

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 824 of 2004**

Dilip Kumar Sorri, S/o. Handaram Sorri, Aged about 27 years, R/o. Village – Pudidas, Distt. Bastar (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through – Secretary Home (Police) Department , Raipur (C.G.)
2. D.I.G., Chhattisgarh Shashastra Police Bhilai (C.G.)
3. Senanai, Fifth Battalian Chhattisgrah Shashastra Police, Jagdalpur Through Company Commander D-Sanway, Beejapur, Distt. Bastar (C.G.)

---- Respondents

For Petitioner: Mr. Govind Dewangan, Advocate.
 For Respondents/State: Mr. Prasun Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****02/11/2016**

(1) The petitioner was appointed on the post of Constable on 05.01.1998 by the respondent No. 3. During the continuance of service, he was charge sheeted on the allegation that he has performed second marriage without obtaining prior permission of the State Government during continuance of his first marriage; and also did not inform the fact of first marriage, which is contrary to the Rule 3 of the Chhattisgarh Civil Services (Conduct) Rules, 1965 (hereinafter called as 'Rules of 1965')

(2) Respondent No. 3 by its order dated 29.08.2002 imposed

penalty against the petitioner and he was reduced in rank for a period of two years with cumulative effect.

(3) Respondent No. 2 in exercise of *suo motu* jurisdiction conferred under Regulation 270(1) of the Chhattisgarh Police Regulations, 1961 issued notice to the petitioner stating that penalty imposed against the petitioner is disproportionate to the misconduct committed by the petitioner and in exercise of power conferred under sub Rule 3(1), 22(1) and 64(1) of the Rule 3 of the Rules, 1965 imposed penalty of removal from service.

(4) Feeling aggrieved against the order of removal passed by respondent No. 2, petitioner herein preferred this writ petition questioning the order of removal.

(5) Shri Govind Dewangan, learned counsel for the petitioner would submit that the petitioner is a member of Scheduled Tribe and among the Tribes bigamous marriage is permissible by the custom prevalent, which is duly pleaded by the petitioner in his reply before respondent No. 2. He further submits that the fact of first marriage could not be informed to the Department due to some inadvertence and he would rely upon Rule 22(1) of the Rules, 1965 in support of his submission. He while placing reliance upon the judgment of the High Court of Tripura in the matter of ***Ghulam Nabi Shergujri Vs. The United of India & others***¹ would also submit that it is a technical misconduct in not seeking permission of the authority concerned, therefore, lenient view by taken in favour of the petitioner and order of removal be

1 W.P. (C) No.588 of 2015, decided on 04.04.2016

set aside.

(6) On the other hand, Shri P.K. Bhaduri, learned counsel appearing for the Respondents/State would submit that by virtue of 22(1) of the Rules, 1965, Government Servant is not eligible to enter into second marriage without obtaining permission of the State Government, notwithstanding the fact that subsequent marriage is permissible under the personal law for the time being applicable to him and, therefore, the respondent No. 2 has rightly been terminated the petitioner holding him guilty of violation of Rule 3 of the Rules, 1965.

(7) In order to answer the question raised at the bar, it would be appropriate to notice Rule 22 (1) of the Madhya Pradesh Civil Services (Conduct) Rules, 1965, which reads as under: -

“22. 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) XXX XXX XXX

(3) XXX XXX XXX”

(8) A careful perusal of the Rule 22(1) of the Rules, 1965 would show that the Government Servant has been prohibited to perform second marriage during life time of his spouse living without obtaining permission from the Government and the said prohibition is absolute and unconditional and even if the personal

law of the Government servant permits such a marriage, then also second marriage is not permissible unless the permission is obtained from the State Government; in other words, applicable personal law has to give way to the applicable service law (Statutory Rule) to the said Government servant.

(9) The Supreme Court in the matter of **Khursheed Ahmad Khan Vs. State of Uttar Pradesh and others**², has held that contracting second marriage during existence of first marriage without permission from Government as prohibited by Rules, amounts to misconduct in terms of State Conduct Rules and held as under:-

“ 13. The matter is no longer *res intergra*. In Javed v. State of Haryana³, this Court dealt with the issue in question and held that what was protected under Article 25 was the religious faith and not a practice which may run counter to public order, health or morality. Polygamy was not integral part of religion and monogamy was a reform within the power of the State under Article 25. This Court upheld the views of Bombay, Gujarat and Allahabad High Court to this effect. This Court also upheld the view of the Allahabad High Court upholding such a conduct rule. It was observed that a practice did not acquire sanction of religion simply because it was permitted.”

(10) The High Court of Tripura in the matter of **Ghulam Nabi Shergujri (supra)** has also held that act of marrying a second time without seeking permission of the Government is misconduct and held as under:-

“7. Having held so, we are clearly of the view that the punishment imposed upon the petitioner is grossly disproportionate to the misconduct committed by him. We must keep in mind the fact that the petitioner had already

² (2015) 8 SCC 439

³ (2003) 8 SCC 369

rendered 18 years of service before he contracted into the second marriage. He was terminated after he had completed almost 20 years of service. In the reply, there is no allegation that there was any other complaint against the petitioner. No doubt, his act of marrying a second time without seeking permission of the Government is misconduct but can it be said that this misconduct is so severe that he should be dismissed from service which would mean that he would virtually be entitled to no pensionary or other benefits.

8. The petitioner has pleaded that he was not aware of the provisions of Rule 21 of the CCS (Conduct) Rules. Ignorance of law is no excuse but at the same time, we cannot ourselves ignore the hard truth that a large number of employees are not aware of the details of the rules. Whatever be the case, the petitioner is a person who served the BSF for about 20 years and the allegation against him is that he misconducted himself by contracting a second marriage while his first spouse was living. This is not a criminal offence of bigamy because the personal law permits such conduct. Misconduct is the technical misconduct in not seeking permission of the authorities concerned. We are, therefore, of the opinion that though the misconduct of the petitioner is serious enough to warrant his non-continuation in service but it is not so serious as to warrant forfeiture of all his service benefits.”

(11) In the matter of **Khursheed Ahmad Khan** (supra), their Lordships of Supreme Court has held that punishment of removal for contracting second marriage during existence of first marriage without permission from the Government as prohibited by Rules is just & proper and, as such, penalty of removal from service

cannot be held to be disproportionate and, therefore, the Reviewing Authority, respondent No. 2 herein is absolutely justified in imposing major penalty of dismissal from the service to the petitioner, in which, I do not find any illegality requiring interference by this Court in this writ petition.

(12) Accordingly, the writ petition is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-