

REFORMATION AND MODERNIZATION OF SERVICE LAWS

Following complaints in the media and suggestions forwarded by individuals, the Pakistan Law Commission decided to undertake the reformation and modernisation of the laws relating to various civil services of Pakistan. The services included in the study were Federal Service, Provincial service and services in the Autonomous Bodies and Corporations. The Commission, therefore, issued an advertisement in the news media with a view to solicit public opinion and comments on the issue. The advertisement reads as follows:

"As desired by its Chairman, the Pakistan Law Commission is examining all service laws with a view to bring them in conformity with the teachings of Islam and Pakistan Ideology.

This study will further help the Government to improve the working and working conditions of all services as well as to save them from outside influence both political and otherwise".

In addition, the Commission wrote letters to the heads of various departments/institutions, asking their views on the issue and suggestions for improvement. Furthermore, the Commission also established contact with the relevant organisations/institutions and interviewed their personnel to seek clarification of written comments they submitted and to obtain from them additional information relevant to their service.

Besides, the Commission also organised a Workshop on the subject, wherein experienced and knowledgeable persons from the relevant fields, such as judiciary, bureaucracy, academic and legal profession, were invited to give their views/recommendations for the improvement of civil service.

The response from the general public was overwhelming, as a large number of individuals responded to the Commission's call, giving their views and suggestions. The departments/organisations/institutions, however, were not all that enthusiastic in their response, though some of them did submit some very useful suggestions/recommendations. The information received may be categorised as follows:

- 1- Views and comments received from the public, giving their perception of the services, enumerating complaints against these services, together with their proposed recommendations for their reformation/improvement.
- 2- Complaints from the service personnel against the discriminatory laws and rules in their departments as well as arbitrary decisions of their superior officers. Some of the personnel also listed suggestions for reformation and improvement of their organisations.
- 3- Responses from some service associations, complaining of discriminatory policies and attitudes affecting their respective services/cadres; seeking solution of their problems and pleading for uniformity of laws and rules.
- 4- Replies from the heads of certain organisations/ institutions, pinpointing defects/shortcomings in laws/rules concerning their organisations and suggesting proposals for reformation and improvement.
- 5- Comments and suggestions obtained from certain experienced service personnel through interviews.
- 6- Recommendations from the participants in a Workshop, organised for the purpose.

The Commission duly acknowledges the contributions of these individuals, personnel and associations and appreciate their help and assistance in the task of restructuring/reforming the service laws. The views/comments expressed and proposals/recommendations given will go a long way in helping the Commission to understand the problems, appreciate the issues and prepare a viable and practicable report on the subject.

The Commission, by its reference, is required to examine the following services:

- 1- Federal Civil Service
- 2- Provincial Civil Service
- 3- Service of the Autonomous Bodies
and Corporations

The various statutes, laws and rules dealing with these services may be enumerated below:

- 1- The Federal Public Service Commission Ordinance, 1977, as well as, Provincial Public Service Commission Ordinances, together with rules and regulations, framed thereunder.
- 2- The Civil Servants Act, 1973, as well as, Provincial Service Tribunal Acts, together with rules and regulations, framed thereunder.
- 3- The (Federal) Service Tribunals Act, 1973, as well as Provincial Service Tribunal Acts, together with rules and regulations, framed thereunder.
- 4- Acts/Statutes of the Autonomous Bodies and Corporations, together with rules and regulations, framed thereunder.

As would appear from the above-mentioned list of laws, rules and regulations, the Commission has on its hand a gigantic task of examining and scrutinizing several

statutes, rules and regulations. However, to save time and be practical in approach, the Commission in the first phase would confine its report to the examination of federal statutes only, and recommends to the provinces to follow suit. Even otherwise, the provinces have in the past usually followed the Federal statutes and rules with very little changes/modifications. A cursory look at the Provincial statutes clearly brings out this fact. This is essential as some of the services are common both to the Federation and Provinces, hence, the need for having similar legislation on the subject. Such an approach is desirable in view of the prevailing federal system of government in Pakistan.

So far as the autonomous institutions and corporations are concerned, such services, being specialised in nature and character, require separate treatment and should appropriately be the subject of a separate report.

Accordingly, the Commission would like to undertake a detailed study of the following statutes and rules, regulations, made thereunder:

1- The Federal Public Service Commission Ordinance, 1977.

2- The Civil Servants Act, 1973.

3- The Service Tribunals Act, 1973.

The Commission in its meeting held on 26 - 31 December, 1992 approved the part of Report dealing with the Federal Public Service Commission. The remaining portion is awaiting consideration by the Commission.

