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Article 310 of Constitution of India (COI)

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ABSTRACT

Under The Judiciary would appreciate, without an express authority; neither the Centre nor State can legislate on any subject matter. Referring to the matter sub-judice before the Hon'ble Supreme Court, I the undersigned, do hereby make this humble submission for your kind consideration

Without expressing an authority from the "Constitution on India" (COI) which empowered the legislative to legislate, the Central Govt of India (GOI) brought in the Tribunals Reforms Act, 2021 (TRA) & put to enforcement retrospectively from 4th April, 2021 on an assent from Hon'ble President of India.

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Nonetheless, this TRA legislation is in apple pie order absolutely with respect to two aspects exclusively of three disputed issues under namely;

- Power to legislate on the subject in terms of articles of COI
- Power to legislate on the subject as regards to;
- Regulate recruitment and
- Regulate condition of services
- Power to legislate on Term of office

To assess the authenticity, authority and correctness of disputed provisions of present TRA, the undersigned inclined to seek the attention of Hon'ble Supreme Court to the PART XIV of our Indian Constitution, namely **"The Constitution of India"**,

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The present PART XIV of Constitution of India, deals with **Services under the Union and the State**, consisting of two separate chapters as under;

Chapter I - Services

Chapter II - Public Service Commission

Since the disputed issue falls within the ambit of **Service** as envisaged by Chapter – I of COI, consequently, the entire submission vis-à-vis exercise is restricted to the chapter I of PART XIV of COI and every precisely to article 309 & article 310 of the COI as is prevailing at the an appropriate applicable time of TRA legislation.

To be very dense, for the sake of ready reference the text of aforesaid articles are reproduced herein verbatim;

309. Recruitment and conditions of service of persons serving the Union or a State — *Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:*

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

310. Tenure of office of persons serving the Union or a State —

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.

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.

For the clarity of research concern with the subsisting petition, this research paper take it through the **History of “Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963. (ITAT-R63)”**

In the absence of central enactment, in 1963 vide GSR No 1265 dt 27th July, 1963 in exercise of the power conferred by the proviso to article 309 of the Constitution of India **and of all other powers enabling** in that behalf, the Hon’ble President promulgated rules **regulating the recruitment and condition of service** of persons appointed as members of the Income Tax Appellate Tribunal namely; Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 (ITAT-R63) & accordingly brought into force from 1st September, 1963.

The **Clause 11** of aforesaid ITAT-R63, provided for **tenure of office** of person appointed as President and Senior Vice President / Vice-President & Other Members specifying the superannuation in terms of applicable Central Services provisions as under;

Clause 11 Retirement – The date of retirement of

- *the President shall be the date on which he attains the age of sixty-five years*
- *the Senior Vice-President, Vice-President and Member shall be the date on which they attains the age of sixty-two years;*
- *and not the last date of the month as in the case of other Government Servants.*

All clauses except clause 11 of ITAT-R63 emanated from an authority bestowed unto the Hon’ble President of India by article 309 of COI and whereas the clause 11 of ITAT-R63 has been sprung from article 310 which is in exclusive reach of the Hon’ble President of India.

By virtue of Article 309 of Constitution of India, the aforesaid promulgation shall continue to be in force until the appointed date of a separate, valid enactment of Act of the Central / Union Legislature **to regulate the recruitment, and conditions of service** of persons appointed, to public services and posts in connection with the affairs of the Union.

Inevitably, article 309 confines the power of Union and State to legislate only to regulate the **“recruitment and condition of service”** of persons appointed.

The point of address the research paper tries to brings to the kind attention that, the Hon’ble President of India exclusively retains the **constitutional prerogative power to provide for**

tenure of office of persons serving the Union or the State by virtue of article 310.

The article 310 invariably makes no distinction between person holding permanent or temporary post and extends its protection equally to all Government Servant.

The founding fathers of Constitution of India has wisely and categorically carved out the authority from the legislature and conferred unto the Hon'ble President of India to ensure the uninterrupted public services to the nation (independent of legislative hand change). And it is at the hands of Hon'ble Apex Court of India which protects & give a concrete shape to the vision of the founding fathers of the Constitution of India.

Removal or dismissal of services by an appointing authority; On the other hand, if (even remotely) the legislature (Central or State) is permitted to intrude over the prerogative power laid in article 310 of the Constitution of India, it shall inevitably tantamounts to removal or dismissal of a person appointed to civil services of the Union or State within the ambit of article 311(1).

However, an exercise the power laid u/a 311(1) by an appointing authority is subjected to two qualifications imposed under the provisions of article 311(2), which protects the office of civil personnel by mandating framing of charge succeeded by inquiry as pre-requisite for removal or dismissal.

It is noteworthy to state that, the Hon'ble Supreme Court in "B P Singhal vs Union Of India & Anr" reported in (2010) 6 SCC 331 vide para 21 observed and settled that, the Constitution of India thus provides for three different types of tenure as under (paragraph reproduced herein below);

21. Constitution of India thus provides for three different types of tenure:

Those who hold office during the pleasure of the President (or Governor);

Those who hold office during the pleasure of the President (or Governor), subject to restrictions; and

Those who hold office for specified terms with immunity against removal, except by impeachment, who are not subject to the doctrine of pleasure.

Constitutional Assembly debates clearly show that after elaborate discussions, varying levels of protection against removal were adopted in relation to different kinds of offices. We may conveniently enumerate them;

Offices to which the doctrine of pleasure applied absolutely without any restrictions (Ministers, Governors, Attorney General and Advocate General);

Offices to which doctrine of pleasure applied with restrictions (Members of defence service, Members of civil service of the Union, Member of an All-India service, holders of posts connected with defence or any civil post under the Union, Member of a civil service of a State and holders of civil posts under the State); and

Offices to which the doctrine of pleasure does not apply at all (President, Judges of Supreme Court, Comptroller & Auditor General of India, Judges of the High Court, and Election Commissioners).

Having regard to the constitutional scheme, it is not possible to mix up or extend the type of protection against removal, granted to one category of offices, to another category.

This research paper believes that, article 310 and article 311 is founded on dharma, hence rest the justice with the Hon'ble Courts on the strength of it's accepted official slogan as “**यतो धर्मस्ततो जयः**”, whereby term of office of government servants shall not fall with the whims & fancies of legislature hand.

The history or mythology (refer as whatever), reminds as **Dhritarashtra** was warned using this phrase by **Vyasa** to discourage the unrighteous ways of his sons Duryodhana, the time again so arrived in this “Kali-Yuga” where lord of Justice is expected play “Vyasa Maharshi” role to ensure the justice to Union Civil Servants.
