification made by the legislature. This provision is made with the object of ensuring that every regulation excluding the jurisdiction of Public Service Commission in the matter of consultation is subject to scrutiny and modification by legislature.

(4) *No consultation in relation to reservation in favour of backward classes*: Clause (4) of Article 320 specifically provides that there is no necessity to consult the Public Service Commission in the matter of reservation of posts in favour of backward classes who, in the opinion of the Union or the State Government, are not adequately represented in the concerned services, as required under Clause (4) of Article 16 of the Constitution read with Article 335.

(5) *Additional functions as regards state service and services of public authorities and institutions*: Article 321 provides that the Parliament or the State Legislature may make a law conferring additional functions on the Union Public Service Commission or the State Public Service Commission, as the case may be. While the main object of the Constitution of Union Public Service Commission and the State Public Service Commission is to advise the Union Government and the State Government on matters relating to recruitment and conditions of service appointed to the civil posts under the Union or the State, as the case may be, it is also provided under Article 321 that if the legislature consider it necessary that Public Service Commission should be entrusted with additional functions in respect of services under the Union or State and also in respect of services under the local authorities or other corporate body constituted by law or public institution it could be entrusted with such additional functions by means of such legislation.³

3. Consultation

(1) *Object of consultation*: The consultation on all matters affecting a public servant has been specifically provided for two reasons, namely, (1) to give assurance to services that a wholly independent body not directly connected with the making of orders adversely affecting public servants, has considered the matter with an open and, (2) to afford the Government unbiased advice and opinion on matters vitally affecting the morale of public service. The object of consultation being an assurance to the services that an independent body has considered the matter and that it has furnished its unbiased opinion to the State in the matter, it is incumbent on the part of the Government to consult the Commission in all cases where such consultation is necessary.⁴

(2) *Consultation not mandatory*: The provisions for consultation with the Commission by the President or the Governor as the case may be are not mandatory and consequently a public servant cannot challenge an order imposing penalty passed against him on the ground that it is illegal for want

3 Instance of one such legislation is Mysore Public Service Commission (Conduct of business and additional functions) Act 1959 and the rules framed thereunder entrusting additional functions relating to recruitment to the local authorities to the State to the Public Service Commission.

4 State of Uttar Pradesh *V.* Manbhodlal Srivatsava—AIR 1957 SC 912.

of consultation. Though Article 320 states that Commission shall be consulted in respect of the matters specified therein, the provision cannot be construed as mandatory for the following reasons:

(i) Proviso to Article 320 confers power on the President or the Governor as the case may be to dispense with consultation and if the provision was mandatory the proviso would not have been included. (ii) The advice given by the Commission is not made binding on the Government. This is clear from Article 323 which provides that the annual report required to be sent by the Commission should be placed by the Government before the legislature together with explanation for not accepting the advice of the Commission. (iii) Articles 320 to 323 provide for matters regulating the Constitution of the Commission and its functions and other connected matters but is not a guarantee of the nature contained in Article 311(2). (iv) Article 311(2) is not made subject in any way, or controlled by the provisions of Chapter II Part XIV particularly to Article 320. (v) There is no provision providing that the effect of non-consultation would render the order invalid.

Provision for consultation contained in Article 320(3)(c) does not confer any enforceable right on a public servant and non-consultation of the Public Service Commission before passing final orders therefore does not provide a cause of action enforceable in Court of law. But that does not mean that it is open to the executive Government to completely ignore or pick and choose cases in which it may or may not consult the Commission. Once relevant regulations have been made they are meant to be followed in letter and spirit.⁵ The position is the same in respect of consultation on other matters such as recruitment, appointments and other matters provided in the Article.⁶ Therefore in a case where the Governor exercises his powers of review in the exercise of his gubernatorial power there is no mandatory requirement to consult the Commission.⁷

(3) *Consultation mandatory when statutory provisions specifically provide for consultation*: Provision for consultation with the Public Service Commission by the President or the Governor, as the case may be, in respect of all matters specified in Article 320 is no doubt not mandatory. But the position would be different when a statutory provision or the rules framed by the President or Governor in exercise of powers under proviso to Article 309 make it obligatory for the designated authority to make recruitment or appointment only on the recommendation made by the Commission or where a final order in disciplinary proceeding in specified cases should be made only after

5 *State of Uttar Pradesh V. Manbhodjal Srivatsava*—AIR 1957 SC 912.

6 *Ram Gopal Chaturvedi V. State of Madhya Pradesh*—AIR 1970 SC 158.

7 *Gururajachar V. State of Mysore*—1972(1) *Mys. L. J.* 142.
Rule 26 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, and the Mysore Public Service Commission (Consultation) Regulations interpreted.

consultation with the Commission. In such cases any recruitment or appointment made or order passed in disciplinary proceeding by any subordinate authority would be contrary to the statutory provisions and non-consultation renders the order or action invalid.⁸ Therefore, when the recruitment to a particular category of posts was required to be made by selection by Public Service Commission only, any recruitment made by a Selection Committee constituted by the State Government in exercise of its executive powers is invalid. Even a notification issued by the Governor under proviso to Article 320 of the Constitution dispensing with the consultation in respect of recruitment to all Class III posts to which category the impugned selection belongs does not save the recruitment from illegality. Selections made by a Committee in contravention of rules framed under Article 309 are illegal.⁹

