

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4365 of 2014**

Mehatru Baddhai @ Mehatru Ram Baddhai S/o Shri Dhan Singh Baddhai Aged About 32 Years Ex-Constable No. 598, R/o Babudabena, Post Potgaon, Police Station Korar, District Uttar Bastar Kanker, Chhattisgarh,

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Principle Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. The Director General Of Police Police Headquarters, Raipur, District Raipur, Chhattisgarh
3. The Inspector General Of Police Bastar Range, Lalbagh, Jagdalpur, Chhattisgarh
4. The Superintendent Of Police District Uttar Bastar Kanker, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Sunil Pillai, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.
		Ms. Ishwari Ghritlahare, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20/09/2019**

1. The challenge in the present writ petition is to the three orders dated 13.02.2013 (Annexure P/4), 23.03.2013 (Annexure P/6) and 12.10.2013 (Annexure P/12).
2. Annexure P/4 dated 13.02.2013 is the order by which the services of the petitioner has been terminated on the misconduct committed by him under Rule 22 of the Conduct Rules for having married again during the lifetime of the first wife without obtaining the permission from the Government as is required under the Rules. Annexure P/6 dated 23.03.2013 is an order by which the first appeal preferred by the petitioner before the Departmental Appellate Authority stood

rejected. Annexure P/12 dated 12.10.2013 is the order whereby the respondent No.2 again rejected the Mercy Appeal of the petitioner.

3. The facts of the case in nutshell is that the petitioner was working as a Constable under the respondents. The petitioner after getting an appointment under the respondents got married in December, 2005 to one Smt. Mamta. However, inspite of the fact that the said Smt. Mamta being the wife of the petitioner and also being alive, the petitioner again entered into a marriage with one Nirasha Ledia and from the said second marriage, the petitioner also has a child born.
4. When this fact came to the notice of the Department, a disciplinary proceeding was initiated and the petitioner was issued with a charge-sheet alleging two charges, one alleging that being a government servant the petitioner has misconducted himself by entering into a second marriage during the lifetime of the first wife and also having children from the said second marriage. The second charge was that by entering into the second marriage, the petitioner has committed the misconduct as envisaged under Rule 22(1) & (2) of the Civil Services Conduct Rules, 1965.
5. During the course of the departmental enquiry, it has been admitted and proved that during the lifetime of the first wife Smt. Mamta, the petitioner has entered into a second marriage and has also got a child from the said subsequent marriage. It was also an admitted position that before entering into the second marriage, the petitioner had not obtained any permission from the establishment in this regard. The Disciplinary Authority after due consideration of the materials brought before the Inquiry officer and also on perusal of

the inquiry report having found that the charges stood fully proved, inflicted the petitioner with the order of termination vide Annexure P/4. The petitioner immediately thereafter preferred a departmental appeal and the Appellate Authority also vide Annexure P/6 rejected the appeal, against which the petitioner preferred a Mercy Appeal to the respondent No.2 and the respondent No.2 in turn vide Annexure P/12 rejected the appeal.

6. The sole ground of challenge in the present writ petition by the petitioner is that the second marriage having being entered into by the petitioner was with the due consent and permission from the first wife. That the first wife had also sworn an affidavit in this regard in respect of the consent that she had given for the petitioner to enter into the second marriage. In support of his contention, the counsel for the petitioner relied upon two decisions of the Madhya Pradesh High Court, one in the case of **“Gopchand Rai v. State of Madhya Pradesh” 2004 (2) MPHT 21** and the second being WP No. 10638/2005, decided on 11.05.2010. In both the cases, the High Court had set-aside the order of termination and the petitioners therein were given a lighter punishment and were reinstated in service. The contention of the petitioner is that the Madhya Pradesh High Court in both the aforesaid judgments have reached to the conclusion that since there was a consent given by the first wife, therefore the punishment of termination from service becomes too harsh and disproportionate. The petitioner seeks for a similar relief in the instant case also.
7. Per contra, the State counsel opposing the petition submits that from the factual matrix of the case, the findings of the Inquiry officer, the

evidence collected by the Department in the course of the departmental enquiry, all would clearly establish the fact that the charges leveled against the petitioner stands fully proved. According to the State counsel, admittedly the petitioner has entered into a second marriage, during the lifetime of the first wife and before entering into the second marriage, the petitioner has not sought for any permission from the State Authorities as is required under Rule 22(1) &(2) of the Conduct Rules, 1965.

