

Constitutional Law and Public Administration in India

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Constitutional Authorities - III (Public Service Commissions & Law Officers)

The third set of Constitutional authorities are the Union Public Service Commission and the State Public Service Commission. Part XIV of the Constitution of India deals with services under the Union and the States. There is a separate Public Service Commission for the Union and a separate Public Service Commission for the States. However, both have been dealt together in the Constitution. So, the Constitutional provisions for the Union Public Service Commission and the State Public Service Commissions are common and are contained in articles 315 to 323 of the Constitution.

The Union Public Service Commission and the State Public Service Commissions can be dealt with separately. Article 315 of the Indian Constitution establishes the Union Public Service Commission. As to the composition, the Constitution merely states that in the UPSC, there must be a chairman and some other members. All of these chairmen and the other members are appointed by the President. But the numerical strength of the members who should be appointed has not been mentioned. But the Constitution mentions that at least one half of the members of the Union Public Service Commission should have held office for 10 years either under the Union government or under the state government. So, the numerical strength is not mentioned, but the Constitution provides that one half of the members should have been government servants for at least 10 years.

The tenure of every member has also been fixed. It is either 6 years of service or 65 years of age and the Constitution states that no member of the Union Public Service Commission shall be eligible for reappointment to that office. There are three ways in which the service of a member of the Union Public Service Commission will get over. Either he will retire, or he can resign by submitting a written resignation to the President or he can be removed from his office.

For removing a member of the Union Public Service Commission, the President has to first refer the matter to the Supreme Court. Once the Supreme Court conducts an inquiry and submits a report to the President recommending that the member should be removed from the office only then the President can pass an order to remove a member from the Public

Service Commission. Now what are the grounds for removal? The President has to refer the matter of removal to the Supreme Court on the ground of misbehavior. That is when the whole process of removal would be initiated. Till the Supreme Court's inquiry is completed, the President can choose to suspend a member of the Public Service Commission from his office. There are some grounds on which the President can initiate the process of removal of the member of the Public Service Commission unilaterally, that is without referring the matter to the Supreme Court. There are three such grounds. The first is if a member of the Public Service Commission has been adjudicated as an insolvent. Second if he engages in some paid employment outside the duties of his office while he is serving as a member of the Public Service Commission. The third ground is if the President is of the opinion that a particular member is not fit to continue with the duty owing to some physical or mental infirmity. These are the grounds on which the President can pass an order for removal without involving the Supreme Court and this order will be considered as final. As regards the State Public Service Commission the Constitutional provisions are all the same. There are differences between the two. The first thing to be noted is that the members of the State Public Service Commission are appointed by the Governor and the second difference is with respect to tenure.

For a member of the Union Public Service Commission the tenure is either 6 years or 65 years of age whichever is earlier. When it comes to the State Public Service Commission the tenure of the members is either 6 years of service or 62 years of age whichever is earlier. So unlike the members of the Union Public Service Commission the members of the State Public Service Commission are also not eligible for any reappointment. If the members of the State Public Service Commission have to resign, they have to tender their resignation before the Governor. In the case of UPSC it was before the President.

In the case of the State Public Service Commission, it is before the Governor. But the process of removal of the State Public Service Commission members is very similar to that of the members of the Public Service Commission of the Union. It is the same process, it is the same ground, it is the President who initiates it, and the matter is referred to the Supreme Court etc. So, the same process is proven. But the power of suspension which in the case of UPSC was with the President is exercised by the Governor in the case of State Public Service Commissions.

There is also something called a Joint Public Service Commission. So, if two or more states want to have a common Public Service Commission they can pass a resolution to that effect in their state legislative assembly. And the Parliament will create a Joint Public Service Commission for those states. The states of Punjab and Haryana had a Joint Public Service Commission for a very brief period of time. In the case of the Joint Public Service Commission also it is the President who carries forward the majority of the functions. The governor does not have much of a role to play. So how are PSCs made independent Constitutional bodies? How is their security of tenure ensured? The security of tenure is

ensured by making the process of removal a rather difficult procedure whether it be the Union Public Service Commission or the State Public Service Commission. The process of removal can only be initiated by the President and that too with the Supreme Court's inquiry and recommendation. Under Article 318 it has been provided that their conditions of service are determined by the President or the governor depending on whether it is the Union Public Service Commission or the State Public Service Commission.

