

## 44 State Public Service Commission

**P**arallel 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 authorises 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<sup>1</sup>, 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<sup>2</sup>:

- (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 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<sup>3</sup>.

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

Further, the Constitution has also defined the term 'misbehaviour' in this context. The Constitution states that the chairman or any other member of a SPSC is deemed to be guilty of misbehaviour, if he (a) is concerned or interested in any contract or agreement made by the Government of India or the government of a state, or (b) participates in any way in the profit of such contract or agreement or in any benefit therefrom otherwise than as a member and in common with other members of an incorporated company.

## 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 that 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 conducts examinations for appointments to the services of the state.
- (b) It is consulted on the following matters related to personnel management:
  - (i) All matters relating to methods of recruitment to civil service 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 service 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 and 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<sup>4</sup>
  - (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.

The Supreme Court has held that if the government fails to consult the SPSC in these matters, the aggrieved public servant has no remedy in a court. In other words, the court held that any

irregularity in consultation with the SPSC or acting without consultation does not invalidate the decision of the government. Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the SPSC does not confer any right to the post upon the candidate. However, the government is to act fairly and without arbitrariness or malafides.

The additional functions relating to the services of the state can be conferred on SPSC by the state legislature. It can also place the personnel system of any local authority, corporate body or public institution within the jurisdiction of the SPSC. Hence the jurisdiction of SPSC can be extended by an Act made by the state legislature.

The SPSC presents, annually, to the governor a report on its performance. The governor places this report before both the Houses of the state legislature, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.

## **LIMITATIONS**

The following matters are kept outside the functional jurisdiction of the SPSC. In other words, the SPSC 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 castes and scheduled tribes in making appointments to services and posts.

The governor can exclude posts, services and matters from the purview of the SPSC. The Constitution states that the governor, in respect to the state services and posts may make regulations specifying the matters in which, it shall not be necessary for SPSC to be consulted. But all such regulations made by the governor shall be laid before each House of the state legislature for at least 14 days. The state legislature can amend or repeal them.

## ROLE

The Constitution visualises the SPSC to be the 'watchdog of merit system' in the state. It is concerned with the recruitment to the state services and advises the government, when consulted, on promotion and disciplinary matters. It is not concerned with the classification of services, pay and service conditions, cadre management, training and so on. These matters are handled by the Department of Personnel or the General Administration Department. Therefore, the SPSC is only a central recruiting agency in the state while the Department of Personnel or the General Administration Department is the central personnel agency in the state.

The role of SPSC is not only limited, but also recommendations made by it are only of advisory nature and hence, not binding on the government. It is up to the state government to accept or reject that advice. The only safeguard is the answerability of the government to the state legislature for departing from the recommendation of the Commission. Further, the government can also make rules which regulate the scope of the advisory functions of SPSC<sup>5</sup>.

Also, the emergence of State Vigilance Commission (SVC) in 1964 affected the role of SPSC in disciplinary matters. This is because both are consulted by the government while taking disciplinary action against a civil servant. The problem arises when the two bodies tender conflicting advice. However, the SPSC, being an independent constitutional body, has an edge over the SVC.

Finally, the SPSC is consulted by the governor while framing rules for appointment to judicial service of the state other than the posts of district judges. In this regard, the concerned state high court is also consulted.



## 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 performance 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 but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.

**Table 44.1** *Articles Related to SPSC at a Glance*

Article No.	Subject-matter
315	Public Service Commissions for the Union and for the states
316	Appointment and term of office of member
317	Removal and suspension of a member of a Public Service Commission

318	Power to make regulations as to conditions of service of members and staff of the Commission
319	Prohibition as to the holding of office by members of commission on ceasing to be such members
320	Functions of Public Service Commissions
321	Power to extend functions of Public Service Commissions
322	Expenses of Public Service Commissions
323	Reports of Public Service Commissions

## NOTES AND REFERENCES

1. Originally, it was 60 years. The 41st Amendment Act of 1976 raised it to 62 years.
2. Added by the 15th Amendment Act of 1963.
3. In 1993, the Supreme Court ruled that appointment of a university professor (known to be blind) as a member of a SPSC cannot be set aside on the ground of infirmity of body or mind.
4. The difference between removal and dismissal is that the former does not disqualify for future employment under the government while the latter disqualifies for future employment under the government.
5. Such Rules are known as the SPSC (Exemption from consultation) Regulations.