8. For better appreciation of the legal position as it stands, it would be appropriate to quote Rules 22(1) & (2):

“22. Bigamous marriages. - (1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.”

9. Plain reading of the aforesaid provision of law would also require us to know the fact that firstly the petitioner is a Hindu by religion and that where under the personal law there is no practice or custom of marrying more than one person during the lifetime of one. The aforesaid Rules also requires that if at all if a person intends to enter into a second marriage, then he should first have sought permission from the Government. The Rule also has a non-obsante provision that such a permission of the Government is also required, even if second marriage is permissible under the personal law applicable to him.
10. What cannot be lost sight of is the fact that the petitioner belongs to a disciplined and uniformed service, whose duty primarily is to ensure that the citizens abide by the law of the land and the persons

violating the law of the land are prosecuted under the Rules. The petitioner being an educated person and having got an appointment under the State Government and that to in a Police Department, which is a disciplined and uniformed service, cannot take the plea of ignorance of law, so far as the requirement under Rule 22 of the Conduct Rules, 1965. Admittedly, the solemnization of the second marriage without the permission as is required under Rule 22 is not in dispute. There is also no infirmity, malafides or violation of the principles of natural justice pointed out against the disciplinary proceedings conducted against him on the charges leveled against the petitioner.

11. The Rule 22 is a facet for enforcement of discipline in government service. A government servant on entering the service has to abide by the discipline imposed by the government by way of Rules and regulations.
12. Even if the personal law or for that matter the customary law, permitted him to solemnize the second marriage. The rule itself visualizes prior permission in such a case.
13. The Hon'ble Supreme Court in the case of **“Union of India v. K.G. Soni” 2006(6) SCC 794**, where the respondent was charge-sheeted for solemnizing a second marriage and where in a disciplinary proceeding he was removed from service and the Appellate Authority converted it into one of compulsory retirement. In the said case the High Court setting aside the order of compulsory retirement remitted the matter back to the Appellate Authority to reconsider the quantum of punishment and holding that the said misconduct was

not one which warrants compulsory retirement. The Hon'ble Supreme Court setting aside the order of the High Court restored the order of the Appellate Authority holding that the order of compulsory retirement cannot be said to be one which is shocking and disproportionate to the conscious of the Court.

14. Again in **2015(8) SCC 439** in the case of “**Khursid Ahmed Khan v. State of Uttar Pradesh**”. The appellant was removed from service on proved misconduct of contacting second marriage during existence of the first without obtaining permission from the Government in accordance with Rules. The removal from service was upheld by the High Court dismissing the writ petition and the judgment of the High Court was further affirmed by the Hon'ble Supreme Court by dismissing the SLP (Special Leave Petition) observing that second marriage solemnized without permission was a misconduct under the Conduct Rules and the order of removal from service on the said charge did not warrant any interference.
15. Following the aforesaid two judgments of the Hon'ble Supreme Court, the Division Bench of this High Court again in Writ Appeal No. 494/2015 decided on 26.10.2015 had dismissed a Writ Appeal, whereby the Single Bench had dismissed the writ petition declining to interfere with the order passed by the Disciplinary Authority on the charge of having solemnized a second marriage during the subsistence of the first.
16. Recently, this Court also in a similar case in WPS No. 2362/2008 decided on 12.07.2019 referring to the aforesaid judgments of the

Hon'ble Supreme Court as also by the Division Bench of this High Court had dismissed a writ petition.

17. So far as the two judgments of the Madhya Pradesh High Court referred to by the petitioner is concerned, with all due respects and humility at my command, this Court begs to defer with the view taken by the Madhya Pradesh High Court on the subject matter. The simple reason for disagreeing with the two verdicts of the Madhya Pradesh High Court is that in the event, if we allow the writ petition and set-aside the judgment of the termination from service on the ground of solemnizing second marriage during the subsistence of the first that to without permission from the State Government, it may be detrimental to the larger interest of society as also the discipline of the government servant is concerned. It could lead to a situation that many more such persons may start entering into the second marriage and at times, even more than two marriages and would try to take shelter and protection from the said judgment.
18. Given the aforesaid facts and circumstances of the case, this Court does not find any strong case made out by the petitioner for interference with the order of punishment and the rejection of the appeal.
19. The writ petition thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge