

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.14116 of 2009

N.Karunanidhi

...Petitioner

Versus

1. The Commissioner of Agricultural
Productions-cum-Secretary to Government,
Secretariat,
Fort St. George, Chennai-9.
2. The Secretary,
Tami Nadu Public Service Commission,
Chennai-600 002.
3. The Joint Director of Agriculture,
Nagapattinam, Nagapattinam District. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Charge Memo No.A.4/4795/03 dated 18.06.2004 issued by the Joint Director of Agriculture, Nagapattinam, the 3rd respondent herein and the order of dismissal in G.O. (3D) No.82, dated 09.06.2009 passed by the Commissioner of Agricultural Productions-cum-Secretary to Government, the 1st respondent herein and quash the same and consequently, direct the 1st respondent to extend all service terminal benefits to the petitioner.

For Petitioner : Dr.R.Sampathkumar

For Respondents : Mr.K.Ravi Kumar,
1 and 3 Addl. Govt. Pleader

O R D E R

Challenging the Charge Memo No.A.4/4795/03 dated 18.06.2004 issued by the Joint Director of Agriculture, Nagapattinam, the 3rd respondent herein and the order of dismissal in G.O. (3D) No.82, dated 09.06.2009 passed by the Commissioner of Agricultural Productions-cum-Secretary to Government, the 1st respondent herein, quash the same and for consequential

direction, directing the 1st respondent to extend all service terminal benefits to the petitioner, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner would submit that the petitioner was appointed as Assistant Agricultural Officer in the year 1982 and was rendering his sincere service to the entire satisfaction of his superiors for the past 25 years. Although, he married one Kalaiselvi on 8.2.1980 under the Hindu Customs and a daughter was born through her, later on, she refused to return to his matrimonial home even after several counselling by the elders of both the families and also refused to extend the conjugal life. While so, after waiting for long period till 2000, the petitioner filed a Divorce Petition No.1/2000 before the Sub-Court, Chidambaram and since the said Kalaiselvi did not appear before the said Court, the petitioner obtained an ex-parte divorce decree.

3. The learned Counsel for the petitioner would further submit that however, the Joint Director of Agriculture, Nagapattinam, the 3rd respondent herein issued a Charge Memo with a single charge stating that the petitioner has performed the second marriage with one Piari which is running contrary to Rule 19(1)(111) of Tamil Nadu Government Servants Conduct Rules. Subsequently, one Mr.Sethuraman, Deputy Director (Agriculture) was appointed as Enquiry Officer, who after enquiry came to a conclusion that the charge of marrying Piari was not established. On the basis of the report of the Enquiry Officer, by order dated 23.02.2005, the Joint Director of Agriculture, Nagapattinam dropped the charges stating the reason that the alleged charge levelled against the petitioner was not proved.

4. The learned Counsel for the petitioner would also submit that though the charge of second marriage with Piari was dropped after enquiry by the Additional Secretary to Government, the Government thereafter, has taken up the matter suo motu and without even issuing any charge memo or holding any enquiry and that without even giving any opportunity whatsoever to give his explanation, wrongly passed an order of dismissal from service on 09.06.2009. When the petitioner has disproved the charge memo dated 18.06.2004 issued against him by participating in the enquiry before the Enquiry Officer and when the Enquiry Officer also has satisfactorily accepted the case of the petitioner that there was no such marriage took place with the said Piari, without even setting aside that charge memo and without even issuing any fresh charge memo on any fresh cause brought to the notice of the respondents, the service of the petitioner from the post of Assistant Agricultural Officer cannot be dismissed, it is pleaded.

5. The learned Counsel for the petitioner would further submit that the said Piari also took part in the enquiry and deposed that no such marriage as alleged has taken place with the petitioner. When the said Piari has stated that she has not performed second marriage with the petitioner and she was only assisting his aged parents, the Enquiry Officer accepted the case of the petitioner and based on the report of the Enquiry Officer, the Disciplinary Authority also has dropped the charge. While the said Piari who is said to have married the petitioner as a second wife has also participated in the enquiry and denied the contract of second marriage, the impugned order of dismissal ought not to have been passed.

