

Neutral Citation No. - 2024:AHC-LKO:40957-DB

RESERVED

Court No. - 2

Case :- WRIT - A No. - 2000185 of 2015

Petitioner :- Ram Gopal Dubey

Respondent :- State Of U.P. Through Prin. Secy. Home Deptt. Lko.
And Ors.

Counsel for Petitioner :- Dharmendra Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Per Om Prakash Shukla, J.)

- (1)** Heard Shri Dharmendra Kumar Mishra, learned Counsel representing the petitioner and Shri Indrajeet Shukla, learned Additional Chief Sanding Counsel representing the State/respondents.
- (2)** The challenge in the present writ petition filed under Article 226 of the Constitution of India, is to the judgment/order dated 02.07.2013 passed by the State Public Services Tribunal, Indira Bhawan, Lucknow (hereinafter referred to as '**the Tribunal**'), whereby Claim Petition No. 352 of 2004 filed by the petitioner against the order of punishment/dismissal dated 28.02.2002 and the appellate order dated 23.02.2004 has been dismissed. Apart from it, the petitioner is also challenging the judgment/order dated 01.10.2014 passed by the Tribunal, whereby Review Petition No. 98 of 2013 filed by him seeking review of the aforesaid judgment/order dated 02.07.2013, has been dismissed.

- (3) The petitioner also seeks to assail the validity of the order of punishment/dismissal passed by the Superintendent of Police, Hardoi/opposite party no.4 in terms of which he stood dismissed from service in exercise of powers conferred upon the said authority *inter alia* on the ground that the conduct of the petitioner was in violation of U.P. Public Servant Conduct Rules, 1956 as he consummated a second marriage without the permission of appropriate authority during the subsistence of his first wife. The said order of punishment/dismissal also stood confirmed in appeal by the opposite party no.3/Deputy Inspector General of Police, Lucknow Range, Lucknow.
- (4) The facts as could be borne from the records are that in the year 1997-98, the petitioner was posted as Constable at Police Station Tambaur, District Sitapur and at that time he was residing as a tenant in the house of one Shri Basu Ram Verma situated at Mohalla Thakuran Tola, district Sitapur.
- (5) It appears that one Smt. Rinki (daughter of Basu Ram Verma) asserting herself to be the second wife of the petitioner made a complaint to the Inspector General of Police, Lucknow Zone, Lucknow, alleging solemnization of second marriage with her by deception and out of wedlock, one girl was born. Apart from it, Smt. Rinki had also alleged in the said complaint that the petitioner had blackmailed her father and borrowed some

money and when the first marriage of the petitioner came to her knowledge, the petitioner ousted her from the house by snatching all her belongings and in this regard, she lodged an F.I.R. against him (petitioner herein), which was registered as Case Crime No. 126 of 1999, under Sections 363, 406, 420, 506, 366, 376 I.P.C., at Police Station Tambaur. It was also alleged that on 06.07.1998, a settlement agreement was arrived between the petitioner and her, by which the petitioner would pay Rs.500/- per month to her and Rs.300/- per month to her daughter Guddi and even this agreement had not been complied with by the petitioner. The complainant Smt. Rinki had enclosed copy of the F.I.R. along with the said complaint dated 30.10.2001.

- (6) Taking cognizance on the complaint made by Smt. Rinki, a preliminary inquiry was instituted against the petitioner and it was entrusted to Circle Officer, Bilgram, Hardoi. The Inquiry Officer had recorded the statement of the petitioner, wherein he had denied the allegations and had alleged false implication on account of some money advanced to the father of the complainant, who was his landlord. Thereafter, statement of the complainant Smt. Rinki was recorded by the Inquiry Officer, wherein she had reiterated the allegations levelled against the petitioner and claimed herself to be the second wife of the petitioner. To substantiate her claim made in the

complaint, the second wife/complainant had also produced before the Inquiry Officer an affidavit dated 07.11.1999 and some letters said to be written by the petitioner to her and her father as well as combined three colour photo and one combined black and white photo of her with the petitioner for establishing the claim of solemnization of her marriage with the petitioner. The Inquiry Officer, after appreciating the statement of the petitioner and complainant Smt. Rinki and also going through the documents produced by her as also the report of the police of police station Tambaur, district Sitapur, had submitted its report dated 24.12.2001, recommending initiation of departmental action against the petitioner under Section 14 (1) of the Police Officers of Subordinate Ranks (Punishment and Appeal) Rules 1991 (hereinafter referred to as '**Rules, 1991**') as petitioner's conduct was in violation of U.P. Government Servants Conduct Rules, 1956 (hereinafter referred to as '**Rules, 1956**').

