

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:64090-DB

Judgment Reserved On 10.07.2024

Judgment Delivered On 18.09.2024

Reserved

Case :- WRIT - A No. - 5111 of 2022

Petitioner :- Balram Panwar

Respondent :- State Of U.P. Thru. Secy. Nyay Vubhag U.P. &
Anr.

Counsel for Petitioner :- Mool Chandra

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per: Rajan Roy, J.)

1. Heard Mr. Gajendra Pratap, learned Senior counsel assisted by Mr. Mool Chandra, learned counsel appearing for the petitioner, learned standing counsel for the State and Mr. Gaurav Mehrotra, learned counsel for the High Court.

2. By means of this petition the petitioner an erstwhile Judicial Officer has challenged the order of his removal from service dated 09.02.2021 as also the Full Court resolution preceding it which is dated 11.12.2020.

3. The facts of the case, in brief, are that the petitioner and one Mehru Nisha were pursuing their LLB course while staying at Allahabad and they had a long association. Both of them were preparing for competitive examinations. As per petitioner the mother of said Mehru Nisha was pressurizing her to get married for which she was not willing, but, in view of the pressure exercised by her mother, she approached the Arya Samaj Temple, Chak Kriparam, Mama Bhanja Ka Talab, Naini, Allahabad for getting a certificate of marriage with the petitioner, but, on being informed that this could not be done till the actual marriage takes place, she planned a sham marriage with the petitioner which took place on 24.10.2013 at the said Arya Samaj Mandir. All this happened even though as per the petitioner his marriage had already been fixed for being solemnized with another girl on 15.12.2013 and, in fact, was solemnized on the said date. Thereafter, the petitioner applied for being considered for selection and appointment to the Provincial Civil Services (Judicial) in the State of U.P. and appeared in the examination held in the year 2013 itself where he succeeded. He was appointed as Additional Civil Judge (Junior Division) at Hapur on 18.03.2015 and joined his services on 19.03.2015. The petitioner has a girl child from his marriage which was solemnized on

15.12.2013 (not with Mehru Nisha). The allegation is that he lived with the first wife also after the marriage allegedly held on 24.10.2013 and during life of the first wife he had solemnized second marriage on 15.12.2013. Mehru Nisha never lodged any complaint in this regard.

4. On 08/09.11.2016 Mehru Nisha who was residing in a rented premise at Allahabad went missing and the landlord informed her mother, brother-in-law, etc. whereupon the brother-in-law reached Allahabad and with the help of the police. The lock of her room was opened wherein marriage certificate showing marriage of Merhu Nisha with the petitioner was recovered. Initially a GD entry was made in the police station concerned but, as, no FIR was being lodged, as alleged by the complainant herein, a writ petition bearing Criminal Misc. Writ Petition No. 5928 of 2017 was filed by family members of Mehru Nisha at Allahabad. During course of argument, it was informed that ultimately the FIR was lodged, but, no offence was found as having been committed, certainly not by the petitioner, therefore, final report was submitted, however, there is nothing on record in this regard. The writ petition itself was dismissed for want of

prosecution on 02.07.2018 although earlier certain orders were passed asking the police as to why the FIR had not been lodged.

5. Be that as it may, a complaint was submitted by the brother-in-law of Mehru Nisha, Istekhar Ali on 10.01.2017 and 11.01.2017 and by the mother of Mehru Nisha on 18.01.2017 against the petitioner regarding Mehru Nisha having gone missing also mentioning therein the factum of her marriage with the petitioner. The Administrative Judge concerned sought comments of the Officer vide his order dated 21.01.2017. The petitioner submitted his comments on 22.08.2017 through the District Judge concerned denying the factum of marriage and any involvement in Mehru Nisha's disappearance. On 31.08.2017 the complainant Istekhar Ali filed an application along with an affidavit *inter alia* mentioning that other complainant Noorjahan had died on 17.08.2021 and that he did not want any action on his complaint.

