

Services under Union and States

Prof.(Dr.) G .B. Reddy

Dept. of Law

Osmania University

Hyderabad-500007

E-Mail: gbredlaw@gmail.com

Services & their Role in Modern times

- Indispensable to governance and progress of country
- Implementation of Government policies & laws
- Welfare of people
- Vital for Democracy
- **Civil Servant:** includes members of a civil service of the centre or a state, or of all India service, or all those who hold civil posts under the Centre or a State.
- **Civil Post :** means an appointment or office on the civil side and includes all personnel employed in the administration of the union and the states.

- **Civil service**, the body of government officials who are employed in civil occupations that are **neither political nor judicial**. In most countries the term refers to employees selected and promoted on the basis of a merit and seniority system, which may include examinations
- “If you want an efficient all-India service, I advise you to allow the service to open their mouth freely. If you are a Premier, it would be your duty to allow your Secretary, or Chief Secretary, or other services working under you, to express their opinion without fear or favour. But I see a tendency today that in several provinces, the services are set upon and told, “No, you, are servicemen, you must carry out our orders....”Sardar Patel in the Constituent Assembly on 10th October 1949.

Service Matters

- All matters relating to conditions of service in connection with Union or any State or any local authority or other authority etc.
- Including recruitment, remuneration, pension & retirement benefits
- Tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation
- Leave , disciplinary matters etc

Law Governing Service Matters

- Constitution of India- Art.309-311
- The All India Services Act, 1951 (Only 4 Sections)
- **Sec.2. Definition.**—In this Act, the expression “an All-India Service” means the service known as the Indian Administrative Service or the service known as the Indian Police Service, or any other service specified in section 2A.
- **Sec.2A. Other All-India Services:** 1. The Indian Service of Engineers (Irrigation, Power, Buildings and Roads); 2. The Indian Forest Service; 3. The Indian Medical and Health Service. (added subsequently)
- Service Rules framed by appropriate Government
- The Service Contracts (Standard Form)
- Judicial Precedents

Services under Constitution

- **Art.309** – Power of Parliament & State Legislatures to regulate recruitment and conditions of service in connection with affairs of Union and States
- Subject to other provisions of Constitution – **E.g.** F.Rts, Art.311 etc.
- **309. Recruitment and conditions of service of persons serving the Union or a State:** Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:
- Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act

Services under Constitution- Judicial Services

- In case of conditions of service rel. to Subordinate judiciary – subject to consultation with H.C.s (Art.233-239)
- Rel. Case: **State of Bihar v. Bal Mukund Sah** (AIR 2000 SC 1296) – relating to application of reservations in judicial recruitment.
- **Held:** * Judicial Services especially, the Subordinate Judiciary comprising of district cadre and the cadre of Judges below the same were part and parcel of the Public Services of the State
-no recruitment to the post of a District Judge can be made by the Governor without recommendation from the High Court. Similarly, appointments to Subordinate Judiciary at grass-root level also cannot be made by the Governor save and except according to the rules framed by him in consultation with the High Court and the Public Service Commission.

Services under Constitution- Doctrine of Pleasure

- Art.310 – Doctrine of Pleasure
- Every member of Defence/ All India Service/Civil service or person holding civil post under Union-holds such post during pleasure of President
- Every member of Civil service of State or person holding civil post under State holds such post during pleasure of Governor
- Exception – contractual appointments Art.310(2)

Doctrine of Pleasure:

- Originated in England and came to India with the entry of the East India Company.
- Derived from the Latin phrases '*durante bene placito*' (during good pleasure) and '*durante bene placito regis*' (during the good pleasure of the King)
- The King was considered to be the representative of God and so their decisions cannot be questioned by others.
- This doctrine was developed from the concept of the Crown, and it was thought that the king is a person who will always be infallible.
- Incorporated under 1833 Charter & the GoI Act 1935 u/s 240
- **In modern times**: it can be invoked in larger public interest
- Not applicable to Judges of the Supreme Court; Judges of the High Courts; Chief Election Commissioner; and Comptroller and Auditor General of India.

Services Under Constitution

- **Art.311 – Safeguards to Civil servants**

- 1) No dismissal/removal from service by authority subordinate to appointing authority
- 2) No dismissal/removal/reduction in rank except after inquiry & giving reasonable opportunity of being heard in respect of charges (**not in respect of proposed penalty**)

Exceptions :

- 1) **dismissal/removal/reduction in rank on ground of** conduct leading to conviction on criminal charge; or
- 2) **satisfaction of authority for reasons to be recorded that** it is not reasonably practicable to hold such enquiry; or
- 3) **satisfaction of President/Governor that it is** not expedient to hold such inquiry in interest of security of State

