CHAPTER-II

CIVIL SERVANT

Civil Service or civil servant is a relatively new term used to describe an old governmental feature that is becoming increasingly important in modern political system. The phrase was first used in British administration in India and was popularised by Sir Charles Trevelyan a little more than a Century ago. When the principle of open competitive examination was introduced in Great Britain in 1854, the phrase "Civil Service" was also carried over and was applied to the officials serving the State in a professional capacity, except for those in the military and judicial services.

Civil Service is not a precise concept. It is similar to, but not identical in meaning with, other terms, such as public service and public bureaucracy. As used in Great Britain and to certain degree elsewhere, the term "Civil Service" refers to officials serving the Government or its agencies rather than local units of Government.

Our 'Civil Service' has been based on the British model. The term Civil Service or Civil Servant has not been defined anywhere in the Constitution. The debates in the Constituent Assembly also do not reveal the scope of these expressions. The term 'Civil Post' means a post on the civil, as distinguished from the defence, side of

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administration. It means an appointment or office or employment on
the civil side as distinguished from the military side of administration.
It includes an office of a situation created for the performance of any
function other than military.

A 'civil servant' may be defined as a servant of the Crown (not
being the holder of a political or judicial office), who is employed in a
civil capacity and whose remuneration is wholly paid out of monies
provided by Parliament.³

'Civil Service' is a professional body of officials permanent, paid
and skilled.⁴

'Civil Servant' is an employee of the civil service, Government
departments other than the armed forces.⁵

Civil servant is a member of the civil service. Civil service
means (a) all those employed in Government administration except in
the army, navy, legislature or judiciary (b) any Government service in
which a position is secured through competitive public examination (c)
Official regulations for such Government service.⁶

   Staples, 1948, p.35.
6. Webster's New Twentieth Century Dictionary, USA: Simon and
   Schuster, p.332.
The term ‘Civil Service’ first originated to designate those servants of the East India Company who were engaged in mercantile work. Employees of the East India Company were called its servants and those who conducted its trade overseas were called civil servants so as to distinguish them from those whose duties were of a naval or military nature. The Regulating Act of 1773 provided for a distinction between the civil and the commercial functions of the East India Company. The character of the East India changed from trading to territorial domination to governance. So did the character of its civil servants. The service was gradually reformed and fitted for the tasks of administration by the efforts of Clive, Warren Hastings, Cornwallis and Wellesley and emerged at the beginning of the 19th Century as an administration service with a completely different character.

The Government of India Act, 1885 delegated to the Secretary of State powers in relation to the servants of the company and the position remained unaltered under the Government of India Act, 1915 which made the tenure of every civil servant subject to His Majesty’s power. Similar provision was enacted in Section 240 of the Government of India Act, 1935 which was subsequently transplanted as Article 310 of our Constitution. The Constitution devotes a whole chapter to the Civil Services.

The elaborate provisions in Part-XIV relating to services under the Union and the State indicate the great importance which the framers of our Constitution attached to the civil service. Service under the State or Union being of prime importance, the Constitution makers
thought that unless the employees feel a sense of security, they could
not be able to play the vital role they are expected to do in the
administration. So, a measure of abundant protection to civil servants,
Article 311 of the Constitution has been introduced. Clause (1) of that
Article lays down that no person who is a member of a Civil Service of
the Union or an All India Service or Civil Service of a State or holds a
civil post under the Union or a State shall be dismissed or removed by
an authority subordinate to that by which he was appointed. Clause (2)
of Art. 311 lays down that no person as aforesaid shall be dismissed
or 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.

As what is seen from the above, the condition precedent to
claim the protection of Article 311, which is vital to civil service is that
one should hold a “Civil Post”. Unless one is a member of “Civil Service”
or holds a “Civil Post” under the State or Union, he has no right to
claim the aforesaid protections, with the result in every case where a
person invokes the right under that Article, it has to be satisfied that the
claimant is a member of a civil service or holds a civil post under the
State or Union.

