

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.50357 of 2006

S.K.Shivakumar  
Junior attendant,  
Central Library, IIT Madras,  
Chennai - 600 036.

... Petitioner

Vs.

1.The Director,  
Indian Institute of Technology,  
Chennai - 600 036.

2.The Registrar,  
Indian Institute of Technology,  
Chennai - 600 036.

3.The Enquiry Officer - Cum  
Deputy Registrar Administration,  
Indian Institute of Technology,  
Chennai- 600 036.

4.K.Neelaveni  
(Impleaded as 4th respondent vide order of  
this Court dated 04.01.2019  
made in M.P.No.1/2013 in  
W.P.No.50357/2006 )  
... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari filed Mandamus, calling for the records relevant to the Order in No.F.Admn/11/B-1/2006/484 dated 19.12.2006 passed by the First Respondent and quash the same as illegal, improper, unreasonable, arbitrary and against the Rule of law and natural justice and thereby direct the Respondents to continue the service of the Petitioner from 19.12.2006 and pay back all the services benefits to the Petitioner.

For Petitioner : Mr.R.Suriyaprakash

For Respondents : Mr.P.Neelakantan for R1 to R3

Mr.S.N.Ravichandran for R-4

## O R D E R

This Writ Petition is filed for a Writ of Certiorari cum Mandamus to quash the order dated 19.12.2006 of the First Respondent and consequently direct the Respondents 1 to 3 to continue the service of the Petitioner from 19.12.2006 with all attendant benefits.

2.The salient facts of the case are as set out herein. It is an admitted position that the Petitioner married K.Neelaveni/the 4<sup>th</sup> Respondent herein on 03.09.1997 and that the marriage was solemnized at Dr.Ambedkar Thirumana Mandapam, Tambaram. Admittedly, the petitioner and his wife lived together for a short period after the marriage and they are now residing separately. It appears that the wife of the Petitioner filed a complaint with Respondents 1 to 3 and called upon them to initiate disciplinary proceedings against the Petitioner because he had unlawfully married another person, namely, Bharathi, through whom he had a child. In view of the fact that no action was taken on the complaint initially, the 4<sup>th</sup> Respondent filed W.P.No.21531 of 2003 before this Court and this Court by order dated 20.08.2003 directed the respondents 1 to 3 to conduct an enquiry in accordance with the law. During the first enquiry, the 4<sup>th</sup> Respondent produced a copy of statement allegedly made by people from Kilsirupakkam Village to prove the bigamous marriage. But the enquiry officer held that in view of the absence of original documents and the oral evidence of the persons who said that the Petitioner married the said Bharathi, the charges were not proved.

3.Accordingly, the Petitioner's wife(4<sup>th</sup> respondent herein) filed a second Writ Petition in W.P.No.27560 of 2004 before this Court and this Court, by order dated 22.03.2005, directed the Respondents 1 to 3 to consider all the documents produced by the Petitioner, provide sufficient opportunity to both parties and decide the matter within a period of four weeks from the date of request.

4.Pursuant thereto, an enquiry officer was appointed and a charge memo dated 06.10.2006 was issued to the Petitioner. Thereafter, an enquiry was held. It is the admitted position that the Petitioner and 4<sup>th</sup> Respondent participated in the said enquiry. Pursuant to the said enquiry, the Enquiry Officer submitted a report dated 22.05.2006. From the report of the Enquiry Officer, it is clear that the Enquiry Officer examined the original voter's list for the year 2004 and the certified copy of the birth certificate. He also called for an explanation from the Petitioner vide memorandum dated 28.11.2005 and the Petitioner submitted his explanation vide letter dated 12.12.2005. It is also clear that, thereafter, the enquiry was held on 09.03.2006 and 21.03.2006 when both the Petitioner and the 4<sup>th</sup> Respondent let in oral evidence. The Petitioner herein submitted the birth certificate at page 17 of the typed set of

papers of the Petitioner and the electoral card and this was taken into consideration. After considering the documents and oral evidence submitted by both parties, the Enquiry Officer held as under:

(i) Voter list: In the voter's list submitted by Mrs. Neelaveni, which was published on 25.02.2004, one Ms. Barathi is shown as W/o. Sivakumar with the address 9, Agesthiyar Street, Tambaram 600 045. Sri. Sivakumar, in his reply has stated that he has sent an objection letter to the Electoral authorities for deletion of the name of Ms. Barathi which was included in the list as his wife, apparently by Mrs. Neelaveni by forgery. Though he had produced a latest electoral card dated 20.03.2005, which does not contain the name of Ms. Barathi, he has not produced the revised electoral roll deleting Barathi's name. Hence according to the available evidences it is understood that Sri Sivakumar has got married Ms. Barathi.

