

Government Employees & Right to Free Speech

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Manifest pedagogy: The issues of governance have taken center stage in the UPSC exam these days. The issues about the service rules of the civil servant is an important issue of civil service reform. In light of the recent Tripura high court judgement on the same issue if free speech of the civil servants and their participation in political rallies has taken center stage.

In news

The judgment of Tripura High Court on Right to Free Speech of government employees

Placing it in the syllabus

- Role of Civil Services in a Democracy
- Judicial Intervention

Static Dimensions

- Service conduct rules of Bureaucracy on Free Speech
- Difference between Attending and participating in a rally

Current dimensions

- The judgment of Tripura HC and Kerala HC on the issue
- Political Neutrality of Bureaucracy
- The politicization of Bureaucracy
- SC Judgement in Kameshwar Prasad Case

Content

Service conduct rules of Bureaucracy on Free Speech(rule 5)

- **Rule 5(1) stipulates that** no Government servant shall be a member of, or be otherwise associated with, any political party or any organization which takes part in politics nor shall he take part in, subscribe in aid of, or such in any other manner, any political movement or activity.
- **Rule 5(4) stipulates that no Government servant shall canvass or otherwise interfere with, or use influence in connection with or take part in,** an election to any legislature or local authority.

Difference between Attending and participating in a rally

The Tripura High Court has stated that there is a vital difference between attending a rally and participating in a rally. During election times as is well known, political parties and their leaders as well as nominated candidates take out rallies and address public gatherings. **Every person who is present in the audience during such addresses cannot be stated to have participated in the rally.** The presence of a person does not either establish his or her political affiliation

The judgment of Tripura High Court

- In its judgment, the court has mentioned that government servants 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 Akil Kureshi has mentioned that **“As a Government servant the petitioner 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 she desired, of course, subject to not crossing the borders laid down in sub-rule (4) of Rule 5 of the Conduct**

Rules”

- In the backdrop, the Petitioner Lipika Paul had been suspended from her services as a UDC in the State Fisheries Department, four days before her retirement, for attending a political programme in December 2017 and making a political post in 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 by making defamatory and indecent comments against political leaders.

Kerala HC on the issue

- In the year 2018 Kerala High Court had directed the state to reinstate a **KSRTC conductor placed under suspension for circulating allegedly derogatory remarks against the Chief Minister of Kerala Pinarayi Vijayan** through Whatsapp. However, his reinstatement was made subject to disciplinary proceedings.
- “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 that order.
- Justice Mustaque had also in November 2018 held that continued **suspension of a University Assistant of Mahatma Gandhi University**, who posted sarcastic comments in social media following his removal from the membership of University Employees Association, was unjustified.
- **“Discipline and servitude are to be distinguished. If an employee speaks out in 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. The survival of public Institution depends upon how it accounts for democratic values. Free expression is the cornerstone of democratic value. Every functionary of public power, therefore, must command liberty to their constituents”, Justice Mustaque stated in that judgment.

Political Neutrality of Bureaucracy

Sardar Patel had made the following observations in the Constituent Assembly to support the continuance of the pre-independence civil service structure:-

“It needs hardly to be emphasized that an efficient, discipline and contended civil service assured of its prospects as a result of diligent and honest work, is a sine-qua-non of sound administration under democratic regime even more than under an authoritarian rule. **The service must be above party and we should ensure that political considerations, either in its recruitment or in its discipline and control,** are reduced to the minimum if not eliminated altogether.”

The politicization of Bureaucracy

It refers to undue political influence in the governance due to nexus between bureaucracy and politics resulting in government appointing their own people to sensitive positions and higher offices.

The undue political interference of the government in power in the functioning of the central bureau of investigation has led to severe criticisms about the institute. Supreme Court even called CBI as caged parrot which speaks for its masters.

Political neutrality is no longer the accepted norm with many civil servants getting identified, rightly or wrongly, with a particular political dispensation. There is a perception that

officers have to cultivate and seek patronage from politicians for obtaining suitable positions even in the Union Government. As a result, the civil services in public perception are often seen as increasingly politicized.

SC Judgement in Kameshwar Prasad Case

As for the question of the right to strike, the Supreme Court has held that **there is no fundamental right to go on strike. "The question of the right to strike – whether fundamental, statutory or equitable/moral right – in our view, no such right exists with the government employees. Law on this subject is well settled and it has been repeatedly held by this court that the employees have no fundamental right to resort to strike"**, the Apex Court opined in Kameshwar Prasad and others vs State of Bihar case.