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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.6369 of 2006

F.Suresh Xavier

... Petitioner

Vs.

1.The Additional Director -
General of Police
(Law & Order)
Govt. of Tamil Nadu
Chennai - 4.

2.The Deputy Inspector General
of Police, Coimbatore Range
at Coimbatore District.

3.The Superintendent of Police
The Nilgiris District.

4.The Deputy Superintendent of Police,
The Nilgiris District (PEW)
Ooty.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent vide No.H1/PR/36/04 dated 21.12.2004 pursuant to the enquiry report submitted by the 3rd respondent and quash the enquiry report submitted by the 3rd respondent and further direct the respondents to re-instate the petitioner into service with all consequential benefits.

For Petitioner : Mr.A.Immanuel

For Respondents: Mr.K.Ravikumar for R1 to R4

Additional Government Pleader

O R D E R

The petitioner has filed this writ petition challenging the order of removal passed by the third respondent and to direct the respondents to re-instate the petitioner into service with all consequential benefits.



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2.The facts leading to the filing of this writ petition are as follows: The petitioner was enlisted as Police Constable Grade II in the year 1995 and posted in Tamil Nadu Special Police Force in the VII Battalion at Palani and he was transferred to Armed Reserved Police at Ooty. Thereafter he was transferred to the Local Police Station at Ooty.

3.The petitioner was legally married to one Mary Nirmala as per the Christian Marriage Rites on 14.05.1999 at St.Anthony's Church at Coonoor, in the presence of the family members. After the marriage, they lived together at Aruvankadu and they were blessed with a male child Joshva and a female child Janifar. His wife is working as a Teacher in the Nilgiris District. There was some family dispute due to personal reasons and his wife made complaint to the Superintendent of Police, The Nilgiris District alleging that he has illicit intimacy with one women Police Constable Bharathi.

4.Thereafter, preliminary enquiry was conducted and the petitioner was served with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, on 15.06.2004. The petitioner had also given a detailed reply to the fourth respondent on 22.09.2004. During the course of enquiry, the Enquiry Officer recorded the statements of Mary Nirmala (P.W.1), Bharathi (P.W.2) and one Jaya Mary (P.W.3) and also recorded the petitioner's evidence. The enquiry revealed that the petitioner had developed illicit contact and love with the said Bharathi and also married her illegally and secretly and through the wedlock, they were blessed with a female child and suppressing the said marriage, the petitioner had married Mary Nirmala on 14.05.1999 without getting prior permission of the Department or Government.

5.Hence, two charges were framed against the petitioner by the fourth respondent and the petitioner was issued with a Memo calling for further explanation, for which, the petitioner has given a reply. Thereafter, the Enquiry Officer submitted the Enquiry Report before the third respondent and the third respondent based on the Charge Memo and Enquiry Report passed the impugned order awarding the punishment of dismissal from service with immediate effect on 21.12.2004 and a copy of the order was served to the petitioner on the same day through the Inspector of Police, 'M' Circle, Udhaigai, The Nilgiris District.

6.Aggrieved by the same, the petitioner filed appeal before the second respondent/ The Deputy Inspector General of Police, Coimbatore Range, on 07.01.2005 and the second respondent rejected the appeal on 02.03.2005 and the same was communicated to the petitioner through the Inspector of Police, Ketti Police Station on 16.03.2005. Thereafter, the petitioner filed review



application before the first respondent/ The Additional Director General of Police (Law & Order), Govt. of Tamil Nadu, Chennai and the same was also rejected on 14.07.2005. Hence, the petitioner has filed this writ petition.

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7.The learned counsel appearing for the petitioner would submit that though three witnesses were examined, no documentary evidence was marked. There is no document to prove that the petitioner married the women Police Constable Bharathi and there also no document to prove that they were blessed with a female child. Based on the oral enquiry, the Enquiry Officer as well as the Disciplinary Authority arrived at a conclusion that there was marriage inbetween the women Police Constable Bharathi and suppressing the first marriage, the petitioner had married the complainant namely, Mary Nirmala.

8.The learned counsel appearing for the petitioner would further submit that apart from the above, the complainant herself withdraw the complaint and after withdrawal of the complaint, the Enquiry Officer proceeded with the matter and awarded punishment which is un-sustainable one. In the absence of any complaint, the Enquiry Officer submitted the report and the Disciplinary Authority as well as the Appellate Authority without analyzing the facts dismissed the petitioner from service which is un-sustainable. Accordingly, he prayed for allowing the writ petition.

