

**CONTRACTS OF EMPLOYMENT.** By N.C. Lahri. First Edition (1970). Eastern Law House, Calcutta. Pp. 393. Rs. 20.

UNDER THE first strict law of master and servant the employment relations were governed purely by contract. The management went into the open market, employed whom it liked, paid what it liked, dismissed the worker when it liked, and the state was a mere helpless spectator in this state of affairs. But with the emergence of the concept of social justice various restrictions have been imposed on management's prerogative of terminating the services of its employees through statutory provisions and judicial decisions.

The book under review<sup>1</sup> does not claim to provide answers for all the problems and difficulties of contracts of employment, for, as stated in the preface it deals with only some of the main problems arising out of contracts of employment in respect of government servants, employees of public sector undertakings, corporations and industrial employees.

The book is divided into eight chapters. The first chapter is introductory, the second deals with government servants, the third with public corporations and their employees, the fourth with conditions of service, the fifth with disciplinary proceedings, the sixth with powers of removal and dismissal, the seventh with judicial review and the last deals with industrial workmen. Further, the author has included an appendix which enhances the utility of the book by embodying the relevant portions of the law relating to the All India services, viz., the All India Services Act, 1951; the Indian Administrative Service (Cadre) Rules, 1954; the Indian Police Service (Cadre) Rules, 1954; the Indian Forest Service (Cadre) Rules, 1966; the Indian Administrative Service (Recruitment) Rules, 1954; the Indian Administrative Service (Appointment by Promotion) Regulation, 1955; the Indian Administrative Service (Appointment by Selection) Regulation, 1956; the Indian Administrative Service (Special Recruitment) Regulation, 1956; the Indian Administrative Service (Emergency Commissioned and Short Service Commissioned Officers), Appointment by Competitive Examination Regulation, 1966; the Indian Police Service (Recruitment) Rules, 1954; the Indian Police Service (Appointment by Competitive Examination) Regulation, 1955; the Indian Police Service (Appointment by Promotion) Regulation, 1955; the Indian Police Service (Special Recruitment) Regulation, 1955; the Indian Police Service (Special Recruitment) Regulation, 1957; the Indian Police Service (Emergency Commissioned and Short Service Commissioned Officers; Appointment by Competitive Examination) Regulations, 1966; Indian Forest Service (Recruitment) Rules, 1966; the Indian Administrative Service (Probation)

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1. N.C. Lahri, *Contracts of Employment* (1st ed. 1970). (Hereinafter cited as *Lahri*).

Rules, 1954; the Indian Police Service (Probation) Rules 1954; the Indian Administrative Service (Regulation of Seniority) Rules, 1954; the Indian Administrative Service (Seniority of Special Recruitment) Regulations, 1960; the Indian Police Service (Regulation of Seniority) Rules, 1954; the Indian Police Service (Seniority of the Special Recruits) Regulations, 1960; the All India Services (Conduct) Rules, 1955; the All India Services (Discipline and Appeal) Rules, 1955; the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and the Central Civil Services (Conduct) Rules 1964.

The introductory chapter while stating the framework of study also deals with the growing importance of the subject. In the chapter on government servants the author explains the coverage of government servants and enumerates some of the services covered under article 310 of the Constitution. The author further deals with statutory rules regulating recruitment and conditions of service of government servants. He thereafter discusses the status of civil servants under English and Indian law with the help of decided cases of English and Indian courts.

In the chapter on "public corporations and their employees" the author deals with the status of employees of public corporations with reference to English and Indian cases. He has concluded that "employees of statutory and non-statutory bodies do not hold any civil post either under the Union or the State as such they cannot seek constitutional protection under Article 311 of the Constitution." There are, however, certain statements of law contained in this chapter which do not represent the correct position of law. For instance, the author has written that :

Public corporations which have been set up under the Indian Companies Act, 1956 (or under earlier Acts) are generally known as companies whether public or private. They are not statutory bodies having no public duty to perform. The object and powers of such companies can be found in their respective memorandum and article of association.<sup>2</sup>

Such statements are apt to misguide the readers. "Corporation" is a wider term and includes various types of incorporated bodies. In the United States 'corporation' is also used to denote companies. In India, however, the term "corporation" is used for those bodies which are incorporated and governed by special Acts of the legislature, namely, the Life Insurance Corporation Act, the Damodar Valley Corporation Act, the Reserve Bank of India Act. On the other hand, the expression "company" is used in India for those bodies corporate which are registered under the Companies Act 1956. According to section 3 (1) (i) of the Companies Act 'a company means a company formed and registered under the Companies Act, 1956 or any of the previous companies Laws.'