Leading Cases and Settled Case Laws

- **Government Servants have no right to strike – T.K.Rangarajan v. Govt. of Tamil Nadu** (AIR 2003 SC 3032) – relating to unprecedented action of the Tamil Nadu Government terminating the services of all employees who have resorted to strike for their demands (1,70,241 dismissed as per Section 7 of TESMA, 1,56,106 reinstated and 14,135 not reinstated)
- **When enquiry officer is not disciplinary authority, delinquent employee has right to receive E.O.'s report, to defend him self before disciplinary authority. M.D.,ECIL v. B.Karunakar**, [(1993) 4 SCC 727: AIR 1994 SC 1074]
- It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings

Leading Cases and Settled Law

- Termination of service amounts to punishment when Govt.servant had a right to post/rank under any rule of service /contract & will be entitled to protection U/A 311 – [**Purushotham Lal Thingra v. Union of India** , AIR 1958 SC 36 - given higher post on officiating post –reverted back subsequently on ground of unsatisfactory work-upheld by court]
- A reduction in rank must, similarly, be a punishment if it carries penal consequences with it and the two tests to be applied are (1) whether the servant has a right to the post or the rank or (2) whether evil consequences such as forfeiture of pay or allowances, loss of seniority in his substantive rank, stoppage or postponement of future chances of promotion, follow as a result of the order. Where either of these tests applies, the reduction in rank must be one within the meaning of Art. 311 (2) of the Constitution and attract its protection. In the instant case, the appellant was holding an officiating post and had no right under the rules of the Railway Code to continue in it. Under the general law such appointment was terminable at, any time on reasonable notice, and the reduction could not operate' as a forfeiture of any right. The order of the General Manager visited him with no evil consequences. Consequently, he was not reduced in rank by way of punishment. (per majority)
- a probational has no right to hold the higher post in which he is officiating or a right to be confirmed

Suspension- Leading Cases and Settled Law

- Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature.
- Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. ... *Ajay Kumar Choudhary vs Union Of India AIR 2015 SC 2389*
- Similarly an order of suspension at the initial stage may be valid fulfilling all the requirements of law but may become penal or unlawful with the passage of time, if the disciplinary inquiry is unreasonably prolonged or no inquiry is initiated at all without there being any fault or obstruction on the part of the delinquent employee. No person can be kept under suspension for indefinite period since during the period of suspension he is not paid full salary. He is also denied the enjoyment of status and therefore admittedly it has some adverse effect in respect of his status, life style and reputation in society. A person under suspension is looked with suspicion in the society by the persons with whom he meets in his normal discharge of function.

- **A suspension during contemplation of departmental inquiry or pendency thereof by itself is not a punishment if resorted to by the competent authority to enquire into the allegations levelled against the employee** giving him an opportunity of participation to find out whether the allegations are correct or not with due diligence and within a reasonable time. In case, allegations are not found correct, the employee is reinstated without any loss towards salary, etc., and in case the charges are proved, the disciplinary authority passes such order as provided under law. **However, keeping an employee under suspension, either without holding any enquiry, or in a prolonged enquiry is unreasonable. It is neither just nor in larger public interest. A prolonged suspension by itself is penal...**(**Chaman Singh vs State Of U.P. Thru. Prin. Secy. Revenue- Allahabad HC-3 February, 2021**)

- Rule 151 of the Bombay Civil Service Rules 1959- which provided for payment of normal subsistence allowance to a civil servant on his suspension from service for the reasons stated under the service rules. While the first proviso to the Rule places a bar on the Government servant to take up any other avocation during the period of his suspension, the second proviso thereto reduced the subsistence allowance to rupee one per month when the Government servant is convicted by a competent authority and sentenced to imprisonment till date of his removal or dismissal or reinstatement by the competent authority unless he was acquitted by appellate court in the meanwhile in which case he will draw subsistence allowance and at the normal rate from the date of acquittal.
- The second proviso was struck down by apex court- **Held: Suspended employee** – entitled to normal subsistence allowance in **State of Maharashtra v. Chandrabhan Tale** , AIR 1983 SC 803 (Rs.1/-p.m.-held to be unconstitutional)
- If any Provision in any rule framed under Article 309 of the Constitution is illusory or unreasonable, it is certainly open to the civil servant concerned to seek the aid of the Court for declaring that provision to be void. In these circumstances, I hold that the second proviso is unreasonable and void and that a civil servant under suspension is entitled to the normal subsistence allowance even after his conviction by the Trial Court pending consideration of his appeal filed against his conviction until the appeal is disposed of finally one way or the other, whether he is on bail or lodged in prison on conviction by the Trial Court. **(Justice O.Chinnapa Reddy)**