In the early stages of the working of the Indian Constitution, a
view prevailed that only permanent civil servants could enjoy the
protective umbrella provided by Article 311. But in P.L. Dhingra Vs
Union of India 7, the Supreme Court for the first time held that the

7. AIR 1958 SC 36.
Provisions of Article 311 made no distinction between a permanent and temporary civil servant.

In State of Assam Vs Kanak Chandra 8 the Supreme Court held that civil post in Article 311 meant a post, not connected with defence, outside the regular Civil Service. This shows that the words "civil post" have been used in contradistinction to a post connected with defence. Thus, all post held by Government servants not connected with defence must be held to be civil post. While in the Kanak Chandra's Case 9, the tests for deciding whether a post or office under the State fell within the purview of Articles 309,310 and 311 were determined, in P.L. Dhingra's case 10 the applicability of Article. 311 to the various categories of the civil servants and their status under the Constitution were discussed in detail.

**Relationship of Master and Servant essential**

It is now settled law that in view of Article 311 of the Constitution several statutory rules framed under the proviso to Article 309, the general law of master and servant will not apply to matters which are specifically regulated by the Provisions of the Constitution and the statutory rules. The general law of master and servant comes into play only in cases, where a particular matter is not governed by the provisions of the Constitution.

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8. AIR 1967 SC 884.
9. id.
10. Supra Note 7 p.9.
There are various characteristics and factors which make for a civil servant under the State. It is, however, not necessary that all the factors should co-exist in order to make a particular post a civil post. But one essential character that should exist in order to make a post a civil post under the State is the relationship of master and servant between the Government and the employee. Whether such a relationship exists is a question of fact to be decided in each case. A host of factors have to be taken into consideration to determine such relationship. None of these factors may be conclusive and no single factor may be considered absolutely essential. Some of these factors are:

i) who selects the employee

ii) who appoints him?

iii) who pays him the remuneration or wages?

iv) who controls the method of his work?

v) who has power to suspend or remove him from employment?

vi) who has a right to prescribe the conditions of service?

vii) who can issue directions to the employee?

If the answer to all these question is, the Government, then it is a civil post under the Government. Co-existence of all these indicia is not predicated in every case to make the relationship as one of master and servant. In special cases of employment, a contract of service may exist even in the absence of one or more of these indicia. Ordinarily, the right of an employer to control the method of doing work, and the
power of superintendence and control are strong indicators of the master and servant relationship.\textsuperscript{11}

The meaning and import of the expression "post under the Union or State" may now be considered. It has been held that the expression "Civil post under the State" meant that the post was under the ultimate control of the Government which if so desired, could abolish it or regulate the conditions of service concerning the same. However, mere payment of salary out of the State Exchequer was not enough to categorise the post as under the State.\textsuperscript{12} The other view is that before a person could be regarded as holding a post under the State, it must be shown that he is not only functioning under the direct administrative control of the State but must be associated in activities which fall within the sphere of the Union or the State.\textsuperscript{13}

The true test for determination of the question whether a person is holding a civil post or is a member of civil service is the existence of relationship of master and servant between the State and the person holding a post under it. The existence of such relationship is depending upon the right of the State to lead and to bind the holder of the post, its right to suspend or dismiss, its right to control the manner and method of doing the work and payment by it as wages and remuneration.\textsuperscript{14}

\textsuperscript{11} State of UP Vs Audh Narain Singh, AIR 1965 SC 360.
\textsuperscript{12} Lachmi Vs Military Secretary to Govt. of India, AIR 1956, Pat. 398.
\textsuperscript{13} M.A. Kidwai Vs Improvement Trust, AIR 1958 All 353.
\textsuperscript{14} State of Gujarat Vs Ramanlal Keshablal AIR 1981 SC 53.
Public Services

"Public Service" takes in Defence Services and Civil Services. It is necessary to insulate the services from political influences so that they may be impartial and independent. So, recruitment to public services should be made on the basis of the examination conducted by a Public Service Commission. India being federal, the civil service may be a Union service, a State service or it may be an All-India Service, i.e. serving commonly the Union and the States. Indian Civil Services (I.C.S) of the British days was called the steel frame of India because it was supposed to maintain the organic unity of the entire governmental machinery. The Indian Administrative Service was its successor. Indian Police Service was another All India Service. All the authorities, officers (Judicial, executive or ministerial) are continued under Art. 375 of the Constitution. The laws in force governing these services are continued under Art. 313 (Transitional Provisions) so far as they are consistent with the Constitution.