Federal Public Service Commission

In democratic societies, recruitment to civil service as well as the terms and conditions of service of the civil servants are regulated through a free, impartial and independent institution. Such institution is generally referred to as Civil Service Commission. The institution of Civil Service Commission is designed to serve mainly two purposes:

- (i) to induct merit, calibre and efficiency into the service; and
- (ii) to help the civil service free of political influence and maintain it as an independent and impartial institution, geared to executing the laws and implementing the policy objectives of the government.

It is commonly acknowledged that an efficient and impartial civil service, based on merit, is a sine qua non for the success of democratic system. It is the civil service which gives stability and continuity to the democratic system. In England the recruitment of civil servants and their placement in various departments is made by the Civil Service Commission. The British Civil Service Commission is an independent institution whose members are appointed by the Crown. In the United States, prior to 1883, the civil servants were appointed on the discretion of government in power. This system called, the "Spoils System" was based on the principle of political patronage. However, this system led to several abuses and was ultimately scrapped. Instead the Civil Service Commission was established in 1883. This Commission is responsible for recruitment to civil services. Similarly, in Canada, Australia and India, appointment to the civil service and laws and rules concerning the terms and conditions of civil servants are regulated through their respective Civil Service Commissions.

After independence, Pakistan adopted the 'Government of India Act, 1935' as an interim Constitution. This Constitution had provisions for Public Service Commission. Such Commissions were established both at the federal and provincial levels. The composition, role and functions of the Commission were also laid down in the Constitution [1]. The same provisions were retained, mutatis mutandis, in the subsequent (1956, 1962 and 1972 (Interim)) Constitutions. The Constitution of 1973, however, departed from this practice and authorised the Parliament and Provincial Legislatures to provide a Public Service Commission in their respective jurisdictions [2]. Thus, both the Federal and Provincial Governments made statutes for the establishment of Public Service Commissions [3]. Since their establishment the Public Service Commission maintained a fairly good reputation and kept reasonably high profile and image in the public. Its members were generally known for their integrity,

impartiality and objectivity. The selection procedure for the appointment of civil servants had generally been fair. There were hardly any complaints of the Commission members resorting to nepotism or favouritism or accommodating any outside influence or pressure. The result was that the members of the civil service, being selected on merit, were generally speaking, competent and efficient. However, of late, the situation has changed. There are complaints of the Commission members, being appointed through political influence. It is alleged that such members lack calibre, integrity, and are vulnerable to influence/pressure from outside. There are also complaints of the Commission staff being inefficient, because of which delays occur in finalising the selection procedure. Furthermore, there are reports of leakage of examination papers and involvement of the Commission staff in the scandals of selling the question papers.

The successive governments, both central and provincial, through a variety of techniques, ventured to ignore as well as by-pass the Commission and make direct appointments, sometimes in relaxation and other times violation of rules. One favourite technique adopted by the successive governments, has been to appoint persons on ad-hoc or temporary basis and subsequently regularise their services through an Act or Ordinance. As a result, thousands of people, with low calibre and inferior qualifications have been inducted into the civil service.

The recruitment was largely on the basis of nepotism or political patronage. Similarly, favouritism and patronage, rather than merit and efficiency, were the determining criteria for promotion and placement in civil service. Tragically, some of the appointees were such, that having failed to qualify the Commission's test, their candidatures were rejected by the Commission, however, such rejected candidates entered into the civil service through back door. Since bulk of appointments are made by the Ministers and the criterion of selection is anything but merit, most of the appointees are incapable, incompetent and inefficient.

The end result has been the lowering of standards in the civil service, giving rise to inefficiency, incompetency and even corruption. The service has been politicised. Political links and connections play a major role in the appointment, promotion and placement of civil servants. Consequently, there is a lot of heart-burning and grumbling going on among the civil servants. Honest, efficient, dedicated and hard working

employees find it difficult to get a free and impartial environment so very essential for their functions. There is a deep sense of insecurity among the civil servants. There is a widespread feeling of frustration among them. This state of affairs has adversely affected their performance and consequently, there are widespread complaints of inefficiency, incompetency and corruption among the civil bureaucracy.

This downward slide which is gaining momentum each passing day needs to be checked. The government cannot afford to let its executive branch cripple and crumble. The people would not want the administrative set up to come to a complete halt, thereby increasing their problems and add to their miseries. The nation would expect of its representatives, to repair the damage and improve the administration. Apart from other measures, one important factor which can help in improving the administrative machinery is to restore the image and status of the Public Service Commission and improve its functions so that this institution is enabled to play its role more effectively, and give a better civil service and quality administration to the nation.

Accordingly, we will suggest certain changes to the structure and functions of the Public Service Commission.

