

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.1363/2019

Smt. Lipika Pual, D/O Late Kumud Ranjan Paul, Resident of IGM Hospital, Lane No.6, Agartala, West Tripura, Pin-799001.

-----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharjee, G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment: **9th January, 2020.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard learned counsel for the parties for final disposal of the petition.

2. Petitioner has challenged the action of the respondents in placing her under suspension at the fag end of her service career and initiating departmental proceedings after the date of her superannuation. According to the petitioner, the actions are taken without any basis and only by way of victimization.

3. This petition arises in the following backgrounds:

At the relevant time the petitioner was appointed as UDC in the Fisheries Department of the Government of Tripura. She would have superannuated w.e.f. 30.04.2018. On 25.04.2018 the Director of Fisheries passed the order of suspension on the ground

that the petitioner had violated Rule 5 of the Tripura Civil Services (Conduct) Rules, 1988 (hereinafter to be referred to as the Conduct Rules) by directly taking part in a political rally organized/ campaigned by a particular party at Agartala on 31.12.2017. The Director had the said issue preliminary examined and called for a report from the Joint Director of Fisheries.

4. Thereafter, under a memorandum dated 04.10.2018 the petitioner was charge-sheeted. This charge-sheet contained only one article of charge alleging that while working as a UDC the petitioner had canvassed against a political party by making defamatory and indecent comments against political leaders who were contesting election from a recognized political party in the Assembly Election of 2018. She had also canvassed and participated in the political rally held on 31.12.2017 at Agartala. It was, therefore, alleged that her conduct was in breach of Rule 5(4) of the Conduct Rules.

5. The petitioner replied to the said charge-sheet under letter dated 10.10.2018 denying all the charges.

6. It appears that the Director of Fisheries realized that reliance for issuance of the charge-sheet to Rule 5 of the Conduct Rules was erroneous. He, therefore, withdrew the charge-sheet under memorandum dated 11.05.2019 and issued a fresh memorandum of charges dated 15.06.2019 relying on Rule 9(2)(b) of the Central Civil Services (Pension) Rules, 1972 (hereinafter to

be referred to as CCS (Pension) Rules). However, the article of charge and the statement of imputations of misconduct remained identical.

7. On the basis of such materials on record, learned counsel for the petitioner submitted that the initiation of inquiry is wholly mala fide and by way of victimization. The petitioner had not breached any of the service rules. Even if all the allegations made in the charge-sheet are accepted as true, no misconduct is made out. Subjecting the petitioner to protracted departmental inquiry after retirement would cause undue hardship and prejudice. On account of pendency of departmental proceedings her post retiral benefits are not finalized. The petitioner had put in more than 38 years of service without blemish. She was placed under suspension at the fag end of her service career.

8. On the other hand, learned Government Advocate opposed the petition contending that the petition is premature. The petitioner would have right to defend herself in the departmental proceedings initiated by the disciplinary authority. The question whether she has committed misconduct or not cannot be prejudged. He highlighted that as per the information of the department the petitioner had participated in a political rally and had also put Facebook post criticizing certain candidates of the rival political party. This was clearly in breach of Rule 5 of the Conduct Rules. As a Government servant she could not have taken part in political activities.

9. Ordinarily the Court would not interfere at a stage where the department has only issued a charge-sheet and the departmental inquiry is yet to be completed. It is essentially for the employer to inquire into any of the allegations of misconduct against the Government servant by constituting a departmental inquiry and conducting the inquiry in consonance with the principles of natural justice. The role of the High Court even before the departmental inquiry is completed would necessarily be limited. However, there must come cases, howsoever and few and far between, which would require closer scrutiny at the hands of the Court and to discern at the very threshold whether the allegations contained in the charge-sheet constitute any misconduct whatsoever. If the answer to such a question is in the negative, it would be futile, in fact incorrect to subject the Government servant to a full-fledged departmental inquiry. With this angle in mind one may look at the precise allegations against the petitioner contained in the said charge-sheet.

10. The sole charge reads as under:

“ Article I

That the said Smt. Lipika Paul, UDC (now retired from Govt. Service) while working as UDC at Directorate of Fisheries in the Department of Fisheries Govt. of Tripura, Agartala, has canvassed against a Political party by making defamatory & indecent comments against Political Leader who were contesting election from a recognized Political Party in the Assembly Election 2018. She not only

canvassed but also participated in Political rally dated 31.12.2017 at 4.00 PM at Vivekananda Maidan, Agartala.”

As per this charge thus the petitioner who was still working as a UDC had canvassed against a political party by making defamatory and indecent comments against political leaders who were contesting election from a recognized political party in the Assembly Election of the State of the year 2018. She had also participated in a political rally held on 31.12.2017 at Agartala. Thus the allegations against the petitioner are in two parts. First part is that she had put certain Facebook comments which according to the disciplinary authority amounted to canvassing against the political party and its leaders who were contesting the ensuing Assembly Election. The second part was that she had participated in a political rally held at Agartala.

11. To better understand the allegations one may also look at the statement of imputations of misconduct in support of the said charge. A portion of the imputations is in Bengali language. Along with English translation the entire statement reads as under:

“ Article-I

That the said Smt. Lipika Paul, UDC (now retired from Govt. Service) has failed to performed her duties by canvassing against Political leader who were contesting election from a recognized party in the Assembly Election 2018 and posted in social media through her Face book wall.

Sri Abhijit Ghosh, Editor, Janata Mashal, Bordwali, Bipani Bitan, Agartala has lodged a complaint with evidence addressed to the Secretary (Fy) dated 13/4/2018 against Smt. Lipika Paul, UDC while posted at Directorate of Fisheries. It was reported that she made few defamatory & indecent comments in social media through her Face book wall against Political leaders who were contesting election from a recognized party in the Tripura Assembly Election 2018.

