

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.06.2023

Pronounced on : 08.08.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9754 of 2023

and

WMP(MD)No.8689 of 2023

A.Lakshminarayanan

...Petitioner

Vs.

The Assistant General Manager – HRM/
Disciplinary Authority,
Tamil Nadu Grama Bank, Head Office,
Vigilance Department,
No.6, Yercaud Road,
Hasthampatti, Salem – 636 007.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the charge sheet dated 23.03.2023 in TNGB/VIG/CS/24/2022-23 on the file of the respondent and quash the same.

For Petitioner : Ms.D.Geetha

For Respondent : Mr.N.Dilipkumar,
Standing Counsel.

ORDER

The petitioner joined Pandiyan Grama Bank as Office Assistant in the year 2013. The bank was later amalgamated with Pallavan Grama Bank and is now known as Tamil Nadu Grama Bank. The petitioner is now working in Arumuganeri Branch, Thoothukudi Region as Group B Office Assistant (Multi purpose). The petitioner is a trade union activist. He is an office bearer of the Tamil Nadu Grama Bank Workers Union. The petitioner is facing disciplinary action at the hands of the management. The petitioner had filed writ petitions assailing them.

2.The petitioner came to be suspended on 05.08.2022 on the ground that he had posted certain objectionable messages mocking the administrative process/decisions and belittling the higher authorities in a WhatsApp group on 29.07.2022. The suspension order was stayed in WP(MD)No.18705 of 2022 on 18.08.2022. After revoking the suspension, the impugned charge memo came to be issued. Challenging the same, the present writ petition was filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside charge memo and grant relief as prayed for.

4.The respondent has filed counter affidavit and the learned standing counsel for the bank took me through its contents. The prime contention of the learned standing counsel is that the message posted by the petitioner is per se defamatory. The Board of Directors of the Bank includes women IAS officers. The petitioner had described their actions in unflattering terms. As per the conduct Rules and the instruction issued by the management, the act committed by the petitioner constitutes misconduct. Relying on a catena of decisions, the learned Standing Counsel contended that the writ petition is not maintainable. He pressed for its dismissal.


5.I carefully considered the rival contentions and went through the materials on record. The Tamil Nadu Grama Bank (Officers and Employees) Service Regulations, 2019 governs the conduct of the employees of the Bank. Regulations 18 and 20 read as follows:-

”18.Liability to abide by the regulations and order:- every officer or employee shall confirm to and abide by these regulations and shall also observe, comply with and obey and directions which may, from time to time be given to him by any person or persons under whose jurisdiction, superintendence or control he may for the time being be posted.

20.Obligation to promote the Bank's interest:- Every officer or employee shall serve the Bank honestly and faithfully, and shall use his utmost endeavor to promote the interests of the Bank and shall show courtesy and attention in all transactions and dealings with officers of Government, the Bank's constituents and customers.”

6.The management had issued Circular No.82/2019-20 dated 23.07.2019 regulating the conduct to be followed by the employees of the Bank while expressing views in social media. It is as follows:-

Circular No.
82/2019 - 20

 Tamil Nadu Grama Bank
Head Office :: Salem

Date:
23.07.2019

HRM Department

SUB: EXPRESSING VIEWS IN SOCIAL MEDIA BY EMPLOYEES

The Board, in its meeting held on 10.07.2019, approved the code of conduct to be followed by the employees of the Bank while expressing views in Social Media. The code of conduct approved by Board are,

1. No employee of the Bank shall establish/form/promote any group/community on any internet site which uses the logo of Tamil Nadu Grama Bank or shall become member of any such group or community unless such group is expressly created or permitted by the Bank. Usage of Bank's logo / colour scheme is prohibited.
2. No Employee shall either in his/her name or by using any ID/name other than his/her name create profile in any social network / media or participate in any other social network profile/page created by Third Party to express / post any views therein in relation to the Bank in general.
3. No employee shall write/express anything in any internet site or social media that may damage the reputation of the Bank or any of its employees.
4. No employee shall post/express any remarks/views in any internet site or social media which may be defamatory to the Bank or officials or its employees in their official capacity
5. No employee shall criticize the management of the Bank or the business processes or strategies of the Bank or policies of the Bank on any internet site or social media.
6. No employee shall disclose any information about any employee or customer of the Bank including their personal details on any internet site or social media.
7. No employee shall, without express authority, use the name "Tamil Nadu Grama Bank" while expressing any personal views in any of the internet sites/social media on any topic which could be misconceived / misleading as views of the Bank. If such views are expressed, it has to be specifically stated that it is the views of the individuals / author and does not represent the views of the Organisation / Bank with a specific disclaimer clause.
8. No employee shall engage in collusive behaviour on any internet site or social media, with Bank's competitors or employees.
9. No employee shall canvass for any donation, lottery or third party marketing/business promotional activities/affairs on any internet site or social media.
10. No employee shall disclose on any internet site or social media any information which he/she has received as an employee of the Bank for internal circulation only

