



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.4716 of 2011

N.Vijayaraghavan

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Technical Services (PTB),
Chennai - 600 004.

2.P.Premkumar,
Deputy Superintendent of Police
(Communication)
Police Tele Communication Branch
Chennai- 600 004

... Respondents

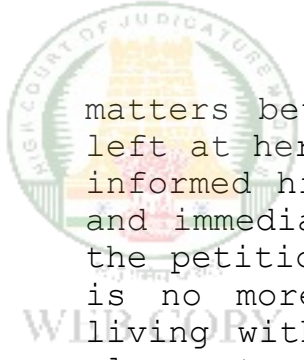
PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order of the first respondent vide proceedings C.No.C2/P.R10/2010 - DO No.245/2011 dated 11.03.2011 quash the same and consequently direct the respondents to reinstate the petitioner with backwages and all attendant and monetary benefits with continuity of service.

For Petitioner	: Mr.G.Gomathi Sankar
For R - 1	: Mr.J.Gunaseelan Muthiah, Additional Government Pleader.
For R - 2	: No appearance

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order of the first respondent vide proceedings in C.No.C2/P.R10/2010 - DO No.245/2011 dated 11.03.2011 and to quash the same and consequently directing the respondents to reinstate the petitioner with backwages and all attendant and monetary benefits with continuity of service.

2.The learned counsel appearing for the petitioner submitted that the petitioner was working as the Sub-Inspector of Police in the Dindigul Police Tele-communication Branch from 13.02.2006. He was discharging his duty for the past 25 years in various cadre of the respondent Department with unblemished record without any misconduct. Earlier, the petitioner married one Vaijayanthimala in the year 1986 and one female child namely Indra was born in the year 1987. Since from the date of their marriage, his wife used to frequently quarrel with him and there was always indifference in all

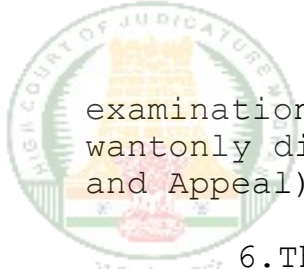


matters between them, in the year 1993, the petitioner's wife was left at her parents house for second delivery and later his in-law's informed his parents that his wife expired at the time of delivery and immediately, he went to Chennai but his in-laws did not allow the petitioner to enter into their house and told him that his wife is no more and they buried her. Thereafter, the petitioner was living with his daughter and after completion of her studies, she also got married. Since the petitioner's first wife was not alive and no communication from his in-laws house for the past 15 years, his daughter and well-wishers insisted the petitioner to marry another woman. Hence, the petitioner married one Lakshmi Narasammal @ Vimala and her name was also included in his Service Records as his wife as well as nominee for receiving pension and other benefits.

3.The learned counsel appearing for the petitioner further submitted that on 25.03.2010, the first respondent issued a letter dated 25.03.2010 seeking explanation for the alleged charge that the petitioner has been illegally living with another woman in the Government quarters as husband and wife, after driving his mother out of his house. Upon receipt of the same, the petitioner personally appeared before the second respondent on 31.03.2010 and given a statement disclosing the truth by denying the said averments. That apart, the petitioner has categorically stated in the reply that the charge-memo was issued only at the instigation of his sister-in-law / Mythili Ragavan, who is a popular political person which is a motivated one and the first respondent acted upon the dictation of the above said Mythili Ragavan. Since the information of the death of Vaijayanthimala as disclosed by her parents was in the year 1993 and the said Vaijayanthimala did not contact him from that day, the petitioner was under the bonafide belief and due to the death of his wife in the year 1993 and the lack of communication for more than 15 years by his in-laws, the petitioner presumed that his wife was not alive.

