

(1994) 02 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 1705 of 1991

Nawab Haider and Another	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 17-02-1994

Acts Referred:

Citation : (1994) 02 PAT CK 0009

Final Decision : Dismissed

Judgement

Naresh Kumar Sinha, J.—The constitutional validity of Sub-rules (1) and (2) of Rule 6 of the Bihar Government Servant's Conduct Rules, 1976 (hereinafter as the "Conduct Rules") is under challenging in this application under Articles 226 and 227 of the Constitution of India.

2. The petitioner No. 1 is a Government servant in the department of Industries, Government of Bihar, and is presently posted on deputation as Cashier, Bihar State Textile Corporation Ltd. Petitioner No. 2 is his wife but she is admittedly not in Government service. The petitioners, it is stated, are interested in joining political parties for their all round development without prejudice to the implementation of the National Policy and official duties cast upon the Government servant. Their case is that the provisions of Sub-rules (1) and (2) of Rule 6 of the Conduct Rules are violative of their fundamental rights enshrined under Articles 19(1)(c) and 21 of the Constitution of India inasmuch as they prohibit them from becoming a member of a political party. The framing of the Rules is said to be politically motivated to keep Government servant as second grade citizen by snatching away his/ her right to speech and expression guaranteed under Article 19(1)(a) of the Constitution. The petitioner has also expressed the apprehension that in case he is allowed to join politics after his superannuation he will become a very junior member of the party. The law debarring the Government servant and his family members from joining political parties, it is said, cannot be treated as reasonable restriction as it amounts to putting the Government servant and his whole dynasty is slavery by infringing

their fundamental rights. The said provisions of the Conduct Rules have also been described as opposed to public policy.

3. We have heard at length learned Counsel for the petitioners and the learned Advocate-General after he informed us that no counter-affidavit was being filed on behalf of the State. The Governor of Bihar in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India has been pleased to make certain Rules to regulate the conduct of Government servants and the relevant provisions of Rule 6 of the said Rules are, to quote:

6. Taking part in politics and election.-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 assist in any other manner, any political movement or activity.

(2) It shall be the duty of every Government servant to endeavour to prevent any member of the 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 servant is unable to prevent a member of his family from taking part in, or subscribing in aid of, assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

The contention being raised on behalf of petitioner No. 2 that the relevant Conduct Rules either prohibit or debar her from joining any political party is entirely misconceived. She is not a Government servant and as wife of petitioner No. 1, a Government servant, nothing in Sub-rules (1) or (2) of Rule 6 of the Conduct Rules prohibited her from joining any political party.

4. The Conduct Rules are for regulating the conduct of Government servants and applied to every person appointed to a civil service or posts in connection with the affairs of the State of Bihar and who are subject to the rule-making powers of the Government, They impose a code of conduct on Government servants not only in reference to their official duties but in respect of their private lives as well. The provisions of Sub-rule (2) of Rule 6 do not seek to impose any code of conduct or discipline on any member of the family including any dependant of a Government servant as defined in Clause (c) of Rule 2 of the Conduct Rules. What Sub-rule (2) of Rule 6 of the Conduct Rules does it to impose a duty on the Government servant to endeavour to prevent any member of the family from doing the kind of acts mentioned therein. It does not require the Government servants to prevent them from committing those acts at all costs but only to endeavour i. e. to attempt to prevent the members of the family from committing act which is, or tends directly or indirectly to be subversive of the Government as by law established and in the event of failure of his attempt, the sub-rule merely required him to make a report to that effect to the Government.

5. The Bihar Government Servant's Conduct Rules, 1956 which were repelled by Rule 27 of the Conduct Rules of 1976 had in Sub-rules (1) and (2) of Rule 4

provisions which are almost similar to the provisions of Sub-rules (1) and (2) of Rule 6 of the Conduct Rules, 1976. There is only a difference in phraseology so far Sub-rule (2) of Rule 4 of the Conduct Rules of 1956 was concerned which reads as follows:

4. (1) * * * *. * *

(2) It shall be the duty of every Government servant to endeavour to prevent any member of the 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 servant fails to prevent a member of his family from taking part in, or subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

