PART X

LITIGATION BETWEEN STATE AND ITS SERVANTS

CHAPTER I

Causes and Remedies

After the commencement of the Constitution which *inter alia* contains specific provision in the form of Articles 14 and 16, 309 and 311 together with the Constitutional remedies provided under Articles 32 and 226 of the Constitution of India, the civil servants have a right to seek constitutional remedies available to them whenever any action taken against them is violative of any provisions of the Constitution or in violation of any statutory provisions made in exercise of powers under Article 309 of the Constitution regulating the recruitment and conditions of service. But it was least expected that the litigation between the State and its servants would reach such an alarming proportion. It is a matter of common knowledge that in various High Courts in the States and in the Supreme Court of India large number of cases of civil servants have come up for adjudication and in majority of the cases the claims put forward by the civil servants are accepted in courts and reliefs are granted. This indicates that there is sufficient basis for the civil servants to approach the courts for relief in such large number of cases.

1. Causes

Some of the main causes which are responsible for such large number of litigation between the State and its servants, to state illustratively, and not exhaustively are—

(i) Though the Constitution has made specific provision for regulating matters relating to recruitment and conditions of service by acts of appropriate legislature under Article 309 of the Constitution and by rules framed under proviso to Article 309 of the Constitution, in respect of several matters no legislative enactments or statutory rules have been framed and the matters are allowed to be regulated by executive orders which are issued and modified several times and leaving the matters indefinite and unpredictable.

(ii) Even when statutory rules under proviso to Article 309 of the Constitution are framed, they are not framed taking all the circumstances into con-

sideration and are not precise and are frequently amended again resulting in indefiniteness and confusion.

(iii) Even after rules are framed, the rules are interpreted differently to suit individual cases and inconsistant stands are taken by the State before the courts to suit particular cases.

(iv) Orders, relating to conditions of service and in disciplinary matters are passed committing patent illegalities leaving no other alternative for the civil servants to seek redress in courts of law.

(v) Indecision or inordinate delay in taking decisions in respect of the legitimate grievances put forward by the civil servants even in cases where similar questions have been the subject matter of decisions of the High Court or the Supreme Court.

A perusal of the various decisions of Courts reveal that uncertainty in the matter relating to orders or rules regulating recruitment, fixation of quota and seniority and in the matter of prescription of qualifications and the like, have given rise to long line of litigations, involving large number of officers.

In this connection, it is useful to quote some of the observations made by the Courts in their decisions relating to grievances of civil servants.

(a) In the case of Jaisinghani *V.* Union of India, criticising about the non-observance of quota rules between direct recruitment and promotions and consequential disobedience to seniority rules, the Supreme Court observed as follows:—

> "In this context, it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole Constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey—'*Law of the Constitution*'—Tenth Edition Introduction cx.) "Law has reached its finest moments", stated Douglas, J in United States *V.* Wunderlich (1951) 342 US 98[66] when it has freed man from the unlimited discretion of some ruler......Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes (1770)

4 Burr 2528 at p. 2539 " means sound discretion guided by law. It must by governed by rule, not by humour; it must not be arbitrary, vague and fanciful".[1]

(b) In the case of Ramachandra Shankar emphasising the necessity of framing statutory rules the Supreme Court observed as follows:—

"We find in the course of our judicial experience and we notice this fact with some apprehension, that members of public services in alarmingly large numbers resort to legal remedies in courts of law for agitating their grievances in regard to service matters. This phenomenon is symptomatic of sense of injustice and subversive of that undivided and devoted attention to official duties which is so essential for efficient and dynamic functioning of the Government. It can, therefore, hardly be over-emphasised that there is great need for simplifying and streamlining service rules and giving them statutory shape so as to promote contentment among the services by extending the area of equal treatment and imparting stability to conditions of service. It is not desirable that the fortunes of such a vital and strategic instrument of Government as the public services be left to be governed by mere departmental resolutions and executive instructions. These cannot take the place of statutory rules which alone can impart stability and security and ensure observances of the rule of law. Legal rules must govern the recruitment and conditions of public servants so that there is no arbitrariness or inequality in State action in regard to them and the rule of law is not eroded. And such should preferably be framed without avoidable delay and after consultation with groups which apprehend discriminatory treatment as that would go a long way to produce a sense of contentment and satisfaction. We make these observations not with a view to casting any reflection on the administration but to highlight a problem which has come to our notice quite often, in the hope that it will help appreciate the social dimensions of the problem and the damage to public interest which may be likely to result if the problem is not promptly and satisfactorily resolved."[2]

(c) In the case of Sakaldip *V.* Union of India, the Supreme Court made the following observations:—

