

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 8073 of 2023.

Decided on :16th September, 2026

Suneel Kumar

...Petitioner.

Versus

HRTC & Anr.

....Respondents.

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹ yes.

For the Petitioner:

Mr. Manish Sharma, Advocate.

For the respondents:

Mr. Raman Jamalta, Advocate.

Jyotsna Rewal Dua, Judge.

Himachal Pradesh Staff Selection Commission issued an advertisement on 28.12.2019 for filling up several posts of conductors in Respondent No. 1, Himachal Pradesh Road Transport Corporation. Petitioner applied for the advertised posts and participated in the selection process. He emerged successful therein. Respondents offered appointment to him on the post of conductor vide order dated 18.11.2021. Petitioner accepted the offer and he was accordingly appointed and posted as such with the respondent-corporation on contract basis. On 07.12.2021, an agreement was executed between the parties wherein respondents-Corporation mentioned the terms and conditions of petitioner's appointment.

¹ Whether reporters of the local papers may be allowed to see the judgment?

1(ii). On 21.08.2023, Respondent No. 1 issued an office order containing certain guidelines for regulating the conduct of its employees on social media platforms and directed its employees to adhere to the guidelines, failure to do so was to entail disciplinary action.

1(iii). Certain conductors of Respondent No. 1-Corporation, including the petitioner, formed a WhatsApp group by the name of "Himachal Parichalak Ekta". Some messages were exchanged by the participants in the WhatsApp group. Petitioner also responded to the conversation in the aforesaid WhatsApp group. In context of two messages shared by the petitioner in WhatsApp group on 04.09.2023, the respondents issued a show-cause notice to him on 26.09.2023. The show-cause notice was issued stating that WhatsApp messages of the petitioner were in violation of Guideline No. ii of the office order dated 21.08.2023; By posting these messages in the WhatsApp group on 04.09.2023, the petitioner had violated the contract agreement dated 07.12.2021 as well. As per the show-cause notice, conclusion was also drawn therein that *"undersigned has come to conclusion that he (petitioner) is not a fit person to be retained in service further"*. The conclusion of petitioner being unfit to be retained in service having already been drawn in the show cause notice, a formal reply was directed to be filed by the petitioner. Petitioner furnished response to the show-cause notice on 04.10.2023, inter alia

highlighting therein that he had not posted any objectionable message; That he had only vented himself out, that too not on a social media platform, but in a private, end-to-end encrypted WhatsApp group. After affording the opportunity of hearing to the petitioner, his reply was not found satisfactory by the respondent and vide office order dated 10.10.2023, his services were terminated by the respondents.

1(iv). It is in the aforesaid background that petitioner has instituted this writ petition seeking quashing of the termination order dated 10.10.2023 seeking direction to the respondents to reinstate him in service with all consequential benefits.

2. Pursuant to the interim order passed in this writ petition on 20.10.2023, petitioner was permitted to continue in service. Learned counsel for the petitioner submitted that though petitioner is continuing in service, however, on account of pendency of this writ petition and the impugned office order having been passed by the respondents terminating his services, the petitioner has not been regularized in service. Consequential service benefits have also not been released to him.

3. Heard learned counsel for the parties and considered the case file.

4. The two WhatsApp messages posted by the petitioner (in vernacular) in the WhatsApp group were as under:-

" 1. जनता परेशान होगी बात मंत्री तक जाएगी फिर बात ये सब करने करवाने वालों पर आएगी तब दबाव बनेगा फिर जाकर ये दोबारा से रिव्यू करेंगे

2. और मैं तो चाहता हूं इनके इन फैसलों का एक महीने रिव्यू हो और देखा जाए निगम को कितना घाटा या मुनाफा नए रूल्स आने के बाद हुआ और कितना पहले इनकम थी जब पुराने रूल लागू थे और इसका ब्योरा सार्वजनिक किया जाए"

Respondents have terminated services of the petitioner on account of his having posted above-extracted two messages in the WhatsApp group on the ground that this action of the petitioner was in violation of Clauses 3 and 8 of the contract agreement dated 07.12.2021 as also the guidelines framed by the respondent in office order dated 21.08.2023.

4(i). Clause 3 of the agreement dated 07.12.2021 (Annexure R-5) reads as under:

"3. The services of the FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee not found good or if a regular incumbent is appointed/posted against the vacancy for which the FIRST PARTY was engaged on contract."

It is not the case of the respondent that performance/conduct of the petitioner as contract appointee was not good. It is also not the case of the respondent corporation that a regular incumbent had been appointed against the vacancy/post for which the

petitioner had been engaged on contract. Pertinently, petitioner had been engaged as Conductor after he underwent a thorough selection process conducted by the respondent corporation through the aegis of Himachal Pradesh Staff Selection Commission, akin to the regular selection process. The said clause, therefore, is not at all attracted to the case in hand.

4(ii). Clause 8 relied upon by the respondent corporation for terminating the services of the petitioner is as under:-

"8. If the contract appointee is found involved in anti management activities such as participation in strike, refusal to perform the assigned work, trying to exert political or any outside pressure on the authorities etc., his/her agreement will be terminated straightway."