'Public Service' essentially refers to

1) the business of supplying essential commodity or a service,

2) a system of employment maintained by the Government.

The later reference is often interchanged with 'Civil Service' which refers to a method of appointing Government employees on the basis of competitive examination. While 'Civil Service' originated by the British is a more restrictive term, 'Public Service' encompasses employees of local Governments, Public Corporations and others. Judges are
members of the public services but not civil servants. Civil servants are public servants but the latter are not necessarily civil servants.

Civil Services

In Government service each separate unit is called a cadre. Each cadre contains a number of post hierarchically arranged. A permanent post is one which carries a rate of pay without limit of time. A permanent post which carries with it a lien is said to be a substantive post. In such case, officer in whatever department he may be, will be having a lien on the post in his parent department. When a substantive post is vacant or the incumbent is on leave, an officiating appointment may be made. A temporary post is one which is on a definite rate of pay for a limited period. An appointment may be made on probation. The service of a probationer is terminable by notice. When a person is holding for more than 3 years a permanent post but not substantively or, is in a temporary post for more than 3 years, then his service becomes quasi-permanent.

Persons holding civil post

As the words “civil post” have nowhere been defined, we have to look to the decided cases to find out the answer. The real test for determining whether a person is holding a civil post under the State is not whether he is paid out of State funds but whether the post is held under the administrative control of the State.
In determining whether a person is holding a civil post the issues like whether there is a relationship of master and servant, the post is under the control of the State, the functions assigned to the individual are the functions which he is performing as an agent of the State, whether the appointing authority is the State and he receives remuneration from the State, are to be considered. It is only on the consideration of the totality of all the circumstances in each case, it can be decided whether a person is a civil servant holding a civil post under the state.\textsuperscript{15}

The kurk-amins appointed on commission basis by the Collectors have been held to be Government servants as there exists no difference between them and the kurk-amins appointed on salary basis.\textsuperscript{16}

The term ‘civil servant’ does not include a member of a defence service, or even a civilian employee in defence service who is paid salary out of the estimates of the Ministry of Defence. These persons, therefore, while falling under Articles 309 and 310 do not enjoy the protection of Art. 311.\textsuperscript{17}

The Staff artists of the All India Radio hold ‘civil post’ and as such Art. 311 is applicable to them. They are appointed by the officers of the Government, they can be suspended by the Government, the remuneration is paid by the Government and therefore, it has been held

\textsuperscript{15} Ranchobhai, Desaibhal Patel Vs Collector of Panchamahals, AIR, 1967 Guj-92.
\textsuperscript{16} State of UP Vs Chandra Prakash Pandey, AIR, 2001 SC 1298.
\textsuperscript{17} B.S. Rajesh Vs U.O.I., 2000 (3), SLJ, Del.264.
that a relationship of master and servant exists between the State and the artists and therefore they are holders of civil post under the Union Government.¹⁸

The Extra-Departmental Agents woking for the Postal Department are holders of civil post for the purpose of Art. 311 of the Constitution. They work under the direct control and supervision of the Postal Authorities and the relationship of master and servant exists between them.¹⁹

Tahavildars in Utter Pradesh appointed by the Govt. Treasurer under the powers delegated to him and whose services are subject to the control of the District Officers in the matter of transfer, removal and disciplinary action, is entitled to the protection under Art. 311 of the Constitution.²⁰

The appointment of Assistant Public prosecutors are concerned, they are employees of the State. They hold civil post. They are answerable for their conduct to higher statutory authority. Their appointment is governed by the Service Rules framed by the respective Government.²¹ But Government Advocates, Public Prosecutors, legal advisors are not holder of civil post.

