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Analytical Study of the Doctrine of Pleasure and Constitutional Safeguards to the Civil Servants: Role of High Courts and Supreme Court

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Abstract

The concepts of the police state and welfare state are contrary to each other. In former the role of the state is limited and has confined towards collection of taxes maintenance of law & order and protection of the country from external aggression. Under the concept of the welfare state democratic Governments are expected to take care of the welfare of individual from his birth up to the death. Naturally in order to perform the different kinds of functions vital for the growth and development of individual state carries the army of the administrators and has conferred upon them vast powers. Thus on one hand concept of the incentive form of Government through welfare state has came into existence at the same time there is need to control the Government authorities preventing them from becoming the power drunkard creatures by adopting the concept of responsible Government. Both of these concepts/ purposes have been served in Indian context with the help of doctrine of pleasure. Significance of the role of higher judiciary in maintenance of the balance among above-mentioned concepts /purposes is vital.

Keywords: Scope and objectives of the administrative law-relationship between the constitutional law and administrative law-doctrine of pleasure-Article 311-principles implicit therein-intensive form of the Government-doctrine of welfare state-government arbitrariness-role of the judiciary-public awareness.

Introduction

Modern democracies governed by the rule of law from police states have turned into the welfare states. In these countries there is the growth and advancement of the administrative law independent from Constitutional law. Administrative law as a part of its objectives maintains a balance between intensive form of Government and responsible Government.

Administrative authorities are instrumental in discharging the wide range of the obligations of the states towards people under the influence of the concept of welfare state. Thus Governmental authorities apart from the executive functions are also discharging rule-making functions, quasi-judicial functions and discretionary functions and thereby they do provide opportunities to the people at large for their development in different fields of human life by adopting people oriented welfare policies.

The state is supposed to have control on the administrative authorities to avoid administrative arbitrariness. Unlike the pattern of having the codified administrative law which exists in the Western democracies Indian administrative law is partially codified and partially un-codified.

In India by and large administrative law is still studied and discussed under constitutional law. Under Indian Constitution the doctrine of the pleasure has been accepted wherein the civil servants are entitled to serve so at the pleasure of the head of the state. Doctrine of pleasure serves the purpose of the Government's control on its administrative authorities. In the parliamentary form of the democracy head of the state is duty-bound to act on the aid and advice of the Council of ministers who actually in the name of head of the state exercise control on administrative authorities. Thus the civil servants have been compelled to act in a responsible manner otherwise these authorities may be removed from their posts through head of states on the advice of the Government. Now at the same time if assurance as to service conditions and permanency in the service if has not been provided to the civil servants they will not be able to discharge their functions independently and in consonance with the concept of welfare state.

Role of the Indian higher judiciary with its jurisdiction under public law is important for maintenance of the said balance. If either the state or the civil servant transgresses its constitutional limit the aggrieved party may seek remedy from high courts and Supreme Court.

Article 310 and Doctrine of Pleasure under Indian Constitution

Clause 1 of the Article 310 lays down that every person who is a member of a defense service, or a civil service of the Union or of an all India service or holds any post connected with defense or any civil post under the union, it is during the pleasure of the President and in the same manner any person who is a member of civil service of a state or holds in the civil post under a state shall hold office during the pleasure of the Governor. Article 310 makes the tenure of civil servants at the pleasure of the President or Governor as the case may be.

The pleasure doctrine has been imported from England. Common law doctrine of pleasure is based on the principle of public policy in order to make civil servants responsible to the Government and responsive to the people. In common-law; the doctrine implies that civil service is not a contract and hence service can be terminated at any time without assigning any reason and civil servant cannot enforce any condition of his service in a court of law and

cannot claim damages or arrears of salary against the Government. In this common-law doctrine Parliament has now made many inroads by legislation relating to employment, social security and labour relations.

Doctrine of pleasure as developed in England has not been accepted in full in India. It is subject to the provisions of Article 311 which lays down procedural safeguards for civil servants.

Article 311 and Constitutional Limitations on Doctrine of Pleasure

Article 311 of the Constitution is relevant in context of the doctrine of pleasure wherein limitations on the said doctrine have been imposed. There also exist other provisions under Constitution which do impose limitations on the said doctrine. These limitations can be studied in following manner.

a) Article 311 is the proviso of Article 310. Therefore services of any civil servants cannot be terminated at pleasure unless the mandatory provisions of Article 311 have been observed. The doctrine of pleasure is further restricted by the general law of the land which empowers civil servant to file suit in a court of law for enforcing any condition of a service and for claiming arrears of pay. The power to dismiss at pleasure any civil servant is not a personal right of the President or the Governor as the case may be. It is an executive power which is to be exercised at the advice of Council of ministers. Doctrine of pleasure as contained in Article 310 being the constitutional provision cannot be abrogated by the legislative and executive law. This is not the case in England where the Constitution is unwritten and hence the common law doctrine of pleasure can be withheld down by any Act of the British Parliament.

b) The doctrine of pleasure only applies to civil services and post held under the state. Therefore the doctrine has no application to various constitutional posts of judges of the Supreme Court, high courts, chairman and members of the public service commissions, chief election commissioner, controller and auditor general of India. These functionaries hold office for the term as laid down in Constitution and can be removed only according to the procedure as also laid down in the Constitution.