The Joint Director of Fisheries, Department of Fisheries, Govt. of Tripura was entrusted with direction to conduct enquiry & submit report within 7(seven) days vide this office letter No.F.10(45)-Fish(Con)2018-19/128 dated 20/4/2018. The Joint Director of Fisheries, Department of Fisheries, Govt. of Tripura has been submitted report vide letter No. Nil dated 23/04/2018 after conducting enquiry against Smt. Lipika Paul, UDC (now retired) that she has attended meeting organized by a recognized Political party on 31/12/2017 at 4.00 PM at Vivekananda Maidan, Agartala. Subsequently she canvassed against the Political Party by posting in social media through Face book along with photographs which are as follows:-

“Who is in the temple, I am not taking banana. No room in his own place but making big noise elsewhere. This soil is an unconquerable fort. In Asthabal Play Ground, with people we are two. Listen Sudip, on 2018, we will not come, it is 100% confirm. But will not tell it to Delhi. In that event money will be reduced. Whatever money will come we take it equally. In course of changing we shall be necked. It is waiting for wearing next garment. Let us slap.”

12. As per these imputations the petitioner had attended a meeting organized by a recognized political party on 31.12.2017 at Agartala. Subsequently she had posted certain comments on her Facebook which have been reproduced in the statement of imputations. Before analyzing this material, one may peruse the contents of Rule 5 of the Conduct Rules which is allegedly breached. Rule 5 pertains to taking part in politics and elections and reads as under:

"5. Taking part in politics and elections. –

(1) No Government servant shall be a member of, or be otherwise associated with, any political party or any organisation which takes part in politics nor shall he take part in, subscribe in aid of, or such in any other manner, any political movement or activity.

(2) It shall be the duty of every Government employee to endeavour to prevent any member of his family from taking part in, subscribing in aid of, or assisting in any other manner any movement or activity which is, or tends directly or indirectly to be subversive of the Government as by law established and where a Government employee is unable to prevent a member of his family from taking part in, subscribing in aid of, or assisting in any other manner any movement or activity, he shall make a report to that effect to the Government.

(3) If any question arises whether a party is a political party or whether any organisation takes part in politics or whether any movement or activity falls within the scope of sub-rule (2), the decision of the Government thereon shall be final.

(4) No Government servant shall canvass or otherwise interfere with, or use influence in connection with or take part in, an election to any legislature or local authority;

Provided that-

(i) a Government employee qualified to vote at such election may exercise his right to vote but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted:

(ii) a Government employee shall not be deemed to have contravened the provisions of this sub-rule by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation. The display by a Government employee on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-rule.” सत्यमेव जयते

13. The respondents have relied on sub-rule (4) of Rule 5 of the Conduct Rules. For obvious reasons there is no reliance on sub-rules (2) and (3) thereof. For better understanding we may refer to and analyze the contents of sub-rule (1) and sub-rule (4) of Rule 5. As per sub-rule (1) of Rule 5 no Government servant would be a member of, or be otherwise associated with any political party or any organization which takes part in politics or would take part in, subscribe in aid of, or such in any other manner, any political movement or activity. As per sub-rule (1) of Rule 5 thus any active political association of a Government servant is barred. Sub-rule (4)

of Rule 5 is more specific and prevents a Government servant from canvassing or otherwise interfering with or using influence in connection with or taking part in an election to any legislative or local authority. We are not concerned with the proviso to sub-rule (4).

14. With this background we may analyze the allegations against the petitioner contained in the said charge-sheet. As per the article of charge, the petitioner had participated in a political rally held on 31.12.2017. She had also canvassed against the rival political party by making defamatory and indecent comments on her Facebook against the leaders of the said party. The statement of imputations does not give any indication of the activity of the petitioner being in any manner violative of sub-rule (4) of Rule 5 of the Conduct Rules. The article of charge alleges that she had participated in a political rally whereas the statement of imputations alleges that she had attended the meeting. There is a vital difference between attending a rally and participating in a rally. During election times as is well known, political parties and their leaders as well as nominated candidates take out rallies and address public gatherings. Every person who is present in the audience during such addresses cannot be stated to have participated in the rally. The presence of a person does not either establish his or her political affiliation. A student of politics, an enthusiastic young man, a reporter or just a curious bystander all are likely to be present in any political gathering. Even an opponent or a critic of a political party may also attend the gathering. Her

mere presence at a gathering, therefore, without any further allegation, would not amount to her participation in such political gathering. First limb of the allegation against the petitioner of having breached the sub-rule (4) of Rule 5 of the Conduct Rules, therefore, must fail.

15. The second limb of canvassing against a political dispensation by putting a Facebook post is even easier to dispatch. I have taken note of the contents of the said post which originally was in Bengali and has been translated and presented before me. Nothing contained in the said post suggests canvassing for or against any political party. It only expresses certain beliefs of the petitioner in general terms. As a Government servant the petitioner is not devoid of her right of free speech, a fundamental right which can be curtailed only by a valid law. She was entitled to hold her own beliefs and express them in the manner she desired of course subject to not crossing the borders laid down in sub-rule (4) of Rule 5 of the Conduct Rules. Once I find that the petitioner's Facebook post had no element of canvassing for or against any political party, second limb of the allegation of breach of Rule 5(4) of the Conduct Rules also must fail.

16. Under the circumstances, I have no hesitation in setting aside the said charge-sheet issued against the petitioner under memorandum dated 15.06.2019. Consequentially, the order of suspension dated 25.04.2018 which was issued pending initiation of departmental inquiry would automatically not survive. The

respondents shall release all the post retiral benefits which has so far not been paid to her within a period of 2(two) months from today.

17. Petition is disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

Pulak