4.The first respondent issued a charge-memo dated 21.05.2010 in P.R.No.10 of 2010 and two charges have been framed against him. One P.Subramani, Deputy Superintendent of Police, Cryptography, Police Tele-Communication Branch, Chennai was appointed as an enquiry officer. The petitioner has received the above said charge-memo along with the alleged statement of his wife Vaijayanthimala recorded at Chennai and only at that time, he came to know that his wife Vaijayanthimala is alive and respondents have recorded a statement from her.

5.Even though in the annexure of the charge-memo it is specifically stated that during the course of the oral enquiry Vaijayanthimala will be examined, but she was not examined at the time of oral enquiry conducted by the enquiry officer and the examination of Vaijayanthimala was dispensed with by the enquiry officer in adherence to his specific request for cross-

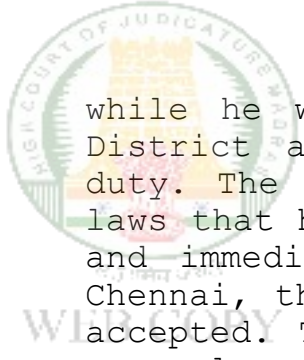


examination of the said Vaijayanthimala and her appearance was wantonly dispensed with violating Rule 3(b) of the TNPSS (Discipline and Appeal) Rules, 1955.

6.The said Vaijayanthimala is the only competent witness to prove that she was alive and to deny the allegation that she is not alive. Dispensing with her appearance during the enquiry, without considering the specific request for cross-examining her, is not only amount to the violation of principles of natural justice and also the alleged charge against the petitioner that he has entered into a bigamous marriage with Lakshmi Narasammal @ Vimala will not be proved unless and until the said Vaijayanthimala appear before the enquiry officer.

7.The petitioner sent a written representation dated 19.10.2010 to the enquiry officer stating that the averments are not true and the signature in the alleged statement is not the signature of the said Vaijayanthimala, since she was not educated. The non-appearance of the said Vaijayanthimala would prove his case that the said Vaijayanthimala was not alive. When the factum of the allegation that the said Vaijayanthimala is alive and the same was denied by the petitioner during his oral evidence, it is the duty of the department to sustain the fact that the said Vaijayanthimala is alive, the department should have examined her by subjecting her to the cross-examination by him, but the enquiry officer acted malafidely according to the well-wisher of the above said political person Mythili Ragavan and paved way for taking revenge on him by making story of hallucination where the said Vaijayanthimala was living and giving the statement to the second respondent and the second respondent malafidely fabricated the records namely the statement of Vaijayanthimala dated 05.04.2010 by forging her signature with the connivance of Mythili Raghavan and he acted as a tool of the said Mythili Raghavan, even she was also not examined, who has given the complaint, during the enquiry. But the enquiry officer has come to the conclusion that the charge framed against the petitioner has been proved and thus violated Rule 23 of the Tamil Nadu Police Sub-ordinate Conduct Rules, 1964 by committing the offence of bigamous marriage holding that he has married Lakshmi Narasammal @ Vimala as his second wife, when his first wife Vaijayanthimala is alive and he has also given a finding that the petitioner was in gross negligence in failure to get prior and proper permission from the competent authority to marry Lakshmi Narasammal. The first respondent passed the impugned order of removal from service with effect from 07.03.2011, dated 11.03.2011, without considering his representations dated 25.07.2010, 19.10.2010, 26.11.2010 and 15.02.2011. Challenging the same, the petitioner has filed the Writ Petition.

8.The respondents have filed the counter-affidavit and stated that he did not have any clean records and at an earlier point of time, the petitioner was dismissed from service for his misconduct,