None of the eventualities mentioned in Clause 8 exist in the instant case. The said clause, therefore, has been wrongly invoked by the respondent for terminating services of the petitioner.

4(iii). The respondents have next placed reliance upon Guideline No. ii in the office order dated 21.08.2023 (Annexure P-2). It would be appropriate to extract relevant portion of the aforesaid office order:-

"It has been observed by the undersigned that the HRTC employees are using different social media platforms like Face book, Twitter, Instagram, etc. or Instant Messaging applications like WhatsApp, Telegram etc. and creating social media group using name of HRTC, without adhering the proper protocol/ guidelines and permission thereof. As per rules, the employees should refrain from unwarranted sharing, commenting. posting inappropriate posts and content on social media platform. The

employees have been seen to comment or act or behave in a manner that does not conform to the acceptable standards of official conduct.

In view of the foregoing, it has been felt expedient to invoke the guidelines regarding using of social media platform for HRTC employees as under:

i Employees, directly or indirectly, shall not publish, post or release any information on social media that is considered confidential or that is not meant for public dissemination. nor shall they pass any official document or any part thereof to any employee or any such person to whom he is not authorized to communicate such document or information.

ii No HRTC employee shall, through any post, tweet or otherwise, discuss or criticize on social media, any policy pursued or action taken by the Government/ HRTC, nor shall he/she, in any manner, participate in any such discussion or criticism on social media pages/communities/micro logs.

iii No employee shall post, tweet or share content that is political or anti-secular and communal in nature or subscribe to pages, communities or twitter handles and blogs of such nature.

iv HRTC employee shall not post on social media, any such content or comments about passengers or individuals, that are vulgar, obscene, threatening, intimidating or that violate the conduct rules.

V No HRTC employee shall post grievances pertaining to their workplace on social media in the form of videos, posts, tweets or blogs or in any other form, but will follow the already established channels of complaint redressal existing in the corporation.

It is, however, clarified that the above guidelines are not intended to dissuade employees Corporation from using social media for positive and constructive purposes.

It is accordingly enjoined upon all employees working in HRTC to strictly adhere to the aforementioned guidelines and refrain from indulging in unwarranted debates/discussions and sharing/commenting/posting inappropriate posts/ content on social media platform. The violation of these guidelines shall tantamount to misconduct and invite disciplinary action against the delinquent official under the relevant rules."

The purport of the above office order, more specifically guideline No. ii, is that employees of respondent-corporation do not participate in any negative discussion or criticism concerning any policy or action of the State/HRTC on social media pages/community/micro blogs. In ***A. Lakshminarayanan versus Assistant General Manager***², in somewhat similar context, the observations inter alia made were that WhatsApp is essentially a communication platform; It is end-to-end encrypted; Someone who is not a part of the group cannot have access to the conversation exchanged among the WhatsApp group members; Every employee or a member of an organization may have some issue or the other with the management; To nurture a sense of grievance is quite natural. There is something called right to vent; It is in the interest of the organization that 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; When the members of a WhatsApp group are merely discussing among them matters of common interest, that cannot be a target of attack.

In the instant case, petitioner had expressed his views. Petitioner's views may not be palatable to the respondent corporation, but that would not make out a case for terminating his services merely on the

²W.P (MD) No. 9754 of 2023 decided on 08.08.2023, 2023 SCC OnLine Mad 5311

ground that he had posted some messages in the private WhatsApp group. Incidentally, respondents have also imposed upon the petitioner under the contract agreement dated 09.12.2021 a condition that the Conduct Rules are not applicable to the contract appointee, yet in a way, they are applying Conduct Rules of their own liking to the petitioner:-

"12. Provisions of service rules like FR-SR, Leave Rules, GPF Rules, Pension rules & Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointee. They will be entitled for emoluments at the rate of Rs.8310/- per month, i.e. minimum of the Pay Band and Grade Pay (Rs.5910+2400)."

4(iv). Services of the petitioner have been terminated on imaginary reasons. Petitioner had not criticized any policy of the respondent-corporation on any social media platform. It admitted case of the respondent-corporation that petitioner had shared two messages in the WhatsApp group. The WhatsApp group was of Conductors of the respondent corporation. It was not a social media public platform. Petitioner had clarified in his response to the show cause notice issued to him that messages had been sent by him in a private WhatsApp group. Such messages were not available in public domain. The reading of the message also gives the impression that they were in context of a conversation that was going on at that particular time in the private group. It appears that the respondent corporation neither examined the

messages posted by the petitioner or the platform where they were shared. Respondent No. 1 did not even consider it proper to even look at the gist of the messages posted by the petitioner as to whether the same amounted to any negative criticism of the policy of the respondent. Additionally, as noticed previously, while issuing show cause notice to the petitioner on 26.09.2023, the respondent had already formed the conclusion that petitioner was not a person fit enough to be retained in service. What followed thereafter was a mere empty formality on part of the respondents, leading to mechanical termination of the petitioner's services.

5. For the foregoing reasons, this writ petition is allowed. Impugned office order dated 10.10.2023 (Annexure P-7) terminating petitioner's services is quashed and set aside. Petitioner shall be deemed to be in continuous service of the respondent corporation. All consequences in accordance with law shall follow. Pending applications, if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

16th September, 2026.
(jai)