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2. *Lahri* at 17.

Chapter IV deals with "conditions of service". According to the author these words have been generally used to mean "appointment, employment tenure, benefits etc." In this chapter the author discusses probation, confirmation, revision, seniority, transfer, resignation and retirement. In regard to probation the author discusses two main questions—(a) whether an order of the competent authority is required to show that the probationer has successfully completed his probation and (b) assuming that it is so, what would be the position of probationer in respect of whom no confirmation order has been issued though the period of probation has since long expired. The author discusses these issues and also the different aspects of seniority and promotion with the help of decided cases. But many important cases have missed the attention of the author. It would be better if the author includes in the next edition the problems discussed in *Kunj Beharilal Agarwal v. Union of India*,<sup>3</sup> and *General Manager Southern Railway v. Rangachari*.<sup>4</sup> Further, the study of conditions of service of government servants is incomplete without a discussion on the application of the Acts and Service Rules regulating the condition of service of government servants. A discussion of some of the Supreme Court cases<sup>5</sup> on this subject would have surely enhanced the utility of the book under review.

In chapter V, the author discusses the disciplinary proceedings. Here the author deals with (i) fact finding enquiry, (ii) regular proceedings and enquiry, (iii) charges, (iv) adjournments, and (v) censure and warning. The author has not cited any authority to explain the first four points. It would have been better had this chapter been explained with reference to relevant cases. Further, this chapter is not an appropriate place to discuss "censure" and "warning".

Chapter VI deals with the authority competent to make an order of removal or dismissal against a government servant. The author has discussed with the help of the Supreme Court and the High Courts cases as to who are competent to exercise the power of removal and dismissal against a government servant. However, two important cases of the Supreme Court, namely, *Mohd. Ghouse v. State of Andhra*,<sup>6</sup> and *Garewal v. State of Punjab*,<sup>7</sup> have escaped the notice of the learned author.<sup>8</sup> It may

3. A.I.R. 1963 S.C. 518.

4. A.I.R. 1962 S.C. 36.

5. *State of Uttar Pradesh v. Babu Ram Upadhyay*, A.I.R. 1961 S.C. 751 ; *State of Uttar Pradesh v. Ajodhya Prasad*, A.I.R. 1961 S.C. 773 ; *Jagannath Prasad Sharma v. State of Uttar Pradesh*, A.I.R. 1961 S.C. 1245 ; *Javali v. State of Mysore* (1962) 1 L.L.J. 134; *State of Rajasthan v. Sripal Jain*, A.I.R. 1963 S.C. 1323 ; and *State of Uttar Pradesh v. Jagendra Singh*, A.I.R. 1963 S.C. 1618.

6. A.I.R. 1957 S.C. 246.

7. A.I.R. 1959 S.C. 512.

8. In these cases the Supreme Court held that art. 311(1) applied only to the final order, and not to the order directing an enquiry or suspension pending enquiry, which could validly be made by any authority competent in that behalf under the service rules.

also be pointed out that since the author has confined his discussion only to competent authority a more appropriate heading could have been given to this chapter. The learned author also discusses in this chapter the nature and concept of transfer as an important incident of conditions of service. The author states:

Transfer may be made from one department to another but in the same rank or promotion to higher post either in the same department locally or outside of it depending on vacancy position and exigencies of service.<sup>9</sup>