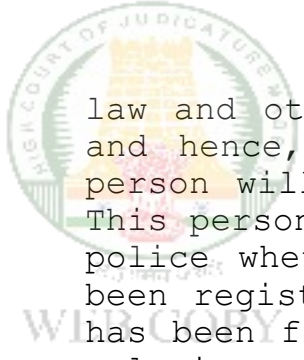


while he was working in the Armed Reserve in Coimbatore (Rural) District and also faced departmental enquiry for dereliction of duty. The petitioner's contention that he was informed by his in-laws that his wife expired at the time of delivery in the year 1993 and immediately when he rushed to his in-laws house situated in Chennai, they did not allow him to enter into their house cannot be accepted. The petitioner, who is a Government servant, should have properly verified with the relatives and found out whether his first wife Vaijyanthimala was alive or not before entering into second marriage. He married another woman ie., Lakshmi Narasammal @ Vimala as his second wife and he has also not legally divorced his first wife. Further, the name of the second wife Lakshmi Narasammal @ Vimala was never entered on record as his legal wife to receive the DCRG, SPF and GPF benefits. The first respondent had issued a memo to the second respondent on 25.03.2010 directing the second respondent to enquire into the matter and submitted a report on the allegations against the petitioner. During the enquiry held on 31.03.2010, he himself has admitted before the second respondent that he married Lakshmi Narasammal @ Vimala as his second wife without divorcing his first wife Vaijyanthimala and he has also produced photographs taken at the time of marriage between him and his second wife Lakshmi Narasammal @ Vimala.

9.It is further stated that Mythili Raghavan, who is the sister-in-law of the petitioner, has contacted the first respondent over phone and informed that the petitioner, who had married earlier, is keeping another woman illegally and both of them are living in Government quarters as husband and wife. The second respondent conducted a detailed enquiry and clearly it was found that the petitioner had violated Rule 23 of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964. The first respondent, after considering the report submitted by the enquiry officer, has passed the impugned order removing him from service, as the nature of delinquency is not a minor, but it is a serious one and prayed for dismissal of the Writ Petition.

10.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the first respondent.

11.On perusal of the materials available on record it is seen that the petitioner has given statement on 31.03.2010, in which he has admitted that he married one Vaijyanthimala and at the time of their marriage, he was working in Armed Reserve in Coimbatore Rural. He further stated that his wife delivered the first daughter, Indira in 1987 and since his wife wanted to go to her parent's house for the second delivery in May 1993, he left her with her parents at Chrompet. He further stated that his parents at Coimbatore received the information that his wife had died during delivery and in turn they informed him while he was on duty at Ooty and when he went to his residence at Chrompet to see the body of her, his father-in-

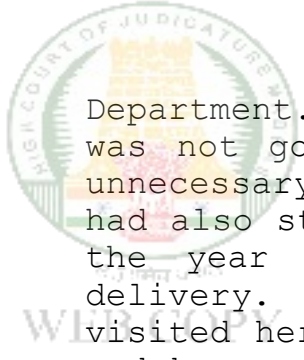


law and other relatives did not allow him to enter into the house and hence, he returned to Ooty is not acceptable, as no prudent person will just listen the words without even enquiring properly. This person being a police officer ought to have verified with local police whether his wife is alive or not or whether her death has been registered or not. No such steps have been taken and no proof has been filed by him for taking any such steps. The averment that only in order to get his daughter's marriage, he married one Lakshmi Narasammal @ Vimala as his second wife is denied. In the statement, it is further seen that in the nominee form, in the spouse column, he has not given any name but as 'Nil' and he has not informed about the death of his first wife to the department. When his mother went to Chennai for kidney treatment to his brother's house, due to personal vengeance, his sister-in-law had given the false complaint to the authorities under hallucination is a cock and bull story. Whatever might be the personal enmity, the petitioner's sister-in-law has given only truth stating that the first wife of the petitioner is still alive.

12.As per the said statement of the petitioner, the authority concerned directed to hold an oral enquiry and as per the enquiry, it was found from the statement of the petitioner that he still believed that the first wife is not alive and only in order to wreak vengeance, the petitioner's sister-in-law has given the complaint stating that the petitioner living with another woman as husband and wife in the quarters, which fact has not been informed to the authorities.