6. Be that as it may, the Administrative Judge looking into the seriousness of the allegations passed an order on 05.03.2018 recommending a discreet inquiry as to genuineness of the marriage certificate dated 24.10.2013, etc. An Officer of the High Court was entrusted with the task of verifying the genuineness of the said documents which exercise he undertook and he

ultimately submitted his report on 19.03.2018 that these documents were genuine. The documents were obviously verified from the records of the Arya Samaj Mandir where it was alleged that the marriage between the petitioner and Mehru Nisha had taken place. On 31.03.2018, the Administrative Judge recommended action in the matter, whereupon, Hon'ble the Chief Justice of this Court ordered initiation of a Vigilance Inquiry on 23.04.2018. The Vigilance Inquiry was completed and the report was submitted by the Special Officer (Vigilance), High Court, Allahabad dated 02.05.2018 on which a decision was taken to initiate regular disciplinary proceedings against the petitioner as factum of second marriage was found to be proved in the Vigilance Inquiry. A charge-sheet duly approved by the competent authority was issued to the petitioner on 04.07.2018. The charge-sheet was served upon the petitioner and he made an endorsement of denial of the said charge as has come in the inquiry report. The petitioner submitted replies dated 14.08.2018 and 15.09.2018 to the same. The District and Sessions Judge, Kanpur Nagar was appointed as the Inquiry Officer. The Inquiry Officer conducted the inquiry. Documentary and oral evidence were adduced and considered in the inquiry.

7. On a perusal of the inquiry report we do not find any personal hearing having been given to the petitioner wherein he may have been confronted with the charges and the evidence in support thereof specifically with an opportunity to explain to his side of the story. However, we do find that the petitioner had submitted written arguments/submissions in this regard on 15.10.2018. Thereafter, the Inquiry Judge submitted his inquiry report dated 24.10.2018 in Departmental Enquiry No. 3 of 2018. In the said inquiry report he found the charges proved. A show cause notice was issued to the petitioner to which he submitted his response on 11.12.2018.

8. The stand of the petitioner before the Inquiry Officer and the Disciplinary Authority was firstly that no marriage had actually taken place between him and Mehru Nisha on 24.10.2013, what was performed was only a sham marriage only to enable Mehru Nisha who was his close friend with whom he had a long association of 13 years to placate and satisfy her mother who was pressing for her marriage; secondly, he had married another girl on 15.12.2013 from whom he has a girl child and is living happily ever since then and both these events took place prior to his joining service and, as, he was not a Government servant on

the said dates, as such, even assuming that the two marriages took place, neither violation of Rule 3 nor Rule 29 of U.P. Government Servant Conduct Rules 1956 could be alleged as none of these Rules was attracted.

9. The Inquiry Officer, however, based on the evidence before him found the marriages to be proved without considering this aspect of the matter and submitted his report that the charges had been found proved against the petitioner.

10. The aforesaid matter was placed before the Full Court which considered the same in its resolution dated 11.12.2020 and thereafter the matter was referred to the State Government which ultimately passed the order of removal of the petitioner from service on 09.02.2021. The order of removal is based on a consideration of the inquiry report referred hereinabove.

11. The contention of the Senior Counsel Mr. Gajendra Pratap appearing for the petitioner, in nutshell, was that the charge itself was so vague and uncertain having been framed without due application of mind, ignoring non-application of Rules 3 and 29 of the Conduct Rules, 1956 violation of which has been alleged that the entire proceedings based thereon were vitiated.

12. On merits of the marriage, he invited our attention to the reply submitted by the petitioner as also the written arguments submitted by the petitioner before the Inquiry Officer to contend that the petitioner had denied the said marriage from very beginning even in the comments submitted by him to the complaint on 22.08.2017. His case was that it was a sham marriage only some formalities had been completed so that Mehru Nisha may obtain a marriage certificate which could be shown by her to her mother so as to placate her as there was pressure from her family to get married. He submitted that it has come in the statements of witnesses produced by the Department that Mehru Nisha was not ready to marry and that is why the younger sister had got married, but, only on account of the pressure of her mother she hatched a plan and petitioner being her close friend became part of it without any mal-intent. In fact, marriage of petitioner had already been fixed with another girl to be solemnized on 15.12.2013, therefore, there was no occasion for him to solemnize a marriage with Mehru Nisha and if it was an actual marriage, then, he would not have married for the second time on 15.12.2013. It was also his submission that the petitioner is happily married with his actual wife from whom he has a girl child. There is no marriage with Mehru Nisha in the

eyes of law. He also invited our attention to the testimonies of witnesses, especially the Purohit of the Arya Samaj Mandir in this regard.