But no case law has been cited by the author in support of this proposition. It would have been better if the author had explained this point with reference to some important cases, namely, *Bareilly Electricity Supply Co. Ltd. v. Sirajuddin*,<sup>10</sup> *Kundan Sugar Mills v. Ziyauddin*;<sup>11</sup> *National Radio Corporation v. Their workmen*,<sup>12</sup> and *Canara Banking Corporation Ltd. v. V. Vittal*.<sup>13</sup> There are certain other aspects of transfer which have not been dealt with by the author. Some of these are, (i) whether on transfer, conditions of service in the transferor company continue to govern, (ii) transfer allowance, (iii) the effect of refusal to obey the order of transfer and (iv) whether transfer pending proceedings violates section 33 of the Industrial Disputes Act, 1947? There are a number of decided cases on each of these points. For instance the effect of refusal to obey an order of transfer may be discussed with the help of *Motipur Zamindari Co. (Pvt.) Ltd. v. Their Workmen*.<sup>14</sup>

In chapter VII the author deals with "judicial review", which includes the problems relating to "quasi-judicial," "natural justice", the "Ghost land of Article 311 (2)", "compulsory retirement" and "the abolition of post". The author has explained the nature of quasi-judicial with the help of English cases and refers to the observations of the English writers on administrative law.<sup>15</sup> The reviewer assumes that the learned

9. *Lahri* at 59.

10. (1960) 1 L.L.J. 556. The Supreme Court held that the employer had the right to transfer the workmen from one department to another in the same establishment. An employer is not required to give reasons in the aforesaid situation. The position is however different in case of transfer from one establishment to another, or from one place or from one branch to another. The management has no right to order the transfer of his workman from one establishment to another or from one place or one branch to another, in the absence of any express provision in the contract of employment or in the standing order permitting such transfer.

11. A.I.R. 1960 S.C. 650.

12. (1963) 1 L.L.J. 282.

13. (1963) 2 L.L.J. 354.

14. (1965) 2 L.L.J. 139.

15. See Griffith & Street, *Administrative Law* 173 (4th ed.), Wade, *Administrative Law* 172 (2nd ed.) and Allen, *Law and Order* 351-53 (3rd ed.),

author is not unaware of numerous Indian cases<sup>16</sup> in this area and the wealth of materials furnished by the leading Indian scholars.<sup>17</sup>

In the second part of this chapter the author has explained the principle of natural justice with the help of English and Indian cases. The author has, however, referred to only one Supreme Court decision, viz., *State of West Bengal v. N.N. Bagehi*.<sup>18</sup> There are number of other important Supreme Court cases<sup>19</sup> on the principle of natural justice, which the author could have usefully referred in this chapter. In the third part of chapter, namely, on the "Ghost land of Article 311 (2)", we find some helpful comments. The discussion on this topic is indeed well authenticated by decisions of the Supreme Court. The author rightly concludes that these decisions have been misconstrued

by the Bench and the Bar alike with the result that one can only hope that in a proper case the Supreme Court would be in a position to review all the cases and deliver a judgment which would destroy the ghost-land of "dismissal, removal and reduction in rank".<sup>20</sup>

The fourth part of this chapter deals with "compulsory retirement and other matters". The author has however not included the Supreme Court judgment in *Kailash Chandra v. Union of India*,<sup>21</sup> which discusses the important question of interpretation of rule 2046 (2) (a) and (b) of the Railway Establishment Code. It would have been better if the author includes this case in the next edition. The usefulness of the book could have been further enhanced by including a discussion on compulsory retirement of industrial employees.<sup>22</sup> The last part of chapter VII is, whether abolition of post attracts article 311. The author also discusses with the help of decided cases what is the remedy of a civil servant if the post itself is abolished.

16. For instance the nature of quasi-judicial, has been explained and illustrated in *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.* (1950) 2 L.L.J. 921; *Engineering Mazdoor Sabha v. Hind Cycle* (1962) 2 L.L.J. 760. (S.C.) and *Jaswant Sugar Mills v. Lakshmi Chand* (1963) 1 L.L.J. 524 .

