

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

C O R A M

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH  
AND  
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Writ Appeal No.473 of 2017

P.Soundararajan

.. Appellant

Vs.

1.The Principal Secretary to the  
Government,  
Government of Tamil Nadu,  
Home (Pol-V) Department,  
Secretariat,  
Chennai - 600 009.

2.The Commissioner of Police,  
Greater Chennai.

3.The Deputy Commissioner of  
Police, Armed Reserve,  
Chennai.

.. Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters patent  
against the order of His Lordship Mr.Justice S.Nagamuthu dated  
17.06.2013 made in W.P.No.4202 of 2007 on the file of this Court.  
Prayer in WP.NO.4202/2007:

Petition filed under Article 226 of the Constitution of India  
praying to issue a Writ of Certiorarified Mandamus to call for  
the records and quash the proceedings of the Ist respondent in  
Lt.No.127390/Pol.V/2002-8 dt 29.04.2005 proceedings of the 2nd  
respondent in Proc. No.Appeal.3/PR.I(3)/99 dt 26.03.99 and the  
proceedings of the 3rd respondent in PR.70/PR.3(1)/97 dt  
14.12.1998 and direct the respondents to reinstate the  
petitioner in service with all consequential benefits

For Appellant : Mr.S.Soundararajan

For Respondents: Mr.V.Jayaprakash Narayanan,  
Special Government Pleader

## JUDGMENT

(Judgment of the Court was delivered by HULUVADI G.RAMESH, J.,)

Challenging the order passed by a learned Single Judge of this Court, in W.P.No.4202 of 2007 dated 17.06.2013, the appellant is before this Court with this Writ Appeal.

### 2.The facts of the case are as follows:-

The Appellant joined in Police service as a Grade II Police Constable on 27.05.1988. The said post is governed by the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. While so, the third respondent by his proceedings in Tha.Ko.No.59/Tha.Pi.1(2)/97 issued a charge memo to the appellant, framing charges under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. According to the said charge, on 07.12.1981, when his first wife Mrs.Selvi was alive and the marriage was in subsistence, the appellant had contracted second marriage with one Ms.Tamilarasi in the year 1986. This conduct of the appellant entering into the bigamous marriage is a violation of Rule 23 of the Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964. Since, the appellant had allegedly violated the said Conduct Rules, charge memorandum came to be issued.

3.The appellant had admitted that he married Ms.Tamilarasi in the year 1986. Rule 23 of the Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964 prohibits a Police Officer from contracting second marriage subsequent to entering into service. Therefore, according to the appellant, the second marriage with Ms.Tamilarasi that the appellant had contracted long prior to his joining service is not at all a misconduct in terms of Rule 23 of the Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964. Not satisfied with the said explanation, an enquiry officer was appointed and he conducted enquiry. Before the Enquiry Officer, the appellant admitted his marriage with Ms.Tamilarasi in the year 1986. But the Enquiry Officer, rejecting his explanation, found that he committed misconduct in terms of Rule 23 of the Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964. Based on the said Enquiry Officer's report and after affording an opportunity to the appellant to make further representation, the third respondent, by his proceedings dated 14.12.1998, dismissed the appellant from service. As against the same, the appellant preferred an appeal to the second respondent. The second respondent, by his proceedings in Proc.R.C.No.Appeal.3/PR.I(3)/99 dated 26.03.1999 dismissed the appeal, thereby confirming the order of removal from service. Challenging the same, he filed a review to the Government and the first respondent/Government, by issuing G.O.3D.No.137 Home

(Pol.V) Department dated 26.06.2001 dismissed the same. Thereafter, the appellant filed a mercy petition before the Government and the same was also rejected by the Government under Letter No.127390/Pol.V/2002-8 dated 29.04.2005. Aggrieved over the above, the appellant has filed a writ petition in W.P.No.4202 of 2007.

4.After considering the facts and circumstances of the case, the learned Single Judge of this Court has dismissed the writ petition by way of a detailed order. Challenging the same, the appellant is before this Court with this Writ Appeal.