13. As regards Mehru Nisha having gone missing he invited our attention to the charge levelled against the petitioner which did not say that the petitioner was responsible for the same. In any case there was nothing on record to show that the petitioner had been found in any inquiry or investigation or trial as being guilty of any offence involving Mehru Nisha disappearance.

14. He submitted that removal of petitioner from service was based on mere suspicion which was impermissible in law. Neither the High Court nor the Disciplinary Authority had properly appreciated the facts of the case in the light of the legal provision. The Inquiry Officer, of course, has apparently ignored the non-applicability of Rules 3 and 29 of the Conduct Rules, 1956.

15. Per contra, Mr. Gaurav Mehrotra, learned counsel for the High Court vehemently opposed the writ petition by submitting that a high degree of probity and integrity is required for a Judicial Officer. The Inquiry Judge has found sufficient evidence in the form of testimonies of Purohit who conducted the marriage ceremony, the witnesses to the marriage who were also

examined and were independent witnesses as also the compact disc containing the videography of the marriage ceremony being performed, based on which the Inquiry Judge has rightly opined that the first marriage with Mehru Nisha is proved and it took place on 24.10.2013. Against this background as it is a fact admitted by the petitioner that he married on 15.12.2013 to another girl from whom he has a girl child the charge levelled against the petitioner is proved. In view of this the Inquiry Judge cannot be faulted for having recorded his finding of guilt against the petitioner nor can the High Court or the State Government be faulted for having removed the petitioner from service. He laid great emphasis on the fact that the petitioner did not disclose the factum of two marriages solemnized by him at the time of appearing in the selection and securing appointment.

16. He also emphasized the fact that subsequently the said Mehru Nisha went missing on 08/09.11.2016 and there is evidence to show that the petitioner was with Mehru Nisha on the said date as has come in the testimony of the sister of Mehru Nisha. This is not only intriguing but disturbing. It has also come in the oral testimony of the witnesses that the petitioner was taking advantage of his position as a Judge to scuttle the

investigation by the police and was threatening the family members of Mehru Nisha, therefore, such conduct can neither be condoned nor ignored keeping in view the august office of a Judge to which the petitioner was selected and appointed. In this view of the matter, Mr. Mehrotra submitted this is not a fit case for exercising extraordinary jurisdiction under Article 226 of the Constitution of India. In support of his contention Mr. Mehrotra relied upon the decisions of Hon'ble the Supreme Court in ***Registrar General, High Court of Patna Vs. Pandey Gajendra Prasad & Others; 2012 (6) SCC 357*** and ***Rajasthan High Court V/s Ved Priya & Another; 2020 SCC OnLine 337***.

17. We have heard learned counsel for the parties and have also perused the records.

18. The charge against the petitioner as contained in the charge-sheet dated 04.07.2018 is as under:

"While you were practicing as a lawyer in High Court, Allahabad, you solemnized marriage with Ms. Mehru Nisha, a practicing Advocate D/o Sri Tara Chand R/o Mavi Kala, P.S. Kotwali, District Baghpat, on 24.10.2013 at Arya Samaj Temple, Chak Kriparam, Mama Bhanja Ka Talab, Naini, Prayag. Thereafter, you were selected as Civil Judge (Junior Division) in the year 2015 and you solemnized second marriage in the life time of your first wife Ms. Mehru Nisha, who has been missing since 09.11.2016 in respect of which an F.I.R. bearing crime no. 0465/2017 u/s 364 I.P.C., P.S. Colonelganj, Allahabad has been registered against you.

Thereby, you have failed to maintain uprightness and your above conduct is in contravention of the norms of conduct prescribed for a Judicial Officer. For the said misconduct, you are hereby called upon to answer the charge in terms of Rule 3 read with Rule 29 of the U.P. Government Servants Conduct Rules, 1956, which is punishable under Rule 3 of the Uttar Pradesh Governments (Discipline and Appeal) Rules, 1999."