17. See Markose, *Judicial Control of Administrative Action in India* (1956).

18. A.I.R. 1956 S.C. 447.

19. See *State of Uttar Pradesh v. Mohd. Nooh*, A.I.R. 1958 S.C. 86; *Amalendu Ghosh v. North Eastern Railway*, A.I.R. 1960 S.C. 992 ; *Jagdish Prasad Saxena v. State of Madhya Pradesh*, A.I.R. 1961 S.C. 1070 ; *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan*, A.I.R. 1961 S.C. 1623; *Bhatt Mazor v. Union of India*, A.I.R. 1962 S.C. 1344; *State of Orissa v. Murlidhar Jena*, A.I.R. 1963 S.C. 404; *State of Mysore v. Shiv Basappa Manapur*, A.I.R. 1963 S.C. 375; and *Union of India v. H.C. Goel* (1964) 1 L.L.J. 38. (S.C.).

20. *Lahri* at 105.

21. A.I.R. 1961 S.C. 1346.

22. There are three aspects of compulsory retirement of industrial workmen which requires consideration :— (i) The proper age limit for compulsory retirement of industrial employees, (ii) The determination of the age of an employee for fixing the date of his retirement, and (iii) re-employment of the retired employees.

The last chapter deals with the industrial workmen. In the first section of the chapter the author examines the nature of standing orders, their legal aspects and evidentiary value, and has drawn two conclusions. Referring to some of the decisions of the Supreme Court and the High Courts on the nature of standing order, the author observes that "model standing orders are just model and nothing else".<sup>23</sup> The reviewer, however, feels that this view is not wholly correct. Section 4 (b) of the Industrial Employment (Standing Orders) Act, 1946 provides that the draft standing order should conform to the model unless it was impracticable for the employer to follow the model. In *Electric Workers' Union v. U.P. Electric Supply Co.*<sup>24</sup> the Allahabad High Court was of the view that it was enough if the draft contained the items mentioned in the model and that it was not necessary that it should exactly be in the same terms as the model. Whereas in *Associated Cement Co.*,<sup>25</sup> the Bombay High Court held that the contents of the draft standing orders should conform to those of the model in all respects unless it was impossible for the employer to follow them. This controversy has now been settled by the Supreme Court in *Associated Cement Co. Ltd. v. P.D. Vyas*,<sup>26</sup> wherein the court has held that the draft in substance must be in conformity with the model standing orders, though it may not be in identical terms. The author also concludes that the standing orders are contractual in nature.<sup>27</sup> This observation also requires careful scrutiny. Section 3 of the Industrial Employment (Standing Orders) Act, 1946, imposes upon the employer a duty to draft the standing orders and get them certified by the relevant authority. The draft should cover matters enumerated in the schedules and should conform as far as practicable, to the model standing order prescribed by the government. Section 4 requires the certifying officers to "adjudicate upon the reasonableness and fairness" of the draft standing orders. Section 5 affords an opportunity to both employer and labour to be heard before the final order is passed. Section 6 provides for an appeal from the decision of the certifying officer, that any party aggrieved by the order of certifying officer may appeal to the appellate authority whose decision "shall be final". Section 7 lays down the date from which the standing order shall come into operation. Section 8 provides for the maintenance of a register of all standing orders which are finally certified under the Act. Further, section 13 makes it an offence if an employer fails to submit the draft standing orders as required by section 3 or modifies his standing order otherwise than in accordance with section 10. From this scheme of the Act it is, therefore, clear that the standing orders are not only contractual in nature but also incorporate statutory regulations. In the second section of the chapter the author deals with 'misconduct'.

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23. *Lahri* at 171.

24. A.I.R. 1960 S.C. 665.

25. A.I.R. 1955 Bom. 363.

26. *Supra* note 24.

27. *Lahri* at 172.

The discussions on the topic are vague, inadequate and incomplete. No case law has been referred to illustrate the points made by the author. A discussion of some of the important cases<sup>28</sup> on misconduct would have been desirable. The author while dealing with the procedure for holding the departmental enquiry<sup>29</sup> against delinquent workmen has failed to substantiate his case for holding departmental enquiry.