The protection is available to civil posts and not military and an allied posts. Two procedural safeguards provided in Article 311 apply only to persons who are members of civil service of the union or of an all India service or of civil service of state or to persons who hold a civil post under Union of state. Civil post means an appointment on civil side of administration as distinguished from military side. Therefore these safeguards are not available to the members of the defense forces to any post connected with the defense which is governed by Army Act 1950. Even a civilian holding a post in department concerned with defense such as military engineering, farm service cannot claim protection of Article 311. Civil post signifies that there must exists a master and servant relationship between the holder of the post and the

state which may be indicated by the state's right to recruit, appoint, control and payment of wages. A relationship of master servant can be indicated by all or some of these factors.

c) Clause 2 of Article 310 specially empowers the Government to enter into service contracts with persons having special qualifications. The doctrine of pleasure can be qualified or limited by such service agreements. Thus in order to secure the services of any person, the Government may include in the service agreement provision for compensation in case of premature abolition of the post or retirement not due to misconduct.

d) Article 14, 15 and 16 place limitations on the free exercise of pleasure doctrine. Article 14 forbids any discrimination and arbitrary termination of service. Article 15 forbids termination of service on ground only of religion, race, caste, sex or place of birth or any of them. Article 16(1) obligates equal treatment and bars arbitrary discrimination in public employment.

e) Article 320(3)(c) places another limitation on the pleasure doctrine by providing that in all disciplinary matters affecting civil servants, Union or a state public service commission, as the case may be is to be consulted.

f) Statutory appointments: In such cases, appointment and termination is governed by the terms of the statutory provisions. Even in case of removal of constitutional functionaries, pleasure doctrine is not unlimited. Therefore a Governor cannot be dismissed on whims and caprice. In *BP Singhal vs Union of India 2010 SCC 331* the Supreme Court opined that a Governor cannot be dismissed on the basis of ideology, change in Government, making way for other or loss of faith.

Article 311 and the Role of High Courts and Supreme Court

Constitutional Safeguards to Civil Servants: Article 311 is a limitation on the doctrine of pleasure as laid down in Article 310 and thus places two limitations on the power of Government to dismiss a civil servant at pleasure. These limitations are, (i) that no civil servant can be dismissed or removed from service by an authority subordinate to that by which he was appointed and (ii) that no civil servant can be dismissed or removed or reduced in rank, except after an enquiry in which he has been made aware of the charges against him and also given a reasonable opportunity to defend himself.

These two limitations lay down the constitutional code of procedural safeguard for civil servants in India. For the first time in India on traditional protection to Government servants was provided by the Government of India Act 1919 which was followed by Government of India Act 1935 and continued by the Constitution of India in Article 311.

Law of Precedent

High courts and Supreme Court are the guardians of the provisions of Indian Constitution. They have led down many useful ratios and have developed a law of precedent on Article 310 and Article 311. Same may be analyzed in following manner.

a) Protection of Article 311 shall not be available in case of compulsory retirement in public interest, termination of service during probation, or termination of service which was temporary and for a fixed period, or reversion from an officiating post; provided the termination of the service is bona fides and simpliciter which does not attach any stigmata the employee. When action of the termination of the services is 'punitive' or 'simpliciter' or when it is a 'foundation' or a 'motive' will be required to be determined and same was explained by Supreme Court in the *Prakash Banerjee vs SN Bose National Centre for Basic sciences AIR 1999 SC 983*, (i) If finding arrived at in an enquiry as to misconduct of employee is behind his back without any regular enquiry, the simple order of termination will be founded on allegation hence, bad in law. (ii) If no enquiry was held, as employer was not inclined to hold one, an order of termination will be simpliciter and it would be a case of 'motive' and not 'foundation', hence will not be bad in law.

b) If the employer does not want to enquire into allegations against the employee because of the reason of delay in taking action or if he is doubtful that adequate evidence will be available then allegations could only be motive for termination of service and hence termination would be simpliciter not bad in law.

c) Where there is a stigma on the employee arising out from any record or order or annexure which can be asked for by any future employer, the order of termination will be bad in law.

