

Court No. - 35

Case :- WRIT - A No. - 15824 of 2023

Petitioner :- Bhaskar Prasad Dwivedi

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Shailesh Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Shailesh Pandey, learned counsel for the writ petitioner and Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel, who appears for Respondents 1 to 5.

In view of the order, which is being proposed to be passed today, notices are not being issued to the fifth and sixth respondent.

The case of the writ petitioner is that the writ petitioner was initially appointed as an Assistant Professor Sanskrit, in Freedom Fighter Vishram Singh Post Graduate College, Chunar Mirzapur, fifth respondent-institution on 12.09.2013.

It is further the case of the writ petitioner that he solemnized marriage with the sixth respondent in the year 2005 according to Hindu Rites and Rituals and from the wedlock, a baby child was born in the year 2006. In para 6 of the writ petition, it is further asserted that the sixth respondent who happens to be the wife of the writ petitioner preferred various applications and also lodged complaint regarding torture and demand of dowry. In para 7, it is also asserted that the sixth respondent and the writ petitioner both are living separately and by mutual understanding they have moved an application under Section 13 (B) of the Hindu Marriage Act and the same has been registered as Marriage Suit No. 75 of

2021 (Bhaskar Dwivedi Vs. Sushma Dwivedi) before the Court of Principal Judge, Family Court, Allahabad, wherein while inviting attention towards paragraph 7 of the writ petition, it is also asserted that an order has been passed on 14.07.2022 by the Court of Additional Principal Judge, Family Court, Allahabad whereby the proceedings under Section 13-B has been rejected. As per the writ petitioner, the sixth respondent has lodged complaint against the writ petitioner that the writ petitioner had performed the second marriage during the subsistence of the first marriage. It is also the case of the writ petitioner that by virtue of the order dated 27.07.2023, the Principal Secretary, Higher Education, U.P. at Lucknow, first respondent has proceeded to suspend the writ petitioner.

Questioning the order dated 27.06.2023, placing the writ petitioner under suspension, the writ petitioner has preferred the present writ petition. This Court entertained the writ petition on 09.10.2023 while passing the following orders:

"Supplementary affidavit filed today is taken on record.

Learned counsel for the writ petitioner submits that the order dated 27.07.2023, passed by the respondent no.2, Chief Secretary (Higher Education Department), Government of U.P. proceeds on misconception of facts and law. Though, on one hand the writ petitioner is being placed under suspension, however as per the order impugned proceedings were drawn under Rule - 10 (2) of the U.P. Government Servant Rules, 1999 on the allegation that the writ petitioner solemnized second marriage in the presence of first marriage.

He further submits that the order itself is self contradictory besides being minor without authority, as once proceedings were undergone under Section - 10 (2) of the 1999, Rules under the caption for procedure for imposing penalty then suspension could not have been resorted, as the same would only

be resorted provided the charges were grave enough for imposition of a major penalty. He further submits that even in fact the procedure so adopted is totally foreign to service jurisprudence in particular the Rules.

Sri P.K. Shahi, learned Additional Chief Standing Counsel, who appears for the respondent nos.1 to 5 seeks time to obtain instructions.

Put up this case on 17.10.2023, as fresh on the top of the list."

Instructions were produced before this Court by the learned Standing Counsel on 10.10.2023 pursuant to the order dated 09.10.2023 which was found to be thoroughly incomplete. This Court on 17.10.2023 proceeded to pass the following orders:

"This Court on 09.10.2023 required the learned Standing Counsel to obtain instructions.

Today, the instructions have been produced under the signature of the Director, Higher Education, Prayagraj dated 10.10.2023, which are taken on record.

The said instructions are thoroughly incomplete and they do not portray the correct picture.

Put up this case on 28.10.2023 as fresh. On that date, learned Standing Counsel shall obtain complete instructions."

Thereafter instructions were produced on 27.10.2023 which was also not clear so this Court on 28.10.2023 proceeded to pass the following orders:

"Pursuant to the orders dated 09.10.2023 and 17.10.2023 instructions have been forwarded to the Court dated 27.10.2023 under the signature of Joint Director, Higher Education, Prayagraj containing a document dated 15.02.2023. The suspension order recites in the second paragraph that there happens to be an inquiry report of the District Magistrate dated 26.05.2023. Prima facie, holding the writ petitioner guilty of the said charges, however,

page 121 of the paper book happens to be the communication of the District Inspector of Schools, Mirzapur dated 26.05.2023 but the same is otherwise.

On the request of Sri Gaya Prasad Singh, learned Standing Counsel, put up this case on 07.11.2023 as fresh at 2:00 P.M.

Instructions filed today is taken on record and marked as Appendix 'C'."

Today, instructions dated 07.11.2023 of the Joint Director of Higher Education, Prayagraj on behalf of the Director of Higher Education, Prayagraj has been produced before this Court. Shri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel submits that since instructions are available before this Court, thus, the writ petition be decided on the basis of the instructions so produced.

Shri Shailesh Pandey, learned counsel for the writ petitioner submits that the impugned suspension order dated 27.07.2023 passed by the first respondent cannot be sustained even for a single movement, particularly, in view of the fact that in the first paragraph of the order, it is recited that in pursuance of the communication of the educational authorities letter dated 26.05.2022 and 15.02.2023, the allegations are against the writ petitioner for solemnizing second marriage during the subsistence of the first marriage stood proved. Accordingly on 15.02.2023, the writ petitioner was put to notice to submit his explanation to which the writ petitioner is stated to have responded. However, as per the recital contained in the order dated 27.07.2023, proceedings were drawn under the provisions contained under Rule 10 (2) of the U.P. Government Servant (Disciplinary and Appeal) Rules, 1999 for imposition of minor penalty. The order in question further recites that preliminary inquiry report was submitted on 26.05.2023 according to which it was proved that the writ petitioner has

solemnized second marriage. Accordingly, by virtue of the order dated 11.03.2023, the explanation offered by the writ petitioner was turned down and the writ petitioner has been placed under suspension.

Learned counsel for the writ petitioner submits that he has filed as Annexure 9 at page 120/121 of the paper book, certain documents reference whereof has been made in para 15 of the writ petition wherein at page 121 there happens to be a communication of the District Magistrate, Mirzapur addressed to the Director of Higher Education, Prayagraj dated 26.05.2023 whereby it has been informed that the Circle officer, Chunar District Mirzapur was entrusted with the duty to conduct, preliminary enquiry in order to find out as to whether the writ petitioner has solemnized second marriage or not. However, he did not perform his function thus his conduct was castigated and two days' time have been given to him. He further seeks to rely upon the show cause notice dated 26.05.2023 issued to the circle officer Chunar, District Mirzapur which is at page 120 of the paperbook. According to him, though in the suspension order, there is recital to the fact that there happens to be a preliminary inquiry report proving the allegations against the writ petitioner but the same is not available on record. He not only denied the factum of solemnization of the second but according to him, there was no material available before the disciplinary authority to have placed the writ petitioner under suspension as mere complaint would not suffice the purpose.

Shri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel on the basis of the instructions has sought to argue that the instructions which he has produced today also does not contain the preliminary inquiry report dated 26.05.2023 which has been

made the basis to place writ petitioner under suspension. According to him, the matter needs reconsideration by the first respondent.

I have heard learned counsel for the parties and perused the record carefully.

Normally in-ordinary circumstances, this Court would not have interfered with the order of the suspension in the wake of the allegations that the writ petitioner has solemnized the second marriage during subsistence of the first marriage. However, this Court while dealing with the order of suspension has to bear in mind the materials which weighed the disciplinary authority to pass an order of suspension as obviously mere allegations will not be a factor germane for placing the delinquent under suspension. An exercise is to be undertaken while recording satisfaction as to whether the writ petitioner/delinquent is to be placed under suspension or not. Though in the order impugned, recital has been made about a preliminary inquiry dated 26.05.2023 holding the allegations to be true which became the basis for suspending the writ petitioner, on being repeatedly asked and granted umpteen number of times as apparent from the order passed by this Court on 09.10.2023, 17.10.2023 and 28.10.2023, today, itself also the alleged preliminary inquiry dated 26.05.2023 has not been produced before this Court. As rightly pointed by Shri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel that the matter needs reconsideration thus in the opinion of the Court, the suspension order dated 27.07.2023 passed by the first respondent, Principal Secretary, Higher Education, U.P. at Lucknow is liable to set aside.

The passing of the order today may not be construed to be an

expression that the disciplinary authority is precluded from passing of a fresh order in accordance of law and further this order may also not come in the way of the disciplinary authority to conduct disciplinary proceedings against the writ petitioner.

With the aforesaid observations, the writ petition stands partly **allowed.**

Order Date :- 7.11.2023

A. Prajapati