9.Per contra, the respondents have filed a counter affidavit stating that the petitioner was enlisted as Police Constable Grade II in the year 1995. During August, 1998, the petitioner was deputed for the Chief Minister's Medal Parade duty to Trichy District and when he was on duty at Trichy, he developed love with one Bharathi who was working as Woman Constable No.2685 of the Tamil Nadu Special Police I Battalion. He stayed with her secretly in the Police Quarters belonging to her and married her secretly on 16.03.1999 without the consent of their parents. On completion of the duty, he returned to the Nilgiris District Armed Reserve, Udhagai. Due to the wedlock, the said Bharathi and the petitioner were blessed with one female child on 11.12.1999.

10.The counter affidavit further states that in the meantime, the parents of the petitioner arranged for his marriage with one Mary Nirmala and the marriage with Mary Nirmala took place on 14.05.1999. The petitioner deliberately concealed his marriage with Bharathi and married Mary Nirmala as his second wife and thereby deserted the women Constable Bharathi. Hence, the petitioner has violated the conduct rules besides bringing discredit to the Police Force and committed the delinquency of bigamous marriage.



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11.The learned Additional Government Pleader would submit that based on the complaint given by one Mary Nirmala on 15.11.2003, enquiry was conducted. During the course of enquiry, the petitioner's second wife namely Mary Nirmala was examined as P.W.1, Woman Constable namely, Bharathi was examined as P.W.2 and one Jaya Mary

was examined as P.W.3. Thereafter, disciplinary proceedings were initiated and since the charges were proved, the petitioner was removed from the uniformed service.

12.The learned Additional Government Pleader would further submit that a person suppressing his earlier marriage and marrying for second time cannot be accepted in the uniformed service. Thereby in order to maintain discipline in the uniformed service, the petitioner was removed from service. Accordingly, he prayed for dismissal of the writ petition.

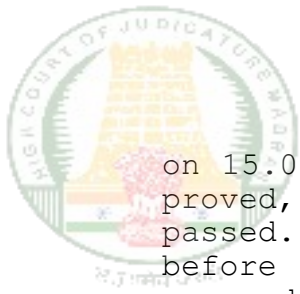
13.Heard the arguments advanced by the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader.

14.From a perusal of the complaint given by Mary Nirmala on 15.11.2003 it is known that the petitioner had illegal intimacy with one Bharathi and they were blessed with one female child and suppressing the above marriage, the petitioner has married the complainant. P.W.1 Mary Nirmala has deposed before the Enquiry Officer that the petitioner suppressed the first marriage with one Woman Constable

Bharathi and married her on 14.05.1999 and they were blessed with two children. Thereafter, she came to know that the petitioner has got a female child through one Bharathi. Hence, she gave the complaint before the Disciplinary Authority.

15.The said Bharathi was examined as P.W.2 and she in her deposition accepted her marriage with the petitioner. She also admitted that the herself and the petitioner resided together in the Trichy Police Quarters and they were blessed with a female child. The petitioner was also examined. In the enquiry, he admitted his first marriage with Bharathi and he requested Bharathi to convert to Christianity and she refused to convert to Christianity. Thereafter he was forced by his parents to marry and thereby he married the defacto complainant.

16.All the above said facts were clearly established before the Enquiry officer. Thereafter, the Enquiry Officer filed a report before the Disciplinary Authority. From a perusal of the entire records and files, it is known that charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, was given to the petitioner



on 15.06.2004 and after detailed enquiry, since the charges were proved, the impugned order of dismissal from service came to be passed. Aggrieved by the same, the petitioner filed appeal before the second respondent on 07.01.2005 and the second respondent rejected the appeal on 02.03.2005. Thereafter, the petitioner filed review application before the first respondent and the same was also rejected on 14.07.2005.

17.Both the Appellate Authority as well as the Revisional Authority came to the same conclusion since the petitioner was in uniformed service and he has committed the grave offence of bigamous marriage. Marrying second time when the first wife is alive is a clear violation of the conduct Rules as well as the tenure of the uniformed service. In view of the above, I do not find any error in the impugned order passed by the third respondent.

18.Already two fact finding authorities have come to the same conclusion. This Court while exercising its power under Article 226 of the Constitution of India is not inclined to interfere in the findings of the fact finding authorities in the case of bigamous marriage. Accordingly, the impugned order passed by the third respondent is confirmed.

19.In the result, the writ petition is dismissed. No costs.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1.The Additional Director -
General of Police
(Law & Order)
Govt. of Tamil Nadu
Chennai - 4.

2.The Deputy Inspector General
of Police, Coimbatore Range
at Coimbatore District.



3.The Superintendent of Police
The Nilgiris District.

4.The Deputy Superintendent of Police,
The Nilgiris District (PEW)
Ooty.

+1 CC to Govt. Pleader sr 24867.

+1 CC to Mr.A. Immanuvel, Advocate sr 24886.

W.P.No.6369 of 2006

SSD(CO)
SP(24/04/2018)