

Chapter - 22

UNION PUBLIC SERVICE COMMISSION

The Union Public Service Commission (UPSC) is the central recruiting agency in India. It is an independent constitutional body in the sense that it has been directly created by the Constitution. Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC.

COMPOSITION

The UPSC consists of a chairman and other members appointed by the president of India. The Constitution, without specifying the strength of the Commission has left the matter to the discretion of the president, who determines its composition. Usually, the Commission consists of nine to eleven members including the chairman. Further, no qualifications are prescribed for the Commission's membership except that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the Government of India or under the government of a state. The Constitution also authorizes the president to determine the conditions of service of the chairman and other members of the Commission.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. However, they can relinquish their offices at any time by addressing their resignation to the president. They can also be removed before the expiry of their term by the president in the manner as provided in the Constitution.

The President can appoint one of the members of the UPSC as an acting chairman in the following two circumstances :

- (a) When the office of the chairman falls vacant; or
- (b) When the chairman is unable to perform his functions due to absence or some other reason.

The acting chairman functions till a person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

REMOVAL

The President can remove the chairman or any other member of UPSC from the office under the following circumstances;

- (a) If he is adjudged an insolvent (that is, has gone bankrupt);
- (b) If he engages, during his term of office, an any paid employment outside the duties of his officer; or
- (c) If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.

In addition to these, the president can also remove the chairman or any other member of UPSC for misbehaviour. However, in this case the president has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member. Under the provisions of the Constitution, the advise tendered by the Supreme Court in this regard is binding on the president. During the course of enquiry by the Supreme Court, the president can suspend the chairman or the member of UPSC.

INDEPENDENCE:

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the UPSC;

- (a) The chairman or a member of the UPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy security of tenure.
- (b) The conditions of service of the chairman or a member, though determined by the president, cannot be varied to his disadvantage after his appointment.
- (c) The entire expenses including the salaries, allowances and pensions of the chairman and members of the UPSC are charged on the Consolidated Fund of India. Thus, they are not subject to vote of Parliament.
- (d) The chairman of UPSC (on ceasing to hold office) is not eligible for further employment in the Government of India or a State.

- (e) A member of UPSC (on ceasing to hold office) is eligible for appointment as the chairman of UPSC or a State Public Service Commission (SPSC), but not for any other employment in the Government of India or a state.
- (f) The chairman or a member of UPSC is (after having completed his first term) not eligible for reappointment to that office (i.e., not eligible for second term).

FUNCTIONS

The UPSC performs the following functions.

- (a) It conducts examinations for appointment to the all-India services, Central services and public services of the centrally administered territories.
- (b) It assists the states (if requested by two or more states to do so) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- (c) It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.
- (d) It is consulted on the following matters related to personnel management ;
 - (i) All matters relating to methods of recruitment to civil services and for civil posts.
 - (ii) The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
 - (iii) The suitability of candidates for appointments to civil services and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotions and request the UPSC to ratify them.
 - (iv) All disciplinary matters affecting a person serving under the Government of India in a civil capacity including memorials or petitions relating to such matters. These include :
 - Censure (Severe disapproval)
 - Withholding of increments
 - Withholding of promotions
 - Recovery of pecuniary loss
 - Reduction to lower service or rank (Demotion)
 - Compulsory retirement
 - Removal from Service
 - Dismissal from service
 - (v) Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.
 - (vi) Any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India and any question as to the amount of any such award.
 - (vii) Matters of temporary appointments for period exceeding one year and on regularization of appointments.
 - (viii) Matters related to grant of extension of service and re-employment of certain retired civil servants.
 - (ix) Any other matter related to personnel management.

LIMITATIONS:

The following matters are kept outside the functional jurisdiction of the UPSC. In other words, the UPSC is not consulted on the following matters;

- (a) While making reservations of appointments or posts in favour of any backward class of citizens.
- (b) While taking into consideration the claims of scheduled caste and scheduled tribes in making appointments to services and posts.
- (c) With regard to the selections for chairmanship or membership of commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
- (d) With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.

STATE PUBLIC SERVICE COMMISSION

Parallel to the Union Public Service Commission (UPSC) at the Centre, there is a State Public Service Commission (SPSC) in a state. The same set of Articles (i.e., 315 to 323 in Part XIV) of the Constitution also deal with the composition, appointment and removal of members, power and functions and independence of a SPSC.