19. The following documentary evidence was proposed to be adduced in support of the said charge:

"1. Photocopy of complaint made by Sri Istekhar Ali s/o Sri Asamuddin R/o Village Nirmani, P.S. Shahpur District Muzaffarnagar dated 10.01.2017 and 11.01.2017 addressed to the learned Registrar General of this Court along with affidavit dated 12.04.2017 comprising twelve pages with all annexures.

2. Photocopy of complaint dated 18.01.2017 made by Smt. Noor Jahan (Mother of Mehrunisha)' W/o late Tara Chand, R/o Mavi Kala, P.S. Kotwali, District Baghpat comprising of five pages along with annexures.

3. Photocopy of letter dated 22.05.2017 sent by S.S.P. Allahabad to the learned Registrar General of this Court comprising fifteen pages with all annexures.

4. Photocopy of nine coloured photographs of Smt. Mehru Nisha relating to your marriage comprising of five pages."

20. In addition to it following oral testimony was proposed to be adduced:

"1. Sri Santosh Kumar Shastri S/o Late Ganga Prasad, R/o 59, K.L. Keedganj, Allahabad.

2. Sri Harshvardhan S/o Sri Asharfi Lal, R/o Chak Kripa Ram, Naini, Allahabad.

3. Sri Kamlesh Kumar S/o Awdhesh Kumar Paswan, R/o Village Dhaska, P.O. Rampur, P.S. Manihar, District Ballia.

4. Smt. Priya w/o Sri Kamlesh Kumar, R/o Village Dhaska, P.O. Rampur, P.S. Manihar, District Ballia.

5. *Sri Ishtekhar Ali S/o Sri Asamuddin, R/o Village Nirmani, P.S. Shahpur, District Muzaffarnagar.*

6. *Smt. Noor Jahan W/o Sri Tara Chand, R/o Mavi Kala, P.S. Kotwali, District Baghpat.*

7. *Smt. Afsana W/o Sri Mustakeem (D/o Sri Tara Chand), R/o H. No. MB, 12/2, Garima Garden, Near Garima Jali Public School, Asauda, Paswada, Pasauda, Ghaziabad, U.P.-201005."*

21. The charge-sheet also mentions that any other evidence which is considered during the course of inquiry in respect of the charge may also be taken into account after due notice to the charge-sheeted Officer.

22. It has already been mentioned that the petitioner herein denied the charge levelled against him especially the factum of first marriage with Mehru Nisha. It has already been stated that petitioner's stand was that it was nothing but a sham marriage for the reasons already discussed. In view of this it was upon the Department to prove the charge based on the standard of proof applicable in the disciplinary proceedings which is preponderance of probabilities.

23. When we peruse the charge levelled against the petitioner we find it to be quite vague and lacking in certainty, as also suffering from non application of mind. It mentions about the alleged first marriage of petitioner with Mehru Nisha on 24.10.2013 at Arya Samaj Mandir, Chak Kriparam, Maman

Bhanja ka Talab, Naini, Prayag while they were practicing as Lawyers in the Allahabad High Court. It goes on to mention that petitioner was selected as Civil Judge (Junior Division) in 2015 and straightaway thereafter it mentions that he solemnized second marriage in the lifetime of the first wife who has been missing since 09.11.2016 in respect of which an FIR bearing Crime No. 0465 of 2016, under Section 364 IPC, Police Station Karnalganj, Allahabad had been registered. The charge does not mention as to when the second marriage took place. Of course, now it is not in dispute that it took place on 15.12.2013 when the petitioner was not a Government servant. The first marriage is in dispute.

24. Thereafter, the charge goes on to say that the petitioner had failed to maintain uprightness and that the said conduct was in contravention of the norms of conduct prescribed for a Judicial Officer, wholly oblivious of the fact that on the relevant dates when the alleged marriages were solemnized in the year 2013 the petitioner had not even been selected for appointed as Judicial Officer, what to say of having been appointed, therefore, the framing of the said charge based on conduct, etc. expected of

a Judicial Officer makes the non-application of mind at the time of framing of charge apparent.