Leading Cases and Settled Law

- **Compulsory Retirement** - *simpliciter* is not punishment – State of Gujarath v.Umedbhai M.Patel AIR 2001 SC 1109 & Baikunta nath v.Chief Medical Officer , (1992) 2 SCC 299
- **Safeguards not applicable to temporary servants / probationers** - State of Punjab v. Sukh Raj Bahadur AIR 1968 SC 1089

Leading Cases and Settled Law

- Reasonable Opportunity need not be given – in cases of conviction u/s 332,IPC,Creating a riotous situation by CISF personnel becoming a security risk, etc – Union of India v.Tulshiram Patel (1985) 3 SCC 398
- Termination on ground of procuring job by producing false caste certificate – justified Addl.G.M.(HR),BHEL Ltd,hyd. V. S.R.Burde, AIR 2007 SC 2048

Criminal Prosecution and Acquittal of Employee- Effect on Service

- Once an employee accused of an offence is finally acquitted (**honourably and completely exonerated of the charges**) by a court of competent jurisdiction-
 - i) keeping the employee in suspension or not revoking the order of suspension contemplating or pending departmental enquiry on the same set of facts is wholly unjustified
 - ii) The employee would be entitled to be considered for promotion from the date on which his junior has been promoted ... **Gurpal Singh v.High Court of Rajasthan** [WP(Civil) no.200/2006 u/A 32): **AIR ONLINE 2012 SC 508-** See also **Corporation of City of Nagpur v.Ramcandra** (1981)2 SCC 714

Leading Cases and Settled Law

- **All Entries in C.R.s** (Whether poor, fair, good or very good) must be communicated to public servants (whether in civil, judicial, police or any other State service except Military) must be communicated to him within a reasonable period so that he can make a representation for its upgradation.. **Dev Dutt v. UoI, (2008) 8 SCC 725**
- The appellant was in the service of the Border Roads Engineering Service (BRES) which is governed by BRES Group 'A' Rules... was eligible to be considered for promotion to the post of Superintending Engineer on completion of 5 years on the grade of Executive Engineer The Departmental Promotion Committee (DPC) held did not recommend him for promotion, but his juniors were selected and promoted..... ground that.... only those candidates who had 'very good' entries in their Annual Confidential Reports (ACRs) for the last five years would be considered for promotion
- The grievance of the appellant was that he was not communicated the 'good' entry for the year 1993-94. He submitted that had he been communicated that entry he would have had an opportunity of making a representation for upgrading that entry from 'good' to 'very good', and if that representation was allowed he would have also become eligible for promotion. Hence he submits that the rules of natural justice have been violated..... **Contention was upheld by SC**
- We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in Union of India vs. Major Bahadur Singh 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants). (Para 41)

Minimum tenure for civil servants & action on oral instructions

T.S.R. Subramanian v. Union of India [AIR 2014 SC 279](#)

- ‘ We are of the view that the civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests. Further, civil servants shall also not have any vested interests. Resultantly, there must be some records to demonstrate how the civil servant has acted, if the decision is not his, but if he is acting on the oral directions, instructions, he should record such directions in the file. If the civil servant is acting on oral directions or dictation of anybody, he will be taking a risk, because he cannot later take up the stand, the decision was in fact not his own. Recording of instructions, directions is, therefore, necessary for fixing responsibility and ensure accountability in the functioning of civil servants and to uphold institutional integrity’. (Para 33)

Minimum tenure for civil servants & action on oral instructions T.S.R. Subramanian v. Union of India AIR 2014 SC 279 (Oct 31, 2013)

- Oral and verbal instructions, if not recorded, could not be provided. By acting on oral directions, not recording the same, the rights guaranteed to the citizens under the Right to Information Act, could be defeated. The practice of giving oral directions/instructions by the administrative superiors, political executive etc. would defeat the object and purpose of RTI Act and would give room for favoritism and corruption.
- We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated huffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.(Para 30)
- We, therefore, direct the Union State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within a period of three months. (Para 31)

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- **31. We, therefore, direct the Union State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within a period of three months.**

Parity in pay/pay scale — Principle of “equal pay for equal work” — Applicability to temporary employees

- Principle of “equal pay for equal work” expounded through various decisions of Supreme Court constitutes law declared by Supreme Court, which is binding on all courts in India.
- As such, it is also applicable to temporary employees performing the same duties and responsibilities as regular employees. It is fallacious to determine artificial parameters to deny fruits of labour, more so, in a welfare State.
- Any act of paying less wages as compared to others similarly situated, constitutes act of exploitative enslavement emerging out of domineering position of the State.
- **Held-** temporary employees possessing requisite qualifications and appointed against posts which were also available in regular cadre, performing similar duties and responsibilities as being discharged by regular employees holding same/corresponding posts, were entitled to claim wages on a par with minimum pay scale of regular employees holding the same posts. [**State of Punjab v. Jagjit Singh, (2017) 1 SCC 148**]

Thank You