

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19659 of 2007

G.Fathimaraj

.. Petitioner

-vs-

1.State of Tamil Nadu,
rep. by Secretary to Government,
Higher Education (F2) Department,
Fort St. George, Chennai 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 002.

3.The Director of College Education,
Chennai 600 006.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 01.02.2007 in G.O. Ms. No.14, Higher Education (F2) Department of the first respondent herein and quash the same and consequently direct the respondents herein to re-instate the petitioner as Lecturer in Mathematics in Mannai Rajagopalaswami Government Arts College, Mannargudi, with effect from 01.02.2007 with all attendant benefits.

For Petitioner:: Ms.AL.Ganthimathi

For Respondents:: Mr.K.Karthikeyan,
Government Advocate
for R1 and R3

No appearance for R2

ORDER

The writ petition has been filed challenging the impugned G.O. Ms. No.14, Higher Education (F2) Department dated 01.02.2007 passed by the first respondent herein and seeking a

direction to the respondents herein to re-instate the petitioner as Lecturer in Mathematics in Mannai Rajagopalaswami Government Arts College, Mannargudi, with effect from 01.02.2007 with all attendant benefits.

2.Learned counsel appearing for the petitioner would submit that the petitioner was working as Lecturer in Mathematics in Mannai Rajagopalaswami Government Arts College, Mannargudi. While so, he was married to one L.Susilamary in the year 1973 and after 23 years of married life, they have no issues out of the wedlock and she was also not in a good health. Therefore, they have undergone medical check up. After ascertaining the fact that there was no possibility of having issues through the petitioner's first wife, he got married to one S.Vijaya, due to pressure mounted on him by his first wife, though he was not inclined to marry her.

3.According to the learned counsel appearing for the petitioner, after the second marriage with the said Vijaya, on 18.06.1998, due to the fire emanating from the stove, the same got bursted and unfortunately his second wife Vijaya died, while preparing food in the kitchen. Though the petitioner had attempted to save her life by pouring water on her and also attempted to put off the fire by holding her and rolling on the floor, resulting in the petitioner sustaining serious burn injuries and also admitted her in both the Government Hospital at Pudukkottai and Trichy, she died without responding to the treatment. Thereafter, the petitioner was arrested on 22.06.1998.

4.Learned counsel appearing for the petitioner would further submit that the Director of College Education, Chennai, the third respondent herein, by proceedings dated 16.03.2004, had issued memo of charges framing two charges against the petitioner and also called upon him to submit his explanation: The charges framed against the petitioner are as follows:

- 1.Since I married a second time while my first wife was alive, the same amounts to misconduct under Rule 19 of the Tamil Nadu Government Service Conduct Rules.
- 2.Since I married one Vijaya as my second wife who is a student of the same College in which I was working as a Mathematics Lecturer, the same amounts to misconduct under Rule 19 of the Tamil Nadu Government Service Conduct Rules.

5.According to the learned counsel appearing for the petitioner, on receipt of the aforesaid charge memo, the petitioner gave his detailed explanation denying the charges that he got married for the second time only with the permission of his first wife, who had pressurised to get married and given

her consent in writing on a stamp paper since they have no issues and the same was performed only due to the ill-health of his first wife and the second marriage was also conducted only with the permission of the family members and elders. According to the learned counsel appearing for the petitioner, disagreeing with the explanation offered by the petitioner, an Enquiry Officer was appointed for an enquiry on the aforesaid charges and the petitioner, who attended the enquiry, has submitted his explanation with the relevant documents. Without properly going through the facts and circumstances of the case, the Enquiry Officer had found the petitioner guilty of the charges framed against him. On receipt of the enquiry report, the petitioner further submitted his explanation reiterating all the explanations offered by him and stating that his second wife Vijaya had died out of a fire accident in the year 1998 and she had also given a dying declaration that the same was only an accident.

