

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

and

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

WRIT PETITION No.39593 of 2015

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ORDER: (per RR, J)

Heard Sri R.Dheeraj Singh, learned counsel for the petitioner and Smt. Bobba Vijayalakshmi, learned Standing Counsel for the High Court and, after hearing them, the writ petition is disposed of at the stage of admission.

A writ of mandamus is sought by the petitioner to declare the action of the third respondent in conducting an enquiry, and in submitting a report on 01.04.2015, without taking into consideration the Andhra Pradesh Civil Services (Conduct) Rules, 1964 (for short 'the Rules') as illegal, arbitrary and violative of the CCA Rules. The petitioner seeks a consequential direction to the fourth respondent not to defer his promotion on the ground that the departmental enquiry and criminal cases are pending against him.

Proceedings were issued whereby Articles of charge were framed against the petitioner for having married again, though his wife Smt. G. Surya Kumari was living on the date of his second marriage, and for having violated Rule 25 of the Rules. Rule 25(1) of the Rules stipulates that no Government employee, 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. The petitioner's personal law does not even permit

him to marry again when the first wife is alive and the earlier marriage is subsisting.

The disciplinary enquiry initiated against the petitioner is for his having contracted a second marriage which is prohibited by Rule 25(1) of the Rules. The contention that the enquiry being conducted by the enquiry officer, and the report submitted by her, is in violation of Rule 25 of the Rules is, therefore, not tenable. The petitioner was issued proceedings dated 21.11.2013 wherein articles of charge was framed against him. Promotion of all other candidates was effected by proceedings dated 31.12.2013 and, on the ground that disciplinary proceedings were pending against the petitioner, his promotion was deferred till completion of the disciplinary enquiry or criminal cases, if any, filed against him.

Sri R.Dheeraj Singh, learned counsel for the petitioner, would submit that promotion cannot be denied where disciplinary proceedings are contemplated or are under consideration. In the present case, disciplinary proceedings were initiated, and proceedings dated 21.11.2013 was issued wherein Articles of charges were framed against the petitioner. Promotion was effected to employees, in the category to which the petitioner belongs, more than a month thereafter on 31.12.2013. Pendency of disciplinary proceedings would disentitle an employee from being considered for promotion. While a Government servant cannot be denied his right to be considered for promotion merely because disciplinary proceedings are contemplated or are under consideration, once disciplinary proceedings are instituted and Articles of charges are framed against him, he cannot be considered for promotion till the disciplinary proceedings stand concluded by an order passed by the disciplinary authority. We find no illegality in the action taken by the fourth respondent, in deferring the petitioner's case for promotion, till completion of the disciplinary proceedings initiated against him.

Commencement of the enquiry proceedings, and the enquiry report submitted by the enquiring officer, was pursuant to the earlier proceedings dated 21.11.2013 issued by the disciplinary authority framing articles of charge against the petitioner. As these proceedings of the third respondent do not suffer from any illegality, they also do not necessitate interference in proceedings under Article 226 of the Constitution of India.

The writ petition as filed is wholly misconceived and is, accordingly, dismissed. Miscellaneous Petitions, if any, pending shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

7th DECEMBER, 2015.

S. RAVI KUMAR, J

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