This distinction has been further explained by Supreme Court in *Chandra Prakash Shahi vs state of UP AIR 2000 SC 1706* in the following manner, important principles which are deducible on the concept of motive and foundation, concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention and service or for confirmation, an enquiry is held and it is on the basis of that enquiry that a decision is taken to terminate his service, the order will not be penalty in nature. But if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the services is passed on the basis of that enquiry, the order would be punitive in nature.

d) Compulsory retirement: Government has the power to compulsorily retire any Government servant in public interest who has put in specified number of years of the service. This gives unfettered power to the Government without any counterbalancing

protection of Article 311 being available to the employee. Therefore, in many situations this power has been exercised in mala fide manner for punishing an employee. Therefore the courts have started extending the protection of Article 311 in cases of compulsory retirement against executive arbitrariness. Hence if it can be proved that power was exercise in a mala fide manner and action carries any stigmata to the employee then the courts would not hesitate to quash the administrative actions. In *Baldev Rai vs Union of India AR 1981 SC 70* the Supreme Court quashed the order of compulsory retirement which had been passed after taking into account old adverse confidential reports and ignoring confidential reports of the last five years.

In another case, court quashed the order when an employee was allowed to cross the efficiency bar but was compulsorily retired soon thereafter, even though there was nothing against him subsequent to his crossing the efficiency bar.

In case of compulsory retirement decision rests on subjective satisfaction and it is not considered a punishment or any suggestion of misbehavior. The proceedings are also not quasi judicial therefore the principles of natural justice are not attracted. However it can be challenged on the ground of mala fide, no evidence or arbitrariness.

e) Dismissal removal, reduction in rank and suspension: Constitutional protection of Article 311(1) is available in case of dismissal or removal from service but the protection of Article 311(2) applies in case of a reduction in rank also besides removal and dismissal. Thus the scope of Article 311(2) is wider than clause (1). Dismissal or removals are basically the same concepts because in both the cases termination of service takes place. But the difference between the two expressions is that in case of dismissal the employee is barred from future employment but not in case of a removal. Reduction in rank does not entail termination of service because it is only a change to lower the rate of a class. Therefore a person has been appointed on the lowest grade this punishment cannot be awarded to him. A person is appointed temporarily or to officiate on higher post gets no right to the higher post and hence if reverted to his substantive post Article 311 is not attracted. But if reversion is by way of punishment then protection of Article 311 shall be available to him.

State of Tamil Nadu vs PM Belliappa 1985 lab 51 (Mad) Suspension of a civil servant pending an enquiry is neither dismissal nor removal from service so the protection of Article 311 is not available to suspended employee. However if the suspension is by way of punishment or is based on extraneous or irrelevant considerations or there is the total non application of mind then court may grant relief.

f) If the service of civil servant is terminated as a result of abolition of his post then also the protection of Article 311 shall not be available. Creation and abolition of a post is a matter of public interest which is in the sole discretion of the Government. If the post has been abolished in mala fide manner or as a cloak to punish the employee then court may grant relief.

The principles of natural justice are integral part of administrative jurisprudence therefore in departmental proceedings if it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable the court will exercise its power of judicial review. Thus there is no absolute right to terminate the services of any Government servant even if contractual in nature without the existence of any cause. Expression without assigning any reason does not mean without existence of any reason. Any administrative action without an application of mind or action devoid of any reason renders it arbitrary subject to judicial scrutiny.

Conclusion

On the basis of the above mentioned analysis it can be concluded that doctrine of pleasure under Article 310 of the Constitution is a mean in the hands of the Government to control administrative authorities. It enables the Government to ensure that at the end of administrative authorities policies are framed and implemented as decided by the Government. Thus ultimately with the help of doctrine of pleasure Government is able to function as the welfare state through its administrative authorities promoting the concept of responsible Government.

Article 311 of the Constitution serves as a limitation on the doctrine of pleasure enabling the Government authorities to serve in an independent manner but in consonance with the Constitution, law and administrative traditions. Protection of civil servants under Article 311 enables the civil servants to serve without any fear or favour and at the same time still it is possible for Government to ensure that authorities will not be acting in arbitrary manner.

The High Courts and Supreme Court within its writ jurisdiction and extraordinary jurisdiction under Article 310 and Article 311 maintains a balance in the functioning of the Government and civil servants. The higher judiciary in conformity to the constitutional provisions interprets the doctrine of pleasure in such a manner that the purpose of implementation of the concept of welfare state and reasonable independence of the public servants is served. Higher judiciary also ensures that along with the concept of welfare state, the concept of intensive form of Government and the concept of responsible government have been followed upon.

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