5.We have heard Mr.S.Soundararajan, learned counsel for the appellant and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondents.

6.Originally, the appellant had married one Ms.Tamilarasi in the year 1986 during the subsistence of the first marriage between him and one Mrs.Selvi. Therefore, there can be no difficulty to hold that the appellant had contracted bigamous marriage. Now, the legal question involved in this case is as to 'Whether the said bigamous marriage, which was contracted prior to entering into service, would fall within the ambit of Rule 23 of the Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964, so as to be a misconduct to be dealt with under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules.

7.Rule 23(1)(a) of the Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964 reads as follows:-

"23.Bigamous Marriages :- (1)(a) No police officer shall enter into or contract, a marriage with a person having a spouse living and"

8.Rule 23(1)(a) of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1944, which prohibits entering into a contract of marriage with a person having a spouse living was challenged before this Court in W.P.No.15288/2012 and the Hon'ble Mr.Justice N.Paul Vasanthakumar (as he then was) upheld the said provision by holding that the said provision was made in accordance with the Personal Law applicable to the parties in order to maintain morality in society.

9.After having referred to the said Rule, the First Bench had the occasion to consider the judgment of Delhi High Court in M.S.Mann Vs. Union of India (1976 (1) SLR 350), judgment of the Honourable Supreme Court in Javed Vs. State of Harynana (2003 (3) CTC 620 (SC) and also the judgment of the Honourable Supreme Court in Sushil Kumar Singhal Vs. Punjab National Bank (2010 (8)

SCC 573). The First Bench also had an occasion to refer to Rule 23 1(a) of the Tamil Nadu Subordinate Police Officers Conduct Rules. In para 17 of the judgment, the First Bench has observed as follows:

"17.Rule 23(1) (a) of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1944, which prohibits entering into a contract of marriage with a person having a spouse living was challenged before this Court in W.P.No.15288/2012 and one of us (NPVJ) upheld the said provision by holding that the said provision was made in accordance with the Personal Law applicable to the parties in order to maintain morality in society."

10.After having considered Rule 23 (1) (a) of the Tamil Nadu Subordinate Police Officers Conduct Rules vis-a-vis Chartered Accountants Act, 1949, in the light of the judgments of the Honourable Supreme Court and other Courts, in para 19, the First Bench has held as follows:

"19.From the above referred judgments and having regard to the fact that the appellant married another woman, while the first marriage was subsisting, and had acted contrary to the law and to his "estranged wife", we are of the view that the offence of bigamy is coming within the meaning of "moral turpitude"."

11.The learned counsel for the appellant would submit that Rule 23 of the Tamil Nadu Subordinate Police Officers Conduct Rules, deals only with a situation after an officer had entered into the service and the said Rule cannot be made applicable retrospectively to the conduct of a Police Officer, which occurred prior to his joining service. In order to substantiate the said contention, the learned counsel would rely on a Division Bench judgment of this Court in G.Sekar Vs. Commissioner of Police and another (2013) 3 MLJ 520).

12.Per contra, the learned Special Government Pleader appearing for the respondents submitted that though the marriage between the appellant and Ms.Tamilarasi was solemnized in the year 1986 i.e., before entering into the service by the appellant, at the time of entering into service, the said fact was suppressed by the appellant. If the said fact was brought to the notice of the Department, definitely, the appellant would have been disqualified even for entering into service. Hence, the learned Special Government Pleader would submit that no

leniency would be shown to the appellant as he does not deserve and the learned Single Judge of this Court has considered the facts and circumstances of the case in detail and has dismissed the Writ Petition. Hence, the said order of the learned Single Judge does not warrant any interference at the hands of this Court.

13. At this juncture, the learned counsel for the appellant submitted that instead of dismissing or removing the appellant from service, he may be permitted to retire compulsorily so that, he may have some monetary benefits. The learned counsel further submitted that the first wife of the appellant also now interested in getting money. Despite private offence being committed by the husband/delinquent, the first wife will have to live in lurch, if the delinquent is removed or dismissed from service. In this regard, the learned counsel would rely on the judgment of the Hon'ble Supreme Court in Union of India and another v. K.G.Soni (CDJ 2006 SC 619) wherein, the removal from service was converted into compulsory retirement.