(ii) Birth Certificate: Further, the certified copy of the birth certificate produced by Mrs. Neelaveni also reveals that a female child was born on 03.07.2002 to Mr. Sivakumar and Mrs. Barathi whose address is given as 'Kizhsirupakkam, Chengam Taluk.'

5. The Enquiry Officer's report was forwarded to the Petitioner and the Petitioner was called upon to submit his explanation thereto if any. Accordingly, the Petitioner by letter dated 23.10.2006 submitted his further explanation. Upon considering the further explanation of the Petitioner, by order dated 19.12.2006, the Disciplinary Authority accepted the finding of the enquiry officer and dismissed the Petitioner from service under Statutes 13(9)(b)(vii) of IIT Act with immediate effect for the serious misconduct of bigamy.

6. At the hearing, the learned counsel for the Petitioner submitted that the Petitioner was appointed as a Helper in the First Respondent Institute and that, thereafter, he became a Junior Attendant at the Central Library of the First Respondent. He further submitted that after the first enquiry proceedings, the charges were dropped as not proved. He invited the attention of this Court to the birth certificate at Page Nos. 16 and 17 of the typed set and contended that the birth certificate at Page No. 16 had been obtained and produced by the 4<sup>th</sup> Respondent and that this document is false because it reflects the permanent address of the Petitioner as Tambaram, Chennai and that the correct birth certificate is produced at Page No. 17 of the typed set which shows the address as Kizhsirupakkam, Chengam

Vattam. He also invited the attention of the Court to the Voter's list produced by the 4<sup>th</sup> Respondent, which is at Page Nos.46 and 47 of the typed set of papers. He contended that this Voter list was false and that it wrongly mentioned Bharathi as his wife. Accordingly, he submitted that he issued a representation to the Chief Election Officer on 25.06.2004 and a revised voter list was issued in 2006 which is at Page Nos.68 to 71 of the typed set of papers. He pointed out that, as per this voter list, his name is mentioned in Serial No.44 whereas the name of Bharathi, the alleged second wife is not mentioned. He, thereafter, invited the attention of the Court to the second enquiry report and submitted that the enquiry officer incorrectly concluded that he had not produced the revised electoral roll deleting Bharathi's name but merely produced the latest electoral card dated 20.03.2005 which does not contain the name of Bharathi. Therefore, it is the contention of the Petitioner that the enquiry proceedings are vitiated and liable to be interfered with by this Court.

7. In response, the learned counsel appearing for the Respondents 1 to 3 submitted that the principles of natural justice have been duly followed in this case. He further submitted that it is the admitted position that the charge memo was served on the Petitioner, that the Petitioner attended the enquiry and was given an opportunity to provide an explanation and produce documents in support of his case. He also invited the attention of the Court to the Impugned Order of the Disciplinary Authority which records that the copy of the enquiry report was communicated to the Petitioner and his explanation was called for. He further contended that it also records that the Disciplinary Authority perused the records and personally heard the Petitioner on 29.11.2006. He further pointed out that the Disciplinary Authority also took into consideration the photo copy of the voter's list without the said Bharathi's name but, on examining the same, the Disciplinary Authority concluded that it does not prove that the Petitioner did not marry Bharathi. On the above basis, he submitted that the enquiry was duly conducted, adequate opportunity was provided to the Petitioner and that the Disciplinary Authority also applied its mind independently before imposing the penalty of dismissal from service on the Petitioner.