COMPOSITION

A State Public Service Commission consists of a chairman and other members appointed by the governor of the state. The Constitution does not specify the strength of the Commission but has left the matter to the discretion of the Governor. Further, no qualifications are prescribed for the commission's membership except that one-half of the members of the commission should be such persons who have held office for at least ten years either under the government of India or under the Government of a state. The constitution also authorizes the governor to determine the conditions of service of the chairman and members of the Commission.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier (in the case of UPSC, the age limit is 65 years). However, they can relinquish their offices at any time by addressing their resignation to the governor.

The governor can appoint one of the members of the SPSC as an acting chairman in the following two circumstances :

- (a) When the office of the chairman falls vacant; or
- (b) When the chairman is unable to perform his functions due to absence or some other reasons.

The acting chairman functions till the person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

REMOVAL

Although the chairman and members of a SPSC are appointed by the governor, they can be removed only by the president (and not by the governor). The president can remove them on the same grounds and in the same manner as he can remove a chairman or a member of the UPSC. Thus, he can remove him under the following circumstances:

- (a) If he is adjudged an insolvent (i.e., has gone bankrupt); or
- (b) If he engages, during his term of office, in any paid employment outside the duties of his office; or
- (c) If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.

In addition to these, the president can also remove the chairman or any other member of SPSC for misbehavior.

However, in this case, the president has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member. Under the provisions of the Constitution, the advice tendered by the Supreme Court in this regard is binding on the president. However, during the course of enquiry by the Supreme Court, the governor can suspend the concerned chairman or member, pending the final removal order of the president on receipt of the report of the Supreme court.

INDEPENDENCE

As in the case of UPSC, the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a SPSC :

- (a) The chairman or a member of a SPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy the security of tenure.
- (b) The conditions of service of the chairman or a member, though determined by the governor, cannot be varied to his disadvantage after his appointment.
- (c) The entire expense including the salaries, allowances and pensions of the chairman and members of a SPSC are charged on the consolidated fund of the state. Thus, they are not subject to vote of the state legislature.
- (d) The chairman of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC or as the chairman of any other SPSC but not for any other employment under the Government of India or a state.
- (e) A member of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC or as the chairman of the SPSC or any other SPSC, but not for any other employment under the Government of India or a state.
- (f) The chairman or a member of a SPSC is (after having completed his first term) not eligible for reappointment to that office (that is, not eligible for second term).

FUNCTIONS

A SPSC performs all those functions in respect of the state services as the UPSC does in relation to the Central services :

- (a) It conduct examination for appointment to the services of the state.
- (b) It is consulted on the following matter related to personnel management :
 - (i) All matters relating to methods of recruitment to civil services and for civil posts.

- (ii) The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
- (iii) The suitability of candidates for appointments to civil services and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotions and request the SPSC to ratify them.
- (iv) All disciplinary matters affecting a person serving under the government of the state in a civil capacity including memorials or petitions relating to such matters. These include.
 - Censure (Severe disapproval)
 - Withholding of increments
 - Withholding of promotions
 - Recovery of pecuniary loss
 - Reduction to lower service or rank (demotion)
 - Compulsory retirement
 - Removal from service
 - Dismissal from service
- (v) Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.
- (vi) Any claim for the award of a pension in respect of injuries sustained by a person while serving under the government of the state and any question as to the amount of any such award.
- (vii) Any other matter related to the personnel management.

JOINT STATE PUBLIC SERVICE COMMISSION

The Constitution makes a provision for the establishment of a Joint State Public Service Commission (JSPSC) for two or more states. While the UPSC and the SPSC are created directly by the Constitution, a JSPSC can be created by an act of Parliament on the request of the state legislatures concerned. Thus, a JSPSC is a statutory and not a constitutional body. The two states of Punjab and Haryana had a JSPSC for a short period, after the creation of Haryana out of Punjab in 1966.

The chairman and members of a JSPSC are appointed by the president. They hold office for a term of six years or until they attain the age of 62 years, whichever is earlier. They can be suspended or removed by the president. They can also resign from their offices at any time by submitting their resignation letters to the president.

The number of members of a JSPSC and their conditions of service are determined by the president.

A JSPSC presents its annual performing report to each of the concerned state governors. Each governor places the report before the state legislature.

The UPSC can also serve the needs of a state on the request of the state governor and with the approval of the president.

As provided by the Government of India Act of 1919, a Central Public Service Commission was set up in 1926 and entrusted with the task of recruiting civil servants. The Government of India Act of 1935 provided for the establishment of not only a Federal Public Service Commission and Joint Public Service Commission for two or more provinces.