INDIAN JOURNAL OF LEGAL REVIEW [IJLR]

VOLUME 4 AND ISSUE 1 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

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DOCTRINE OF PLEASURE-RESTRICTIONS ON THE DOCTRINE OFPLEASURE UNDER THE INDIAN CONSTITUTUION

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BEST CITATION - GAYATHRI LAKKAMALLA, DOCTRINE OF PLEASURE-RESTRICTIONS ON THE DOCTRINE OF PLEASURE UNDER THE INDIAN CONSTITUTUION, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (1) OF 2024, PG. 76-83, APIS – 3920 – 0001 & ISSN - 2583-2344.

ABSTRACT

The Doctrine of Pleasure has its roots from the England. In England, the Crown is known as the Executive head and the civil services are also part of executive. The Doctrine of Pleasure is that the Crown has the power to terminate the services of a civil servant at any time without providing any notice of termination to civil servant. Therefore, civil servants serve at the pleasure of the Crown, who has the power to dismiss them at any time. When the civil servants are fired from the services, they do not have the right to sue the Crown for the wrongful termination, nor they have the right to seek restitution for losses incurred as a result of the termination and also, they cannot ask for damages for the wrongful termination. The doctrine of pleasure was also followed in India. The President is the executive head of the Union so he holds the same position like the Crown in England. In India, the President has the authority to remove a civil servant at any time under this doctrine of pleasure. The doctrine of pleasure was adopted with some modifications in India form that of England. Article 310 has some exceptions which are provided by the Constitution, a civil servant of the Union works at the pleasure of the President and a civil servant in the State works at the pleasure of the Governor of that state. This is evident that the operation of the Doctrine of Pleasure can be limited by constitutional provisions. The Judges of the Supreme Court, Judges of High Courts, Chief Election Commissioner and Comptroller and Auditor General of India are excluded from the operation of Doctrine of Pleasure. So, this doctrine of pleasure is not absolute and it is subject to Constitutional provisions. There is another aspect that the civil servants can also be excluded from the operation of this doctrine because they have been provided with some protection under Article 311 and thus doctrine's application can be limited to civil servants as well. The procedural safeguards are laid down under Article 311.

The civil services were introduced in India during the British era and thus their laws, rules and regulations were adopted in India as per the needs of the country. After independence of India, the civil services were provided Constitutional status. The laws of England still have immense effect on Indian laws. Under the Doctrine of Pleasure, the civil servants of the crown and these civil servants served at their pleasure. The civil servant is indispensable to the governance of the country in the modern administrative age. Ministers frame polices and legislature enact laws, but the task of efficiently and effectively implementing these policies and laws falls on civil servants. The bureaucracy thus helps political executive in the governance of the country. The Constitution, therefore, seeks to inculcate in the civil servant a sense of security and fair play so that he may work and function efficiently and give his best to the country. Despite the fact that there are protections in place that can only be used in conjunction with this power, the government's absolute authority to fire or demote a servant has been preserved.

The service jurisprudence in India is rather

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complicated since it is connected with the legislative process, rules, directives, customs, court rulings, and the fundamental legal concepts of administrative law, constitutional law, fundamental rights, and natural justice. In order to strike a balance between the dual demands of the civil service—namely, the need to uphold discipline among public servants and the need to ensure that the disciplinary authorities act lawfully and fairly—the Courts play a significant role in this area.

DOCTRINE OF PELASURE

Article 310- Tenure of office of persons serving the Union or a State

1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State 2)Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period, that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.[105]

According to **Article 310**, except for the provisions provided by the Constitution, a civil servant of the Union works at the pleasure of the President and a civil servant under a State works at the pleasure of the Governor of that State. This implies that the operation of the Doctrine of Pleasure can be limited by constitutional provisions. Under the constitution, the following are excluded from the operation of this doctrine:

1. Judges of the Supreme Court; (Article 124)
2. Judges of the High Courts; (Article 218)
3. Chief Election Commissioner; (Article 324)
4. Comptroller and Auditor General of India. (Article 148)