8. In addition, the learned counsel for the Respondents 1 to 3 handed over the relevant Rules of the First Respondent institute and pointed out that there is a provision for appeal against the order of the Disciplinary Authority. Accordingly, he submitted that the Petitioner has not exhausted the alternative remedy. He also produced the Judgment of the Hon'ble Supreme Court in B.C.CHATURVEDI Vs. UNION OF INDIA AND OTHERS reported in (1995) 6 SCC 749 and in particular, he invited the attention of the Court to Paragraph 12 thereof wherein the

Hon'ble Supreme Court held as under:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

9. The learned counsel appearing for the 4<sup>th</sup> Respondent submitted that upon discovery of the fact that the Petitioner had an illegal second marriage, the 4<sup>th</sup> Respondent was constrained to make a complaint to the First Respondent and that complaint was not initially acted upon. Therefore, the 4<sup>th</sup> Respondent was constrained to file W.P.No.21531 of 2003 and that

the enquiry was conducted pursuant to the orders passed therein. He also pointed out that the birth certificate at Page Nos.16 and 17 of the typed set reflect the name of the father of the child as Sivakumar and that of the mother as Bharathi. Both the documents also show the place of birth as Kizhsirupakkam, which is the maternal home of the said Bharathi. Therefore, he submitted that the birth certificate at Page No.17 of the typed set of papers does not advance the case of the Petitioner. He also invited the attention of the Court to the second Writ Petition, namely, W.P.No.27560 of 2004 whereby this Court, by Order dated 22.03.2005, directed the First Respondent to conduct a fresh enquiry after considering the documents produced by the Petitioner and provide adequate opportunity to both parties. He, thereafter, invited the attention of the Court to the electoral list submitted by the 4<sup>th</sup> Respondent at the enquiry and specifically pointed out that entries 612 to 617 at Page No.47 relate to the family members of the Petitioner, including the second wife, namely, Bharathi and that these public documents cannot be said to be forged especially when all the details are correct. He also invited the attention of the Court to the Additional typed set of papers and pointed out as to how the Petitioner had failed to pay maintenance, including for the child born through the 4<sup>th</sup> Respondent, and that the 4<sup>th</sup> Respondent had to initiate legal proceedings before the Hon'ble Supreme Court and that the criminal complaint with regard to bigamy is still pending adjudication. Therefore, he submitted that the Writ Petition should be dismissed.

10.By way of rejoinder submissions, the learned counsel for the Petitioner submitted that upon submission of the birth certificate at Page No.17 and the revised electoral list for the year 2006, the burden of proof shifted to the 4<sup>th</sup> Respondent and that the said Respondent did not discharge the burden.

11.The affidavit, counter affidavit, documents and oral submissions of both parties were considered carefully.

12.It is not disputed that the principles of natural justice were duly complied with while conducting the enquiry. The Petitioner admittedly participated in the enquiry, he was examined personally and the documents submitted by him were considered. The next issue that arises for consideration is whether the enquiry officer and, thereafter, the Disciplinary Authority acted upon material evidence in order to conclude that the charges were proved. It is clear from the enquiry officer's report that he duly considered the birth certificate of the child born through the illegal second marriage and the voter's list showing the names of the family members of the Petitioner, including the said Bharathi, in order to arrive at the conclusion that the charges were proved. It is settled law that this Court in the exercise of supervisory jurisdiction does not

sit in appeal over the findings of the enquiry officer and the Disciplinary Authority. The primary consideration is whether the procedure followed by the enquiry officer and the Disciplinary Authority is in compliance with the principles of natural justice. There can be no doubt that the procedure was in accordance with the principles of natural justice in this case. It is also clear from the records that the enquiry officer and the Disciplinary Authority acted upon relevant evidence and reached the conclusion on a preponderance of probabilities. As correctly contended by the learned counsel for the Respondents 1 to 3, the principles laid down in (1995) 6 SCC 749 (cited supra) will squarely apply to this case in as much as there is no reason for this Court to interfere with the decision on the basis that the evidence was irrelevant and that the Authorities acted on no evidence. Accordingly, there is no infirmity in the Impugned Order. As such, the Writ Petition is liable to be dismissed.

13. In fine, this Writ Petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,  
Indian Institute of Technology,  
Chennai - 600 036.

2. The Registrar,  
Indian Institute of Technology,  
Chennai - 600 036.

3. The Enquiry Officer - Cum  
Deputy Registrar Administration,  
Indian Institute of Technology,  
Chennai- 600 036.

+2cc to Mr. Karthick Mugundan, Advocate, S.R.No. 31245, 30103  
+1cc to Mr. P.A. Chitramani, Advocate, S.R.No. 30642  
+1cc to Mr. S.N. Ravichandran, Advocate, S.R.No. 30348

W.P.No.50357 of 2006

SSI (CO)  
GN(06/05/2019)