

Constitutional provisions on Service Matters

Part XIV – Services under the Union and States

CHAPTER –I

Services (Article 308 to 315)

Article 309 – Acts of appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of Union or State.

- **Proviso : The President or Governor or such person directed by them are competent to make rules regulating the recruitment and conditions of service to such service and posts until provision in that behalf is made by or under an Act by legislature under this article and such rules have effect subject to provisions of such Act.**

Case laws

- For persons engaged under contract service rules are not applicable. (*Jayanthilal Vaghela and others AIR 2006 SC 1165*)
- After accepting resignation the employee cannot be re-employed condoning the period of absence (*Chand Mal Chayal Vs State of Rajstan AIR 2006 SC 3340*)
- Disciplinary action will not offend Article 21 of the Constitution. (*Mathura Prasad Vs. Union of India AIR 2007 SC 381*)
- Rules prevail over executive instructions (*Veerendra Singh Hooda and other Vs. State of Haryana and another AIR 2005 SC 137*)
- Resignation entails forfeiture of service . Hence no pension is payable (*2005 AIR SCW 5583*)
- In relation to revised pay scales, dismissed employee cannot exercise option (*UOI Vs RK Chopra AIR 2010 SC 649*)

Article 310 – Tenure of office or person:

Defence service

Civil Service

All India Service

(1) Every person of any of the above services holds any post connected with the above services holds office during the pleasure of the President or Governor of the State.

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- **(2) A person holds a civil post or any contract during the pleasure of the President or of the Governor, shall be provided for the payment of compensation, if before the expiration of an agreed period that post is abolished or he is required to vacate that post, for reasons not connected with any misconduct on his part.**

Article 311: Dismissal, removal or reduction in rank

(1) No member of a civil service holds a civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

- Principles of natural justice:
- (1) No man shall be a judge of his own cause.
- (2) Justice should not only be done, but manifestly and undoubtedly be seem to be done.
- (3) Bias: (1) pecuniary bias
- (2) Personal bias
- (3) Official bias
- (4) Audi Alterum partem: Hear the other side.
 - (i) Notice
 - (ii) fair hearing
 - (iii) opportunity of hearing
 - (iv) speaking order or reasoned decision

- **Provided that where after inquiry it is proposed to impose any penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry without any opportunity of making representation on the penalty proposed.**

Exceptions:

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;**
 - (b) where the authority empowered to dismiss or remove a person or to reduce him in rank records satisfactory reasons that it is not reasonably practicable to hold such inquiry; or**
 - (c) where the President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.**
- the decision of the authority empowered to dismiss or remove such person or to reduce him in rank under clause (2) shall be final**

Case laws

Teacher assaulting principal amounts to misconduct deserves removal as punishment (Kendriya Vidyalaya Sangathan & Another Vs. Satbir Singh Mahla AIR 2008 SC1612)

Show cause notice served on the last day of the employee's service is a valid notice and service (UP State Sugar Corporation Ltd and another Vs Kamal Swaroop Tandan AIR 2008 SC 1235)

Police officer standing surety for accused amounts to misconduct (Commr of Police Vs Syed Hussain AIR 2006 SC 1246)

Where employee overstays leave, giving him six months time to join duty amounts to premium to indiscipline (GOI & Another Vs George Philip AIR 2007 SC 705)

Termination of service on grounds of producing false caste certificate is absolute and cannot be condoned on the basis of an undertaking of future good conduct. (Addl. General Manager, Human Resource, BHEL Ltd. Vs. Suresh Ramkrishna Burde, AIR 2007 SC 2048).

If caste certificate is found to be genuine, it shall not be enquired into again (Shiv Pujan Prasad (Died) by LRs Vs. State of UP and another AIR 2010 SC256)

Adverse entry – Prior opportunity need not be given to the employee (AIR 2000 SC 2150)

- **Article 312 : All India Services –**

Parliament may by law provide for the creation of one or more all India services including an all-India judicial service common to the Union and the States, and regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this Article.

(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a District Judge

Rule 27 of AP State and Subordinate Service Rules 1996.

312 A. (1) Parliament may by law—

(a) vary or revoke, whether prospectively or retrospectively, the conditions of services as respects remuneration, leave and pension and the rights as respects disciplinary matters of persons who were appointed before the commencement of this Constitution and continue on and after the commencement of the Constitution to serve under the Government of India or of a State in any service or post;

- **Except to the extent provided for by Parliament by law under this article, nothing in this article shall affect the power of any Legislature or other Authority under any other provision of this Constitution to regulate the conditions of service of persons referred to in clause (1).**

- **Art. 313 : Transitional provisions :**

All laws in force existing before commencement of constitution which are applicable to public service or any post continue to exist after commencement of constitution which are in consistent with the Constitution until other provisions are made.

CHAPTER –II PUBLIC SERVICE COMMISSIONS

(Art. 315 to 322)

315: There shall be Public Service Commission for each State:

Two or more State provided by the Parliament

The UPSC may agree with the approval of the President to serve all of any needs of the States.

316& 317 Appointment and term of office of members

318. Powers to make regularization as to conditions of service of members and staff of the Commission:

- 319: Prohibition as to holding the office by members of Commission on ceasing to be such members.
- **320: Functions of PSC:**
- (1) to conduct examinations for appointments to the service
- (2) framing and operating the schemes of joint recruitment for any services
- (3) Render consultation
- (a) relating to methods of recruitment to civil service and civil post
- (b) principles to be followed in making appointments , promotions, transfers and on suitability of candidates for such appointments , promotions, transfers
- © on all disciplinary matters including memorials or petitions relating to such matters.

- (d) on any claim of civil servant incurring cost in defending legal proceedings instituted against him in respect of acts in the course of his service payable out of the Consolidated Funds of the State.
- (e) on any claim or award of a pension in respect of injuries sustained by a civil servant in the course of his service payable out of the Consolidated Funds of the State.
- Provided the Governor may make regulation in the matters where the Commission shall not be consulted.

- (4) No consultation need be made in respect of the matters concerning Clause (4) of Article 16.

321: Power to extend functions of PSC

322: Expenses of PSC: Charged on the Consolidated funds of the State.

323: Reports of PSC: To the President/Governor annually.

The advice of the PSC is not binding on the Government but the reasons shall be recorded in case the same are not accepted.

- **Fundamental rights :**
- **Article 14:** Equality before law.
- **Article 15:** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- **Article 16:** Equal opportunity in the matter of public employment.
- **Article 19:** Protection of certain rights regarding freedom of speech etc.

- (a) Freedom of speech and expression.
- (b) to assemble peacefully and without arms.
- © to form associations or unions
- (d) to move freely throughout the territory of India.
- (e) to reside and settle in any part of the territory of India.
- (f) To practice any profession or to carry on any occupation, trade or business.

- **Article 20: Protection in respect of conviction for offences:**

No person shall be convicted for any offence except for violation of a law in force at the time of commission of the act charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence.

- **Article 21: Protection of life and personal liberty:**
- **(1) No person shall be deprived of his life or personal liberty except according to procedure established by law.**
- **(2) No person shall be prosecuted and punished for the same offence more than once**
- **(3) No person accused of any offence shall be compelled to be a witness against himself**