

CHAPTER IV

RELATIONSHIP BETWEEN STATE AND ITS SERVANTS*

The relationship between the state and its servants is not merely contractual like the ordinary relationship of master and servant. In the first instance, in making legislative enactments or statutory rules or in the implementing of the provisions of the Act or rules regulating the recruitment and conditions of service in the absence of rules in exercise of executive powers, the state is bound to act in conformity with the fundamental rights guaranteed under part III of the Constitution. Further, in matters relating to regulation of recruitment and conditions of service and the tenure of office of civil servants *viz.*, of officers and servants who are employees of either the union or the states the same is required to be regulated under the provisions of the Constitution identified in chapter III.

These various constitutional provisions providing safeguards relating to recruitment and conditions of civil servants under the state are designed to serve public interest; and the matter is not left to be treated as ordinary relationship of master and servant. Explaining the nature of the relationship between government and its servants, the Supreme Court stated as follows:

It is true that the origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to a post or office, the government servant acquires a status and his rights and obligations are no longer determined by the consent of both the parties but by statute or statutory rules, which may be framed and altered unilaterally by the government. In other words, the legal position of a government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by public law and not by mere agreement of the parties. The emoluments of the government servant and his terms of service are governed by statutes or statutory rules, which may be unilaterally altered by the government without the consent of the employee. It is true that article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under article 310. *But it is obvious that the relationship between the government*

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

and its servants is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than purely contractual relationship voluntarily entered into between the parties. The duties and status are fixed by the law and in the enforcement of these duties, the society has interest.¹

The Supreme Court in *Union of India v. Tulsiram Patel*² has observed that the civil service confers a status to the employee and it is not merely contractual in nature. Further, explaining the relationship between the government and its servants in *Ram Sahan Rai v. Sachiv Samanaya Prabhak*³ the apex court has observed that, once it is held that the defendant is a statutory body it can exercise all pervasive control over its employees as per the statutory rules. In the matter of passing an order of dismissal of an employee, if the state did not follow the mandatory provisions of rules and regulations and principles of natural justice then the third exception to the general principle that contract of personal service cannot ordinarily be specifically enforced would be applicable. The apex court in *Ahmedabad Education Society v. Gibbert B. Shah*⁴ observed that, in case of contractual employees, the terms of contract would govern the service conditions of the employees.

The above observations of the Supreme Court make it clear that the government servants are constitutionally expected to discharge their duties and responsibilities honestly, sincerely, impartially and without fear or favour. This expectation is elaborated and reinforced by the safeguards immunizing government servants from this arbitrary treatment. They undoubtedly confer rights and benefits on civil servants, and are mainly designed to achieve general public good. Therefore, it is of utmost importance that in matters relating to recruitment and conditions of service, the authorities exercising power strictly follow the constitutional provisions and rules relating to these matters.

The objectives of constitutional provisions

Public good or interest must, in the present opinion, at least ensure the following qualities in the personnel constituting the services under the state:

1. Suitability and efficiency
2. Fearlessness and independence
3. Honesty and contentment

1 *Roshanlal Tandon v. Union of India*, AIR 1967 SC 1889 at 1894.

2 AIR 1985 SC 1416.

3 (2001) 3 SCC 323.

4 (2004) 1 SCC 612.

4. Obedience and team-work
5. Discipline and devotion to duty

Suitability and efficiency: The efficient discharge of the duties pertaining to a civil post depends upon the selection and appointment of a suitable person to hold the post. The aim of recruitment, whether by direct recruitment or by promotion or by promotion by selection, is to select and appoint a person to a post who is competent to discharge the duties thereof. Therefore, the rules of recruitment which prescribe the method of recruitment, qualification for the post and the mode of selection must be so framed as to enable the selection and appointment of persons who are competent to discharge the duties of the post. In making appointments by selection all relevant facts must be taken into account and persons with requisite standard and efficiency alone should be appointed. Any method of selection adopted which does not take into account all the relevant factors, which are necessary to assess the merit, defeats the very object of selection and appointment, *viz.*, suitability and efficiency of persons in the service of the state.⁵ The apex court observed that an unqualified candidate cannot claim appointment merely because he belongs to a particular community and the mere inclusion of the name in the ranked list does not guarantee right for appointment unless he satisfies the required eligibility condition for the post in question.⁶

Fearlessness and independence: These qualities come especially into play in respect of civil servants holding higher posts who are entrusted with important duties, or with the power of taking decisions in important matters involving policy, or with the power to determine the rights of citizens. Officers placed in these positions are expected to discharge their duties and responsibilities without fear or favour. The constitutional safeguards are guaranteed under article 311 with the object of ensuring fearlessness and independence on the part of such officers in the discharge of their duties and exercise of their powers.

Honesty and contentment: Honesty and contentment among the civil servants are of utmost importance so that they serve the interest of the public in a befitting manner. The object of the rules regulating conditions of service including rules regulating conduct and disciplinary proceedings and the rules regulating fixation of pay scales and other allowances and the provision relating to promotional opportunities and retirement benefits is to see that civil servants remain contented and honest in the discharge of their duties.

Obedience and teamwork: At the lower echelons of the services where civil servants are entrusted with the duties and responsibilities of a routine

5 *Jankiprasad v. State of Jammu and Kashmir*, 1973(1) SCC 420: AIR 1973 SC 930 at 934-36.

6 *S.R. Joymon v. State of Kerala*, 2000 (2) SCC 797 : SLR 2000 (3) Ker 151.

nature, the important qualities, which contribute to the efficient administration of the affairs of the state, are obedience and teamwork. Civil servants are expected to act in obedience to the requirement of law and the appropriate instructions issued by higher authorities. They must also exhibit a spirit of team-work. Though this class of officials discharge duties of a routine nature, the efficiency in the administration of the affairs of the state also depends upon this class of officials of discharging their duties and responsibilities as expected of them. The rules regulating conduct, discipline and conditions of service are meant to promote these qualities among civil servants.

Discipline and sense of devotion to duty: A sense of devotion to duty and disciplined conduct in connection with the time, place and manner of discharge of duties and responsibilities entrusted to them is absolutely necessary for contributing towards the efficient and proper administration of the affairs of the state. These qualities are required to be exhibited by civil servants in the discharge of their duties.

Object of security of tenure and better conditions of service

The security of tenure and better conditions of service by way of suitable pay scales, promotional opportunities and retirement benefits and a just and fair treatment to government servants have to be given with the object of securing honesty, contentment and discipline among the civil servants which are of utmost importance and form the very foundation for their discharging their duties as expected of them. A useful principle laid down in "*Sukraniti*", the great ancient Indian compilation, of the principles to be adopted in the administration of the affairs of the state is as follows:-

वाक्पारुष्यान्न्यूनभृत्या स्वामी प्रबलदंडतः
भृत्यं प्रशिक्षयेन्नित्यं शत्रुत्वं त्वपमानतः ।
भृतिदानेन संतुष्टा मानेन परिवर्धिताः
सांत्विता मृदुवाचा ये न त्यजंत्यधिपं हि ते ।

Low salary, harsh treatment, insults and imposition of heavy penalties are causes of unrest among the employees. Satisfied with adequate wages, promoted honourably and consoled or cheered up by gentle words, the employees would never desert the king.⁷

The state in framing rules regulating conduct of disciplinary proceedings, provisions regulating recruitment to higher posts, including the retirement rules and pensionary benefits and in implementing these provisions must bear these important aspects in mind and the rules framed should be such as will enable

7 *Sukraniti Sara* at 69 verses 418 and 419. (1882: G.Oppert ed.) See Rama Jois, *Legal and Constitutional History of India*, Vol 1, 188 (1984).

the civil servants to remain honest, contented and disciplined in the discharge of their duties.

Civil servants owe a duty to the people: Constitution reposes great trust and confidence in the services and gives them security of tenure and conditions of service and in turn expects an honest and sincere service from the members of the services for providing to the people of India an efficient, polite and incorruptible administration and to achieve and to fulfil the aims and objectives of the Constitution. It is the duty of every person appointed to any post under the union or states, high or low, to discharge his duties and responsibilities according to the expectations of the Constitution and befitting the trust and confidence reposed in him by the Constitution. Therefore, while the civil servants are undoubtedly entitled to enforce their rights when they are wronged, they must be equally conscious of their duties and should discharge their duties with honesty, discipline and sense of devotion, as the rights are conferred on them only with the expectation that they would discharge the duties entrusted to them in the required manner.

Rights and liabilities of civil servants

Several cases relating to the fundamental rights and other constitutional and statutory rights of civil servants and their liability for misconduct have come up before the Supreme Court and various high courts and the law governing recruitment and conditions of service is fairly settled on most of the matters. The powers and limitations on the exercise of powers by the state and other appointing and disciplinary authorities, as well as the right and liabilities of civil servants are well settled by the various decisions. The knowledge of the principles of law so settled is necessary both on the part of the authorities exercising power under the law relating to services as also on the part of the civil servants who are governed by the said law. The following chapters attempt to set out the principles of law governing various matters concerning the services under the state.