Thus, this doctrine is not absolute and is subject to Constitutional provisions. The civil servants can also be excluded from the operation of this doctrine because they have been provided with some protection under Article 311 and thus this doctrine's application can be limited to civil servants as well. In Britain, traditionally, a servant of the Crown holds office during the pleasure of the Crown. This is common-law doctrine. The tenure of office of a civil servant, except where it is otherwise provided by a statute, can be terminated at any time at will without assigning any cause, without notice. The civil servant has no right at common-law to take recourse to the Courts, or claim any damages for wrongful dismissal. He cannot file a case for arrears of his salary. The Crown is not bound even by any special contract between it and a civil servant, for the theory is that the Crown could not fetter its future executive action by entering into a contract in matters concerning the welfare of the country. The justification for the rule is that the Crown should not be bound to continue in public service any person whose conduct is not satisfactory. The doctrine is based on public-on-public policy, the operation of which can

[105] Adarsh Singh Thakur, Doctrine of Pleasure,< https://blog.ipleaders.in/doctrine-of-pleasure/> accessed on 19thMarch,2023.

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be modified by an Act of Parliament. In practice, however, things are different as many inroads have been made now into the traditional system by legislation relating to employment, social security and labour relations. As De Smith observes: " The remarkably high degree of securityenjoyed by established civil servants surpassed by judiciary, was not recognized by rules applied in the Courts." A similar rule is embodied in Article 310(1) which lays down that the defence personnel and civil servants of the Union , and the members of an All-Indian Service,hold office during the "pleasure of the President". Similarly, a civil servant in a State holds office "during the pleasure of Governor". In a Constitutional set-up, when an office is held during the pleasure of the President, it means that the officer can be removed by the authority on whose pleasure he holds office, without assigning any reason. The authority is not obliged to assign any reason or disclose any cause for the removal. Article 309 of the Constitution empowers the Legislature or Executive to make any law, rule or regulation with regard to condition of services without impinging upon the overriding power recognized under Article

310. Article 309 is expressly made subject to the provisions of Article 310[106]. Thus, Army Act, 1950 cannot in any way override the Constitutional provision contained in Article 309. This is general rule which operates "except as expressly provided by the Constitution" means that the "doctrine of pleasure" is subject to general constitutional limitations. Therefore, when there is a specific provision in the Constitution giving to a servant a tenure different from that providedin Article 310, then that servant would be excluded from the operation of the doctrine of pleasure. The Supreme Court Judges, Auditor-General, High Court Judges, a member of a Public Service Commission, and the Chief Election Commissioner have been expressly excluded by the Constitution from the rule of pleasure[107].

IMPLICATIONS OF THE DOCTRINE OF PLEASURE

The Supreme Court has defended the pleasure doctrine on the grounds of public policy, public interest, and the greater good, holding that employees who are ineffective, dishonest, or corrupt,or who have become a security danger, should be removed from their positions. According to Article 310, the government has the authority to discipline any of its employees for wrongdoing, including that which occurs beyond the scope of official tasks. The government has a right to anticipate that every one of its employees will uphold certain moral and decency standards in his personal life. No servant of the Crown may pursue legal action against the Crown for any salary arrears, according to a norm derived from the idea of pleasure in Britain. This rule is based on the presumption that the government officials' main right is to the Crown'sbounty, not on any contractual obligations. In the case of State of Bihar v. Abdul Majid, the Indian Supreme Court declined to adhere to the aforementioned criterion. A police sub-inspector who had been fired from the force for cowardice was later hired back, but the government rejected his request for back pay for the time he had been fired. His claim for salary arrears was upheld by the Supreme Court on the basis of contract or quantum meruit, or the worth of the work provided. In Om Prakash V. State of Uttar Pradesh, the Supreme Court upheld the aforementioned decision, holding that when a government servant's dismissal was found to be illegal, he was entitled to receive his salary from the day of dismissal to the date when it was pronounced illegal. In State of Maharashtra V. Joshi, it was determined that a claimfor salary arrears was founded on a contract.