6. In the meanwhile, the petitioner suffered a conviction on 04.02.2005 and as against the same, he has preferred a Criminal Appeal in C.A. (MD) No.184 of 2005. This Court, taking note of the fact that the first wife has given her consent for the second marriage and only on the basis of the consent given by the petitioner's first wife, he has contracted the second marriage and there was no issues through his first wife for about 23 long years from the date of marriage, has allowed the Appeal, by setting aside the order of conviction dated 04.02.2005. Therefore, when the petitioner was able to satisfy this Court and succeed before this Court in the Crl. A. (MD) No.184 of 2005 that he has contracted the second marriage only with the consent given by his first wife, the two charges levelled against the petitioner are wholly unjustified and untenable. Hence the impugned order terminating the service of the petitioner from the post of Lecturer is liable to be quashed.

7. Learned counsel appearing for the petitioner also submitted that the petitioner had reached the age of superannuation on 30.09.2008 and therefore, the question of re-instatement does not arise and he is entitled to get only the consequential benefits.

8. A detailed counter affidavit has been filed by the third respondent. Learned Government Advocate appearing for respondents 1 and 3 would submit that the petitioner was rightly issued with the charge memo containing two allegations and consequently, the Enquiry Officer found him guilty and finally, based on the report of the Enquiry Officer holding him guilty of charges that the delinquent married his second wife during the subsistence of the first marriage, the Disciplinary Authority

has passed an order terminating him from service and therefore, the impugned order cannot be interfered with. Even the report of the Enquiry Officer refers to the consent letter given by the first wife of the petitioner, but, the learned Government Advocate was unable to give any reply on the consent letter given by the petitioner's first wife.

9.It is seen that the petitioner in his explanation submitted to the charge memo, has specifically taken a plea that only with the consent of his first wife and the continuous pressure mounted on him by his first wife to go for second marriage, the petitioner has contracted the second marriage. A clear reference also has been found in the report submitted by the Enquiry Officer that the letter given by the first wife shows that the first wife L.Susila Mary has given her consent for the second marriage of her husband as they failed to have any issue for 23 years. Sadly, there is no finding by the Enquiry Officer on the said letter which is the game changer to the controversy. It is not known on what count the said explanation offered by the petitioner was not taken into consideration by the Enquiry Officer and the same error committed by the Disciplinary Authority could be seen from the order passed by the first respondent. Besides, findings given by this Court in CrI.A. (MD) No.184 of 2005 dated 20.04.2011 show that the petitioner had attempted to save the life of the deceased by pouring water on her and also attempted to put off the fire by holding her and rolling on the floor, resulting in the petitioner sustaining serious burn injuries. When this Court, considering the evidence of P.W.2 and P.W.3, has held that the petitioner had attempted to save the life of the deceased by pouring water and attempted to put off the fire by holding her and rolling on the floor and that the petitioner has admitted the deceased in both the Government Hospital at Pudukkottai and Trichy and thus allowed the Appeal, I do not find any good reason for imposing the punishment of termination from service. When the petitioner in his explanation given to the charge memo, has explained that only after 23 long years from the date of first marriage, has contracted the second marriage due to the persuasion of his first wife, Smt.L.Susila Mary who had given consent letter to go for second marriage, the mischievous charge memo levelled against the petitioner charging that he has contracted the second marriage, is wholly unacceptable and unjustified.

10.In view of the aforesaid reasons, the writ petition stands allowed. Since the petitioner had reached the age of superannuation on 30.09.2008, this Court, quashing the impugned order, directs the respondents herein to pay the consequential benefits from the date of dismissal namely, 01.02.2007 till the date of reaching the age of superannuation including the retiral

benefits. Needless to mention that concerned papers be sent to the Disciplinary Authority within a period of four weeks. No costs.

Sd/-
Deputy Registrar (CJ Conf)

//True copy//

Sub Assistant Registrar

vga

To

1.The Secretary to Government,
State of Tamil Nadu,
Higher Education (F2) Department,
Fort St. George, Chennai 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 002.

3.The Director of College Education,
Chennai 600 006.

+1cc to Mrs.AL.Ganthimathi, Advocate SR.No.35588

+2cc to Government Pleader SR.No.36312 & 36289

W.P.No.19659 of 2007

KK(CO)
GMY(27/05/2019)

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