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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
ON THE 28th OF FEBRUARY, 2024
WRIT PETITION No. 8370 of 2023**

ETITIONER

(BY SHRIABHISHEK SHARDA, ADVOCATE.)

AND

1. THE STATE OF MADHYA PRADESH SECRETARY
VINDHYACHAL BHAWAN DISTRICT BHOPAL
(MADHYA PRADESH)
2. THE COMMISSIONER, INDORE DIVISION
COMMISSIONER, OFFICE, DISTRICT INDORE
(MADHYA PRADESH)
3. THE COLLECTOR. DISTRICT ALIRAJPUR
COLLECTOR OFFICE, ALIRAJPUR (MADHYA
PRADESH)
4. THE CHIEF EXECUTIVE OFFICER, ZILA
PANCHAYAT ALIRAJPUR ZILA PANCHAYAT
OFFICE, ALIRAJPUR (MADHYA PRADESH)

....RESPONDENTS

(BY SHRI SUDHANSHU VYAS, PANEL LAWYER.)

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*This petition coming on for orders this day, the court passed the
following:*

ORDER

01. The petitioner has filed the present petition being aggrieved by order of suspension dated 06.02.2023 passed by Commissioner Indore solely on the

ground that he forwarded objectionable political message in the Whatsapp group of employees / OPS Union Alirajpur.

02. The petitioner was served with the show-cause notice dated by the Chief Executive Officer, Zila Panchayat, Alirajpur that he has forwarded objectionable message in Whatsapp group of employees. The petitioner submitted a reply that his six years old daughter was operating with the mobile and inadvertently she forwarded the message in the group, therefore, that was not intentional and *bona fide* mistake and submitting apology. Since the reply was not found satisfactory, as a result, he was suspended by the Commissioner Indore vide order dated 06.02.2023 and now the charge-sheet dated 09.03.2023 (Annexure P/6) has been issued to the petitioner under Rule 3 of Civil Services (Conduct) Rules, 1965 (for brevity "Rules of 1965"). The petitioner has also challenged the charge-sheet on the ground that he has not made any derogatory remarks in public and this group is only confined to the members of the group. The forwarded message is not his personal opinion, it was only a message which came in his mobile from other group which he forwarded without any intention to defame any political party or person or religion.

03. After notice, respondents have filed the reply by submitting that being a Government employee it is not expected from the petitioner to forward such political message even in the Whatsapp group. He must show absolute integrity towards the Government. Therefore, he has rightly been subjected to suspension and disciplinary enquiry. It is further submitted that the petitioner has come up with the wrong plea that this message was inadvertently forwarded by his daughter but in service book there is no such disclosure about his daughter. He has only three sons, therefore, he took a false plea in the defence hence, same is liable to be rejected.

I have heard learned counsel for the parties and perused the record.

04. The petitioner has taken out the print of the online service book in which name and date of birth of his daughter is mentioned, he has also filed the birth certificate of his daughter. It appears that he has not got his service book updated about the birth of daughter. The daughter's name is also mentioned in the Family Samagra ID of the petitioner which is filed as Annexure P/7. Therefore, petitioner has not taken a false plea that his daughter forwarded the message by mistake.

05. Even otherwise, forwarding any message in a Whatsapp group does not come in any of the provision of Rule 3(1)(i) and (iii) of Rules of 1965. If any member forwards a message in the Whatsapp group which does not mean that it is his personal opinion. Any message in the form of text, photo or video sent in Whatsapp group is confined to the members of the said group. It cannot be said that message had been made public. The Whatsapp group is always formed by the friends and like minded people amongst the contact list. Without the prior permission, third person cannot be added in the group. If any member of the group is not willing to continue, he may exit or delete the group from his mobile. Therefore, it is personal and private group which has nothing to do with office work of the Government. The Government has not issued any circular or made statutory provision for Government employee / office to create Whatsapp group, therefore, any activity of Government employee in the group cannot be linked with serious disciplinary rules.

06. Similar issue came up for consideration before the High Court of Madras in case of *A. Lakshminarayanan V/s Assistant General Manager*

[2023 SCC OnLine Mad 5314] in which following observation has been made. The details are as under:

12. 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.

13. The concept of privacy is now a recognized fundamental right [(2017) 10 SCC 1: AIR 2017 SC 4161 (*Justice K. Puttaswamy (Retd.) v. 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.

14. 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 v. Mahatma Gandhi University)* as follows:

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

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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."

15. The Hon'ble Judge in *WP(C) No. 31703 of 2018 dated 05.12.2018 (Dr. Prasad Pannian v. Central University of Kerala)* 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."

16. The Hon'ble High Court of Kerala in *WP(C) No. 21994 of 2020 dated 26.03.2021 (Retheesh P.V V. Kerala State Electricity Board Ltd.)* Sustained the contention of the petitioner's counsel that the posts made 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.

17. 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.

सत्यमेव जयते

18. 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. State of Tripura)* 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.

19. The Hon'ble Apex Court in *Anuradha Bhasin v. 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.

20. 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 instrumentalities. or its

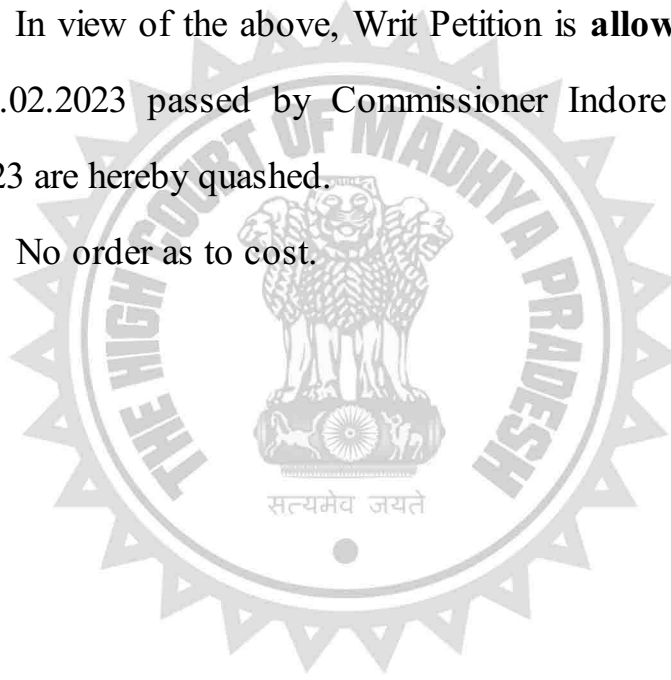
21. It is well settled that a charge memo can be quashed if assuming that all the acts attributed to the delinquent are taken to be true, still, it would not be amount to act of misconduct. As already held, the petitioner is very much possessed of the right to vent. The opinion was not expressed publicly. 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.

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

07. In view of the above, Writ Petition is **allowed**. Order of suspension dated 06.02.2023 passed by Commissioner Indore and charge-sheet dated 09.03.2023 are hereby quashed.

No order as to cost.

Divyansh



**(VIVEK RUSIA)
JUDGE**