11. No employee of the Bank without obtaining prior written approval from the Competent Authority.

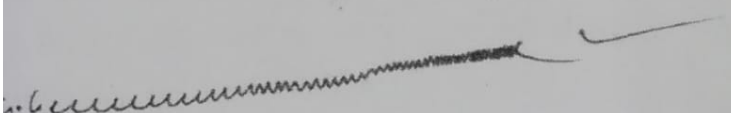
a. Shall express any view on any internet site or social media viz WhatsApp, Instagram, Twitter, Face book etc. about the working or the business of the Bank or generally about Tamil Nadu Grama Bank or any of its officials

b. Shall post/express any views or opinion on behalf of the Bank by using his/her official position in the Bank

c. Shall publish any official information/ circulars/ memorandum/ documents etc. which are of the record of the Bank.

If any of the staff members violating the above guidelines will be viewed very seriously and appropriate disciplinary action will be initiated against them as per extant guidelines.

Please bring the contents of this circular to all the staff of the branch/Office.


General Manager

7. The argument of the learned standing counsel is that the employees have to comply with and obey the instructions issued vide Circular No.82/2019-20 dated 23.07.2019. Since the petitioner has contravened the same, Regulation 39 which provides for penalties for breach stands attracted. The question that calls for consideration is whether this contention of the management is sustainable in the facts and circumstances of the case.

8.The petitioner admittedly posted the subject message in a WhatsApp group. WhatsApp is essentially a communication platform. It is end-to-end encrypted. Messages can be sent by one to another. In the alternative, there can also be a group of persons among whom the messages can be privately shared. Someone who is not a part of the group cannot have access to the conversation exchanged among the WhatsApp group members.

9.The petitioner started a WhatsApp group known as “AIRBEA-TN and Pudukkottai”. According to him, it is a private group that exists to organize their union activities and to communicate among them. The issue is whether the aforesaid circular can be deployed to regulate the activities on the said platform. If the circular is applied literally and verbatim, the act of the petitioner does amount to misconduct. Even though the circular has not been formally impugned, I will adopt the approach approved by the Hon'ble Supreme Court in ***Bharathidasan University Vs. AICTE (2001) 8 SCC 676***. The following ratio was laid down therein:-

“When the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the Courts are bound to ignore them when the question of their

enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which is shown and found to obviously and patently lack.”

I will not strike down the circular. But I can certainly read it down so that it is in conformity with the law of the land. The Industrial Disputes Act, 1947 forbids unfair labour practices. The fifth schedule to the Act catalogues them. If the employer interferes with, restrains or coerces workmen in the exercise of their right to organize a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that amounts to unfair labour practice. The very purpose of the employees coming together is to negotiate with the management in respect of their service conditions. If necessary, the employees will have to even fight with the management for acceptance of their demands. These are legitimate activities in a democratic republic. Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression. It is of course subject to reasonable restrictions. A government servant definitely cannot claim the same extent of right which a private citizen enjoys. He is governed by Conduct Rules. The petitioner is also placed

likewise. When even prisoners have fundamental rights and it has been declared by the Apex Court that Part III of the Constitution does not stop at the prison gates, it would be ridiculous to suggest that the moment a person becomes a bank employee, he has to bid good-bye to Article 19(1)(a). The fundamental right insofar as it applies to the petitioner might have lost a bit of sheen but its core would remain with all vigor.

10.There is something called “right to vent”. Every employee or a member of an organization will have some issue or the other with the management. To nurture a sense of grievance is quite natural. It is in the interest of the organization that the complaints find expression and ventilation. It will have a cathartic effect. If in the process, the image of the organization is affected, then the management can step in but not till then.

11.Let us assume that a group of employees are having a chat in one of their homes. So long as it is a private chat, it cannot attract the regulatory frame work of the management. The common law principle is “everyman's home is his castle”. If bar room gossip is published, that would definitely attract contempt of Court. But then, so long as it remains private, cognizance cannot be taken. The world has become

a global village. It is connected by digital technology. The principles applicable to a chat in a home can be applied to what takes place in an encrypted virtual platform that has restricted access. Such an approach alone will be in consonance with liberal democratic traditions. We are yet to enter into the worlds envisaged by Aldous Huxley in “Brave New World” and George Orwell in “1984”. What the respondent proposes amounts to thought-policing.

12.The concept of privacy is now a recognized fundamental right [**AIR 2017 SC 4161 (Justice K.Puttaswamy (Retd.) vs. Union of India)**]. Not only individuals but even groups have privacy rights. Time has come to recognize the concept of “group privacy”. So long as the activities of a group do not fall foul of law, their privacy must be respected. If the members of a WhatsApp group share child pornographic content, it is a crime and a punishable activity. If the members conspire to commit any unlawful act, then again, the regulatory framework will step in. But when the members of a WhatsApp group are merely discussing among them, matters of common interest, that cannot be a target of attack. The members of the WhatsApp group formed by the petitioner felt aggrieved by some of the actions of the respondent Bank. The petitioner expressed his views. Of course, the manner of expression cannot be said to be in

good taste, but then, everyone has his own way of articulating. When I expressed my disapproval, the petitioner unconditionally apologized in writing. If the management has a mole among the members and snooped the contents of conversation among them, the person who had expressed his opinion in the first instance cannot be proceeded against. In the coming days, powerful managements may be possessed with Pegasus-like technology providing them access to private conversations. Courts may dread such scenario, but then would still firmly say that charges cannot be framed on the strength of information gleaned through such means. Of course, the content shared over the end-to-end encrypted communication platform must be within the legal bounds mentioned above.