While Sub-rule (2) of Rule 4 of the Conduct Rules, 1956, provides that where a Government servant fails to prevent a member of his family from taking part in or subscribing in aid of or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government, Sub-rule (2) or Rule 6 of the Conduct Rules, 1976 mentions that where a Government servant is unable to prevent a member of his family from taking part in or subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government. The two expressions namely, where a Government servant "fails to prevent" and where a Government servant is "unable to prevent" mean one and the same thing. Rule 4-A introduced by way of amendment to the Conduct Rules, 1956 in 1957 and which prohibited Government servants from participating in any demonstration or resort to any form of strike in connection with any matter pertaining to his condition of service was the subject-matter of challenge in a writ petition filed under Article 226 of the Constitution which was dismissed by the High Court vide *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, . The Supreme Court while partly reversing the aforesaid decision of the High Court the judgment reported in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, was pleased to observe as follows:

The Constitution of India does not exclude Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons are specifically named Article 33 of the Constitution having selected the services, members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, other classes of servants of Government in common with other persons and other citizen of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedom in relation to Articles 19(1) (e) and (g).

6. A provision in the U. P. Government Servant's Conduct Rules under which a Government servant was liable to be removed for being a member of a political party was challenged before the Allahabad High Court and the Court in the case of Ramesh Chandra Vs. State Government of Uttar Pradesh and Others, , expressed the view that the provision did not infringe Article 16 of the Constitution of India as it is in public interest that Government servant should not be allowed to join political party because it is a paramount importance that the Government servant should be free from all political bias. The Madras High Court in a decision reported in K. Dakshinamurthi Vs. State of Madras and Others, , while dealing with Rule 21 of the Madras Subordinate Police Officers Conduct Rules was pleased to observe that the freedom of political conviction is a fundamental right of a citizen in a democratic State and a civil servant of the State is also entitled to this freedom but by virtue of his special obligation as a civil servant he is debarred from giving expression to his conviction in a manner which will interfere with his official duties as a servant of the Government. The Court went on to observe that there is nothing in the Rules to prohibit a Government servant from having a mental sympathy or an inward meaning in favour of any political party as long as it remains unexpressed in any of the modes declared objectionable by the Rules of Conduct.

7. The policy of the law to keep the Government servant aloof from politics does not enjoin upon him the duty to have no political convictions for had it been so how could a Government servant participate in the election to the House of the People and to the Legislative Assemblies of States on the basis of adult suffrage under Article 326 of the Constitution of India ? In a decision reported in Krishna Chandra Das and Anr. v. District Registrar Puri and Ors. 1975 SLJ 90, the Orissa High Court was pleased to observe that every Government servant as an individual has his independent right of franchise conferred under Article 326 of the Constitution and, therefore, has his mental sympathies for some political party or the other but he oversteps it and becomes liable to punishment when he exhibits that sympathy or makes a parade of it. If the Government servant was otherwise qualified for being a voter in such an election he could cast his vote in such election only on the basis of his political convictions. In other words, the Government servant may have his freedom to choose any party to vote for but all that is required of him by Sub-rule (1) of Rule 6 of the Conduct Rules is not to give expression to his convictions in any of the manners indicated therein. The restrictions imposed under Sub-rule (1) of Rule 6 must be construed as reasonable restrictions placed in the exercise of the fundamental right to freedom of speech and expression and to form associations or unions under Article 19 of the Constitution as without them there will be no discipline and consequently no efficiency in the civil services of the State, Thus the impugned provisions of the Conduct Rules do not infringe the rights of the petitioners under Article 19(1)(a)(c) of the Constitution of India. So far as the prohibition from becoming a member of a political party is concerned, it is not that the Government servant is made to suffer from a legal disability to become a

member of a political party. He can do so provided he ceases to be a Government servant. If petitioner No. 1 is keen to join a political party and was anxious to avoid the prospect of becoming a junior member of the party if he did so after his superannuation nothing prevented him from resigning the service to free himself from the shackle of Rule 6 (1) if that was the way he thought of the prohibitions contained therein. The Supreme Court while dealing with certain provisions of West Bengal State Health Service Act and West Bengal Health Service Rules, 1993, in Sukumar Mukherjee Ors. Vs. State of West Bengal and another, , it may be mentioned, was pleased to observe that Government service is also an occupation and those who choose it cannot complain of its discipline or insist upon pursuing it on their terms.

8. There is thus no merit in this application and it is dismissed but in the circumstances of the case there shall be no order as to costs.

K.S. Paripurnam, C.J.

9. I agree.