Social-Engineer 'Civil Servants' Historical Development & Common Law Perspective

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ABSTRACT: Civil services in India are modeled upon the pattern of Britain. Still there are some important defenses between the law relating to civil servants in England and India. The expression civil post has been subject of judicial interpretation. The safeguard to Govt. servants in India has been provided in Indian constitution under Article and fundamental rights against doctrine of pleasure enumerated in Article 310. The doctrine pleasure is originated from English law through East India Company when British directly took over the command of India from East India Company. The doctrine of pleasure was prerogative of king in England. Which means govt. servants used to hold office during the pleasure of king or crown and his services could be terminated at any stage with giving him opportunity unless provided in statute. The crown was not bound by the terms and conditions of employment and terms of contract. It was considered that, king can do no wrong. There were direct relation between crown and its servants and the crown was empowered to terminate the services of its servant without affording them opportunity of hearing or without pay them any retrenchment compensation, pension benefits, damages for wrongful termination or any other relief which are applicable in present era.

Keywords: Article, Civil Service, Crown, Doctrine, Fundamental Right, Prerogative

Abbreviations: GOI – Government of India

I. INTRODUCTION

The historical background of the civil services in England reveals that all public officers and servants are the members of the service of the crown and hold appointment at the pleasure of the crown or “Durante beneplacito” with good conduct and are bound to behave well. Therefore, except otherwise provided in any statute all public officers and servants shall hold office during or at the pleasure of the crown. The crown can terminate a person of his appointment holding the office during the pleasure of the crown at any time without assigning any reason. The parliament being supreme and sovereign in England has the power to restrict the powers of the crown by enactment of legislation. Mr. Blackstone has stated the unlimited powers and authority as under: It has sovereign and uncontrollable authority in making, confirming, enlarging, restraining, abrogating, reviving, and expounding of laws, concerning matters of all possible denominations ecclesiastical or temporal, civil, military, maritime or criminal this being the place where that absolute despotic power, which must in all government reside somewhere, is entrusted by the constitutional of those Kingdom. All mischief and grievances, operations and remedies that transcend the ordinary course of the laws, are within the reach of the extra ordinary tribunal.

II. MATERIALS AND METHODS

Blackstone & Dicey's View

Mr Blackstone has further gone ahead in describing the sovereignty the parliament of the United Kingdom and stated that it can change and create a fresh constitution of the kingdom, regulate or new model of succession of the crown and cannot do everything. Dicey's introduction to the study of the law of the constitution has gone to the extent in saying that "it is a fundamental principle with English Lawyers, that parliament can do everything but cannot make a woman a man and a man a woman"
It is now well settled that the crown servants holding office in England continue his appointment at the pleasure of the crown. The crown still retain the power and authority to terminate the appointment of public officer and servant but there have been radical change through legislations which made it practicable and possible to settle the disputes relating to the service matters by collective agreement between the crown and representatives of the public servants. With this development in the historical sketch of civil servants in the United Kingdom, a civil servant can now sue for damages in the matter of dismissal etc. But it does not mean that a civil servant has an absolute right to continue in employment beyond the pleasure of the crown.

Common Law Approach
The position of civil services in India though modelled upon the pattern of the Britain yet is quite different in certain matters. It is of course true that early in 18th century when East India company of Britain set up in India, its own servants where holding the office at the pleasure of the crown and they could be removed by the crown. sec. 35 and 36 of act of 1193 had empowered the Kings Majesty including his heirs and successors in accordance with the procedure laid down to remove or recall any person holding office at the pleasure of the crown. These powers were being enjoyed by the court of Directors of the East India Company. In nineteenth century i.e. in early part of the century Act of 1833 came in to force. The provision of sec 74 and 15 made the similar provision as those exist in the, act of 1793. The position of the civil services during the period of nineteenth century especially by the end of the century was much developed and well organised and the control over the civil services was vested in the executive.

In this way all the civil servants of the crown were being governed under the regulations made in respect of their appointment, recruitment, pay and allowances discipline And conditions of service. These rules were made by the executive. Prior 1833 during the regime of East India Company the affairs of the civil services were controlled by the act 1793 and thereafter by act 1833. Act 1853 provided certain sections for the admission of appointment of person to the civil service of East India Company. In 1858 the crown of United Kingdom took over the control of the Government of India and the administration of East India Company came to an end.

This period was a period of drastic changes in the matters relating to civil services in India and the servants of East India Company were made subject to the pleasure of the crown. The Supreme Court in the case of Moti Ram v Union of India has observed : “It will begin with the government of India act, 1833 section 74 of the said act made the tenure of all services under the East India Company subject to his Majesty’s pleasure. These servants were also made subject to the pleasure of court of Directors with a proviso which accepted the said rule those who had been appointed direct by his Majesty. In due course, when the crown took over, the government of India act 1858, sec 3 conferred on the secretary of state of all powers which had till then vested in the court of Directors, which powers in relation to the servants of the company which till then vested in the Director were by sec 37 delegated to the secretary of the state”.

Judicial Perspective
The Supreme Court has organised elaborated the Development of this period a well organised civil service came into existence .The act 1853 and thereafter the act 1858 came into force .The government of India act 1858 vested the administration ,control and territories under the control of the East India company in the British crown. In this way the administration of East India Company came to end by this act with the proclamation of her majesty’s Queen which confirmed that all servants civil of military would be under the pleasure and regulation of the crown. The statute William IV conferred the doctrine of pleasure. The act 1858 repealed certain sections of the act 1853 in relation to the admission or appointment of persons to the civil service and other matters connected with it. The act 1861 has provided the statutory recognition to the Indian civil service.
In this context it is significant to note that the statute of William IV conferred the doctrine of pleasure. There on the transfer of administration of East India Company, the administration of officers and its employees came under the direct pleasure and prerogatives of the Crown. The position as envisaged under the Act 1858 and Act 1861 continued till 1915. The GOI act 1915 came in to force in 1915 which repealed above two acts. Under the provision of this act 1915, the Secretary of state in council was conferred upon the power to make rules for the India civil service examination, with the aid and advice of the civil service commissioners. The Supreme Court in P.L.Dhingra v Union of India has Observed that the government of India act 1915 had no Reference to doctrine of English common law. In 1916 the government of India (amendment) act, 1916 came in to force. It is not out of place to mention here that none of the acts and the amendment act 1916 has provided the tenure of the members of the civil service holding appointment in India.

The government of India act, 1919 came in to force. It replaced the earlier enactment. This act of 1919 has brought significant and important changes in the matters relating to civil services. It introduced several amendment in the act 1915 which includes part IV an inserting section 96 B with its, heading “The civil services in India”. The Supreme Court in case of P.L.Dhingra v Union of India which discussing the matter in context of the service matters has stated that section 96 B had given the statutory recognition and the force of English common law rule for the first time by which the public servants of the crown were holding office during the pleasure of the crown. It is important to note that section 96 B (2) has confined that the person appointed prior to the endorsement of the act 1919, shall retain all his right etc.

The Calcutta High Court in case in Satish Chandra v The secretary of state has stressed in the case of dismissal of a police officer, the procedure as laid down under rule xix must be followed. In a number of cases during the period between 1919 and 1935 the courts have maintained the prerogative and rights of the crown in the matter of dismissal of the employees at pleasure. Bimalcharan v Trustees for the Indian museum. Ram Das Hazra v The secretary of state. But in the case of VenkataRao v the secretary of state, the Privy Council while disagreeing with the decision of the concerned department in the matter of dismissal of an employee has ruled that the provision of the rules must be observed. Rangachari v The secretary of state, the Privy Council has laid down some important propositions with regard to the delegation of powers authority in the matter of dismissal of the employees. By passage of time a number of political changes crept in the administration and the affairs of the state under the rule of the British crown. Many events have had occurred by the year 1935 when the government of India act 1935 came into existence. The act 1935 had provided legislative recognition and sanction of the position envisaged during the past years. It is important to note that chapter II of part X of the act 1935 exclusively provided the provision relating to service conditions. The act 1935 has replaced the provisions of sec 96 B the act 1919. This change reveals that the British employees were keeping a vigil not only on the political situations which has been considerably changed but also the way under which the employees were mixing with the changed situation of the country adjusting themselves in the changed steam line of the affairs of the country.

Statutory Framework

Part X of the act 1935 provided a number of Provisions and section relating to the service matter particularly related to the defence and civil services. Section 232 to 211 of the act provides the provisions in Relation to the
conditions of service. The government of India act 1935 remained in force till the constitution of India came into force in 1950. It may still be seen that various sections of the act 1935 are the guiding factors even now. The decision and authorities of the Privy Council and various High Courts on the subject relating to service conditions and punishments are authorities to fill the gap between the provisions of the statute and administrative/executive/instructions.

When the government of India act 1935 came into Force, there had been many rules and regulations on the Service matter were being framed. The top echelons and important servant were known as all India services. As discussed above, the Indian civil service and Indian police service were known as administrative machinery. In addition other services which prevailed that time were Indian forest service, Indian education service, Indian Agricultural service, the Indian service of engineers, Indian Medical Services. The appointment to those posts was made by the secretary of state under the terms and conditions of service which were being convened. Besides above service, there were control services Provincial services and subordinates services.

With the above changes a considerable development rose in the service matters through the government of India act 1935, part x of government of India act 1935 is an important party so far as service matters are concerned. The provision of section 240 of the act deals with the tenure of office or person employed in civil capacities in India and section 241 provides and deals with the recruitment and condition of service. In all the related provisions of the act 1935, it is apparent that the doctrine of pleasure has a major part to play in all service matters through restricted under the various provisions of rules and regulations. It was a matter of public policy that doctrine of pleasure played its major role in the service matters.

Analysis of historical development with reference to England & India

Civil services in India are modeled upon the pattern of Britain. Still there are some important defenses between the law relating to civil servants in England and India.

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III.RESULTS AND DISCUSSION
Table 1: Historical Development & Common Law Perspective

<table>
<thead>
<tr>
<th>Civil Servants</th>
<th>Acts/Statutory Provision</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>East India company sent out to India it’s our Servants</td>
<td>Court he earliest times, under the various charters given to the East India company</td>
<td>Crown</td>
</tr>
<tr>
<td>Servants appointed</td>
<td>Charter Act of 1793</td>
<td>Kings Majesty Ended</td>
</tr>
<tr>
<td>Servants still under Court of Director</td>
<td>Charter Act of 1793</td>
<td>Renewed the charter issued to the British East India Company till 1813</td>
</tr>
<tr>
<td>Civil Servants concept initiated for the first time with limited implementation</td>
<td>The Saint Helena Act 1833/The Government of India Act 1833/Charter of 1833</td>
<td>Court of Directors continued to hold the privilege of appointing company officials</td>
</tr>
<tr>
<td>Civil Service Commission</td>
<td>Civil Service Code of 1996 and 2004</td>
<td>The Queen &amp; Prime Minister of United Kingdom</td>
</tr>
<tr>
<td>Civil Servants</td>
<td>Public Service Commission 1926, Federal Public Service Commission 1935,UPSC 1950</td>
<td>The President of Republic of India</td>
</tr>
</tbody>
</table>

It is concluded from Table 1 that since inception of East India Company till present system of civil servant lot of historic developments has been taken place.

IV. CONCLUSION

In conclusion we can easily found the common law approach and its historical development as The East India company sent out to India it’s our Servants and so did the crown, and court he earliest times, under the various charters given to the East India company, the crown at could at its pleasure remove any person holding office, where civil or military, under the East India company had also the power to remove or dismiss to any of its officers or servants not appointed by the crow. Sec 35 of the act ,l793 made it lawful to end for the Kings Majesty, his heirs and successors by any writing or instrument under his or their sign manual' countersigned by the President of the Board of Commissioners for affair of India, to remove or recall any person holding any office, employment or commission civil or military, under the East India company, while sec 36 of the act provided the nothing contained in the act should extended, to be construed to extend, to preclude or take away the power of the court of Directors of the East India company from removing or recalling any of its officers of servants and that the court of Directors shall and may at all times have full liberty to remove ,recall or dismiss any of such officers of servants at their will and pleasure in the like manner as if that act had not been passed .Similar provision were made in the act of 1833 by sec 74 and 75 of the act .

V. FUTURE SCOPE

After reviewing historical development of civil service and civil servants, we can observe a lot of reformation is still required regarding appointment & dismissal. So that bureaucrats can perform their tasks with full dedication. For this we have to study the detailed observation made by different committees or commissions appointed by central government like Santhanam Committee and Administrative Reform Commission etc. regarding civil servants. After that only we can put our suggestions regarding reformation or innovations in bureaucracy.

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