But their conditions of service cannot be varied to their disadvantage once they have been appointed. Under Article 316 it has been provided that members of a PSC cannot be appointed or reappointed to that office. But Article 319 clarifies that the chairman of a Union Public Service Commission or State Public Service Commissions cannot seek any employment under any government offices once he retires or is removed from service. But when it comes to other members of a Public Service Commission they can become the chairman of a Public Service Commission but they cannot seek any other employment in any other government offices. So, the chairman is ineligible for any further employment with the government be it any government office.

The other members of a Public Service Commission are eligible for becoming chairman of Public Service Commissions but are ineligible for holding any other posts. Why is it that such a high condition of a service is imposed? It is because of the nature of functions of a Public Service Commission. The first function of a Public Service Commission is conducting the Union Public Service Commission exams or the State Public Service Commission exams. The major function of Public Service Commissions is to conduct exams for appointing people to various government services in the union or the state government.

If it is the union government, it will be the UPSC which will be conducting these exams and if it is the state government services it will be the State Public Service Commission of that particular state which will be conducting exams. The Union Public Service Commission is bound to assist states if they want to conduct joint recruitment. So, two or more states may want to conduct joint recruitments for the government posts that are there in those states and if that becomes necessary, they may request the Union Public Service Commission's assistance. In such cases the UPSC has to give assistance to these two or more states which are conducting such joint recruitments for government posts. This usually arises when candidates possessing certain specific qualifications for certain specific services are being recruited.

Now the Constitution states that the government shall consult UPSC when it comes to recruitment, appointment, promotion, transfer, disciplinary matters and even in litigations that are filed by government employees before the courts against the government. The usage of the word shall in normal parlance means that it is a mandatory condition. So, this means that the government should consult the UPSC mandatorily when it comes to all of

these aspects of recruitment, appointment, promotion, transfer, etc. But in a judgment called the state of *State of UP v. Manbodhan Lal Srivastava* it has been ruled that this consultation is not mandatory. So, it is just a recommendatory condition, and this consultation is not at all mandatory.

So, what this means is that a candidate cannot challenge the decision of the Union Public Service Commission just because the government did not consult the UPSC before the appointment or transfer or the promotion. The lack of consultation cannot be a ground of challenge for the appointments. This has been held in this case by the Supreme Court. One last function of public service commissions is to render advice if at all any matter is referred to them by the President or the governor. So, these are the functions of the public service commission.

These functions have a critical importance. It is the public service commission which constitutes the appointment and transfer and promotion in various government posts. It is because of this that their independence is critical, and it is because of this that certain strict conditions of service have been imposed on them especially when it comes to ineligibility for reappointment. In the case of Comptroller and Auditor General the public service commissions also have to submit reports annually. The UPSC has to submit the report to the President who will cause it to be laid before the Parliament and the state public service commissions have to submit their annual reports to the governor of that state who shall cause it to be laid before the state legislature. This is an additional accountability that is ensured. This is very similar to the provision that we saw in the case of Comptroller and Auditor General.

There is another set of authorities, the Attorney General, the Advocate General and the Solicitor General. Coming first to the Attorney General for India. The office of Attorney General has been established by virtue of Article 76 of the Constitution of India. The Attorney General is considered as the highest law officer of a country. He is appointed by the President and the Constitution prescribes some conditions of eligibility or qualifications for a person to be appointed as the Attorney General. The Constitution states that the Attorney General should possess the qualifications of the judge of the Supreme Court. The qualifications for a person to be appointed as the judge of the Supreme Court is mentioned under Article 124 of the Constitution. According to Article 124 for a person to be appointed as the judge of the Supreme Court he should be an Indian citizen.

Additionally, he should have been the judge of a High Court for at least 5 years, or he should have practiced in the High Court as an advocate for at least 10 years. The third condition is he should be in the opinion of the President an eminent jurist. So, the condition of being an Indian citizen is the first condition and the other three conditions either one of them has to be satisfied. So, he has to be an Indian citizen and he should have been the

judge of a High Court for at least 5 years or an advocate in the High Court for 10 years or is in the opinion of the President an eminent jurist.