"Before parting this case, we may observe that on the findings of the High Court about the correctness of which we have no doubt the appellant was not treated justly. He was even denied promotion due, which was not a *bona fide* one in as much as its object was to deprive the appellant the rights he would have otherwise enjoyed. It is regret-

1 Jaisinghani *V.* Union of India—AIR 1967 SC 1427.

2 Ramachandra Shankar *V.* State of Maharashtra—SLR 1974 (1) SC 470 at 488 para 23—AIR 1974 SC 259.

table that a subordinate Government servant should be treated in this manner by his superior officers. We hope that although the claim of the appellant has been found to be barred by limitation, the Union of India will consider the equities of the case and see its way to give such relief to the appellant, as we are precluded under the law from granting to him due to the operation of the law of limitation."[3]

(d) The High Court of Mysore while disposing of a batch of 83 writ petitions of College Lecturers whose services were terminated contrary to Government Orders, observed as follows:—

"19. The respondents must know best, as to what is good for education. But we are not sure whether they have realised the extent of damage that they have caused to the cause of education in this State. It is not for us to pronounce on the present day standard of education. But no one can say that there is no need for able, enthusiastic and inspiring educationists and that in large numbers. The nation wants them to have missionary zeal. Here are 83 youngmen with brilliant academic record. They desire to be educationists. Given sufficient encouragement most of them are likely to become good educationists. But a frustrated teacher is likely to be a danger to the society. It is unfortunate that they were made to start their career in the Education Department with bitterness and frustration. This is something that should have been avoided. All that we hope is that the injury suffered by the petitioners will not leave a permanent scar in their mind and make them forget their true role in life, and their obligation to society. These cases have given us more than the usual amount of worry. They have distressed us. Undoubtedly we were worried about the injustice meted to these youngmen. But what worried us more is the trend noticed in a Department and that in a Department of Education. We would have been happy if it has been possible for the Government to set matters right and there was no occasion for the petitioners to come to this Court for relief."[4]

(e) Similarly, as regards the inconsistent stand taken by the State which has been responsible for long line of litigations between the State of Mysore and its servants was a subject matter of specific observation by the High Court of Mysore and the same is extracted hereunder:—

"We cannot but observe that the State Government has not taken a consistent stand in the several cases pertaining to the said rules. As pointed out in the order of reference to the Full Bench in Krishna Gowda *V.*

3 Sakaladip *V.* Union of India—1974 SLWR 66—at 71 para 13.

4 Mukunda Krishna *V.* Director of Collegiate Education—1964 *Mys. L. J.* Suppl. page 531—at page 540 para 19.

State of Mysore, the learned Government Pleader appears to have conceded before the Bench that decided Syed Hussain Syed Sab *V.* Superintendent of Police, Belgaum that the Departmental Examinations Rules 1962 were applicable to the officials of the Police Department though separate Recruitment Rules have been framed for that Department. But before the Full Bench in Krishna Gowda's case, the stand taken on behalf of the State appears to be that the Departmental Examinations Rules 1962, have no application for a Department for which separate Recruitment Rules have been made under the proviso to Article 309 of the Constitution. Though the opinion of the Full Bench was pronounced earlier to the Supreme Court hearing C.A. Nos. 1462 to 1550 of 1966, curiously enough the State Government does not appear to have brought to the notice of the Supreme Court the opinion of the Full Bench in Krishna Gowda's case. As pointed out the contentions advanced on behalf of the State in those appeals were on the footing that the Departmental Examinations Rules 1962, were applicable to the Secretariat Service (for which separate Recruitment Rules had been made under the proviso to Article 309). Similar was the stand taken by the State Government before this court in T. S. Gurusiddaiah *V.* The Chief Secretary, Government of Mysore."

The inconsistent stands taken by the State Government from time to time has contributed considerably to confusion and uncertainty regarding the applicability of the Departmental Examination Rules, 1962, to different cadres of service in the State.[5]

2. Remedies

In the light of the experience derived from long line of litigations between the State and its servants after the commencement of the Constitution, it appears that it is absolutely necessary to take immediate steps to reduce litigation between the State and its servants which is of utmost importance for preventing the diverting of the attention of Government servants to litigation and with the object of promoting smooth and efficient administration by keeping the civil servants free from discontentment so that they may give their undivided attention to the duties with which they are entrusted. Some of the remedies among others which may be adopted by the States and Central Government are:—

(i) The making of unambiguous statutory provisions in respect of every matter relating to recruitment and condition of service without allowing the same to be uncertain or to be regulated by executive orders.