13.The Hon'ble High Court of Kerala (The Hon'ble Mr.Justice A.Muhamed Mustaque) observed in WP(C)No.27355 of 2018 dated 28.09.2018 (Anil Kumar A.P vs. Mahatma Gandhi University and ors) as follows :

“4.Emotional outburst of a disgruntled, through social media in a louder voice is part of his right of free speech.....

5....

6.Servitude is an outlook of an individual and not a governing norm in a public Institution. Discipline is a norm. Discipline and servitude are to be distinguished. If

an employee speaks out in the social media in a general perspective which is not inconsistent with the collective interest of the Institution, that is part of his right of free speech. No authority should expect one to be silent. Survival of public Institution depends upon how it accounts for democratic values. Free expression is the corner stone of democratic value. Every functionary of public power therefore, must command liberty to their constituents.”

14.The Hon'ble Judge in WP(C)No.31703 of 2018 dated 05.12.2018 (*Dr.Prasad Pannian v. The Central University of Kerala and ors*) observed as follows :

“5.Posting in a Face Book or social media has become a matter of concern for public authorities. It is a matter of formulation of opinion of others. As pointed out by this Court in several judgments, in the absence of any social media guidelines, such post has to be viewed to find out whether it would be detrimental to the collective interest of the University. The expression of opinion of a teacher in regard to an action cannot be considered as a criticism. On a glance of the Face Book posting, it can be seen that the petitioner was sympathising a student who has to undergo such pain and trauma of criminalisation of his act. What would constitute a misconduct would depend upon the nature of criticism or comment. 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.”

15.The Hon'ble High Court of Kerala in WP(C)No.21994 of 2020 dated 26.03.2021 (Retheesh P.V vs. Kerala State Electricity Board Ltd) sustained the contention of the petitioner's counsel that the posts made in a private WhatsApp group without any access to the public even if denigratory cannot ipso facto be construed as a disciplinary infraction by an employee.

16.Judged by the above standard, the message posted by the petitioner cannot be said to attract the Conduct Rules laid down by the management. Any employee is bound to show courtesy to the superior officer in his dealings. But while gossiping privately with a fellow employee, the officer may come in for all kinds of criticism. If this had taken place over a cup of tea outside a shop, the management could not have taken note of it. Merely because the same exchange took place among a group of employees on a virtual platform with restricted access, it cannot make a difference.

17.The Hon'ble High Court of Tripura (Hon'ble The Chief Justice Mr.Akil Kureshi) in WP(C)No.1363 of 2019 dated 09.01.2020 (**Lipika**

Pual v. The State of Tripura and ors) was concerned with the case of disciplinary action initiated against a government employee who allegedly participated in a political rally and canvassed for a political party in Facebook. While setting aside the charge sheet, it was held that a government servant 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 desired, of course, subject to not crossing the borders laid down in the conduct rules. Even while respectfully agreeing with what has been stated above, I would add that the borders cannot be unreasonably drawn.

18.The Hon'ble Apex Court in **Anuradha Bhasin vs. UOI (2020) 3 SCC 637** held that the freedom of speech and expression through the medium of internet is an integral part of Article 19(1)(a) and accordingly, any restriction on the same must be in accordance with Article 19(2) of the Constitution.

19.The Hon'ble Supreme Court of India in **Kaushal Kishor v. State of UP (2023) 4 SCC 1** observed that even if a person holds an opinion which is not in conformity in constitutional values, he cannot be taxed or penalized. It is only when his opinion gets translated into

action and such action results in injury or harm or loss that an action in tort will lie. It was held that a fundamental right under Article 19 can be enforced even against persons other than the State or its instrumentalities.

20.It is well settled that a charge memo can be quashed if assuming that all the acts attributed to the delinquent are taken to be true, still, it would not be amount to act of misconduct. As already held, the petitioner is very much possessed of the right to vent. The opinion was not expressed publicly. It was shared among the members of a private WhatsApp group. The management has not disclosed as to how they became aware of the post. It has not been shown as to how the bank's interest has been affected. There are some political leaders who make statements that are in bad taste and yet refuse to apologize. When I indicated that while the petitioner can criticise the management, the language also matters, he readily apologized. In these circumstances, the act committed by the petitioner cannot amount to misconduct. The impugned charge memo is quashed.

21.This writ petition is allowed. No costs. Connected
miscellaneous petitions are closed.

08.08.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
Skm

G.R.SWAMINATHAN, J.

SKM

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