

CHAPTER III

SERVICES UNDER THE STATE*

The amplitude of the definition of the word 'State' in article 12 thus includes services not only under the Government of the Union and the Government of the States but also under the local authorities or other authorities as broadly construed by courts. Therefore, citizens of India can claim equality of opportunity in all matters relating to employment guaranteed under article 165 in respect of not only the services directly under the control of the government of the union and the government of states but also under the other authorities falling within the word 'State' in article 12. Having guaranteed equality of opportunity in matters relating to employment and prohibition against discrimination in respect of all the above mentioned authorities under article 16(1) and (2) respectively, in respect of other matters relating to conditions of service directly under the Union and the States the Constitution has made specific provision in the Constitution itself on matters relating to their tenure and conditions of service. In respect of other authorities other than the services under the Union and services under the State, the matter is left to be regulated either by statutes or statutory rules or regulations required to be framed by the Government or any other authority on whom the power is conferred by the concerned statutes.

Regulation of recruitment and conditions of service

Part XIV of the Constitution (articles 309 to 314) contains general provisions relating to regulation of recruitment and conditions of service including tenure of service relating to the services under the Union and States. The word 'State' in part XIV has a different connotation than the word 'State' used in part III. The definition of the word 'State' in article 12 is an enlarged definition within which all local or other authorities within the territory of India as well as the authorities under the control of Government of India stands included. But the word 'State' in part XIV only means the States specified in first schedule of the Constitution.¹ The relevant provisions of the Constitution meant for regulating recruitment and conditions of service under the Union and the States are as follows:-

- (i) Article 309 confers power on Parliament and the appropriate State Legislature to regulate recruitment and conditions of service in respect

* Revised by Arya A. Kumar, Assistant Research Professor, I.I.I.

1 Art. 1 and Schedule I of Constitution; s.3(68) (b) of the General Clauses Act.

of persons appointed to public services and posts in connection with the affairs of the Union or of any State respectively. The proviso to the said article confers power on the President or any person authorised by him to regulate recruitment and conditions of service by rules until provision is made by Acts of Legislature and subject to legislative enactments.

- (ii) Article 313 provides for the continuance of the laws which were regulating recruitment and conditions of service and which were in force prior to the commencement of the Constitution until other provision is made in this behalf under the Constitution.

General provision relating to tenure of service

The tenure of officers and servants appointed to Central and State services except in respect of those for whose tenure special provision is made in the Constitution itself is declared to be during the pleasure of the President or the Governor, as the case may be. The 'tenure at pleasure' incorporated in article 310 is applicable to every person under the employment of the Union whether in the Civil Service, All India Service or Defence Services and to all persons in the Civil Services of the States.

Restriction on the exercise of pleasure as against civil servants

Though the Constitution has accepted the pleasure doctrine under article 310, the paramount importance of security of tenure of civil servants in order to enable them to discharge their duties without fear or favour is recognised. Article 311(2) accordingly imposes a condition precedent for the exercise of the pleasure of the Governor or the President under article 310. Absolute pleasure could be exercised for putting an end to the tenure of a civil servant only in the paramount interest of the security of the State (vide article 311(2)(C)).

Other authorities having power to determine tenure of civil servants

Article 311(1) permits conferment of power on the appointing authority or higher authority also to dismiss or remove a civil servant. Article 311(2) also regulates the exercise of the power of the appointing authority or any higher authority on whom the power is conferred under article 311(1) to dismiss or remove a civil servant. In addition to the protection afforded against removal or dismissal from service which is the highest penalty that can be imposed on a civil servant, article 311(2) also extends the same protection as against another major penalty, namely, reduction in rank.

Special provisions

Apart from the general provisions contained in article 309 and 313 and 310 and 311 providing for regulating recruitment and conditions of service and conditions relating to tenure of office respectively special provisions have

been incorporated in the Constitution in respect of recruitment and conditions of service of certain services having regard to the importance of those services. The special provisions contained in the Constitution in respect of other services are as follows:

(a) Officers and servants of the secretariat of Parliament

Article 98(3) of the Constitution provides that the President in framing rules of recruitment and conditions of service of persons appointed to secretarial staff of the House of the People or Council of States has to do so after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be.

(b) Officers and servants of the Supreme Court

Subject to any law made by Parliament, the power to regulate the conditions of service of officers and servants appointed on the establishment of the Supreme Court is conferred on the Chief Justice of India or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose. The only restriction contained in proviso to article 146(2) of the Constitution relates to salaries, allowances, leave or pension they require the approval of the President. Subject to these matters for which the approval of the President is necessary, the power to regulate the conditions of service of officers and servants of the Supreme Court conferred on the Chief Justice of India is absolute.

(c) Officers and servants of the Indian Audit and Accounts Department

Though the President is the authority to regulate the recruitment and conditions of service in respect of persons serving on the Indian Audit and Accounts Department, the President has to do so after consultation with the Comptroller and Auditor General (article 148-(5)).

(d) Legislature secretariat

The rules regulating recruitment and conditions of service of persons appointed to the secretarial staff of the legislature secretariat or the Legislative Council of a State has to be framed by the Governor only after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be (article 187(3)).

(e) Officers and servants of the high court

Subject to the law made by the legislature the power to regulate recruitment and conditions of service of officers and servants of the high court as authorised by the Chief Justice. The proviso to article 229(2) however requires that in respect of matters relating to salaries, allowances, leave or pension, the rules so framed by the Chief Justice require the approval of the Governor. Subject

to the matters covered by the proviso, the power of the Chief Justice to regulate the conditions of service of officers and servants appointed to the high court is absolute.

(f) Judicial service

- (i) *District judges:* Article 233 of the Constitution provides that appointment of persons to the cadre of district judges in any state shall be made by the Governor of the state concerned in consultation with the high court exercising jurisdiction in relation to such state. Clause 2 of article 233 also prescribes minimum qualifications for appointment to the cadre of district judges without leaving the same to be prescribed either by law made by the legislature or by the rules.
- (ii) *Subordinate judicial service:* Article 234 of the Constitution provides that appointment of persons other than district judges to the judicial service of a state shall be made by the Governor of the state concerned and in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the high court exercising jurisdiction in relation to such State.
- (iii) *Control over district courts and subordinate courts:* Article 235 of the Constitution confers the power of control over the district courts and the subordinate courts including the posting and promotions of persons belonging to judicial service holding any post inferior to that of district judge in the judicial service of a state, on the high court of that state.

(g) All India services

Article 312 empowers the Parliament to constitute All-India Services subject to the condition mentioned in the said article. The article also empowers the Parliament only to regulate the recruitment and conditions of service by making appropriate legislation. Thus, the regulation of recruitment and conditions of service is taken outside the purview of article 309 having regard to the importance of the service who are expected to serve in important administrative posts both at the centre and states. Recruitment and conditions of service in respect of All-India Services is regulated by All-India Services Act and the rules framed there under.

(h) Member and members of the staff of the public service commission

Article 318(b) relates to the regulation of the conditions of service of the members of the Public Service Commission as also the members of the staff of the Public Service Commission. While the President or the Governor as the case may be, is conferred with the power to regulate the conditions of service of the members of the Public Service Commission as well as the members of the staff of the Public Service Commission, proviso to article 318(b) prohibits the alteration of conditions of service in respect of a member of a Public Service Commission after his appointment to his disadvantage.