



REVIEWS

THE CIVIL SERVANT UNDER THE LAW AND THE CONSTITUTION. By N. Narayan Nair. The Academy of Legal Publications, Trivandrum. 1973 Pp. xliii + 422. Rs. 50.

IN RECENT times the position of civil servants is becoming important because of the multifarious-functions of the state. The civil servants have to adjust to the expanding state function which in turn imposes additional responsibilities. This demands some privileges to be conferred on the civil servants for the smooth running of the government. It is necessary in an ideal state that these ends are properly balanced. The topic of civil service has attracted enormous literature and especially the last two and half decades have seen many additions in this field.¹ These works may be classified into two categories, first, those which serve the purpose of a reference book ; and second, those which are systematic research works. Nair's work comes in the second category. This work was accepted by the Kerala University for the award of the Ph.D. Degree in Law of that university. The author has referred in his discussion to nearly 1023 cases decided by the Supreme Court and the High Courts and also writings of the eminent jurists. Moreover, he has adopted the analytic-critical approach which can be adopted only after a detailed study of the problems.

The book is divided into nine chapters. The first chapter gives an introduction to the subject, a brief history of the civil service in India and their problems.

The important topic of the civil servant and the fundamental rights find place in the next chapter. The author has mainly concentrated on the right to the equality and in brief the seven freedoms. While dealing with the equality clause he has suggested that the right to equality must be balanced in the light of the 'loyalty to state is a desideratum'² and at the same time it should not result in serious discontent among the civil servants which would result in inefficiency in the working of the government. The concept of Mulki Rules in the government appointment is attracting the attention of the legal research scholars, some discussions in this connection in the work could have been added by the author. Dealing with article 16(4) of the Constitution of India the author has rightly pointed out that this article cannot be treated as an independent article. The state in providing for the protective discrimination should try to balance

1. N.N. Nair, *The Civil Servant Under the Law And the Constitution*, bibliography, pp. xiii-xvii (1973, hereinafter referred to as *Nair*).

2. *Nair* at 32.



the requirement of representation of the backward classes in the public employment and the efficiency of administration. Moreover, efforts should be made that the class distinctions die out gradually in the democratic republican form of government where its people have resolved to maintain equality of status and opportunity. The author has not given a comprehensive definition of 'backward class'. Such a definition would avoid borderline cases from claiming the protective discrimination. At one point, he has suggested that in some cases posts in civil service may be reserved for persons not included in article 16(4).³ When the preamble to the Constitution and article 16 bestow on all the citizens equality of status and opportunity, then why a new class be created to get protective discrimination? At the most, these persons may be given some grants if the government thinks it fit. So far as the civil servant and the seven freedoms are concerned, Nair has made a valuable suggestion that the court, while examining the reasonableness of restriction in case of a civil servant, should adopt a different test. Though he has not given any specific test, yet it would allow the court to maintain a balance between the individual interest and the interests of the general public. Nair has referred to about 269 cases in this chapter; the reviewer feels that the author could have confined to important cases only and discussed those cases in detail. This suggestion applies to other chapters also.

The 'doctrine of pleasure' another important field for the research scholar, is discussed in the third chapter. The author has traced the history right from the days of the East India Company down to the Constitution of India, 1950. If it is agreed, as the author has pointed out, that the English common law doctrine was maintained intact in the Constitution⁴ then the doctrine may require some adjustment in the democratic form of government. Though the chapter is entitled 'the doctrine of pleasure in India' yet it mainly deals with its historical background. An analytical study of the constitutional provision could have been included in this chapter. Moreover, immediately after this chapter there is an appendix. The proper place for it would have been in the appendix at the end of the book.

The meaning of the civil service and the civil post finds a place in the fourth chapter. The reviewer feels that the author could have dealt with this topic in the second chapter because without knowing who comes within the definition of civil service or civil post, how can one understand other relevant matters pertaining to civil servants? The author has tried to give a tentative definition of these terms and he has suggested that with the expanding function of the state, no hard and fast definition can be given.

Most of the cases on civil servants have attracted the provision of article 311 which provides for some safeguards against dismissal, removal

3. *Id.* at 68.

4. *Id.* at 110.



or reduction in rank of the civil servants. The cases reported in the All India Reporter for the year 1971-1973 shows that the Supreme Court alone decided forty-nine cases in this connection. The author has rightly pointed out that the *Dhingra* case⁵ “may well be the world’s most quoted case since 1958”⁶ but the case finds very brief discussion in his book. Nair has drawn attention towards the danger of diluting the safeguards of article 311 by amending the service rules and suggested that the court should see that the delegated legislation does not do indirectly what it cannot do directly.

Dealing with the disciplinary proceedings, the author has rightly pointed out that in disciplinary enquiries “the fundamental principles of natural justice are ignored in many cases”⁷ and so a permanent enquiry tribunal ought to be constituted.

So far as the Public Service Commission is concerned Nair has concluded that the commission should have an independent status and that its work should be subject to strict legislative review. But the reviewer feels that with limited time and enormous social legislations before Parliament it would be difficult to accept his second proposal.

Chapter VIII deals with the civil service tenure. In this chapter one finds interesting discussions on recruitment, appointment, probation, confirmation, transfer, deputation, pay, allowances, leave and other matters relating to civil service tenure. The author has rightly pointed out that the conditions of the civil servants should be improved and it should attract the cream of India. One of the conclusions says that the civil servants may be allowed to enjoy the political rights except those who are concerned with policy making or in-charge of law and order. This conclusion may sound well in theory but it has practical difficulty too.

The book ends with the chapter on ‘dynamic of judicial review’. A suggestion is given to constitute a General Civil Service Appeal Tribunal which will put a check on the enormous growth of cases before the Supreme Court and the High Courts. It is surprising that the author has not given any final conclusions. Though each chapter gives some conclusions, it would still have been better if the author had given in the end the main findings of his study. And lastly, the title of the book suggests that the author has discussed different laws—central and states—on the subject in detail but one finds very brief discussion on the same.

On the whole the book is a valuable addition to the growing literature on Indian constitutional law. This book will be useful not only to the research scholars but also to the lawyers, judges, and all those persons who come within the term ‘public servants’. Though printing errors are very common these days yet the book under review may be said to be an exception. The get up of the book is also nice.

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5. *Dhingra v. Union of India*, A.I.R. 1958 S.C. 36.

6. *Nair* at 144, f.n.3.

7. *Id.* at 237.

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