Public Service Commission

Pakistan inherited the 'Government of India Act, 1935' as its first (interim) Constitution. This Act contained detailed and elaborate provisions regarding the composition, role and functions of the Public Service Commission. Subsequent (1956, 1962 and 1972 (Interim)) Constitutions followed broadly this pattern and provided for the Public Service Commission. However, the 1973 Constitution departed from this pattern and did not incorporate comprehensive and detailed provisions relating to the Commission. This was done as part of a reform package introduced by the Government to restructure the civil service. Consequently, detailed provisions regarding the composition and functions of the Commission and safeguards as to terms and conditions of service of the civil servants were not given in the Constitution. Instead the appropriate Legislature was authorised to deal with the matter. The Constitution provided:

Article 242. Public Service Commission.-- (1) (Majlis-e-Shoora(Parliament)) in relation to the affairs of the Federation and the Provincial Assembly of a Province in relation to the affairs of a Province, may, by law, provide for the establishment and constitution of a Public Service Commission.

(1A) The Chairman of the Public Service Commission constituted in relation to the affairs of the Federation shall be appointed by the President in his discretion [4].

(2) A Public Service Commission shall perform such functions as may be prescribed by law.

Accordingly, both the Parliament and Provincial legislatures passed statutes, establishing Public Service Commissions. The Federal Public Service Commission was established under the 'Federal Public Service Commission Act, 1973.' This Act was, however, repealed in 1977 and substituted by the 'FPSC Ordinance, 1977.' The Commission currently functions under this statute.

Federal Public Service Commission Ordinance, 1977

1. Terms and Conditions of Service.-- Section 4 of the Ordinance provides for the terms and conditions of service of the Commission members. This section reads:

"4. Terms of office of members, etc.: (1) The President may determine the terms of office of the Chairman and other members which shall not exceed five years:

Provided that the President may extend the terms of office of the Chairman or any other member for such period, not exceeding period of three years, as may deem fit:

Provided further that a person holding office as Chairman or member immediately before the commencement of this Ordinance shall cease to hold office on such date as the President may direct.

(2) A member may resign his office by writing under his hand addressed to the President."

This section is couched in language to avoid the certainty of tenure of members, so very essential for the independent and impartial functions of the commission. This section provides neither fixed service tenure nor fixed period of extension in such tenure. It gives wide discretion to the appointing authority to appoint a member for a short period and then keep on extending his tenure. Such an appointment seems identical to an ad-hoc appointment, which the appointing authority may keep on extending, keeping in view the performance of such member. The provision is open to wider abuse and affects the freedom and independence of the members. Owing to the uncertainty of tenure, such member may not perform his duties in a free, fair and impartial manner. It is, therefore, suggested that the term of office of members should be fixed as 3 years with no provision for extension. Thus section 4 should be amended as follows:

Section 4. Terms of office of members, etc. (1).-- The Chairman and members of the Commission shall be appointed for a term of 3 years by the president.

Proviso (1) be deleted.

Proviso (2) be deleted as it has now become redundant.

2. Functions.-- Section 7 states the functions of the Commission.

7. Functions of the Commission: The functions of the Commission shall be:

(a) to conduct test and examinations for recruitment [5] (of persons other than officers of the Armed Forces of Pakistan)[6] (who are appointed to such services or posts on the recommendation of the High Powered Selection Board constituted by the President for the purpose) to all Pakistan services, the civil services of the Federation and such posts in connection with the affairs of the federation as may be prescribed by rules made under section 10, and

(b) to advise the President on matters relating to qualifications for, and method of recruitment, to the services and posts referred to in clause (a), and any other matter which the President may refer to Commission.

Explanation: In this section, "recruitment" means initial appointment otherwise than by promotion or transfer.

As is clear, the Ordinance assigns only 3 functions to the Commission. These functions are:

(1) conducting test and interviews for recruitment to civil service and other services specified in the Rules framed under section 10;

(2) advising President on matters relating to qualifications for, and methods of recruitment to the services and posts referred to above; and

(3) advising the President on any other matter which the President may refer to the Commission.

