

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.3034 OF 2016

Humera Anjum w/o Abdul Taqui ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Shri Zia Ul Mustafa, Advocate for petitioner
Shri P.S. Patil, A.G.P. for State
.....

CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.

DATED: 14th March, 2016.

ORAL ORDER :

1. The petition is filed with a prayer that respondent Nos.1 to 3 be directed to initiate departmental enquiry for misconduct against respondent No.4 in pursuance to Rule 26-2 of the Maharashtra Civil Services (Conduct) Rules, 1979 on account of contracting second marriage.

2. The learned counsel for the petitioner submits that, the petitioner is the second wife of respondent No.4. The petitioner has filed a complaint with respondents to take action against respondent No.4 for committing misconduct of contracting second marriage. No action is being taken by the respondents in that regard, departmental enquiry be directed to be initiated against respondent No.4. The learned counsel relies on the judgment of the Apex Court in case of *Khurshid Ahmed Khan Vs. State of U.P. & ors.* (Civil Appeal No.1662/2015), dated 9th February, 2015.

3. We have heard the learned A.G.P.

4. The petitioner claims to be the second wife of respondent No.4. The said marriage is not illegal.

5. In the case before the Apex Court, the Apex Court was required to consider the legality of the departmental proceedings and the validity of the order removing the petitioner from service on account of misconduct by performing second marriage. In this case, action was already taken by the employer.

6. The respondent Nos.1 to 3 have not initiated any action against respondent No.4. Respondent No.4 is in service of respondent No.3 i.e. of a primary school.

7. It will have to be considered that the provisions of the Maharashtra Civil Services (Conduct) Rules, 1979 apply to the Government servants and the respondent No.4 is an employee of a private school and is not a Government servant. Nothing is brought on record to substantiate a contention that Maharashtra Civil Services (Conduct) Rules, 1979 would apply to employees of private school. What steps are to be taken against respondent No.4 is the prerogative of respondent No.3 as respondent No.4 is employee of respondent No.3. It is for the respondent No.3 to take action if the respondent No.3 so desires.

8. In light of that, Writ Petition cannot be entertained. Writ Petition as such, is dismissed. No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)