[106] Srividya Sastry , Doctrine of Pleasure as under the Indian Constituion https://www.legalservicesindia.com/article/1643/Doctrine-of-Pleasure-as-under-the-Indian-Constitution.html Accessed on 23rd March,2023.

[107] Abhinav Garg, Doctrine of Pleasure-An analytical study, https://www.lawctopus.com/academike/doctrine-of- pleasure/ accessed on 23rd March, 2023.

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RESTRICTIONS ON THE DOCTRINE OF PLEASURE

Article 311 states that –

Dismissal, removal or reduction in rank of persons employed in civil capacities under the Unionor a State –

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removedby a 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.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply –

(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; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank inssatisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

The pleasure of the President or Governor is controlled by provisions of Article 311, "so the field covered by Article 311 is excluded from the operation of the doctrine of pleasure. The pleasure must be exercised in accordance with the procedural safeguards provided by Article

311. Under Indian Constitution several restrictions have been placed on Doctrine of Pleasure.They are as follows:

1. The service contract entered between the civil servant and government may be enforced.
2. The fundamental rights guaranteed under the constitution are restrictions on the pleasure doctrine and therefore this doctrine cannot be resorted too freely and unfairly, Articles 14, 15 and 16 of the Constitution imposed limitations on free exercise of Pleasure Doctrine. Article 14 embodies the principle of reasonableness the principle of reasonableness is anti-thesis of arbitrariness. In this way, Article 14 prohibits arbitrary exercise of power under pleasure doctrine. In addition to article 14 of the constitution Article 15 also restricts arbitrary exercise of power in matters of services. Article 15 prohibits termination of service on grounds of religion, race, caste, sex or place of birth or any of them. Another limitation is under Article 16(1) which obligates equal treatment and bars arbitrary discrimination.
3. Further the doctrine of pleasure is subject to many more limitations and a number of posts have been kept outside the scope of pleasure doctrine. Under the constitution the tenure of the Judges of the High Courts and Supreme court,of the

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comptroller and Auditor-General of India, of the Chief Election Commissioner and the Chairman and Members of Public service commission isnot at the pleasure of the Government. Thus, the general principle relating to civil services has been laid down under Article 310 of the Constitution to the effect that government servants hold office during the pleasure of the government and Article 311 imposes restrictions on the privilege of dismissal at the pleasure in the form of safeguards.

The doctrine of pleasure embodied in Article 310, though not subject to legislative power is not, however, unlimited. On its exercise, the Constitution imposes the following several qualifications:

1)The pleasure under Article 310 cannot be exercised in a discriminatory manner and is controlled by the Fundamental Rights, especially, Article 14,15 and 16.

Article 14 can be invoked when a person's services are terminated in a discriminatory manner. Article 15(1) comes into play if a person's services are terminated on account of religious bigotry, racial prejudice, casteism, provincialism or gender. Article 16(1) imposes equitable treatment and bars arbitrary discrimination.

2) Under Article 320(3)(c) , the Union or the State Public Services Commission is to be consulted on all disciplinary matters affecting a person serving in a civil capacity under the Central or a State Government.

3)When a person (not being a member of a defence service or an All-India Service or a civil service) appointed to a civil post on contract for a fixed term, the contract may(if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications) provide for the payment of compensation to him if, before the agreed period, that post is abolished, or that person is required to vacate that post for reason not connected with misconduct on his part [Article 310(2)]

The Chief Minister and the Ministers appointed certain persons of their choice in their respective establishments. The order appointing the employees expressly stated not only that their services shall be terminated at any time without giving any notice an without assigning any reason but also that their appointment was for a limited period conterminous with the concerned minister's tenure. These employees were also asked to execute an undertaking in the above terms. They did execute such an undertaking.

The Supreme Court ruled that their appointment was purely a contractual appointment conterminous with the tenure of the Minister's establishment, at whose choice and instance they were appointed. The appointees in question could not be treated as temporary government servants. As soon as the tenure of the ministers at whose instance and on whose recommendation they were appointed came to an end, their services also came to an end. simultaneously, Neither an order of termination as such, nor any prior notice was necessary forputting an end to their service.