14. In view of the factual finding that when the first wife is alive and the marriage between the appellant and his first wife is in subsistence, he married one Ms. Tamlarasi and the appellant also admitted the said fact before the Enquiry Officer, this Court is of the view that for the sin committed by the appellant, his first wife and her child who are very innocent need not be made to suffer.

15. In this situation, we are of the view that instead of dismissing the appellant from service, the appellant may be permitted to retire compulsorily so that, the first wife and her child and the appellant may get some monetary benefits and the same would meet the ends of justice.

16. In the result, the Writ Appeal is disposed of with the following directions:-

(i) Out of the total retirement benefits, 40% of the amount shall be deposited in any one of the nationalised Bank in the name of the child of the first wife till he/she attain majority;

(ii) 50% of the monthly pension shall be paid to the first wife towards her maintenance.

(iii) The respondents are directed to allow the appellant to go for compulsory retirement and pass necessary proceedings in this regard, within a period of four weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-

Asst. Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Principal Secretary to the  
Government,  
Government of Tamil Nadu,  
Home (Pol-V) Department,  
Secretariat,  
Chennai - 600 009.

2.The Commissioner of Police,  
Greater Chennai.

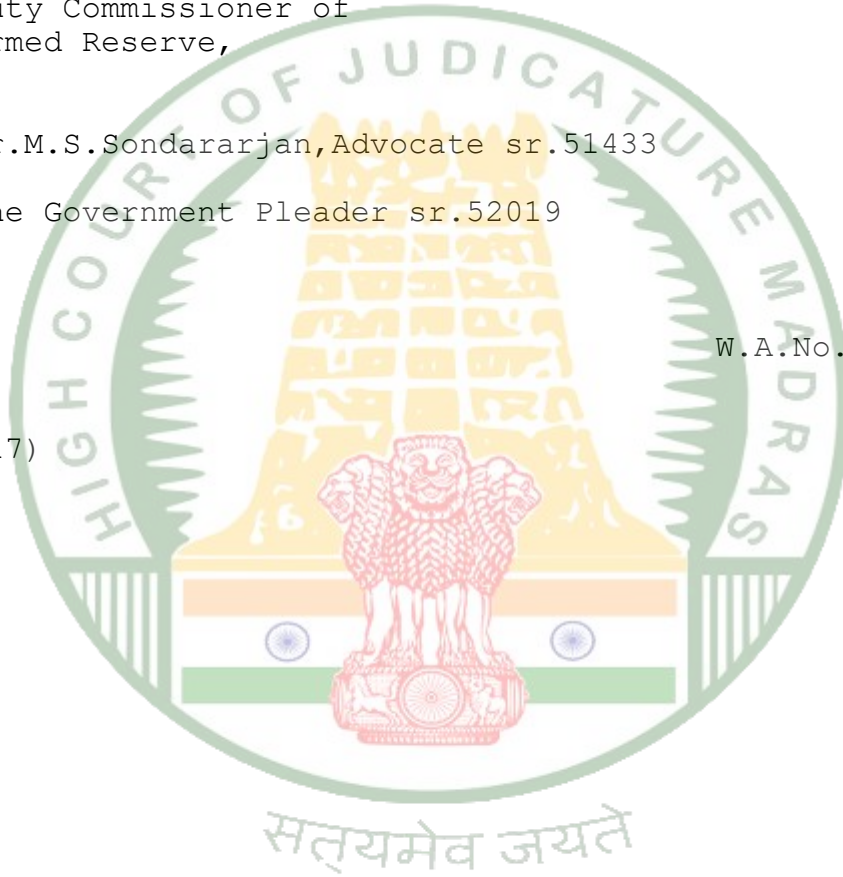
3.The Deputy Commissioner of  
Police, Armed Reserve,  
Chennai.

+1cc to Mr.M.S.Sondararjan,Advocate sr.51433

+1cc to the Government Pleader sr.52019

W.A.No.473 of 2017

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