

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 3-8-2018

Delivered on 8-8-2018

WPS No. 2152 of 2008

Dr. Kaushal Kishor Mishra S/o Shri S.M.Mishra, aged about 50 years, R/o Village Sambalpur, Tahsil Bhanupratappur Distt. South Bastar Kanker C.G.

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary Medical Education and Health and Family Welfare, DKS Mantralaya, Raipur C.G.
2. Director Indian System Of Medicine And Homeopathy, Old Nurses Hostel Behind Mantralaya Raipur C.G.
3. District Ayurvedic Officer Distt. Kanker North Bastar C.G.

---- Respondents

For the Petitioner	:	Mr. Prakash Tiwari, Advocate
For the Respondents	:	Mr. R.K. Gupta, Dy. Adv. Gen.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV Order**

1. The petitioner has preferred this writ petition seeking the relief to quash the impugned order dated 20.02.2008 (Annexure P-1) and to get all consequential benefits.
2. This is admitted by the respondents that the petitioner is working as Ayurvedic Medical Officer. His marriage was solemnized with Ms. Anita Mishra. He had undergone sterilization operation and thereafter he had got two increments by letter dated 14.02.1995 (Annexure P-2). The Deputy Secretary of the State initiated departmental inquiry against him on 11.02.2004. The copy of the charge-sheet was provided to him. The relevant papers regarding departmental enquiry are collectively (Annexure P-8). The two charges were framed against the petitioner one was that he had two wives and second was that he had not furnished correct information.
3. In brief, the petitioner's case is that his marriage with Smt. Anita

Mishra was solemnized on March, 1992. They have adopted a child namely Achintya on 19.3.1994. His sterilization was conducted on 19.03.1994. The First Additional District Judge, Kanker had passed the judgment and decree of divorce between the petitioner and Smt. Anita Mishra on 7.11.2002 (Annexure P-3). He entered in the second marriage with Ku. Rekha Paal on 22.01.2004. The marriage certificate is Annexure P-5. After completion of the departmental enquiry by impugned order Annexure P-1, his two advance annual increments were withheld with cumulative effect. The impugned order is illegal and contrary to the law. He had contracted second marriage after obtaining the decree of divorce from the Court, he had not furnished any wrong information.

4. In brief, the respondents' case is that the appeal lies against the impugned order under Civil Services (Classification, Control and Appeal), Rules 1966 (hereinafter called as Rules 1966) to the Governor, thus, this writ petition is not maintainable. The S.P., Kanker had made the preliminary inquiry and submitted the report on 19.07.2002 (Annexure R-1). He had suppressed the material fact that he had already a son. He had given false information that he has no child.
5. Being aggrieved by the impugned order Annexure P-1, the petitioner has preferred this writ petition.
6. In Para No.2 of Annexure P-1, it has been mentioned that charge of the bigamy is not proved against the petitioner.
7. The first and foremost question for consideration before this Court is that whether this writ petition is maintainable or not.
8. It would be pertinent to mention the Rules 22 and 23 of 1966, which read as under:-

“22. Orders against which no appeal lies- Notwithstanding anything contained in this part, no appeal shall lie against-

- (i) any order made by the Governor.
- (ii) any order of an interlocutory nature or of the nature of a step in-aid for the final disposal of a disciplinary

proceeding;

(ii-a) any order passed under Rule 11; and

(iii) any order passed by an inquiring authority in the course of an inquiry under Rule 14.

(iv) any order passed by the High Court as an Appellate Authority.

23. Orders against which appeal lies- Subject to the provisions of Rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely-

(i) an order imposing any of the penalties specified in Rule 10 whether made by the disciplinary authority or by any appellate or reviewing authority;

(ii) an order enhancing any penalty, imposed under Rule 10;

(iii) an order of suspension made or deemed to have been made under Rule

9. This is quite vivid from Annexure P-1 that it has been issued by order and in the name of Governor Chhattisgarh. Thus, looking to the provision of Rule 22 (1) of the Rules, 1966, this Court finds that no appeal would be preferred against Annexure P-1. Thus, it could not be said that the petitioner had an alternative relief to file the appeal against the impugned order of the Governor. Hence, this Court finds that the petitioner had no alternative remedy, thus this writ petition is maintainable.

10. The second question for consideration before this Court that whether the competent authority had committed illegality on giving the finding that the petitioner had given elusory information to the department.

11. It would be noteworthy to mention the provisions of clause (c) of Rule 2 (ii) of Chhattisgarh Civil Services (Conduct) Rules, 1965 (hereinafter called as Rules, 1965), which reads as under:-

“Members of Family” in relation to a Government servant includes son or daughter or step-son or step-daughter of a Government servant and wholly dependent on him, but

does not include a child or step-child who is no longer in any way dependent on the Government servant or of whose custody Government servant has been deprived of by or under any law.”

12. To resolve the matter in issue the provisions of Rule 3 of Rules, 1965 is relevant which is extracted here below:-

“3. General-(1) Every Government servant shall at all times:-

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government servant.”

13. Sterilization certificate Annexure P-9 contains information that at the time of the sterilization petitioner had no male child and no female child.

14. The beneficiary of Annexure P-9 was petitioner. By Annexure P-2, two advance increments had been given to the petitioner on account of sterilization. Thus, the person who submitted the Annexure P-9 to the department is only the petitioner. The petitioner had not taken any step for rectification of the aforesaid information before submitting Annexure P-9 to the department. Moreover, Annexure P-9 had been filed by the petitioner means that he had relied on the contents of Annexure P-9. Thus this Court finds that aforesaid information was given by the petitioner.

15. The petitioner has given the information to the Assistant Registrar Economic and Statistical on 11-10-1993 that he had a child whose date of birth is 2-9-1993. Looking to this fact and his case that he and Anita Mishra had adopted Achintya on 19-3-1994, this Court finds that on the date of sterilization 19-3-1994, petitioner had a male child namely Achintya.

16. Looking to the above mentioned facts and circumstances of the case, this Court finds that on date of sterilization petitioner had a male child namely Achintya but he had furnished the

information that at that time, he had no child and he had violated the provisions of sub-rule (iii) of Rule 3 of Rules 1965. Thus, this Court finds that the competent authority had not committed illegality on giving the finding that the petitioner had given illusory information regarding aforesaid matter to the department. In the case in hand, the petitioner has not violated the provisions of sub-rule 1 and 2 of Rule 3 of Rules 1965.

17. Third question for consideration before this Court is that whether while awarding the penalty of withholding advance two annual increments with cumulative effect, is just and proper.

18. The petitioner had been found only guilty of not furnishing correct information to the department regarding the existence of a child at the time of the sterilization. By furnishing wrong information regarding that matter, petitioner had not got any undue benefit. Thus, the aforesaid penalty is disproportionate, excessive, unjust and improper. In the facts and circumstance of the case, in the opinion of this Court, ends of justice would serve if the petitioner is awarded a lesser penalty. Thus, this Court remits the matter to the authority concerned for awarding appropriate lesser penalty than which was awarded to the petitioner, in view of the observations made in this order, within a period of 2 months from the date of receipt of a certified copy of this order. Annexure P-1 is set aside to the extent it relates to holding that petitioner had violated the provisions of sub-rules (i) and (ii) of Rule 3 of Rules 1965 and awarding penalty of withholding two advance annual increments regarding furnishing aforesaid illusory information by the petitioner.

19. Consequently, the writ petition is partly allowed.

Sd/-
(Sharad Kumar Gupta)
Judge

