
CASE COMMENT: SMT. LIPIKA PUAL VS THE STATE OF TRIPURA & OTHERS

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Name of the Case	Smt. Lipika Pual vs The State Of Tripura & Others on 9 January, 2020
CITATION	WP(C) No.1363/2019
DATE OF THE JUDGEMENT	: 9 January, 2020
APPELLANT	Smt. Lipika Pual
RESPONDENT	The State of Tripura & others
BENCH/JUDGE	CHIEF JUSTICE MR. AKIL KURESH
LAW/ RULES INVOLVED	Tripura Civil Services (Conduct) Rules, 1988

INTRODUCTION

In this Landmark judgement the High court of Tripura held that Public servants or Government employees have a right to freedom of speech against the government and that their rights cannot be arbitrarily infringed upon. However the court also acknowledged that this right does have certain limitations, but this judgement will have a significant implications on the right of freedom of expression on government employees

BACKGROUND OF THE CASE

Smt. Lipika Paul, who was a Upper-Divisional-Clerk in the Department of Fisheries, Government of Tripura was suspended from Service on the basis of a Departmental Enquiry she was accused of violating Rule 5 of the Tripura Civil Services (Conduct) Rules, 1988 "for directly taken part in a political rally organized/campaigned by the CPI(M).

Also Departmental Proceedings were started against her retirement subjecting her to Rule 9(2)(b) of the Central Civil Services (Pension) Rules, 1972 however the allegations remained

the same.

FACTS

The mentioned individual, Smt. Lipika Paul, was employed as an Upper Division Clerk (UDC) at the Directorate of Fisheries in the Department of Fisheries, Government of Tripura, Agartala. It is worth noting that she has now retired from government service but she was covered under Tripura Civil Services (Conduct) Rules, 1988 at the time of the service. She was Suspended just before her retirement and her retirement benefits were withheld.

According to the Respondents Abhijit Ghosh, the Editor of Janata Mashal located at Bordwali, Bipani Bitan, Agartala, lodged a complaint on 13/4/2018 with supporting evidence. The complaint was addressed to the Secretary (Fisheries) regarding the alleged actions of Smt. Lipika Paul. It alleged that During her tenure at the Directorate of Fisheries, Smt. Lipika Paul, through her Facebook wall on social media, made defamatory and indecent comments against political leaders who were participating in the Tripura Assembly Election 2018 from a recognized party. These comments according to the respondents were deemed to be inappropriate and potentially damaging to the reputation of the political leaders in question.

The said post may be segmented into four parts, which in short are:

- (i) There is no space in own place, formidable in the land here (at 9.30 p.m. on 29.12.2017).
- (ii) We are with people at stable ground (at 4.05 p.m. on 31.12.2017).
- (iii) Listen Sudip, we will not come back in „18 and that is 100% confirmed but will not tell Delhi. If told, the money will not flow from there. If money flows we will divide the same in three shares (on 04.01.2018 at 4.20 p.m.)
- (iv) By changing clothes you will be naked one day there will be no cloth to wear (on 08.01.2018 at 10.47 p.m.) and that was followed by the comment "let us slap" (on 04.02.2018 at 5.52 p.m.)¹

ISSUES RAISED BEFORE THE COURT

1. Does a attending a political Rally mean taking part in the rally?

¹ The State of Tripura vs Smt. Lipika Paul on 26 February, 2021 WA 20/2020

2. Did anything contained in the said post suggest canvassing for or against any political party?

ARGUMENTS PRESENTED BEFORE THE COURT BY THE PETITIONERS

Based on the evidence presented, the counsel representing the petitioner argued that the initiation of the departmental inquiry was entirely malicious and an act of victimization. They contended that the petitioner had not violated any service rules and even if all the allegations in the charge-sheet were true, no misconduct had occurred. Continuing the departmental inquiry after the petitioner's retirement would cause undue hardship and prejudice. Furthermore, the petitioner's post-retirement benefits remained unsettled due to the pending proceedings. It was emphasized that the petitioner had served for over 38 years without any misconduct, and the suspension was imposed at the very end of her career.

ARGUMENTS PRESENTED BEFORE THE COURT BY THE RESPONDENTS

Contrarily, the learned Advocate representing the government argued against the petition, claiming that it was premature. According to the advocate, the petitioner has the right to present her defense during the departmental proceedings initiated by the disciplinary authority. It was asserted that the determination of whether misconduct has occurred cannot be made beforehand. The advocate emphasized that, based on departmental information, the petitioner had participated in a political rally and posted critical comments on Facebook regarding certain candidates from an opposing political party. This conduct was deemed to be a violation of Rule 5 of the Conduct Rules, as government servants are prohibited from engaging in political activities.

RELEVANT RULES ASSOCIATED WITH THE CASE

According to Section 5 of the Tripura Civil Services (Conduct) Rules, 1988

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;

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.

JUDGEMENT

The Honourable High court held that that the statement of imputations against the petitioner did not provide any indication that her activities were in contravention of sub-rule (4) of Rule 5 of the mentioned Conduct Rules implying that there was no evidence to support the claim that the petitioner's actions constituted a breach of the specific provision mentioned.

The honourable High Court emphasised that there is a crucial distinction between attending a rally and actively participating in a rally. The learned judge mentioned that during election periods, it is common for political parties and their leaders, as well as nominated candidates, to organize rallies and address public gatherings and merely being present in the audience during such addresses cannot be equated with actively participating in the rally. The presence of an individual does not establish their political affiliation. Various individuals, such as students of politics, enthusiastic young individuals, reporters, or curious bystanders, may be present at political gatherings for various reasons. It is even possible for opponents or critics of a political party to attend such gatherings. Therefore, the mere presence of an individual at a political gathering, without any additional allegations, cannot be considered as their participation in the rally.

The honourable Judge read the translated version of the post that was posted by the petitioner the judge after analysing the statements given by her, he concluded that post did not indicate any form of canvassing for or against a political party. It simply expressed the petitioner's

general beliefs without targeting any specific political party. The judge emphasised that the petitioner was entitled to hold her own beliefs and express them in the manner she desired and as a Government servant the petitioner cannot be deprived of her right of free speech.

COURT ORDER

The court set aside the said charge-sheet issued against the petitioner under memorandum dated 15.06.2019, quashed the order of suspension and ordered the government to release the post-retirement benefits of the petitioner.