Further, the principle of interference and procedure for holding domestic enquiry has not been fully explained. It would have been better if the author had discussed the issues by referring to Indian cases.<sup>30</sup>

The author has not observed a uniform mode of citation. For instance the citation of Labour Law Journal has been made in three different ways (1963) 1 L.L.J. 671.<sup>31</sup> ; 1969 (1) L.L.J. 373;<sup>32</sup> 1969-1 L.L.J. 373.<sup>33</sup> The proper mode of citation is (1963) 2 L.L.J. 49.

There are a few printing mistakes which may be avoided in the next edition for instance on page 176 para 3 the first sentence reads "The Industrial Disputes Act does not by down any procedure..." It should indeed read as "The Industrial Disputes Act does not lay down any procedure..."

28. *Laxmi Devi Sugar Mills Ltd. v. Nand Kishore Singh*, A.I.R. 1957 S.C. 7; *Burn & Co. v. Their Employees*, A.I.R. 1957 S.C. 38 ; *Indian Iron & Steel Co. Ltd. v. Their Workmen*, A.I.R. 1958 S.C. 130 ; *Orissa Cement Ltd. v. Habibullah*, A.I.R. 1959 S.C. 1288 *Sasa Musa Sugar Works (Pvt.) Ltd. v. Shobrati Khan*, A.I.R. 1959 S.C. 923; *Punjab National Bank v. Their Workmen*, A.I.R. 1960 S.C. 160; *India General Navigation & Railways Co. v. Its Employees* (1961) 2 L.L.J. 372; *Bharat Sugar Mills v. Jai Singh*, (1961) 2 L.L.J. 644; *India Marine Service (Pvt.) Ltd. v. Their Workmen*, A.I.R. 1963 S.C. 528; *Workmen of Dem Dima Tea Estate v. Dem Dima Tea Estate*, (1963) 1 L.L.J. 250; *Anand Bazar Patrika (Pvt.) Ltd. v. Their Employees*, (1963) 2 L.L.J. 429; *Shamnuggur Jute Factory Co. Ltd. v. Their Workmen*, (1964) 1 L.L.J. 634; *Tata Oil Mills Co. Ltd. v. Its Workmen*, (1964) 2 L.L.J. 113; *Model Mills Ltd. v. Dharam Das*, (1958) 1 L.L.J. 539; *Swadesh Industries v. Its Workmen*, A.I.R. 1960 S.C. 1258; *I.M.H. Press, v. Addl. Industrial Tribunal*, A.I.R. 1961 S.C. 1168 ; *Bata Shoe Co. Ltd. v. D.N. Ganguli*, A.I.R. 1961 S.C. 1158; *Sur Enamel & Stamping Works Ltd. v. Their Workmen*, A.I.R. 1963 S.C. 1914.

29. *Lahri* at 176-79.

30. There are series of Supreme Court cases on this point such as *Associated Cement Co. Ltd. v. Their Workmen*, (1923) 2 L.L.J. 396, *Sur Enamel & Stamping Works Ltd. v. Their Workmen*, *supra* note 28; *Kalyani v. Air France*, A.I.R. 1963 S.C. 1756; *Meenglas Tea Estate v. Its Workmen*, A.I.R. 1963 S.C. 1719; *State of Uttar Pradesh v. Mohd. Nooh*, *supra* note 19; *Andhra Scientific Co. Ltd. v. Seshagiri Rao*, (1961) 2 L.L.J. 117; *G.M.C. Kenzie & Co. Ltd. v. Its Workmen*, A.I.R. 1969 S.C. 389, *Bata Shoe Co. (Pvt.) Ltd. v. D.N. Ganguli*, *supra* note 28; and *Lakshmi Devi Sugar Mills v. Ram Sarup*, A.I.R. 1957 S.C. 82.

31. *Lahri* at 35.

32. *Id.* at 48.

33. *Id.* at 15.

Despite the above shortcomings, it is beyond doubt that the book is immensely informative. In the next edition it is hoped that the author would in the light of the above observations make the necessary improvements to make his work a comprehensive one.

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