4)An important limitation on the doctrine of pleasure is imposed by Article 311(1). According to this constitutional provision, no civil servant is to be dismissed or removed by an authority subordinate to the authority by which he was appointed. Dismissal or removal of a civil servant by an authority subordinate to the appointing authority is invalid.

This requirement does not mean that the removal or dismissal must be by the appointing authority itself, or its direct superiors. It is enough if the removing authority is of the same or co-ordinate rank or grade as the appointing authority.

The governmental can confer powers on an officer other than the appointing authority to

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dismiss a government servant provided he is not subordinate in rank to the appointing authority.This means that a person appointed by Secretary cannot be dismissed by the Deputy Secretary. A person appointed by Central government can be dismissed by it but not by the State Government. A rule authorising junior officer to dismiss employees appointed by a senior authority is invalid as contravening Article 311(1).

The purpose underlying Article 311(3) is to ensure certain amount of security to civil servants.The Article bars dismissal or removal by subordinate authorities in whose judgement the civil servants may not have much faith. This requirement is not a restriction on the pleasure not the pleasure of the President or the Governor, for he may always dismiss a servant whether appointed by him or by someone subordinate to him. In effect, it constitutes a restriction on subordinate appointing of the someone subordinate to him. In effect, it constitutes a restriction on subordinates appointing authorities. In their case, the power of dismissal is to be exercised by authorities of the same rank as the appointing authorities.

5) The most important limitation imposed on the doctrine of pleasure is by Article 311(2). According to this provision, no civil servant can be dismissed, 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 of those charges.

It may be pointed out that there are two kinds of penalties in service jurisprudence-major and minor. Amongst the minor penalties are; censure, withholding promotion, withholding increments. The major penalties are: dismissal, removal from service, compulsory retirement and reduction in rank.

6) The rule of reasonable opportunity embodied in Article 311(2) does not however apply in three situations as mentioned in the second proviso to Article 311(2) in clauses 1(a)(b)(c) . These constitutional provisions are discussed later.

It will seen form the above that the two main limitations on the doctrine of pleasure are as follows:

1)A civil servant cannot be dismissed by any disciplinary authority which is subordinate to the authority by which the appointment by which the appointment in question was made.

2) A civil servant cannot be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

These two qualifications on the President's /Governor's pleasure are in reality two safeguards which the constitution extends to a civil servant.

These two restrictions which are mentioned above on the doctrine of pleasure are imperative and mandatory. If any of these restrictions is infringed, the matter is justiciable and the aggrieved party is entitled to suitable relief at the hands of the Courts.

SAFEGUARDS

The Indian Constitution outlines a number of protections for civil personnel in Article 311. As a result, unless Article 311 has been followed, civil officials cannot be fired by the government using the rule of pleasure. The ability to fire a public employee is not a prerogative of the President or Governor; instead, the Council of Ministers must be consulted before such a move is made. It's important to note that Article 311 is only followed when a public employee is being disciplined by being fired, demoted, or reduced in rank. Thus, it becomes difficult to ascertain as to when a termination or reduction order would be deemed as

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punishment[108].

CASE LAWS RELATED TO DOCTIRNE OF PELASURE

State of Bihar v Abdul Majid[109]

The respondent was appointed as a Sub-inspector of Police by the Inspector General of Police,Bihar and Orissa, in January 1920. In the year 1937 departmental proceedings were taken against him and he was found guilty of cowardice and of not preparing search lists and was punished by demotion for ten years. On appeal, the Deputy Inspector-General of Police held that the respondent was guilty of cowardice but acquitted him of the other charge. By the order dated 23-07-1940 which was communicated to the respondent on 29-07-1940, the D.I.G of Police having found him guilty of cowardice made an order dismissing him from service. Further appeals by the respondent to the Inspector-General of Police and to the Governor of Bihar were unsuccessful. The respondent was aggrieved by the departmental action taken against him, the respondent filed the suit out of which this appeal arises in the Court of Additional Subordinate Judge against the State of Bihar for a declaration that the order of the

