



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 7349/2021

Lava Kumar Sharma Son Of Late Shri Jamana Sahay Sharma,  
Aged About 53 Years, R/o Village Mau, Post Chandpur, Tehsil  
Mundawar, District Alwar.

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary,  
Secondary Education Department, Govt. Secretariat,  
Rajasthan, Jaipur.
2. The Director, Secondary Education, Rajasthan, Bikaner.
3. Joint Director, School Education, Jaipur Division, Jaipur.
4. Chief District Education Officer, Alwar.

-----Respondents

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For Petitioner(s) : Mr. Punit Singhvi, Adv.  
Mr. Ayush Singh, Adv.

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**HON'BLE MR. JUSTICE ASHOK KUMAR GAUR**

**Order**

**26/07/2021**

Learned counsel for the petitioner submitted that the petitioner is a Senior Teacher (Mathematics) working at Government Senior Secondary School Babedi, Bansur, District Alwar.

Learned counsel submitted that the petitioner was placed under suspension vide order dated 18.06.2021 by the respondents, exercising powers under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeals) Rules, 1958.

Learned counsel submitted that it was alleged in the order of suspension that the petitioner by his mobile phone had sent messages through WhatsApp on social media against the State



Government and a particular Political Party & further by sending such messages/video/photo, the petitioner had shown total disregard to the norms required to be maintained by a Government Servant.

Learned counsel submitted that the order dated 18.06.2021 was put to challenge before the Rajasthan Civil Services Appellate, Tribunal (hereinafter referred to as 'the Tribunal') by filing appeal No.2162/2021.

Learned counsel submitted that the Tribunal vide order dated 06.07.2021 has refused to pass an ex-parte interim order and only issued notices to the respondents in the appeal and the next date was fixed for 27.07.2021.

Learned counsel for the petitioner submitted that the alleged act of the petitioner cannot be termed as a misconduct for which an enquiry can be conducted against him or he is required to be placed under suspension.

Learned counsel for the petitioner has produced photocopies of WhatsApp messages, which are alleged to be sent by him on the social media.

Learned counsel has shown the WhatsApp messages and submitted that the petitioner in no manner has criticized the Government or the policy of the State Government and expression of the petitioner in respect of certain events, are not targeted against Government or any Political Party.

Learned counsel submitted that the right, which is given to the petitioner under Article 19(1)(g) of the Constitution of India cannot be curtailed by the respondents by taking recourse to such action of placing the petitioner under suspension.



Learned counsel further submitted that even the criticism of any executive action, cannot be termed as a misconduct for which, the Government employee can be punished by way of a departmental enquiry.

Learned counsel for the petitioner refers to a judgment passed by the Apex Court in the case of **Vijay Shankar Pandey Vs. Union of India and Anr.**, reported in **(2014) 10 SCC 589**.

Learned counsel also refers to a judgment passed by the Apex Court in the case of **Shreya Singhal Vs. Union of India** reported in **(2015) 5 SCC 1**, whereby the Apex Court has considered the scope of Articles 19(1)(a) & 19(2) of the Constitution of India and also considered sub-section 66-A, 69-A and 79 of Information Technology Act, 2000.

Learned counsel for the petitioner also refers to a judgment passed by the Kerala High Court in the case of **Dr. Prasad Pannian Vs. The Central University of Kerala** passed in **Writ Petition (C) No.31703/2018** dated 05.12.2018.

Learned counsel submitted that expression of views by an employee should not be prevented by the State in a democratic society and further for constituting a misconduct, it will depend upon the nature of criticism or comment made by the Government Servant.

Learned counsel also refers to an order passed by the High Court of Tripura, Agartala in the case of **Smt. Lipika Pual Vs. The State of Tripura & Ors. [WP (C) No.1363/2019]** decided by order dated 09.01.2020 and the order passed in the case of **Jayant s/o Sarvottamrao Kharwadkar Vs. State of Maharashtra and Anr. reported in 2018(4) Mh.L.J.656**.



Learned counsel submitted that the Tribunal while hearing the stay application of the petitioner has not considered the law, which was cited before it, passed by the Kerala High Court.

The matter requires consideration.

Issue notice of the writ petition as well as stay application, returnable on 23.08.2021. Notices be given 'dasti', if prayed.

In the meanwhile, effect and operation of the suspension order dated 18.06.2021 shall remain stayed and the petitioner would be allowed to continue at the same place where he was continuing prior to passing of the suspension order dated 18.06.2021.

This Court further finds that the matter requires consideration by the High Court and as such the Tribunal is restrained to proceed in the appeal.

(ASHOK KUMAR GAUR),J

Ramesh Vaishnav/86/Monika

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सत्यमेव जयते