25. It then goes on to say that for the aforesaid misconduct the petitioner should answer the charge in terms of Rule 3 read with Rule 29 of the U.P. Government Servant Conduct Rules, 1956 (hereinafter referred to as 'Conduct Rules, 1956') which is punishable under the U.P. Government Servant (Discipline and Appeal) Rules, 1999. Now, these Rules apply only to Government Servant i.e. one who is already in service. The incidents on the basis of which violation of Rules is being alleged took place prior to the petitioner joining service but the concerned authority did not apply its mind at all to this aspect and also as to how in these circumstances Rule 3 and Rule 29 of the Conduct Rules, 1956 would be adhered, when such alleged acts did not take place after joining of service by the petitioner. Rules 3 and 29 of the Conduct Rules, 1956 are as under:

"3. General. (1) *Every Government servant shall at all times maintain absolute integrity and devotion to duty.*

(2) *Every Government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force.*

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."

26. The very opening line of Rule 3 (1) of the Conduct Rules, 1956 says that every Government servant shall at all time maintain absolute integrity and devotion to duty. Sub-Rule (2) also starts with the opening words every Government shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force. It thereafter goes on to say that if a Government servant conducts himself in a way not consistent with due faithful discharge of duty in service it is misconduct, misconduct means misconduct behaviour from ill motive. Act of negligence, errors judgment or innocent mistakes do not constitute misconduct. There is no charge levelled against the petitioner regarding his conduct as a Government servant. The allegations in the charge-sheet pertain to a period prior to his joining service as a Judicial Officer, when he was not a Government servant..

27. On a bare perusal of Rule 29, even assuming that the first marriage with Mehru Nisha took place, though it is in dispute, and

thereafter during her lifetime the petitioner married for the second time, we find that the very opening of the said Rule which pertains to 'bigamous marriages' says no Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government. Now, apparently none of the marriages had taken place after the petitioner joined judicial service, therefore, one fails to understand as to how Rule 29 applies to the facts of this case.

28. None of these relevant aspects have been taken into consideration while framing the charge against the petitioner nor the same have been taken into consideration during inquiry by the Inquiry Judge who has found the petitioner guilty without looking into the scope of the aforesaid Rule, merely on the ground that the marriages had, in fact, taken place, wholly oblivious of the fact that both the marriages, assuming that they had taken place, were of a date prior to his joining in service.

29. If there was any other provision in law/Rules based on which petitioner could be proceeded departmentally, it is not mentioned in the charge-sheet.

30. The fact that such marriage was an offence under Section 494 IPC is a different matter and this is not even the allegation in

the charge-sheet nor is there anything on record to show that the alleged first wife Mehru Nisha initiated any complaint against the petitioner under Section 198 Cr.P.C. read with Section 494 IPC as in such cases only a complaint could be filed before the Court of criminal jurisdiction and not an FIR. There is nothing on record that the family members of Mehru Nisha at any point have filed any such complaint. They did file an FIR which is registered under Section 364 IPC, but, there is nothing on record to show that the petitioner was convicted of the said offence, in fact, it was informed during argument that final report has been filed in the same.

31. This brings us to other recitals in the charge which is with regard to the recital with respect to the alleged first wife Mehru Nisha to the effect - '**who has been missing since 09.11.2016 in respect of which an FIR bearing Crime No. 0465 of 2016, under Section 364 IPC, Police Station Karnalganj, Allahabad has been registered against the petitioner**'. Now, there is no allegation in the charge-sheet that the petitioner was responsible in any manner of having kidnapped her thereby committing an offence under Section 364 IPC nor is there anything on record to show that during investigation the allegations were found to be

true resulting in a police report before the Court of competent jurisdiction or that trial in respect of the said offence was pending before any Court. In fact, the counter affidavit of the opposite parties is absolutely silent on these aspect. Mere filing of an FIR does not constitute any offence nor any misconduct. In view of the above, the recital in the charge-sheet as quoted above is of no consequence.