As regards the tenure of Attorney General the Constitution prescribes that he shall hold office during the pleasure of the President. This means that the Attorney General holds the position only as long as the President wants him to. So, in the case of other Constitutional authorities there is a fixed age, say 6 years or up to 62 years of service and so forth. But in the case of Attorney General he continues in service as long as he enjoys the confidence of the President. On the flip side he can be terminated from services by the President anytime he wants without assigning any reason. There are many other authorities in the Constitution who hold office under the pleasure of the President. The civil servants are an example, the governors are an example. So, all of these authorities hold office during the pleasure of the President. An Attorney General is one such office. Compared to the Constitution his salary is also determined by the President.

The Constitution enumerates the functions of the Attorney General in a very broad manner. It provides that the Attorney General has to give advice to the government of India on legal matters and has to perform duties which are of a legal character. And these duties may be assigned by the President, or it may be assigned by some provision of the Constitution. The President has assigned some specific functions to the Attorney General and this has been done by virtue of an executive notification. There are three such functions. The first is to appear on behalf of the government in matters before the Supreme Court. So, basically these will be cases where the government of India is a party to a litigation before the Supreme Court. In such cases the Attorney General has to represent the government of India. The second function is to represent the government of India in Presidential references under Article 143. The President can refer certain questions of law which are of importance to the Supreme Court and these cases will be heard by the Constitution bench.

In such Presidential references the Attorney General may be asked to represent India. The third function is to appear before the government of India that is to represent the government of India in high courts if necessary. The Constitution of India guarantees certain privileges to the Attorney General. One of the privileges is that the Attorney General has a right to an audience in all courts. The right to an audience means that an Attorney General can appear on any of the courts in India and represent the clients. He can only speak and take part. He cannot exercise any right to vote. The final privilege is that which is accorded to all the members of the Parliament, the freedom of speech.

There is no liability for anything said or any vote given or any liability for any publication which has been made under the authority of the Parliament. This freedom of speech which is guaranteed to other members of Parliament is available to the Attorney General as well. So these are the three privileges or the powers which are available to the Attorney General under the Constitution of India. The Parliament has enacted a legislation called the Law

Officer Conditions of Service Rules 1987. In this there are three types of law officers, the Attorney General, the Solicitor General and Additional Solicitor Generals.

The office of Attorney General is created by the Constitution. However, the Solicitor General and additional Solicitor General's offices have been created under a statute called Law Officer Conditions of Service Rules. So, these are statutory bodies and not Constitutional bodies. This particular statute prescribes a term of office of three years for all law officers that is for Attorney General, Solicitor General, and additional Solicitor General. For Additional Solicitor General, the term of office of below three years may also be prescribed and all the three law officers are eligible for reappointment for a further term that is for one more term and the service of each of these law officers can be terminated by a three months' notice from either side, either from the government or from the Attorney General or the Solicitor General themselves.

The statute also prescribes that the law officers are eligible for a retainer fee, office allowance and fee for the appearances. The office allowance and the fee for appearances is familiar. But retainer fee is what you pay upfront for engaging a lawyer to appear on behalf of yourself in any litigation matter. The statute lays down certain restrictions on all law officers. They can only accept briefs from the government. They cannot advise any other person for lodging a case against a government. They have to seek prior permission from the government if they want to defend an accused in any criminal proceeding or if they want to accept any other appointment. They also cannot advise any other ministry or department unless that request for advice is received through the Ministry of Law and Justice. The office of the Solicitor General is something that is not created by the Constitution. Among all the other authorities this is one single authority which is not constituted under the Constitution.

