

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-04-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34842 of 2018

And

W.M.P.Nos.40390 and 40391 of 2018

V.Dhanasekaran

..Petitioner

vs

The District Collector,  
Villupuram District,  
Villupuram.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in connection with the impugned suspension order passed by the respondent in Roc.No.1853/2018/PA4 dated 6.9.2018 and quash the same and further direct the respondent to reinstate the petitioner with all consequential service and monetary benefits.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.R.S.Selvam,  
Government Advocate.

O R D E R

The impugned order of suspension is issued, placing the writ petitioner under suspension, stating that the writ petitioner entered into a second marriage with another woman Tmt.V.Bharathi when the first wife of the writ petitioner Tmt.E.Tamilselvi is alive. Thus, the writ petitioner has committed an offence of bigamous and failed to maintain the absolute integrity and devotion to duty and thus violated Rule 19(1) of the Tamil Nadu Government Servants Conduct Rules.

2. The writ petitioner was appointed as Junior Assistant and subsequently promoted to the post of Deputy Block Development Officer and it is stated that the writ petitioner married one Tmt.Tamilselvi on 19.8.1988 and after marriage, she went to her parents house situated at Chennai. The writ

petitioner states that his first wife had not returned to the matrimonial home and she deserted the family life and her whereabouts were not known.

3. The writ petitioner lodged a police complaint and he could not able to find out her place of living. The writ petitioner further states that the family members/community people advised the writ petitioner for another marriage and after executing a customary divorce and after a lapse of 7 years and in order to take care of his aged parents, the writ petitioner married one Tmt.V.Bharathi during the year 2004 and has got two children.

4. When the writ petitioner was serving as the Deputy Block Development Officer, Melmalaiyanur, his first wife Tmt.Tamilselvi preferred a false complaint after 23 years before the All Women Police Station, Gingee and the writ petitioner filed a petition for anticipatory bail in CrI.O.P.No.17934 of 2018 and the same was granted on 8.7.2018.

5. The first wife of the writ petitioner has submitted a representation to the Departmental Authorities and pursuant to the complaint, the writ petitioner is placed under suspension by the respondent in order dated 6.9.2018. The order of suspension was not revoked in spite of the representation sent by the writ petitioner.

6. The learned counsel for the writ petitioner states that the respondent has failed to consider the family disputes, which led to the registration of a criminal case against the writ petitioner. Further the first wife of the writ petitioner Tmt.Tamilselvi entered into a compromise and the complaint originally sent by the first wife of the writ petitioner also has been withdrawn.

7. This Court is of the considered opinion that all such complex facts and circumstances arising on account of certain family disputes can never be adjudicated in a writ proceeding under Article 226 of the Constitution of India. The order impugned is an order of suspension. The order of suspension was issued on account of the complaint given by the first wife of the writ petitioner stating that the writ petitioner married one Smt.V.Bharathi as the second wife during the lifetime of the first wife and thereby committed the misconduct of bigamy.

8. Entering into the contract for marriage with another man, during the lifetime of the legally wedded wife, is a misconduct under the Tamil Nadu Government Servants Conduct Rules. Bigamous is also an offence under the Criminal Law. Thus, the public servant has committed an act of misconduct under the

Discipline and Appeal Rules as well as an offence. Thus, there is no infirmity in respect of the order of suspension issued by the competent authority.

9. Compromise entered into between the first wife of the writ petitioner as well as the writ petitioner would not confer any right on the writ petitioner to seek revocation of the order of suspension. Once a misconduct or an offence is committed, then the departmental disciplinary authorities are bound to conduct an enquiry and find out whether the marriage between the writ petitioner and another woman Smt.V.Bharathi is established. In the event of establishing the second marriage during the lifetime of the first wife, the misconduct is established and therefore, the public servant is liable to be punished. Thus, the enquiry is to be conducted in this regard by the competent authority.

10. However, prolonged suspension is to be avoided. In view of the fact that the respondent is in possession of the copy of the complaint and other relevant documents, they are bound to continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible. Long pendency of the departmental disciplinary proceedings would prejudice the service benefits of the public servants. Thus, on initiation of departmental disciplinary proceedings, the authorities competent must ensure early disposal of the same.

11. This being the principles to be followed, this Court is of the considered opinion that it is not the preference to revoke the order of suspension at this point of time as the writ petitioner is under suspension for about five months. However, the respondent is bound to continue the departmental disciplinary proceedings and conclude the same without any undue delay. The writ petitioner is directed to cooperate for the early disposal of the departmental disciplinary proceedings. In the event of non-cooperation on the part of the writ petitioner, the same shall be recorded in the proceedings itself.

12. This being the factum of the case, the respondent is directed to continue the departmental disciplinary proceedings, conclude the same as expeditiously as possible. In the event of taking a decision that the departmental disciplinary proceedings are to be kept in abeyance till the disposal of the criminal cases, then the respondent is bound to review the order of suspension based on the guidelines issued by the Government. It is made clear that prolonged suspension is bad in law and periodical review of the order of suspension is also imminent. Thus, in the event of keeping the departmental disciplinary proceedings in abeyance till the disposal of the criminal case, the respondent shall review the order of suspension.

13. However, there is no bar in proceeding with the departmental disciplinary proceedings during the pendency of the criminal case. The nature of the departmental disciplinary proceedings are distinct from that of the criminal case, which states that high standard of proof is required for the purpose of convicting the public servants. However, no such direct proof is required to punish the employee under the Discipline and Appeal Rules.

14. Thus, the enquiry shall be conducted by the disciplinary authority under the Rules by affording an opportunity to the delinquent officials. Mere pendency of the criminal case is also a no bar for the continuance of the departmental disciplinary proceedings. Thus, the respondent, in the event of availability of materials on record, is empowered to continue the departmental disciplinary proceedings, conclude the same and pass final orders. This being the principles to be followed, the respondent is directed to consider all these aspects, take a decision and proceed further.

15. With the above observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-  
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

To

The District Collector,  
Villupuram District,  
Villupuram.

+1 CC to Mr.Sivakumar, Advocate sr 31575.  
+1 CC to Govt. Pleader sr 32018.

W.P.No.34842 of 2018

MG(CO)  
SP(27/04/2019)