- (7) Based on the aforesaid inquiry report dated 24.12.2001, the Superintendent of Police, Hardoi had instituted inquiry for further action against the petitioner under Rule 14 (1) of Rules, 1991 and entrusted the inquiry to the Circle Officer (City), Hardoi vide order dated 14.01.2002. The Circle Officer (City), Hardoi, on receipt of the record of the departmental inquiry including the preliminary inquiry report dated 24.12.2001,

opined certain discrepancies in the inquiry report dated 24.12.2001, wherein statement of the father of the complainant, statement of first wife of the petitioner, statement of the Investigating Officer who conducted the investigation of the criminal case lodged by the complainant against the petitioner, were not recorded by the inquiry officer and apart from it, the inquiry officer had also prepared charge-sheet and list of evidences. In this backdrop, the Circle Officer (City), Hardoi/inquiry officer transmitted the inquiry to the disciplinary authority for removing the said deficiencies vide letter dated 17.01.2002 and as a consequence of which, the disciplinary authority had directed the Circle Officer, Bilgram, Hardoi to enquire the matter afresh and remove the said discrepancies vide order dated 19.04.2002.

- (8) Pursuant to the aforesaid order dated 19.04.2002, the Circle Officer, Bilgram, Hardoi/Inquiry Officer had recorded the statements of the complainant's father, namely, Bhasu Ram Verma; complainant's mother, namely, Smt. Sheela; first wife of the petitioner, namely, Smt. Uma Devi; S.I. Sukhram Azad, who had investigated Case Crime No. 98 of 1998 lodged by the complainant against the petitioner; Shri Anand Shankar Singh, Shri Rudra Narayan Bajpai, Shri Abdul Aziz, Shri Furkan Ali, who were witnesses of the alleged agreement for maintenance said to be executed by the petitioner; and Shri Yakub Ali and

Shri Mohd. Shabbir, who were neighbour of the complainant's father. Thereafter, the Preliminary Inquiry Officer, while reiterating earlier recommendation to initiate departmental inquiry against the petitioner on account of his misconduct, had submitted its report dated 30.04.2002 along with the charge-sheet and list of evidences to the Superintendent of Police, Hardoi, who, in turn, transmitted it to the Circle Officer (City), Hardoi with a direction to conduct the inquiry against the petitioner vide order dated 02.05.2002.

- (9) In compliance of the order dated 02.05.2002, the Inquiry Officer/Circle Officer (City), Hardoi commenced the final inquiry proceedings against the petitioner. A charge-sheet dated 27.05.2002 was served upon the petitioner on the date itself i.e. on 27.05.2002, wherein it was stated that when in the year 1997-98, he was posted at police station Tambaur district Sitapur, he was residing as a tenant in the house of Bhasu Ram Verma and he had solemnized Court marriage with Rinki, by deception and although he was previously married. He was found guilty of establishing marital relationship with the second wife during subsistence of his first wife. Thus, it was alleged against him that while working in a disciplined force like police department, this act of his appeared to be contrary to the departmental rules as well as Section 29 of the Uttar Pradesh Government Servants Conducts Rules, 1956.

- (10)** The petitioner had submitted his reply to the charge-sheet, denying the allegations made in the charge-sheet. The Inquiry Officer, thereafter, had recorded the statement of the petitioner, who denied the allegations levelled against him and had alleged false implication on account of some money advanced to father of the complainant, who was his landlord. Thereafter, the Inquiry Officer had recorded the statement of complainant, complainant's father Shri Bhasuram Verma, Shri Abdul Aziz, who was the witnesses of the agreement; Shri Rohit Mishra, Circle Officer, Bilgram, Hardoi, who had conducted the preliminary inquiry against the petitioner and had submitted its report dated 24.12.2001 and report dated 30.04.2002. Apparently, none of the witnesses were cross-examined by the petitioner. The Inquiry Officer, thereafter, submitted its report dated 24.09.2002 to the Superintendent of Police, Hardoi, recommending to dismiss the services of the petitioner as it was found that his conduct was contrary to Rule 29 of the U.P. Government Servants Conduct Rules, 1956.
- (11)** Based on the findings of the inquiry officer dated 24.09.2002, a show cause notice dated 08.10.2002 was issued to the petitioner along with the inquiry report dated 24.09.2002, requiring him to show cause as to why he should not be dismissed from the services of Constable. The petitioner, thereafter, had submitted his reply dated 29.10.2002 to the aforesaid show cause notice.

The Disciplinary Authority i.e. Superintendent of Police, Hardoi, opined that the explanation of the petitioner dated 29.10.2002 was not satisfactory and further he was guilty of misconduct in terms of the U.P. Government Servants Conduct Rules, 1956, therefore, vide order dated 28.02.2002, the petitioner was dismissed from service, which was assailed by him in appeal, which too was dismissed vide order dated 23.02.2004.

- (12) Feeling aggrieved by both the aforesaid orders, the petitioner had approached the Tribunal. The Tribunal has gone into the details of the relationship of the petitioner with the complainant Rinki during the subsistence of first wife and after discussing and scrutinizing the factum of second marriage with complainant Rinki, the learned Tribunal has returned a finding that the said Court marriage was not as per law because the alleged marriage came to be performed by virtue of executing a notary document, however, the learned Tribunal came to hold that charge so levelled against the petitioner comes under the purview of 'misconduct' as there is evidence of second marriage with Rinki by deceiving her and also of establishing martial relationship with Rinki, therefore, although the learned Tribunal arrived at a conclusion that there was no bigamous marriage by the petitioner, however it declined to interfere with the order of punishment and dismissed the claim petition filed

by the petitioner vide order dated 02.07.2013. Thereafter, the petitioner preferred review petition, bearing no. 98 of 2013, which too was dismissed vide order dated 01.10.2014. It is these orders, which have been assailed in the instant writ petition.

- (13)** Challenging the impugned judgments/orders passed by the learned Tribunal, learned Counsel for the petitioner has submitted that the learned Tribunal has not appropriately considered the issues involved in this matter inasmuch as that the disciplinary authority, while passing the impugned order of punishment 28.02.2002, has not considered the material available on record in right perspective. According to the learned Counsel, charge imposed against the petitioner was that when he was residing in the house of complainant's father Bhasuram Verma as a tenant, he solemnized Court marriage with his daughter, during the lifetime of his first wife, hence the act of the petitioner was proposed to be a misconduct under the provision of Rule 29 of the 1956 Rules. According to the petitioner, this charge was levelled against him, merely on the basis of complaint moved by daughter of his landlord before the department alleging second marriage even disciplinary authority did not find second marriage proved. Submission is that there was no evidence on record against the petitioner to substantiate performance of second marriage and commission

of alleged offence of bigamy or misconduct, except a notary affidavit filed by complainant Rinki before the department, which the learned Tribunal itself, after detailed discussion, found it to be not a valid document of second marriage as the alleged marriage of the petitioner had not been done before the Marriage Officer. Therefore, it has been submitted that once the learned Tribunal has returned a finding that alleged second marriage with Smt. Rinki could not be held to be valid as there is no proof of second marriage, therefore, charge of bigamy or misconduct as alleged by the department/respondent is not sustainable, therefore, the finding recorded by the learned Tribunal regarding punishment of dismissal imposed against the petitioner is also not sustainable.

(14) Learned Counsel for the petitioner has submitted that there is absolutely no proportionality between the alleged misconduct and the punishment inflicted to the petitioner in the impugned order and as such the learned Tribunal had lost sight of this fundamental provision of the 1956 Rules and had erroneously dismissed the claim petition of the petitioner.

(15) Learned Counsel for the petitioner has further submitted that though an F.I.R., bearing No. 98 of 1998, has been lodged against the petitioner by the complainant Smt. Rinki, however, subsequently, she moved an application along with affidavit dated 08.09.1998 before the Superintendent of Police, Sitapur

for withdrawal of the aforesaid case and further complainant Rinki/alleged second wife, while changing her religion, solemnized marriage with one Sattar alias Chhota Bhaiyya and is presently residing with her husband and her name was mentioned at serial No. 18 in Nagar Panchayat Nirvachal Niyamavali, 2011. According to the learned counsel, these glaring evidence had not been taken into consideration by the learned Tribunal while dismissing the claim petition, therefore, the impugned order passed by the learned Tribunal is unsustainable both on facts and law.

- (16)** *Per contra*, learned State Counsel representing the State-respondents has submitted that the punishment imposed upon the petitioner by respondents was justified and not disproportionate to the gravity of the petitioner's misconduct keeping in view the imperative necessity to maintain discipline in the police force as its personnel are entrusted with sensitive tasks. According to the learned Counsel, the grounds being agitated by the writ petitioner has already been considered by the learned Tribunal. No new ground has been urged in the writ petition and since the present matter essentially pertains to a departmental enquiry, the same should not be interfered and no case of judicial review under Article 226 of the Constitution has been made out by the petitioner, so as to call for any kind of

interference by this court. In any case, the writ petition lacks merit and is liable to be dismissed.

- (17) Having regard to the submissions made by the learned Counsel for the parties and going through the record available before this Court as well as the impugned judgments, we find that the charge against the petitioner was as under :-

“जब वह वर्ष 1997-98 में थाना तम्बौर जनपद सीतापुर में नियुक्त था तो कस्बा तम्बौर अन्तर्गत मोहल्ला ठकुरन टोला निवासी श्री भासू राम वर्मा के मकान में किराये पर कमरा लेकर रह रहा था तथा भासू राम वर्मा की लड़की कु० रंकी से छल पूर्वक सीतापुर में कोर्ट मैरिज की जबकि वह पूर्व से विवाहित था। पहली पत्नी के जीवित रहते हुए दूसरी पत्नी से वैवाहिक सम्बन्ध स्थापित करने के दोषी पाये जाते हैं। आरक्षी ना०पु० राम गोपाल दुबे का यह कृत्य पुलिस विभाग जैसे अनुशासित बल में रहते हुए अमर्यादित आचरण व विभागीय नियमावली के प्रतिकूल कार्य करने तथा उ०प्र० सरकारी कर्मचारी आचरण नियमावली 1956 की धारा 29 के नियमों के विपरीत कार्य करने के दोषी प्रतीत होते हैं।”

- (18) In the light of the aforesaid charge, when we peruse the dismissal order, we find that the Disciplinary Authority has not found the charge of second marriage proved. In fact, he has clearly recorded a finding that no Court marriage took place, however, he has opined that the delinquent got a notary affidavit prepared and based thereon had extra marital relationship with the complainant who was a simple rural girl while being married to his wife and he had indulged in her character assassination, therefore, this was an example of gross indiscipline and there was no place for him in a discipline force

such as the police force. Accordingly, he has dismissed the petitioner.

(19) Now, even from the findings recorded by the Disciplinary Authority, charge of second marriage and violation of Rule 29 of Rules, 1956 is not proved *stricto sensu*. There is only an inference that he was having an extra marital affair which in fact was not the charge against him. Therefore, the dismissal order is based on a finding which is not the charge against him.

(20) At this juncture, it would be profitable to quote Rule 29 of the 1956 Rules, which reads as under:-

“29. Bigamous marriages.- (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.

(3) *Omitted by notification No. 22/2/1969-Karmik-1 dated 20.10.1976”*

(21) As is manifest from a reading of the aforesaid Rule, a Government Servant who has a wife living is prohibited from contracting another marriage without first obtaining the permission of the Government notwithstanding that such subsequent marriage is permissible under the personal law. Rule 29 (2) then provides that no female government servant

who has a husband living shall marry any person without first obtaining the permission of the Government. As is manifest therefrom, the prohibition and disqualification rests on marriage.

(22) The stand of the petitioner before the learned Tribunal and also right from the inception of the complaint before the department was that he never got married with Rinki and the allegations made against him in this regard were not correct. The Tribunal took note of the aforesaid contention and had returned a finding that though it has been alleged to be a 'Court marriage', however, that marriage was not in fact a 'Court marriage' as the alleged "court marriage" was said to be made by virtue of executing/preparing a notary by the parties. Noting these facts, the learned Tribunal came to the conclusion that since the said second marriage between the petitioner and Rinki could not be said to be a legal marriage in terms of Section 17 read with Section 5 (1) of the Hindu Marriage Act because neither any *Sapt padi* was performed nor the marriage was before the competent Marriage Officer as per the Special Marriage Act, the alleged second marriage was void and meaningless in the eyes of law. The relevant finding in this regard recorded by the learned Tribunal reads as under :-

“.....यह भी उल्लेखनीय है कि वर्तमान मामले में याची की कु० रिंकी के साथ विवाह के संबंध में 'कोर्ट मैरिज' कराने के साक्ष्य पाये हैं लेकिन हम पाते हैं कि वास्तव में यह 'कोर्ट मैरिज' नियमानुसार नहीं है बल्कि यह शादी नोटरी

