

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO. 12411 OF 2017

Abdul Sattar S/o. Shaikh Ansar
Age : 41 years, Occu. Assistant Teacher,
R/o.: Islampura, Navegaon,
Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.

... Petitioner

VERSUS

1. State of Maharashtra,
Through Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai – 400 032.

2. Divisional Commissioner (Revenue),
Nasik Division, Nasik.

3. Chief Executive Officer,
Zilla Parishad, Jalgaon,
District Jalgaon.

... Respondents

.....
Mr P. R. Patil, Advocate for the petitioner
Mrs A. V. Gondhalekar, AGP for respondent Nos. 1 and 2
Mr H. P. Kshirsagar, Advocate for respondent No. 3
.....

WITH
CIVIL APPLICATION NO. 2648 OF 2018
IN
WRIT PETITION NO. 12411 OF 2017

.....
Mr Girish Nagori, Advocate for the applicant
Mr P. R. Patil, Advocate for respondent No. 1
Mrs A. V. Gondhalekar, AGP for respondent Nos. 2 and 3
Mr H. P. Kshirsagar, Advocate for respondent No. 4
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 24TH FEBRUARY, 2018.

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :

1. Rule. Rule made returnable forthwith. With consent of the parties, the matter is taken up for final disposal at admission stage.

2. The petitioner is an Assistant Teacher with Zilla Parishad, Jalgaon. He is appointed on 04.08.1997. On 15.12.2002, the petitioner married with one Sameeranbano. The complaint was filed by wife Sameeranbano with the employer on 05.05.2011 to the effect that petitioner has contracted second marriage with one Shahin Bano on or about 08.05.2011. Taking cognizance of the complaint, the employer appointed an Enquiry Officer. The Enquiry Officer submitted report stating that the petitioner has not taken permission before performing second marriage and that the Magistrate in the Criminal Misc. Application No. 975 of 2011 has held that, the petitioner has performed second marriage and held the petitioner guilty. The employer terminated the services of the petitioner. The appeal and revision filed against the said order is dismissed. Aggrieved thereby, the present writ petition.

3. Mr Patil, the learned counsel for the petitioner submits that, at no material point of time, the petitioner had performed second marriage. Though his case is that, he had given divorce to his wife, he had not performed second marriage. The application was also given to the authority seeking permission to perform second marriage, however, the second marriage was never performed. The petitioner is now happily residing with his first wife. The observation of the Enquiry Officer and the decision of the Disciplinary Authority is perverse.

4. Mr Kshirsagar, learned counsel for Zilla Parishad submits that, the Enquiry Officer after conducting enquiry has come to the conclusion that the petitioner has performed second marriage. No permission was obtained by the petitioner while performing second marriage. The act of performing second marriage is against the rules and tantamounts to misconduct. The order removing the petitioner from service is rightly passed. The said order is upheld by the appellate and revisional authority also.

5. Learned counsel for the intervenor viz. the first wife submits that now the intervenor is residing with the petitioner.

6. We have considered the submissions canvassed by the learned counsel for the respective parties.

7. This Court in its writ jurisdiction under article 226 & 227 of the Constitution of India would not sit as an appellate authority over the decision taken by the Disciplinary Authority. However, if the decision of the Disciplinary authority is based on no evidence or is perverse, then this Court can exercise its jurisdiction under Article 226 & 227 of the Constitution of India.

8. We have gone through the Enquiry Report and the orders passed by the Disciplinary Authority so also the appellate and revisional authority. The Enquiry Officer solely on the ground that the Magistrate in Cri. Misc. Application No. 975/2011 filed by the wife u/s 494, 120B and 109 of IPC had observed that, even assuming that the petitioner has performed second marriage, still that would not constitute any offence and had dismissed the complaint u/s 203 of the Cr.P.C. Reading the order of Magistrate, it nowhere transpires that any finding was given by the Magistrate that the petitioner has performed second marriage. The judgment of the Magistrate has been misread by the Enquiry Officer and the authorities while terminating

the services of the petitioner. Apart from the complaint of the wife of the petitioner namely Sameeranbano, there is no evidence of whatsoever nature to even remotely come to the conclusion that the petitioner has performed second marriage. The person with whom the petitioner is alleged to have performed the marriage is not examined nor any document in the nature of Nikahnama or otherwise is coming before the authorities to hold that the petitioner has performed second marriage. Even in the complaint filed by the wife u/s 494, 120B and 109 IPC, the Magistrate has not given any finding that of the petitioner having performed second marriage.

9. The order of the Enquiry Officer, the appellate authority and the revisional authority is *ex facie* perverse and in fact the same is based on no evidence.

10. In light of the above, the impugned orders are quashed and set aside. The respondents shall reinstate the petitioner on his original post. The petitioner shall be given the benefit of continuity in service. The petitioner will be entitled to 50% of the back-wages considering that the finding was on the basis of no evidence.

11. Rule is made absolute in the aforesaid terms. No order as to costs.

12. In view of disposal of writ petition, nothing survives in the connected civil application and same stands disposed of.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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