

The Big Picture - Government Employees & Right To Free Speech

Video Link: https://youtu.be/UwabPoC_LQ

Context:

- Tripura High Court has passed a judgement stating that Government employees are entitled to hold and express their political beliefs, subject to the restrictions laid under Rule 5 of the **Tripura Civil Services (Conduct) Rules, 1988**.
- Chief Justice of Tripura High court had delivered the judgement while dismissing an enquiry against a retired employee of the State Fisheries Department.

Details:

- The petitioner Lipika Paul had been suspended from services as an Upper Division Clerk (UDC) in the State Fisheries Department, before her retirement, for attending a political programme and for making a political post on Facebook.
- She was charged under **Rule 5 of the Conduct Rules and Rule 9(2)(b) of the Central Civil Services (Pension) Rules, 1972** for participating in a political rally and for canvassing against a political party with defamatory comments against the political leaders.
- The Kerala High Court had also ordered the reinstatement, of a KSRTC conductor who was placed under suspension, subject to disciplinary proceedings for allegedly circulating derogatory remarks against the Chief Minister of Kerala.
- The High Court has mandated that a distinction be drawn between participating in and attending a political event, as the mere presence of an individual is not sufficient to convey their political affiliations.
- The issue is not regarding the Freedom of Speech but pertains to the extension of the right to political opinions.

Significance of the judgement:

- Chief Justice Akil Kureshi held that "As a Government servant, the petitioner is not devoid of her right to 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."
- Justice Kureshi differentiated between attending and participating in a rally and held that mere presence of the petitioner at a political rally did not convey her political affiliation.
- "One cannot be prevented from expressing his views merely because he is an employee. In a democratic society, every institution is governed by democratic norms. Healthy criticism is a better way to govern a public institution", Justice Muhamed Mustaque had said in an order.
- Restrictions applied through the service rule, that come in conflict with Article 19 (1)(a), right to free speech shall override unless the rules in question are covered under Article 19 (2), the framework that provides for reasonable restrictions. In a nutshell, any restriction imposed even through the conduct rules will have to qualify the requirements of Article 19(2). The conduct rules are flexible enough to accommodate certain kinds of expression which may not necessarily be political in nature.
- The High Court's judgement is in consonance with the Service Conduct Rules and offers no contravention. The High Courts have, however, stressed the importance of distinguishing the difference between an employee participating in and attending a political event.

Service Conduct Rules:

- Rule 5 of the All India Services (Conduct) Rules, 1968 deals with the involvement of a government employee in politics and elections. It places reasonable restrictions on the expression of opinions which extend to political issues.
 - Sub Rule 1 of Rule 5 prohibits “government servants from being members of or being associated with any political party or political activity.”
 - Sub Rule 4 of Rule 5 states that “no member of the Service shall canvass or otherwise interfere with, or use his influence in connection with, or take part in, an election to any legislature or local authority.”

Freedom of speech and expression:

- Article 19 is recognized as a Fundamental Right which provides an individual or a community, the freedom to articulate their thoughts and opinions without the fear of a legal sanction or retaliation.
 - Article 19(1) (a) of the Constitution of India states that “**all citizens shall have the right to freedom of speech and expression**”.
 - The exercise of this right is subservient to “reasonable restrictions” being imposed under Article 19(2) of the Constitution of India.
- Article 19 (2) contains the grounds on which restrictions on the freedom of speech and expression can be imposed:
 - Security of State
 - Friendly relations with foreign states
 - Public Order
 - Decency or morality
 - Contempt of Court
 - Defamation
 - Incitement to an offence
- Sovereignty and integrity of IndiaThe right to **Freedom of Speech and Expression** plays a key role in the formation of public opinion on the political, social and economic matters. It is, therefore, quintessential for the functioning of democratic processes.

To what extent do the Service Conduct Rules impose restrictions on the Freedom of Speech of Government employees?

- Freedom of speech and expression is a Fundamental Right, however, it is not absolute in nature, as there are reasonable restrictions which can be imposed. This is to ensure that the Indian bureaucracy, which has been perceived as a non-political organization, maintains neutrality.
- The Freedom of speech can only be restricted on two grounds:
 - The order restricting the right is enacted by the legislature.
 - The order has to be reasonable.
- The restrictions are placed to ensure that there is space for healthy criticism. However, emotional outbursts, which could turn into criticism is governed, as these could lead to the public losing faith in the Government.
 - A democratic Government asserts the importance of healthy criticisms, as these would allow the government to address the grievances of the public. Additionally, an individual cannot be prohibited from expressing opinions merely because he/she is an employee of that particular institution.

Conclusion:

The weight or the importance of the orders issued by Justice Kureshi will hold precedential value similar to any other high courts of the country and the orders would still hold persuasive value.