32. In these circumstances, what we find is that the very framing of charge suffers from absolute non-application of mind to relevant facts and the law on the subject. The charge has been framed alleging violation of Rules which apply only to Government servants, oblivious of the fact that none of the allegations pertained to the conduct of the petitioner as a Government servant. One could understand if, based on the material available with the opposite parties, the petitioner was proceeded for cancellation of selection or appointment, if this could have been done and was otherwise permissible in law, but, to frame such a charge for the purposes of imposing a major punishment is apparently without any factual and legal basis. All this is assuming that the first marriage took place although even in this regard there is a doubt.

33. As the discussion made hereinabove is sufficient to allow the writ petition we do not wish to record any conclusive opinion on the factum of the first marriage with Mehru Nisha, but, suffice it to say that considering the stand of the petitioner, there are certain recitals in the witnesses produced by the department which may give credence to his version or which, certainly required a better consideration than what has been done by the Inquiry Officer, such as, in the testimony of the complainant - Istekhar Ali EW-5 wherein he has stated that Noorjahan has four daughters, she did not have any son from her marriage with Tahir Ali, the wife of the complainant is the third daughter of Noorjahan, first daughter was Ashiya, she had been married, second daughter was Mehru Nisha who was unmarried and was studying, Mehru Nisha used to insist on studying on account of which she did not want to get married that is why both her younger sisters got married but she did not marry. Mehru Nisha was 36 years of age when she went missing. His mother-in-law i.e. Noorjahan the mother of the missing lady Mehru Nisha, used to pressurize her for getting married. Now, this tallies with the version of the petitioner herein that a sham marriage was planned by Mehru Nisha on 24.10.2013 so as to get a marriage certificate and to placate her mother so that she may not insist

her for marriage, any further, how far this would be acceptable is another matter but this aspect has not been considered at all in the inquiry report.

34. We may also in this regard refer to testimony of Purohit EW-1 who is said to have conducted the first marriage. He has *inter alia* stated that Mehru Nisha had approached him two or three times for getting a marriage certificate whereupon she was informed that marriage certificate could not be issued without the marriage actually having taken place whereupon she came on 24.10.2013 with the petitioner Balram Panwar and the marriage was solemnized and thereafter marriage certificate was issued, of course, after undertaking an exercise to convert her religion. They had also filed certain affidavits in this regard. In cross-examination he has stated that it is true that the petitioner Balram Panwar had not come to him first, it was Mehru Nisha who had come to him two or three times, although both of them had subsequently applied for marriage which was conducted as per Hindu rites. In the cross-examination he has reiterated that when Mehru Nisha had come to him for the first time she had informed him about requirement of a marriage certificate and after marriage also she came to the temple i.e. on the very next day

and requested that the marriage certificate be cancelled on which the said witness EW-1 expressed his inability as this could be done only by the Court. Why did Mehru Nisha meet the Purohit alone and asked for a marriage certificate without the marriage having been solemnized? Why did she go to the Purohit to get the marriage certificate cancelled, the very next day of marriage? These questions have not been dealt in the inquiry report nor by the Disciplinary Authority. Now, all this when viewed in the light of the stand of the petitioner required a deeper scrutiny than done by the Inquiry Officer who, in fact, has not considered these aspects nor the Rule position as already discussed.

35. It is the case of the petitioner that after the said alleged marriage she had applied at least 14 times for appearing in the competitive examinations of various Public Service Commissions and in none of the said applications she had mentioned herself as his wife nor had she mentioned her name as Nishi Arya which was the name allegedly given by the Priest after her conversion and that she had always mentioned her name as Mehru Nisha which according to him supported his version that it was a sham marriage. As already stated, the Inquiry Judge has ignored all

these relevant aspects so as the Full Court and the State Government.

36. EW-2 Harshvardhan who is the President of the concerned Arya Samaj was not present at the time of marriage. As regards Istekhar Ali EW-5, we have already discussed his statements relevant to the issue aforesaid, earlier. He was also not present at the time of marriage.

37. EW-4 Kamlesh Kumar is the alleged witness to the marriage of the petitioner with Mehru Nisha. He has testified that CD was prepared of the rituals conducted during marriage as also photographs were clicked, but, as stated, the version of the petitioner is that this was all a sham exercise for the reasons already mentioned hereinabove, therefore, this aspect should have been inquired by the Inquiry Judge and the Disciplinary Authority.