13.The second wife Lakshmi Narasammal @ Vidhya was examined and she submitted that she was unmarried till May 2008 and got married on 13.06.2008 with the petitioner in the presence of her close relatives and friends. She had been informed by the petitioner that his first wife had expired about 15 years ago and he had a daughter in the marriage age who is working at Hosur. She further stated that only after getting the concurrence from the petitioner's daughter, she accepted for the marriage and the same has been registered on a stamp paper on 16.06.2008 before a Notary Advocate, since the petitioner was not having either the divorce certificate of his first wife or her death certificate. She further stated that she did not have any contact with any of the relatives of the petitioner's first wife and presently staying with the petitioner in PWD quarters from the day of marriage. From the statement of the second wife of the petitioner, it is found that the wife is innocent and not aware of his earlier life.

14.It is further seen that the first wife of the petitioner / Vaijayanthimala in her statement has stated that she and her son Aswin Kumar are staying with her parents at Chrompet from 1993. She had further stated that her marriage with the petitioner was held on 07.09.1986 at Chennai and the petitioner was working in police



Department. She further stated that the character of Vijayaraghavan was not good from the day of her marriage and he used to create unnecessary quarrels and harassed her, suspecting her fidelity. She had also stated that she had a female child in the year 1987 and in the year 1993, she went to her parents house for the second delivery. After the birth of the second child, her husband had visited her house and picked-up unnecessary quarrel, threatened her and her parents and also shouted at them using filthy languages and did not take her back. She had also added that after her husband separating her daughter from her, he had informed the daughter that the mother was dead. She had also stated that she attempted to contact the petitioner on many occasions, which were ended in vain and had no idea whether he changed his attitude towards her and she was not having any knowledge whether the petitioner is living with any other lady.

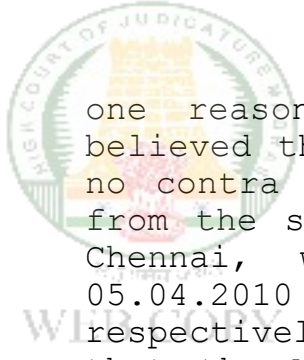
15. When the enquiry officer contacted Mythili Raghavan over phone, she refused to give any statement in connection with the allegations saying that she is only a well-wisher of the society and do not want to involve in other's family affairs.

16. On going through the materials available on record, it is clear that the said enquiry officer verified the service book of the petitioner and found that in the year 1986, he had given his parents name as his nominee and in the year 2000, he had mentioned the name of his daughter Indira as his nominee. It was found that nowhere he had nominated his first wife as nominee and also not informed the death of his first wife to the authority concerned.

17. From the materials available on record, it is clear that after the second delivery of his first wife, the petitioner has not contacted her or her family members and he had informed his daughter and others that his first wife Vijayanthimala was dead and after completion of his daughter studies, for the betrothal ceremony of his daughter, he married Lakshmi Narasammal @ Vimala on 13.06.2008 in the presence of close relatives and friends. Since the petitioner was not having any certificate to prove his disassociation with his first wife, he could not register the second marriage in the Sub-Registrar Office. Hence, they had registered the said marriage as declaration before a Notary at Dindigul.

18. From this it is clear that when the first wife was living, the petitioner has married Lakshmi Narasammal @ Vimala as his second wife and committed an offence of Bigamous marriage violating Rule 23 of the Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964 and this act of the petitioner and plea of ignorance cannot be accepted.

19. It is also further seen from the records that several opportunities were given to the petitioner to examine and cross-examine the witnesses, but only the petitioner has taken time for



one reason or another for non-examining the witnesses. It is believed that the statements given by other witnesses are true and no contra evidence has been given by the petitioner, as it clear from the statement given by P.Premkumar, DSP (Communication), PTB, Chennai, who has filed the statement of Vaijayanthimala on 05.04.2010 and the documents were marked as Exs.P.13, 14, 15 and 16 respectively. As per the documents and oral evidence, it is clear that the Village Administrative Officer has been examined and he further stated that he physically went to the house of Vaijayanthimala and the said Vaijayanthimala is alive and residing with her parents and he gave a letter, dated 21.12.2010, which is marked as Ex.P.17.