बनवाकर की गयी थी। परिवार न्यायालय में कोर्ट मैरिज का कोई प्रमाण नहीं है। यह स्वीकार किया गया है कि शादी से संबंधित अन्य कोई औपचारिकतायें नहीं की गयी थी अतः याची और रिंकी के विवाह को हिन्दु विवाह अधिनियम की धारा 17 सपठित 5(1) के अन्तर्गत विधिक विवाह नहीं कहा जा सकता था क्योंकि न तो कही सप्तसदी हुई है और न नियमानुसार विवाह अधिकारी के समक्ष विवाह ही किया गया है अतः दूसरे विवाह को कानून के अनुसार मान्यता देना संभव नहीं है।”

(23) A bare reading of the aforesaid findings recorded by the learned Tribunal in the impugned judgment/order reveals that the petitioner herein had not entered into a valid marriage with the second lady while his first wife was still alive, however, yet the learned Tribunal opined that it is an act unbecoming of a Government servant.

(24) The Tribunal has also noted that the factum of marriage rests upon an alleged agreement/notary affidavit stated to have been executed between the petitioner and complainant and as such, the Tribunal has returned a finding that since both were Hindus that would not constitute a valid marriage, thus, even the Tribunal did not find the charge levelled against the petitioner which was based on violation of Rule 29 of Rules 1956, as proved. However, the learned Tribunal went on to hold that since the conduct of the petitioner was not satisfactory as he belongs to a discipline force, hence the punishment imposed upon the petitioner i.e. dismissal was perfectly justified. In this backdrop, the learned Tribunal dismissed the claim petition vide

order dated 02.07.2013. The Review Petition has also been dismissed by the Tribunal vide order dated 01.10.2014.

- (25)** Thus, both the disciplinary authority and the Tribunal have not found the charge of bigamy and violation of Rule 29 of the Rules, 1956 having been proved but have found petitioner guilty of extra marital affair unbecoming of a police officer, which in fact was not specifically the charge against him.
- (26)** The petitioner of course alleged false implication by the landlord and his daughter in this regard.
- (27)** The learned Tribunal has observed that legally the petitioner cannot be faulted with violation of Rule 29 of the Rule of 1956, however, in the same breath it found the petitioner guilty of duping the complainant by tricking her to believe that she is the legally wedded wife on the basis of notary marriage, so as to be in marital relationship with him and it appears that this weighed heavily upon the learned Tribunal in not considering the quantum of penalty/punishment imposed by the departmental authorities, which, in our opinion, should have been considered.
- (28)** In this context, it is borne out from the record that the petitioner has denied that he got married with complainant/second wife, whereas complainant had complained that the petitioner got married with her. The disciplinary authority did not find second

marriage (Court marriage) proved, yet, he opined that based on a notary affidavit the petitioner had an extra marital affair with the complainant. The petitioner, of course, had an explanation to offer in this regard which has not been accepted. The complainant has subsequently submitted an affidavit withdrawing her allegation and the complaint. She has already married someone else. Petitioner had rendered about 24 years of service, as claimed, till his dismissal from service and was about 45 years age in 2015 when he joined the police. He is living with his wife and children born from such wedlock but is living in penury as informed by the Counsel. Considering overall facts and circumstances, in our opinion, punishment of dismissal from service was too harsh and excessive. Instead, punishment of withholding of five increments permanently or any other lesser punishment would have sufficed.

- (29)** We, accordingly, set-aside the punishment order and direct the Disciplinary Authority to consider imposition of any other punishment such as the one referred above, except dismissal or removal from service, and pass necessary order in this regard within two months. Any such punishment will take effect from 28.02.2002. We further provide that the petitioner shall not be entitled to arrears of salary for the period he remained out of service, but the said period shall be treated as continuous service for re-fixation of pay consequent to his joining and for

retiral dues. He shall also not be entitled to any consequential promotions which may have fallen due during this period unless he becomes entitled to be considered for it hereafter, though pay revisions for purpose of pay fixation would be admissible, as per Rules. The impugned judgment of Tribunal is also set-aside. Claim Petition is disposed of in the aforesaid terms.

(30) With the aforesaid observation, the present writ petition is **partly allowed**. However, in the facts of the present case, there shall be no order as to cost.

(31) The original records pertaining to the Disciplinary Proceedings, which had been retained, shall be returned to Shri Indrajeet Shukla, learned Additional Chief Standing Counsel for being handed over to the concerned authorities.

(Om Prakash Shukla, J.)

(Rajan Roy, J.)

Order Date : 30th May, 2024

Ajit