

Course Title – Public Employment and Service Law Litigation

No. of Credits - 4 credits

Level - 5yr LLB, 3yr LLB, LLM (Constitutional and Administrative Laws)

Pre-requisites - Constitutional Law – I, Constitutional Law – II, Administrative Law & Regulatory State for 5yr LLB and 3yr LLB students

Note: This course is not suited for BA Legal Studies

Course Description:

The Constitution of India prescribes the rule-making power to the appropriate legislature for recruitment and regulation of conditions of service for persons appointed to public service in connection with the affairs of the Union of India or any of the states. The recruitment of a public servant lays the foundation for the 'creation' of a relationship between an employer and the employee(s) in public service. During the tenure of service, the relationship undergoes a range of bureaucratic processes that regulate the service conditions. From the point of selection to superannuation of an employee, the issues pertaining to appointment, reservation (affirmative action), probation, remuneration, pension, transfers, seniority and reduction in rank, promotions, annual confidential reports, deputation, leave and break in service, compulsory or premature retirement, voluntary retirement, *etc.* dominate the dialogue between the employer and an employee. These issues are further exacerbated due to unequal bargaining power in favour of the state (*the employer*) as opposed to a private employment contract. The hiring of kith and kins, back door appointments, *malafide* suspensions, and arbitrary reduction in rank are a few examples where the power imbalance makes an employee helpless if not guarded by the legal machinery.

The focus of this course would be to explore the constitutional regulation of the relationship between the employer and the employees, particularly in four phases *i.e.*

- creation of the relationship,
- tenure of the employee and issues thereof,
- disciplinary control by the employer over the employee, and
- the termination of the relationship

The discourse in the core courses on public law, particularly Constitutional Law II and Administrative Law & Regulatory State, focuses primarily on the broad structure of the machinery set up by the Constitution of India and Judicial Review of Administrative Action. Due to the limitations of the core courses, this course allows the students to understand the intricate role played by the state - *as an employer* - in the life of a public servant and the nuances of service law litigation. The pedagogy for this course will focus on the substantive and procedural aspects of employment law and its practice in India, thereby developing a skill set to understand the intricacies of service law jurisprudence in India. To that end, the course will focus on the constitutional courts' judgments, the practice of Central and State Administrative Tribunals and litigation proceedings of the pending causes of action in the court of law to address the gap in the bargaining power between state (*the employer*) and the employees and to secure a public servant's tenure against the abusive practices of a powerful employer.

Module 1: Introduction

- Constitutional Provisions: Article 309 and other Sources of Rule Making
- Administrative instructions

Module 2: Creation of Relationship

- Public Service Commission
- Recruitment
- Process of Selection
- Reservation
- Appointment
- Probationer
- Temporary Appointment
- Regularisation
- Absorption

Module 3: Incidents of Relationship

- Remuneration Pay and Pension
- Transfer
- Seniority
- Confidential Reports
- Promotion
- Deputation
- Reduction in Rank
- Leave and Break in Service

Module 4: Disciplinary Control

- Suspension and Disciplinary Proceedings
- Natural Justice and Punishment in Disciplinary Proceedings
- Corruption and Criminal Liability of Public Servants

Module 5: End of Relationship

- Termination of Permanent Employee for Reasons other than Misconduct
- Termination of Service of Probationers
- Termination by way of Punishment for Misconduct
- Compulsory/Premature Retirement
- Voluntary Retirement
- Superannuation
- Abolition of Post
- Abandonment of Service

Reading List:

1. Samuel R. Bagenstos, Employment Law and Social Equality, Michigan Law Review, November 2013, Vol. 112, No. 2, pp. 225-273
2. Lawrence E. Blades, Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power, Columbia Law Review, Dec. 1967, Vol. 67, No. 8, pp. 1404-1435
3. Linda Hamilton Krieger and Susan T. Fiske, Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment, California Law Review, Jul. 2006, Vol. 94, No. 4, pp. 997-1062
4. PETER M. HUBER, ENSURING THE INDEPENDENCE OF THE CIVIL SERVICE: CIVIL SERVICE, RULE OF LAW, AND DEMOCRATIC BACKSLIDING, THE CIVIL SERVICE IN EUROPE (Taylor and Francis 2025)
5. David H. Rosenbloom, Public Administrative Professionalism and Public Service Law, State & Local Government Review, Spring, 1984, Vol. 16, No. 2, pp. 52-57
6. Satinder Mohan Mehta, Legal Status of Probationers in Government Service, Journal of the Indian Law Institute, January-March 1974, Vol. 16, No. 1, pp. 109-117
7. Case Comment, Whether Article 311 (2) of the Constitution demands the second notice of the disciplinary authority to particularise the punishment, Hukamchand Malhotra v. Union of India, Journal of the Indian Law Institute, July 1959, Vol. 1, No. 4, pp. 567-572
8. Samaraditya Pal, Law Relating to Public Service (ISBN: 9789389991567), 4th Edition, LexisNexis (2021) (*selected chapters*)
9. Giampieri, P. Termination Clauses in Common Law and Civil Law: A Comparative Corpus-Based Analysis of English–Italian Terms of Service. *Laws* 2025, 14, 6.
10. Bengtsson, L. (2025). Age discrimination in employment tribunal judgments: Unveiling trends, challenges and solutions amidst the covid-19 pandemic. *International Journal of Discrimination and the Law*

Selected Case Law:

1. Maya Mathew v. State of Kerala, 2010 (4) SCC 498
2. Jit Singh v. State of Punjab, AIR1976SC142
3. Harla v. State of Rajasthan, 1951 AIR 467
4. Basant Lal Malhotra v. State of Punjab, AIR 1969 P&H 178
5. Secretary, State of Karnataka & Ors. v. Umadevi, 2006 INSC 216
6. K Alex v. Delhi State Mineral Development, O.A. No. 4491/2017
7. Ridge v. Baldwin, [1964] AC 40
8. Parshotam Lal Dhingra v. Union of India, 1958 AIR 36
9. Moti Ram Deka v General Manager, Northeast Frontier Railway, 1964 AIR 600
10. Managing Director, ECIL v. B Karunakar, 1993 (4) SCC 727