How is a Solicitor General appointed? This is purely an executive appointment because the Solicitor General is appointed by a body called the appointments committee of the cabinet and this appointments committee of the cabinet comprises the Prime Minister of India and the Minister for Home Affairs. This is an exclusively executive appointment. Now, the Solicitor General is the second highest law officer in the country. In the hierarchy he falls right beneath the Attorney General and the additional Solicitor Generals are mostly appointed for focusing the work on High Courts. As to the function of Solicitor Generals the statute, on the law officers' conditions of service rules treats all the law officers equally and does not shed much light into the functions of the Attorney General or the Solicitor General. In usual practice the Solicitor General merely assists the Attorney General. So, in assisting also they only appear before all courts within India. They do not usually tender legal advice to the government. The act of tendering legal advice is something that falls within the exclusive prerogative of the Attorney General's powers. So, the function of Solicitor General is to assist the Attorney General by appearing before the courts that are

appearing on behalf of the Union of India in courts, but they do not tender legal advice to the government.

The next constitutional authority in this category is the Office of Advocate General for the state. This is an office that has been established under Article 165 of the Constitution and most of the provisions are very similar to that of Attorney General or it is comparable to that of Attorney General. So, if the Attorney General is the highest law officer of a country the Advocate General is the highest law officer of a state and if the Attorney General is appointed by the President the Advocate General is appointed by the Governor and for an Attorney General the qualifications should be similar to that possessed by a judge of the Supreme Court. When it comes to an Advocate General, he should possess qualifications of a judge of a High Court.

What are the qualifications that a judge of a High Court should otherwise have? He should be an Indian citizen and he should have either held judicial office for a minimum of 10 years or he should have been an advocate in a High Court for a minimum of 10 years. So, these are the qualifications that a judge of a High Court should possess, and the same qualifications should be possessed by a person for being appointed as the Advocate General of a state. Just as the Attorney General holds office during the pleasure of the President, the Advocate General holds office during the pleasure of the Governor and his salary is also determined by the Governor. The functions are also very similar. It is to give legal advice to the government of the state and to perform duties of a legal character which are bestowed on the Advocate General either by the President or by the Constitution.

The provisions are said to be comparable and give a better understanding of the position of Advocate General. When it comes to the powers and privileges of the Advocate General, two of the powers and privileges that he has is common with the Attorney General. This is the right to speak in and take part in the proceedings of any state legislature, but he does not have the right to vote. There is a similar provision for Attorney General. The second one is that of the freedom of speech with no liability for anything that is said, or any vote given or any publication which is made within the authority of the state legislature.

This is also something that we saw in the case of Attorney General but the right to an audience in all courts which is a privilege that was available to Attorney General that is not available to Advocate General barring that the other two privileges are available to Advocate General as well. As to a summary of Constitutional authorities, the first Constitutional body that was that of the Comptroller and Auditor General. His appointment is by the President, but he is not eligible for reappointment. His removal is on like manner and grounds as a Supreme Court judge and his salary, and conditions of service have been laid down by the Parliament in the statute called CAG Duties, Powers, and Conditions of Service Act 1971.

The next constitutional authority is the Chief Election Commissioner. He is also appointed by the President and his removal is also on like manner and like grounds as a Supreme Court judge. His salary and conditions of service are determined by the Election Commission, Conditions of Service of Election Commissioners and Transaction of Business Act of 1991. We also looked into the Election Commissioners other than the Chief Election Commissioner. They are also appointed by the President and in the Constitution, it does not say that the removal is on like manner and grounds as a Supreme Court judge.

That was introduced after a Supreme Court judgment was pronounced by the Constitution bench. His salary and conditions of service are also determined by the Election Commission, Conditions of Service of Election Commissioners and Transaction of Business Act. In the case of the Attorney General, the President is the authority appointing him and since he holds office during the pleasure of the President, his removal is also affected by the President by withdrawing the pleasure. The salary and conditions of service are determined by the President. We also have the law officer's Conditions of Service rules to supplement this.

The Advocate General is appointed by the Governor and his removal is also by the withdrawal of pleasure by the Governor. The salary and conditions of service are determined by the Governor. The last constitutional authority is the Public Service Commission. So, for a member of a Public Service Commission, the appointment is by the President, and they are not eligible for reappointment. When it comes to removal, it is the President who affects the removal after recommendation of the Supreme Court's Inquiry Committee. The salary and conditions of service are determined by the President or the Governor as the case may.