¹⁸ U.O.I. Vs M.A. Chowdhury, AIR 1987 SC 1526.
¹⁹ A.P. Augustine Vs Supt. of Post Offices, 1984 (1) LLJ 434 (Ker) HC.
²⁰ State of U.P. Vs U.P. Public Services Tribunal, 1988, (57) FLR 449 (All HC)
²¹ 2004 AIR SCW - 3888.
In Dr. (Mrs) Gurjeewan Garewal Vs Dr (Mrs.) Sumitra Dash and others 22 it has been held that Post Graduate Medical Education and Research, Chandigarh cannot be treated as a State for the purpose of Art. 311 of the Constitution and the employees therein cannot holding any civil post.

In this case, the first respondent was working with the second respondent. At the request an extra-ordinary (ex-India) leave was granted to her for a period of two years. The leave was sanctioned, *inter-alia*, on the express condition that "she will neither resign/seek VRS while on leave nor will request for further extension of ex-India."

By this time, she had already started working as a Haematologist consultant at the Salmaniya Medical Centre, Bahrain. She made a request for extension of leave for one more year but it was rejected. PGIMER asked her to resume duty but she did not respond to the request. On 26.9.1994, she was informed that she was deemed to have permanently left the institute w.e.f. 16/12/96 and was removed from service. Hence, she challenged the order as it was violative of Art. 311.

Held: "PGIMER is a separate entity in itself. Admittedly the employees of any authority which is a legal entity separate from State, cannot claim to be holders of civil posts under the State in order to attract the protection of Art. 311. There is no master and servant relationship between the State and the employee of PGIMER which is a separate legal entity in itself. It is a settled position that a person

22. 2004 (3) Supreme 467.
cannot be said to have a status of holding a 'civil post' under the State merely because his salary is paid from the State fund or that the State exercises a certain amount of control over the post. The PGIMER Act might have provided for some control over the institute but this does not mean that the same is a State for the purpose of Art. 311. Therefore, employees of PGIMER cannot avail the protection of Art. 311 since the same can be claimed only by the members of a civil service of the Union or of All India Service or of a civil service of a State or by persons who hold a civil post under the Union or a State. PGIMER cannot be treated as a State for the purpose of Art. 311 and the employees therein are not holding any 'civil post'. In result, the first respondent is not holding a 'civil post' and she cannot claim the guard of Art. 311."

An employee of Statutory Corporation, such as the LIC., the Hindustan Steel Ltd., or the Industrial Finance Corporation, does not hold a civil post under the State. The employees of Government companies registered under the Companies Act.1956, or of a registered society, or of the Universities or of the Statutory bodies like a State Electricity Board, are not the holders of civil post and therefore do not fall within the term civil servants within the meaning of Art. 311. Though most of the above mentioned authorities are interpreted to be the agencies or instrumentalities of State and are included in the term State for the purpose of Part III of the Constitution, but they do not fall under the term State under the provisions relating to the services contained in Part -XIV of the Constitution of India. The employees of these bodies cannot claim protection of Art. 311.
Thus where a person claims the protection of Art. 311 on the ground that he is the holder of a civil post, it is for the Court to examine whether all the essential characteristics necessary to make for a civil post exist or not. There is no full proof or decisive test to be applied. If the test of administrative control and the relationship of master and servant is established, the fact that the holder does not enjoy a definite rate of pay but works on commission or is a part-time employee, or that he is protected by Industrial Labour Law, does not exclude him from the category of the holder of a civil post under the Government. Though the origin of Government service is contractual, yet once appointed, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties but by the Statutes or Statutory Rules which may be framed or altered unilaterally by the Government. 23

Thus from the above definitions and case laws, the researcher derived a conceptual definition for civil servant. A Civil Servant is a member of Civil Service, a service distinguished from Oolitical, Judicial and Armed Forces, selected by the Governemnt through competitive examination, trained professionally, appointed on a permanent tenure and paid by the Government for implementing the public policies.