5 Suryanarayana *V.* State of of Mysore—1967(2) *Mys. L. J.* 544.

(ii) To consult the concerned group of Government servants before framing of rules of recruitment and conditions of service and if necessary, by calling for objections and suggestions which is the prescribed procedure under the General Clauses Act before making subordinate legislation.

(iii) Strict adherence to the rules after they are framed and in not resorting to frequent amendments which gives apprehension in the minds of Government servants that the amendments are designed to favour certain individuals and to follow the same procedure as suggested in the framing of rules even in making amendments unless the amendment becomes immediately necessary or the amendments are of unimportant nature.

(iv) Specific provision in the service rules authorising the officers to keep on record oral instructions given by higher authorities whenever orders are passed on the oral instructions given by the higher authorities and by communicating the fact of receipt of such oral instructions to the higher authorities immediately.

(v) Disciplinary action against officers in cases where decisions taken are contrary to rules, when the rules are clear and unambiguous or when the questions are covered by the decisions of the High Court or the Supreme Court as the case may be even after the same was brought to their notice.

(vi) Appointment of an official committee at the Secretariat level to examine the cases filed before the Courts, with necessary powers to concede such of the cases which are clearly covered by the decisions or indefensible so as to prevent further filing of cases by officials similarly situated and with the object of putting an end to the controversy between the Government and its servants at the earliest opportunity.[6]

(vii) Issuing of circular instructions from time to time to all the officers vested with statutory powers relating to regulation of recruitment and conditions of service on the basis of the decisions rendered by Courts from time to time with a direction to apply those principles in all similar cases.

(viii) Additional functions to be entrusted to the Public Service Commission for conducting annual inspections relating to orders passed by the Departmental authorities in relation to recruitment and conditions of service of officials in the concerned departments and for making a report to the State Government about the illegal orders passed in relation to the recruitment and conditions of service by departmental officers and a specific provision giving

6 *Note* :—For instance by not conceding the case of an official dismissed from service where such order of dismissal is indefensible on account of long pendency of the case not only the civil servant suffers, it also results in heavy financial loss to State by way of payment of arrears of salary which could be avoided.

power to the State Government to review and pass orders over-ruling the illegal orders passed by the departmental officers as contained in the report of the Public Service Commission whenever the Government agrees with the views of the Public Service Commission without waiting for the Government servants to file appeals or writ petitions.[7]

(ix) *Formation of Administrative Tribunals :* (a) With the object of redressing the grievances of Government servants and also with the object of having speedy settlement of disputes involving large number of Government servants, constitution of Administrative Tribunals invested with the jurisdiction and power to decide appeals of civil servants against the orders in disciplinary proceedings and also orders in respect of their grievances relating to recruitment and conditions of service against the orders passed by all the authorities including the Government. The civil servants on the establishment of Union and State judiciary and the Union and State Public Service Commission should be outside the purview of such Tribunal.

(b) *Jurisdiction and powers :* The Tribunal should consist of at least two members and should be invested with the jurisdiction to deal with the following matters:—

(i) The power to entertain and decide appeals against orders in disciplinary proceedings, passed by disciplinary authorities including the State Government;

(ii) Power to entertain and dispose of appeals from individual or group of officers regarding their grievances in respect of violation of rules regulating recruitment and conditions of service.

(iii) The provision for reference to the Tribunal at the instance of the officers or at the instance of the authority concerned all cases involving disputes involving large number of civil servants.

(c) *Qualification and security of tenure :* As the Tribunals have to be invested with jurisdiction and powers to entertain appeal against orders passed by all authorities including the Government, the qualifications of persons for being appointed as members of such an Administrative Tribunal should be that a person should either as being a Practising Advocate or as a member of the judicial service is qualified to be appointed as a Judge of the High Court.

7 *Note* :—Under the Rules of Recruitment to subordinate services of 1934 framed by the Government of His Highness the Maharaja of Mysore, there was a specific provision for the inspection by the Public Service Commissioner of all orders relating to recruitment made by the Departmental authorities and for making report to the State Government. There was also a specific provision for the State Government to exercise the power of veto against the orders passed by the Deparmental authorities and to *suo moto* redress the injustice done to an individual official.

In order to ensure independence and security of tenure, the State should appoint persons only on the recommendation made by the High Court and the members of the Tribunal should be subject to the disciplinary control by the High Court only, as in the case of members of the judicial service.

The formation of such a tribunal would reduce the number of cases of civil servants before the various High Courts. The various Departmental authorities will also be relieved of the burden of disposing of the departmental appeals. There will be a better investigation of the grievances of civil servants both against departmental penalties and regarding their grievances in relation to their conditions of service.