38. EW-5 the other witness to the marriage who in fact is the wife of EW-4 has stated in her cross-examination that she was not aware as to what rituals were performed.

39. EW-6 sister of Mehru Nisha was also not present at the time of marriage. The date of marriage given by her is incorrect. In any case, although she has asserted marriage between petitioner and

Mehru Nisha and also that on the date she went missing petitioner was with her and that Mehru Nisha had talked to her in this regard, but, then again the version herein of petitioner is firstly of a sham marriage, secondly there is nothing on record to show that the petitioner was responsible for Mehru Nisha's disappearance. All these aspects have not been taken in to consideration by the Inquiry Officer or the Disciplinary Authority. In fact there is no charge against the petitioner that he was responsible for disappearance of Mehru Nisha.

40. A hunch or a suspicion howsoever strong can never be a substitute for hard evidence. Even in a departmental proceeding where the standard of proof is preponderance of probabilities, there has to be tangible evidence pointing towards the guilt of the delinquent employee i.e. the evidence on the basis of which a reasonable inference based on the aforesaid standard of proof can be arrived. It cannot be done merely on a hunch or a suspicion that the petitioner must have committed this misconduct. The law is very well settled in this regard.

41. The only reason we are not recording any conclusive opinion with regard to factum of first marriage is that we are allowing the writ petition only on the ground that the very charge

framed against the petitioner was factually and legally erroneous and unsustainable and as we propose to grant liberty to the opposite parties to proceed afresh as per law.

42. As regards reliance placed by Mr. Mehrotra upon Rule 13 of the U.P. Judicial Service Rules, 2001 which provides that a male candidate, who has more than one wife living or a female candidate who has married a man already having a wife living shall not be eligible for appointment to a post in the service, this is not the charge against the petitioner in the charge-sheet nor are the proceedings for cancellation of selection and appointment. The charge the way it has been framed, as already discussed, is erroneous. In view of the liberty granted by us it is always open for the opposite parties to rely on this Rule for proceeding against the petitioner afresh, if there is evidence in this regard.

43. The contention of Mr. Mehrotra that the sister of the deceased has deposed that petitioner threatened the family members with dire consequences and that he appears to have misused his position as a Judicial Officer, this is not the charge levelled against him in the charge-sheet, as quoted above,

therefore, without it being part of the charge this cannot be considered.

44. In view of the above discussion, none of the decisions relied by Mr. Mehrotra persuade us to take any other view of the matter.

45. The impugned orders are accordingly quashed. Consequently, the petitioner shall be reinstated with continuity in service. It is left open to the High Court to proceed to initiate fresh disciplinary proceedings against the petitioner after framing proper charges or for that matter to initiate proceedings for cancellation of his selection/appointment and the question as to whether the first marriage had, in fact, taken place and during the life time of the first marriage, the second marriage had been solemnized by the petitioner, would also be open for consideration in such proceedings, if there is a cause in this regard. The relevant aspects mentioned hereinabove would also have to be taken into consideration while arriving at any conclusion in this regard. However, while doing so, Inquiry Report dated 24.10.2018 shall not be considered, though the evidence including oral testimonies collected during such inquiry can be utilized for such fresh disciplinary proceedings.

46. As regards arrears of salary, etc. a decision in this regard shall be taken as per Rules only after conclusion of fresh proceedings, if any, initiated against the petitioner by the opposite parties. If such proceedings are not initiated within six months, then a decision shall be taken in this regard in terms of 54-A of the Financial Handbook Volume II Part II to IV or such other Rule as may be applicable.

47. The writ petition is ***allowed*** subject to the liberty granted hereinabove.

48. The Bench Secretary shall return the original records pertaining to the disciplinary proceedings in question and the vigilance inquiry to Mr. Gaurav Mehrotra, learned Counsel for the High Court.

[Om Prakash Shukla,J.] [Rajan Roy,J.]

Order Date :- 18.09.2024

Santosh/-