

GAHC010210842023



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/5504/2023**

SABBIR AHMED LASKAR  
S/O LATE MOHIBUR RAHMAN LASKAR, VILL- NICHINTAPUR, P.O.-  
RAJNAGAR, P.S.-SILCHAR, DIST- CACHAR (ASSAM)

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM (DEPARTMENT OF HOME), DISPUR, GUWAHATI-6, ASSAM

2:INSPECTOR GENERAL OF POLICE (CR)  
NAGAON  
ASSAM  
CAMP-DIPHU

3:SUPERINTENDENT OF POLICE  
DIST-DIMA HASAO  
HAFLONG  
ASSA

**Advocate for the Petitioner : MR F Z MAZUMDER**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE**  
**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**  
**ORDER**

**20.09.2023**

Heard Mr. F.Z. Mazumder, learned counsel for the petitioner. Also heard Mrs. M. Bhattacharjee, learned counsel for all the respondents.

2. The petitioner is challenging the impugned Order dated 26.04.2023 passed by the Superintendent of Police, Dima Hasao, Haflong, by which the petitioner has been removed from service, on the ground of having solemnized his second marriage during the currency of his first marriage.

3. The petitioner's counsel submits that it is not in dispute that the petitioner had contracted a second marriage during the currency of his first marriage. However, the disciplinary proceeding that has been initiated against the petitioner is liable to be set aside, alongwith the consequential order of removal, inasmuch as, the petitioner was not allowed to present his defence witnesses. He further submits that no Presenting Officer was constituted in terms of Rule 9 of the Assam Discipline and Service Rules, 1965. He submits that the petitioner who is a Constable of the Armed Branch of the Assam Police is governed by the Assam Civil Service (Conduct) Rules, 1965, even though the petitioner does not belong to the cadre of the police service in terms of Rule 4 of the Assam Police Service Rules, 1966. He also submits that bigamy is not a misconduct and as such, the petitioner could not have been removed from service, only because he had contracted a second marriage during the currency of the first marriage.

In support of his submissions, the learned counsel for the petitioner has relied upon the judgments of this Court in *Jagadish Chandra Nath Vs. State of Assam and Others*, (2019) 4 GLT 1006 and in the case of *Prafulla Kalita Vs. Oil and Natural Gas Commission and Others*, reported in 1995 2 GLR 388.

4. Ms. M. Bhattacharjee, learned counsel for the State respondents, on the other hand submits that the petitioner having contracted the second marriage during the currency of the first marriage, the petitioner had violated the conduct rules and as such, there was no infirmity with the decision of the disciplinary authority in removing the petitioner from service. She also submits that though the impugned order of removal has quoted the wrong provision of law, regarding the bigamous marriage committed by the petitioner, i.e. by quoting Rule 26 of the Assam Civil Service (Conduct) Rules, instead of the correct provision i.e. Rule 24, the mistake in quoting a wrong provision of law does not vitiate or invalidate the impugned order of removal dated 26.04.2023, so long as the power exists.

5. I have heard the learned counsels for the parties.

6. The undisputed fact is that the petitioner, who is a Constable in the Assam Police (Armed Branch), had contracted a second marriage during the currency of his first marriage without taking the permission of the Government. In fact, he is still married to his first wife even till today. The reason for contracting the second marriage, according to the petitioner, was that his first wife had given delivery to two still born babies and as such, his second marriage had been solemnized with due permission being taken from his first wife.

7. The said issue having been found to be proved, the disciplinary enquiry initiated against the petitioner culminated with the removal of the petitioner, vide the impugned Order dated 26.04.2023. The appeal filed by the petitioner against the removal order was also rejected.

8. The basic issue is whether there was any infirmity or illegality in removing the petitioner due to an admitted bigamous marriage, where he had contracted the second marriage during the currency of the first marriage, in violation of Rule 24 of

Assam Civil Service (Conduct) Rules, which states as follows:-

**["24"]. Bigamous marriage-** (1) No Government Servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government Servant shall marry any person who has a wife living without first obtaining the permission of the Government.

**["25"]. Interpretation-** If any question arises relating to the interpretation of these rules, it shall be referred to the Government whose decision thereon shall be final.

**["26"]. Delegation of powers-** The Government may, by general or special order, direct that any power exercisable by it or any head of department under these rules (except the powers under Rule 23 and this rule shall, subject to such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be specified in the order."

9. In the case of *Khursheed Ahmad Khan Vs. State of Uttar Pradesh & Others*, reported in (2015) 8 SCC 439, the Supreme Court, on considering various judgments passed by the various High Courts has held that the penalty of removal from service cannot be held to be shockingly disproportionate, in respect of the charge where a Government servant had performed a second marriage during the currency of the first marriage. The Supreme Court in the above case of *Khursheed Ahmad Khan (Supra)* also considered the question as to whether the impugned conduct rules, which prohibited a Government servant having a living spouse from entering into a second marriage, was violative of Article 25 of the Constitution of India, keeping in view the personal laws available to persons professing different faiths. The Supreme Court held that the Central Civil (Conduct) Rules, 1964 which restrained any Government servant having a living spouse, from entering into a second marriage, did not violate Article 25 of the Constitution.

10. In the present case, Rule 24 of the Assam Civil Service (Conduct) Rules, which is similar to Rule 21 of the Central Civil Service (Conduct) Rules, 1964 restrains any

Government servant having a living spouse from entering into a second marriage, unless Government permission is obtained. In view of the law laid down by the Supreme Court in *Khursheed Ahmad Khan (Supra)*, which is applicable to the facts of this case, this Court does not find any infirmity with the decision of the disciplinary authority in removing the petitioner from service, for having contracted a second marriage, while still having a living first wife.

11. In the case of *Prafulla Kalita (Supra)*, this Court in paragraph 7 had implied that a bigamous marriage was not a misconduct. In the case of *Jagadish Chandra Nath (Supra)*, this Court has held that a Constable was not a Police Officer in terms of Rule 4 of the Assam Police Service Rules, 1966 and that a Armed Branch Police Constable cannot be said to be in the cadre of Assam Police Service Officer. However, the judgments of this Court in the above cases does not say that the Assam Civil Service (Conduct) Rules, 1964 is not applicable to a Constable of the Armed Branch of the Assam Police. Further, as stated earlier, the Supreme Court has laid down the law that a Government Servant can be removed from service for having a bigamous marriage, which amounts to a misconduct.

12. Though the impugned Order dated 26.04.2023 has referred to Rule 26 of the Assam Civil Service (Conduct) Rules, 1965 relating to the bigamous marriage of the petitioner, this Court is of the view that the mention of a wrong provision of law instead of the correct Rule 24 of the Assam Civil Service (Conduct) Rules does not vitiate or make invalid the impugned order, in terms of the judgment of the Supreme Court in the case of *Mohd. Shahaluddin Vs. State of Bihar, 2010 4 SCC 653*, as the correct provision/power exists, for the exercise of the same.

13. In view of the reasons stated above, this Court does not find any merit in the writ petition. The writ petition is accordingly dismissed.

**JUDGE**

**Comparing Assistant**