(4) *Advice not binding* : The advice tendered by the Public Service Commission on the authority consulting it is not binding. The authority having the power to take decision only seeks the advice of the Public Service Commission. After the advice is received, it is the duty of the authority to consider the advice tendered by the Public Service Commission to come to its own independent conclusion. If, when doing so, an authority abdicates its power and responsibility to take decision and proceeds on the basis that the advice tendered by the Commission is binding and therefore, mechanically accepts it, such a decision would be illegal.¹⁰⁻¹² Therefore, when the Government, which is the appointing authority came to the conclusion that a Reader is suitable for promotion as Professor and promoted, the Reader to the higher post and thereafter ordered reversion solely on the ground that the Public Service Commission gave an advice to the contrary, and the reversion order stated that the person is being reverted for want of concurrence by the Public Service Commission, the order of reversion is illegal and invalid. The Government has to apply its mind independently and take a decision.¹⁰

(5) *Recommendation of a select list cannot be partially accepted* : When under the statutory rules, selection for appointment is entrusted to the Public Service Commission and the Public Service Commission makes recommendation for appointment in the order of merit, Government can either accept or reject the select list. But the Government cannot partially accept it and appoint persons ignoring the arrangement of names made by the Public Service Commission and appoint persons not recommended, to the exclusion of a candidate recommended for appointment.¹³

8 K. S. Srinivasan *V.* Union of India—AIR 1958 SC 419 at 430 para 22—1958 SCR 1295.

9 Govindappa *V.* Inspector General—1964(1) Mys. L. J. 478.

10 H. S. Katyayini *V.* State of Karnataka—1974 (2) Kar. L.J. 8

11 Ramchandra *V.* Secretary to Government of W.B.—AIR 1964 Cal. 265.

12 Ishwarachandra *V.* State—AJR 1966 Orissa, 173.

13 Nazeer Hussain *V.* State of Mysore—1964 Mys. L. J. SN. P. 218.

(6) *Procedure for consultation* : When the statutory rules require that in respect of certain appointments to be made, the Public Service Commission should be consulted, there must be a full and proper consultation with the Public Service Commission. Mere sending the papers or notifying the appointment to the Public Service Commission without expressing any opinion and without seeking opinion of the Public Service Commission about the decision proposed to be taken by the concerned authority is not sufficient compliance with the rule requiring consultation.¹⁴

4. Procedure for Selection

(1) When an interview is to be conducted by Public Service Commission for purposes of making selection for recruitment under the State it is competent for two or more members of the Public Service Commission to conduct the interview provided they are authorised by the Commission and the result of such interview is finally placed before the Public Service Commission for its decision. It is not necessary for all the members of the Public Service Commission to conduct the interview.¹⁵ But when the rules require that the result of the interview should be placed before the full Commission and the recommendation of the Commission should form the basis of the select list, non-placement of the result of interview before the Commission renders the list invalid.¹⁶

(2) *Power of the Public Service Commission to cancel the results of a departmental examination* : The purpose of a Departmental Examination prescribed for promotion conducted by the Public Service Commission is to measure the proficiency which is necessary for the efficient discharge of official duties. In a proper case, the Commission could in exercise of its general power of superintendence over the conduct of examinations confided to it, stop the announcement of the result even after the papers set by the examiners has been answered by the candidates and valued by the examiners. Although a complete and exhaustive enumeration of the situations in which the authority should be exercised is not possible and cannot be accurate, it is clear that the extreme step could be defended only in a case in which the announcement of the result would defeat the very purpose of the examination or for equally good reasons. In a case where there was no defect in the setting of question paper and the opinion entertained by the Public Service Commission that the questions were outside the syllabus was refuted by the examiner and the Public Service Commission thereafter proceeded to compile the result and also publish the result, it is not competent for the Public Service Commission to withdraw the publication of the result which it first prepared. Further, it is not open

14 Prakash Chand V. The Zilla Parishad—1971(1) SLR SC 632.

15 G. K. Ajjappa V. State of Mysore—1969 L & I.C. 364.
(Mysore P.S.C. Conduct of Business and Additional Functions Act 1959 interpreted).

16 K. K. Bhatia V. Rajasthan P.S.C.—SLR 1972 Raj, 435.

for the Public Service Commission to modify the result by deleting some of the questions on the ground that those questions were outside the syllabus which amounts to the Commission substituting for the question paper answered by the candidates, one which they had not answered. It is not open for the Public Service Commission to re-write the question paper in that way. Similarly, it is not open for the Public Service Commission after deleting some of the questions to enhance the maximum of the other question to the maximum prescribed for the paper and re-value the paper and announce the result. By introduction of a modified question paper and the modification of the maximum marks at that stage constitutes an *illegitimate restriction* on the performance of the candidate eliminating the possibility of his success on the marks which he could have secured for the questions which should have been substituted for the removed questions. In such circumstances, the modified result announced by the Public Service Commission is liable to be quashed and the persons concerned are entitled to seek a direction to the Public Service Commission to announce the list of successful candidates prepared earlier.¹⁷

17 R. Sundaramma V. Chairman, Mysore Public Service Commission—1968(17) LR 579—The Mysore Public Service Commission (Conduct of Business and Additional Functions) Act, 1959, interpreted.