

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1170 OF 2018

Govind Basanna Kamble

.... Petitioner

Versus

The Union of India & Ors.

.... Respondents

.....
Shri. Sanjaykumar B. Chavan, Advocate for the petitioner
Shri. Sanjeev B. Deshpande, ASGI for respondents
.....

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

DATED : 22nd MARCH, 2019.

PER COURT:-

1. It appears that, the petitioner was appointed as a Constable with Central Industrial Security Force. He had put in 20 years of service. The departmental enquiry was initiated against the petitioner on the ground that the petitioner has contracted second marriage though his first marriage was subsisting. The Disciplinary Authority upon inquiry found the petitioner guilty and dismissed him from service under order dt. 21.10.2016. The appeal filed by the petitioner was dismissed. The revision filed against the same was also dismissed. Aggrieved thereby, the present petition.

2. Shri. Sanjaykumar Chavan, learned counsel for the petitioner submits that the complaint filed by Maya wife of the present petitioner is out of minor dispute. The complaint was filed by his wife Maya with Police Station Mukundwadi out of anger. Thereafter, his wife again filed application withdrawing the complaint. The learned counsel submits that, his marriage with the first wife Chennamadevi came to an end in the year 2007. Divorce by mutual consent as per the customs was given by Chennamadevi on executing a bond on stamp paper of Rs. 100/-. According to the learned counsel, the said divorce was a customary divorce. After a departmental enquiry was initiated on the ground that the petitioner has contracted second marriage, the petitioner by way of abundant caution also filed proceedings for divorce before the Civil Court against Chennamadevi bearing Marriage Petition No. 231 of 2016. On 04.01.2017, the decree of divorce was also granted. The learned counsel submits that the petitioner was under *bona fide* belief that once the customary divorce has been given, the petitioner is entitled to marry for the second time. Even wife Maya knew the factum of first marriage and the divorce as, the son and daughter begotten from Chennamadevi were living with the petitioner. The learned counsel further submits that, only on the ground that the petitioner has contracted the second marriage the petitioner has been dismissed

from the service. The petitioner has performed his duty with due diligence. He is also awarded for having performed the duty diligently. In such a case, the punishment of dismissal from service ought not to have been awarded more particularly when the documents of customary divorce are on record. The petitioner relies on the order of this Court in **Rajkumar Ratilal Nikam Versus Union of India & Ors.** in Writ Petition No. 7799 of 2017 dt. 08.02.2018 and also the judgment in case of **Ram Padarth Tiwari vs. Union of India and others** reported in 2014(6) Mh.L.J. 85. The learned counsel submits that, the punishment imposed is too disproportionate. The learned counsel also relies on the judgment of the Apex Court in **Pashaura Singh Versus State of Punjab and another** reported in (2010) 11 SCC 749.

3. Shri. Sanjeev Deshpande, learned ASGI for respondents submits that, the petitioner during subsistence of first marriage contracted second marriage which is not permissible. The departmental enquiry has been conducted after following the principles of natural justice. Indiscipline in such employment cannot be tolerated. The petitioner has not proved customary divorce. The learned counsel relies on the judgment of the Apex Court in case of **Swapnanjali Sandeep Patil Vs. Sandeep Ananda Patil** in Civil Appeal No. 2534 of 2019 dt. 06.03.2019.

4. It is not disputed that the petitioner had married with Chennamadevi so also subsequently married with one Maya. Said Maya had filed complaint with Mukundwadi Police Station. The said complaint was subsequently withdrawn by her. The complaint filed with Mukundwadi Police Station was received by respondents. The complaint filed by Maya states that, the petitioner did not intimate her about his first marriage and also gave threat to kill her. The departmental inquiry was initiated basically on the ground that during subsistence of first marriage, the petitioner contracted second marriage.

5. The marriage of the petitioner with Chennamadevi is not disputed, however, the case put forth by the petitioner is that the petitioner had got customary divorce from Chennamadevi in June-2007 and after the initiation of departmental enquiry, the petitioner also filed proceedings for divorce against Chennamadevi viz. Marriage Petition No. 231 of 2016. In the said proceedings, the petitioner did mention about the customary divorce obtained by him from Chennamadevi on stamp paper of Rs. 100/- by producing the said deed of divorce though the same was not pleaded in the plaint.

6. The fact remains that the petitioner did not prove customary divorce nor any issue was framed before the court dealing with the marriage petition about the customary divorce. In absence of evidence of customary divorce, technically the marriage cannot come to an end on the basis of divorce deed and the petitioner thereafter filed Marriage Petition bearing No. 231 of 2016 seeking divorce from Chennamadevi.

7. The Apex Court in a case of Swapnanjali referred to supra has observed that, the husband was required to prove that customary divorce was permissible in their caste/community. In the absence of any such issue or evidence, the Courts below were not justified in observing that there was a customary divorce between the said person and his first wife.

8. In the present case also, the customary divorce has not been proved though the document produced is showing a divorce obtained on stamp paper of Rs. 100/-. In view of that, it cannot be said that, the divorce had taken place between the petitioner and Chennamadevi in the year 2007 on the basis of stamp paper of Rs.100/-.

9. In view of that, the finding of the disciplinary authority confirmed by the appellate authority that the petitioner contracted second marriage during subsistence of first marriage cannot be faulted with.

10. This takes us to the issue about the proportionality of the punishment.

11. It is trite that, wednesbury principle of reasonableness is substituted by the doctrine of proportionality. It appears, the petitioner in good faith and bona fide had obtained divorce from his first wife on stamp paper of Rs. 100/- under the premise that the same is permissible. The petitioner certainly has not been in a position to prove custom. It also appears that, in petition subsequently filed by the petitioner for dissolution of marriage with Chennamadevi, said Chennamadevi did not appear nor contested the proceedings. Because of the belief the petitioner was carrying that the divorce on 100/- rupees stamp paper would be sufficient and he would be legally entitled to marry for second time. It appears that, the petitioner had taken further steps *bona fidely* to marry for the second time though legally same was erroneous. Considering the aforesaid factum that the petitioner was under a wrong belief that

the divorce has taken place between him and Chennamadevi by executing bond of Rs. 100/-, we are inclined to interfere with the punishment awarded to the petitioner of dismissal from service. The order of dismissal of petitioner from service is quashed and set aside, instead the petitioner shall stand compulsorily retired from service.

12. Pursuant to the above order, parties may take further steps for consequential benefits as petitioner may be entitled to.

13. Writ Petition is accordingly disposed of. No costs.

[A. M. DHAVALE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde