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PROTECTION TO CIVIL SERVANTS IN INDIA

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Abstract:

In India government is the biggest provider of jobs to the people. According to an estimate in 1947, the strength of civil servants was 10 lakhs which rose to 20 lakhs in 1978 and became 30 lakhs in 1993.

KEYWORDS:

Civil Servants , Protection , civil services , tremendous growth

INTRODUCTION

However, this does not include the jobs in public sector undertakings. Maximum number of job provided by the government are in defence, railways and Post offices. This tremendous growth in civil services was mainly due to the fact that without a army of civil servants it was not possible to realize the dream of a welfare state which was the cornerstone of the India, So that "Civil services is a body of officials, permanent, paid and skilled."

HISTORY OF CIVIL SERVICES

The structure and process of civil services in India were evolved during the British period with the efforts of eminent persons as Macaulay, Islington etc. During the rule of East India Company the civil servants were appointed in India, by a Selection Committee of Hailybury college and Board of Directors of the Company. In 1854, the Committee on Indian Services was constituted under the chairmanship of Lord Macaulay to suggest reforms in the civil services, and it led to the introduction of the principle of merit based career oriented civil services. Earlier the civil services were divided into two categories - First, the covenanted civil services which consisted of British Civil Servants occupying the higher posts in the administration. Second, the uncovenanted civil services which were introduced to facilitate the entry of Indians at the lower rung of the administration.

CIVIL SERVICES IN INDIA

Ours is the only Nation where the Constitution contains provisions regarding civil services and also it occupies the top position among countries where suits are filed regarding the employer-employee relationship by the employees. Excess and exorbitant amounts of cases checked and flipped the wings of justice on the one hand and also gave rise to the feeling of discontent and dissatisfaction. In order to get rid of the blues created, in 1985, Administrative Service Tribunals were created, but, they also could not live up to the expectation of the people.

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PROTECTION TO CIVIL SERVANTS IN INDIA

RULES REGARDING SERVICES

Article 309 of the Constitutional of India deals with the recruitment and of persons serving the Union or any State. It provides "Subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of services of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Clause (2) further provides that it shall be competent for the executive to frame rules, until the Legislature has legislated on the concerned subject. Thus, it was held in *Ram Autar v. State of U.P.*, that the rule making power of the authorities under Article 309 is identical with that of the legislature.

Tenure of Office (Doctrine of Pleasure)

Article 310(1) of the Constitution incorporates the doctrine of pleasure or it can be said that it contains provisions regarding tenure of office of civil servants. This provision has been borrowed from England where the normal rule is that a civil servant of the Crown holds office during the pleasure of the Crown. Thus, his service can be terminated at any time by the Crown without assigning any reason. It means that if a civil servant is dismissed from service, he cannot claim arrears of salary or damages for premature termination of service.

PERSONS ENTITLED TO SAFEGUARDS

Members of civil service of the Union or of an All India Service or of a civil service of a State or members holding civil posts under the Union or State are entitled to the safeguards provided in the Constitution under Article 311. Members of the defence forces or persons appointed to the posts connected with defence are not entitled for such protection. Thus, military personnel governed by the Army Act are not privileged. Even a civilian holding a post in a department connected with defence such as Military Engineering," or Farms services cannot claims the protection of Article 311. A master and servant relationship must necessarily exist in the holder of the post and the State so far as signified by the term 'Civil post', and it may be indicated by the State's right to recruit, appoint, control and pay wages. Thus, holding of a civil post under the State is a question of fact.

EXTENT TO PROTECTION

Protection of Article 311 shall not be available in case of compulsory retirement in public interest or termination of service during probation or termination of service which was temporary and for a fixed period or reversion from an officiating post provided for the termination of service is bonafide and simplicitor which does not attach any stigma to the employee. But in some recent years Supreme Court has extended the Court's jurisdiction and those cases have been discussed here under the same topics -

In cases of compulsory retirement - In *Baikunth Das v. Chief District Medical Officer*, the matter of compulsory retirement decision rests on subjective satisfaction and it is not considered a punishment or any suggestion of misbehaviour. The proceedings are also not quasi-judicial, therefore, principles of natural justice are not attracted, However, it can be challenged on the ground of mala fide, no evidence or arbitrariness.

In case of termination of service during probation - the government has unfettered power to terminate the service of a probationer or a temporary civil servant without any protection of Article 311 being available to him.

However, Supreme Court in *State of Maharashtra v. V.R. Saboji*, observed that in case of termination of service of a probationer or a temporary staff the Court may ask the government to produce its records if the government servant makes out prima facie case, that the order was by way of punishment. Thus, where the termination of service of a temporary employee was preceded by a show-cause notice which was not pursued and his service were terminated on the ground that his service was purely temporary, the Court quashed the termination order when it was proved that there was nothing on record against the employee except the show-cause notice.

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7. Constitution (Seventh Amendment.) Act, 1956.
8. In the State of Gujarat Panchayats, are included under the term 'State' within Art. 508.
9. Substituted by the Constitution (Seventh Amendment) Act, 1955.
10. V. K. Nambudiri v. Union of India, AIR 1961 Ker. 155.

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