20.The petitioner has submitted his further explanation on 14.01.2011, wherein, he has stated that his first wife Vaijayanthimala was living separately for the past 15 years and since then there is no contact between them. When his mother informed him that Vaijayanthimala had expired, he went to the residence of Vaijayanthimala, but none had spoken with him, instead forced him to get away from the house. He had further stated that his many letters addressed to Vaijayanthimala in the year 1991 were returned undelivered. The said Vaijayanthimala had filed a case against him in the Family Court at Coimbatore and the same was dismissed by the Court, since she had not attended the Court on three hearings. The said Vaijayanthimala was not at all interested to re-join with him and as they have contacted only his parents and nobody sent any letter to him, he believed his mother's version ie., his first wife Vaijayanthimala had died. In the meantime, marriage was fixed for his daughter and as parents were essential at the time of marriage and on the compulsion of his mother, he agreed to marry another woman. He had also stated that his daughter informed Lakshmi Narasammal @ Vimala before her marriage that her mother expired and she was brought up by her father and grandmother. He had stated that his first wife has not turned out during the oral enquiry and hence, he believed that she was dead and he came to know that his first wife Vaijayanthimala is alive and living with her parents only during the enquiry. He further stated that he did not know the reasons that his first wife Vaijayanthimala not raised any objection when the name of his second wife Laskhminarasammal @ Vimala was printed in the marriage invitation card and under such circumstances, he believed that his first wife was already expired and his mother is fully responsible for his second marriage.

21.The charge framed against the petitioner is reproduced below:

'i. Highly reprehensible conduct in having married one Lakshmi Narasammal @ Vimala as his second wife on 13.06.2008 at Thenthirupathy Venkatachalapathy Perumal Temple, M.V.M.Nagar, Dindigul, when the first wife Vaijayanthimala is alive and there by committed the offense of Bigamous marriage violating Rule 23 of



the Tamil Nadu Sub-ordinate Police Officers Conduct Rules, 1964.

ii. Gross negligence in failure to get prior and proper permission from the competent authority to marry another woman ie., Lakshmi Narasammal @ Vimala as his second wife'.

22. Rule 23 of the Tamil Nadu Sub-Ordinate Police Officers' Conduct Rules, 1964 reads as follows:-

'1 (a) no police officer shall enter into a contract marriage with a person having a spouse living and

(b) no police officer having a spouse living shall enter into or contract a marriage with any person.'

23. As it is clear from Rule 23 of the Tamil Nadu Sub-Ordinate Police Officers' Conduct Rules, 1964 that the petitioner cannot enter into a marriage with another person, when the first wife is still alive. From the explanation given by the petitioner on 14.01.2011, it is seen that the first wife Vaijayanathimala has filed a case against the petitioner in Family Court and the story created by the petitioner that his first wife is dead is only a story invented. Being an officer of police department, who has to investigate a case, has not taken any steps to find out whether his wife was dead and if he actually had any suspicion, ought to have given a complaint to the concerned authorities to find out the truth, if he really had love and affection towards his wife, he would not simply believe the words of his in-laws. No evidence produced towards the said act of enquiry by the petitioner and this would also prove that the petitioner has not come to the Court with clean hands. As a police personnel, he ought to have maintained discipline and the petitioner had married Lakshmi Narasammal @ Vimala as his second wife without getting prior permission from the competent authority and the same has been proved beyond reasonable doubt, this Court is not inclined to accept the pleadings of the petitioner and the punishment imposed against the petitioner is proper and the same shall not be interfered with.

24. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

The Deputy Inspector General of Police,
Technical Services (PTB),
Chennai - 600 004.

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-13120[F] dated 05/06/2020)

+1 CC to M/s.SPL GP (SR-13078[F] dated 04/06/2020)

Order made in
W.P.(MD)No.4716 of 2011
Dated:
03.06.2020

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