

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 2673 of 2015

- Chueeru Bajrangi, S/o Late Aghanuram, aged about 57 years, Ex-Assistant Sub-Inspector Balrampur, resident of village Chalni, P.S. - Sanna, Civil and Revenue District Jashpur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Thorough the Secretary, Department of Home, DKS Bhawan, Raipur (C.G.)
2. The Director General of Police, Raipur (C.G.,)
3. The Inspector General of Police, Ambikapur, District Surguja (C.G.)
4. The Superintendent of Police, Ambikapur, District Suguja (C.G.)

---- Respondents

For Petitioner	Mr. Ajit Singh, Advocate.
For Respondent/State	Mr. Y.S. Thakur, Dy. A.G.

Hon'ble Shri Justice Prashant Kumar MishraOrder On Board05.08.2015

Heard finally with the consent of learned counsel for the parties.

- (2) The petitioner is challenging the legality and validity of the appellate order as well as the order passed by the disciplinary authority,

imposing punishment of compulsory retirement from service.

(3) Bare minimum facts of the case, necessary to be mentioned in this order, are that the petitioner performed marriage with one Saigo Bai in the year 1978. He joined the services as Constable in the Police Department on 01.12.1981. He performed second marriage with one Gulabi Bai sometime in the year 1989-90. His first wife Saigo Bai preferred an application for grant of maintenance which was dismissed concurrently by the Judicial Magistrate First Class, Sessions Court and the High Court. However, SLP (Criminal) No.2060/2010 preferred by Saigo Bai was allowed by the Supreme Court vide judgment reported in **2001 AIR SCW 336 (Saygo Bai v. Chueeru Bajrangi)**.

(4) After the judgment passed by the Supreme Court, the first wife moved an application before the petitioner's employer for recording her name as the legal heir/nominee of the petitioner. On receipt of this application, the employer became aware about the factum of performance of second marriage by the petitioner. Soon thereafter, a charge sheet was issued to the petitioner for alleged violation of Rule 22 of the C.G. Civil Services (Conduct) Rules, 1965. In a duly conducted and concluded departmental enquiry, the petitioner has been visited with the penalty of compulsory retirement and the said order has been affirmed in appeal.

(5) Mr. Singh, learned counsel for the petitioner, would submit that the performance of second marriage by a Government servant itself is

not a misconduct; it is the act of not seeking prior permission from the employer which has been made a misconduct under Rule 22, therefore, the impugned order is illegal. He would further submit that under the prevailing customs in the petitioner's caste/society, the second marriage is permissible, therefore, otherwise also, the petitioner has not committed any misconduct. He would place reliance upon the judgment rendered by a Single Bench of the High Court of Madhya Pradesh in the matter of **Kailashvan Goswami vs. State of M.P. and others, (2008(2) MPLJ 278)**. It is also argued that while deciding the petitioner's appeal, the appellate authority has not considered and dealt with each of the grounds separately, therefore, the appellate order is vitiated and the matter deserves to be remitted back.

(6) Per contra, Mr. Thakur, learned Dy. A.G. for the State, would submit that the findings recorded by the enquiry officer regarding performance of second marriage by the petitioner is a finding of fact, which cannot be interfered in this writ petition. He would further submit that the petitioner has neither pointed out any defect in the decision making process nor any perversity or misreading of the evidence has been pointed out calling for judicial review.

(7) A bare reading of Rule 22 would make it explicit that a Government servant who has a wife living shall not contract another marriage without first obtaining the permission of the Government notwithstanding that such subsequent marriage is permissible under the personal law meaning thereby that the performance of second

marriage during subsistence of first marriage has been treated to be a misconduct, however, the same may not, in a given case, amount to misconduct, if the concerned Government servant has obtained prior permission from the employer. Obtaining permission from the employer would impliedly involve such permission which has got sanction in law. Performance of second marriage during subsistence of the first marriage has not been made permissible under the Hindu Marriage Act, therefore, ordinarily, such permission cannot be granted by the employer.

(8) This Court is not convinced with the argument raised by learned counsel for the petitioner that performance of second marriage itself is not a misconduct, but the fact of not seeking permission has been treated as misconduct. If this argument is accepted, it would amount to permitting license to a Government servant to perform second marriage during subsistence of first marriage, which otherwise is not permissible in law. What is not permissible in law governing the field cannot be treated legal just by informing and seeking permission from the employer.

(9) In the matter of **Kailashvan Goswami (Supra)** relied by learned counsel for the petitioner, the concerned Government servant has performed the second marriage before entering into service. Therefore, that was not the act which was committed by him as a government servant and there was no occasion for him to obtain permission from the Government, because, at that time, he was not

even a member of the Government service. Thus, the judgment relied upon by learned counsel for the petitioner is distinguishable on facts.

(10) The contention regarding non-consideration of each and every ground raised in the memo of appeal by the appellate authority, is referred only to be rejected. The present is not a case where the petitioner would point out any procedural defect in conducting the enquiry. He is neither raising any ground of perversity nor misreading of evidence, which has prejudiced him in raising the defence. The alleged misconduct was not qua performance of duties but it concerns with his conduct of performing second marriage.

(11) The petitioner's statement recorded before the enquiry officer is a part of the record of this writ petition. He has admitted that he performed first marriage with Saigo Bai in the year 1978 and after joining service in the year 1981, he performed second marriage in the year 1989-90 with Gulabi Bai. He also admitted that he did not seek permission from the Department before performing second marriage. Apart from this categorical statement, in the matter before Supreme Court, it is observed that in proceedings under Section 125 of Cr.P.C., the petitioner not only admitted the factum of second marriage but tried to justify the same on the ground that the first wife left his company and refused to come back, therefore, he was compelled to perform second marriage. Thus, not only in the departmental enquiry but in the previous judicial proceedings also, the finding has been recorded against the petitioner that he has performed the second

marriage. Once this fact is admitted with further admission that he had not obtained any permission from the department, all the requirements of Rule 22 is satisfied. The appellate authority was not obliged to deal with each and every ground raised in the appeal.

(12) The petitioner has been visited with the penalty of compulsory retirement. It is the settled law that this Court while exercising powers under Article 226 of the Constitution of India, cannot interfere with the quantum of punishment unless the same is shockingly disproportionate to the nature of conduct.

(13) In the facts and circumstances of the case, this Court does not find that the punishment imposed on the petitioner is shockingly disproportionate, therefore, in view of the judgment of the Supreme Court in the matter of **M.P. Electricity Board v. Jagdish Chandra Sharma, (2005) 3 SCC 401**, there is no scope for interference in the quantum of punishment.

(14) For the foregoing, the writ petition being devoid of merits, is liable to be and is hereby dismissed.

Sd/-

Judge

PRASHANT KUMAR MISHRA