Prior to the 1973 Constitution, the powers and functions of the Commission were fairly extensive and also covered the areas of promotion and transfer of civil servants. Besides, the Commission was also consulted in disciplinary matters. These functions have now been withdrawn from the Commission, as an independent body, free from government influence, was an important safeguard for the protection of rights and interests of the civil servants. In promotion and disciplinary matters, the civil servants could count on the judgment of the Commission, as a counter balance to any fear of injustice or victimization from his superior. This safeguard, having been withdrawn, the civil servant has become insecure and vulnerable to pressure. This state of affairs is not conducive to the effective functioning of the civil service. We, therefore, suggest the restoration of erstwhile role and functions of the Commission. Section 7 may, therefore, be amended as follows:

Section 7(b) be substituted as follows:

Section 7(b): To advise the President on the matters:

(1) relating to qualifications for, and methods of recruitment to the services and posts referred to in Clause (a);

(2) relating to principles on which appointment, promotion and transfer to another service or cadre except to the extent that the President may by rules, specify the matters in which either generally or in any particular class of cases or circumstances it shall not be necessary to consult the Commission; and

(3) which the President may refer to the Commission.

As mentioned earlier, prior to 1973, the composition of the Commission, as well as its functions and responsibilities were laid down in the Constitution. However, the 1973 Constitution brought a fundamental change to this arrangement. The Constitution provided that the federal and provincial legislatures may establish Public Service

Commissions. This change had the effect of diminishing the status of Commission and reducing its powers and functions. Two major changes were introduced:

(1) The composition and functions of the Commission were not given in the Constitution. Instead the federal and provincial legislatures were empowered to frame statutes for this purpose; and

(2) A number of functions, such as, the principles of promotions and transfers as well as terms and conditions of service of the civil service were taken out of the purview of the Commission.

The results of this change have been extremely distressing and disappointing. The successive governments have sought to by-pass the Commission and make appointments in violation of rules and laws. Consequently, inept, inefficient and undeserving persons have been inducted into the civil service. There have come to light cases when candidates having failed the Commission's test, were appointed through back door, in some cases even to higher posts. The role of the legislatures have been extremely unhelpful. The politicians, lacking courage and foresight, relented under pressure and recommended appointments and promotions of inept, inefficient and incapable persons. The situation is fast deteriorating. All efforts to stop this practice have ended in fiasco. Even legal safeguards have proved ineffective. It is, therefore, recommended that through an amendment in the Constitution the erstwhile character of the Public Service Commission be restored.

In line with the previous practice, the members of the Commission should be given an oath by the Hon'ble Chief Justice of Pakistan in the following form:

I, do solemnly swear that I will bear true faith and allegiance to Pakistan: That, as a member or Chairman of the Public Service Commission, I will discharge my duties and perform my functions, honestly, to the best of my ability, faithfully in

accordance with the Constitution of the Islamic Republic of Pakistan and the law, and always in the interest of the solidarity, integrity, well-being and prosperity of Pakistan. That I will not allow my personal interest to influence my official conduct or my official decisions and that in the performance of my functions I will act without fear or favour, affection or ill-will.

References:-

1. Article 264 to 268 of the Government of India Act, 1935
2. Article 242 of the Constitution
3. The FPSC currently functions under the FPSC Ordinance, 1977.
Similarly statutes exist for Provincial Public Service Commissions.
4. Inserted by P.O.No. 14 of 1985
5. Inserted by the FPSC (Amendment) Ordinance, 1980
6. Inserted by the FPSC (Amendment) Ordinance, 1981

FEDERAL PUBLIC SERVICE COMMISSION (AMENDMENT) ACT, 1993

An Act further to amend Federal Public Service Commission Ordinance, 1977.

Whereas it is expedient further to amend the Federal Public Service Commission Ordinance, 1977 (XLV of 1977), for the purpose hereinafter appearing;

It is hereby enacted as follows:

- 1. Short title and commencement.- (1) This Act may be called the Federal Public Service Commission (Amendment) Act, 1993.**

(2) It shall come into force at once.

- 2. Amendment of Section 4, Ordinance XLV of 1977.- In the Federal Public Service Commission Ordinance, 1977 (XLV of 1977), hereinafter called the said Ordinance, in Section 4, for sub-section (1) the following shall be substituted, namely,**

"4(1) The Chairman and Members shall be appointed for a term of three years by the President".

- 3. Amendment of Section 7, Ordinance XLV of 1977.- In the said Ordinance, in Section 7, for clause (b) the following shall be substituted, namely,**

"(b) to advise the President on the matters-

(i) relating to qualifications for, and method of recruitment to the services and posts referred to in clause (a);

(ii) relating to principles on which appointment, promotion, and transfer to another service or cadre except to the extent that the

President may by rules, specify the matters in which either generally or in any particular class of cases or circumstances it shall not be necessary to consult the Commission; and

(iii) which the President may refer to the Commission".

Statement of Objects and Reasons

These recommendations of the Pakistan Law Commission seek to amend the Federal Public Service Commission Ordinance, 1977 to fix the term of the Chairman and Members of the Federal Public Service Commission and enlarge the scope of its functions.