6. A detailed counter affidavit has been filed by the respondents 1 and 3.

7. Learned Additional Government Pleader appearing for the respondents 1 and 3 submitted that after the petitioner was charged with an allegation of being performed second marriage with one Piari, an enquiry was conducted and the Enquiry Officer gave a finding that no such second marriage with Piari has taken place. After sometimes, the said Piari submitted a petition to Legal Aid Forum, Chidambaram stating that she wanted to make a compromise so as to live together with her husband N.Karunanithi, the petitioner herein. In view of the above development, a notice was served on 13.3.1995 informing the petitioner to attend an enquiry scheduled to be held on 17.3.1995. But the petitioner did not turn up for the enquiry that shows that he had no evidence to disprove the allegation mentioned in the notice with regard to contract of second marriage with Piari when his first wife Kalaiselvi was alive. That apart, one another person has given a promissory note in favour of Piari, W/o.Karunanidhi for having borrowed money to the tune of Rs.2500/- from Piari that also shows that the petitioner has performed the second marriage with Piari. It is also seen that the petitioner also in his letter dated 05.8.2004 has requested the Agricultural Development Officer, Kollidom to change the nominations in the Service Register of the individual in favour of the following individuals, namely, 1. K.Piari, Wife, 45 years; 2. K.Charles (B.Sc. Agri) Son 20 Years; 3. K.Rechal, daughter 18 years; and 4. K.Rochchana, daughter, 15 years. It shows that at the time of the application, his son was studying B.Sc. Agriculture. Therefore, it was considered that the petitioner should have performed the second marriage with Piari during 1984 and given birth to children through Piari.

8. The learned Additional Government Pleader for the respondents 1 and 3 further submitted that since it is clearly proved that the petitioner has performed the second marriage

with Piari during 1984, while the marriage with the first wife Kalaiselvi was subsisting, a Charge Memo dated 18.6.2004 was issued to the petitioner by the Joint Director of Agriculture, Nagapattinam based on the following documents, namely, a. The letter No. Nil dated 13.3.95 to attend the enquiry; b. A Promissory Note dated 22.10.1993 given by S/o.Sivanesan of Kumaratchi Village in favour of Piari; 3. The letter dated 05.08.2004 of the applicant addressed to the Agricultural Development Officer, Kollidam and d. The Voter List issued during 1999 for Chidambaram Assembly Constituency. It was found that the petitioner had contracted the second marriage during the life time of his first wife Kalai Selvi and through the second wife, he has given birth to four children. Therefore, it was held that Piari who appeared before the Enquiry Officer at the first instance has given a false information. Moreover, though the decree of divorce dated 28.06.2001 was passed by the Sub-Court, Chidambaram against Tmt.Kalaiselvi for not attending the Court was produced, since the children born to the petitioner and Piari were aged about 20, 18 and 15 respectively, namely, K.Charles, K.Rechal and K.Rochchana, it goes to show that the petitioner had really contracted the second marriage during the life time of Kalai Selvi and hence, the impugned order has been passed.

9. Heard the learned Counsel on either side.

10. Considering the facts and circumstances of the case, it appears that Mrs.Piari was initially married to one Ismail, native of B.Muttlur, who died while he was serving in a foreign country and thereafter, the petitioner engaged her as a daily labour to look after his family and after getting divorce from his first wife Kalaiselvi on 28.06.2001, he got married the said Piari. Therefore, the impugned order proceeding against the petitioner, dismissing him from service without issuing any notice or charge memo followed by holding enquiry is unknown to law. When the petitioner has disputed the charge that he was not given any opportunity to explain before the Enquiry Officer that he got married the said Piari only after obtaining divorce on 28.06.2001, merely on the basis of a letter issued to the Legal Aid Forum, Chidambaram stating that Tmt.Piari wanted to make a compromise to live with the petitioner cannot be accepted that she married the petitioner during the life time of Kalai Selvi without there being any enquiry there on. Therefore, the impugned order of dismissal is liable to be set aside.

11. In the result, the Writ Petition stands allowed and the Charge Memo No.A.4/4795/03 dated 18.06.2004 issued by the Joint Director, the 3rd respondent herein and the order of dismissal in G.O. (3D) No.82, dated 09.06.2009 passed by the Commissioner of Agriculture Productions-cum-Secretary to Government, the 1st

respondent herein are set aside. The respondents are directed to pay the retirement benefits to the petitioner by sending a pension proposal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Agriculture
Productions-cum-Secretary to Government,
Secretariat,
Fort St. George, Chennai-9.
2. The Secretary,
Tami Nadu Public Service Commission,
Chennai-600 002.
3. The Joint Director of Agriculture,
Nagapattinam, Nagapattinam District.

+lcc to Mr.Dr.R.Sampathkumar, Advocate Sr.10653
+lcc to the Government Pleader Sr.11382

W.P.No.14116/2009

srg 21/02/2019