D.I.G of Police dismissing him from service was illegal and void and that he should be regardedas continuing office. He also claimed a sum of Rs. 4,242/- from 30-07-1940 to the date of the suit on account of arrears of salary.In the case of the State of Bihar v. Abdul Majid, the Supreme Court of India refused to observe this tenet of the Doctrine of Pleasure. In this case, a police sub-inspector was dismissed from service due to cowardice but was later reinstated. The Government, on the other hand, challenged his claim for salary arrears for the period of his dismissal. In this instance, the Supreme Court upheld his claim for salary arrears based on contract or quantum muruit, i.e. forthe value of the service rendered.

Union of India v Balbir Singh[110]

The Supreme Court ruled that the Court can investigate the circumstances surrounding the President's or Governor's satisfaction. If the Court determines that the events have no influenceon the security of the state, the Court may conclude that the President's or Governor's satisfaction, which is essential for granting such an order, has been tainted by utterly extraneous or irrelevant considerations. In reference to the doctrine of pleasure, in this landmark judgment of Union of India v. Balbir Singh the Supreme Court held that even though there is a right vested in the head of the union (the President of India) and the head of each state (the Governors) to terminate the departmental inquiry on charges levied against a civil servant, that grants him an opportunity of being heard, the decisions of the court will be final. The courts are vested with the ultimate power to ensure the civil servants are not removed from office byillicit means. The court can make a detailed inquiry of the same and if satisfied, the court has the power to overrule the decision of termination by the President or Governor.

Jaswant Singh v. the State of Punjab[111]

In Jaswant Singh v. the State of Punjab, the Supreme Court held that despite Article 311(3)'s finality, its "finality can certainly be tested in a court of law and interfered with if the action isfound to be arbitrary or malafide or motivated by extraneous considerations or merely a ruse to avoid the inquiry."

Shyam Lal Vs. State of Uttar Pradesh[112]

The Supreme Court held in Shyam Lal Vs. State of Uttar Pradesh that compulsory retirement differs from dismissal and removal because it has no legal consequences, and a government servant who is compulsory

[108] Doctrine of Pleasure <http://www.legalserviceindia.com/article/l253-Doctrine-of-pleasure-and-its- proviso-article-311-of-Indian-Constitution.html> Accessed on 13th March,2023.

[109] 1954 AIR 245, 1954 SCR 786

[110] 1998 AIR SC 478

[111] 1958 AIR 124, 1958 SCR 762

[112] AIR 1954 All 235

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VOLUME 4 AND ISSUE 1 OF 2024

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retired does not lose any of the benefits earned during their service, so it does not fall under Article 311.

CONCLUSION

While the doctrine of pleasure has been adopted from the British legal system, it has been modified to suit Indian context as per prevailing social structure in India. The judiciary has played a key role in balancing the arbitrary aspects of this doctrine by their power of judicial review. While England has a Monarch as the Executive head, India elects its Executive head through elections. So, the principle 'the King can do no wrong' is not suitable to the Indian scenario. Despite the judicial intervention, the exceptions to the protection can still be misused. Therefore instead of reviewing each and every instance of arbitrariness, it would be better if certain guidelines are provided which have to be followed while availing these exceptions. If these rules are not followed, the dismissal may be deemed unlawful, which will also enable the party who was wronged to get justice quickly. Consequently, it can be said that the drafters of the Constitution were aware of the irregularities, such as corruption, that were encroaching on the civil service at the time and chose not to grant immunity from summary dismissal to dishonest or corrupt government employees, allowing them to continue in service for months at a time at the expense and to the detriment of the public. The Indian Constitution's Articles 310 and 311—observed in Part XIV—act as a check and prevent government officials from making a mockery of the law in light of a number of cases involving corrupt government officials and the association of various government officials with anti-social elements.