

03.02.2021

Ct. No.13

Sl. No.67

akd

W.P.A. 10398 of 2020 [via video conference]

[Asim Patua -Vs- Union of India & Ors.]

Mr. Prosenjit Mukherjee

Mr. Arghya Kamal Das

... .. for the petitioner

Mr. Bhudeb Chatterjee

Mr. Ravi Ranjan Kumar

... .. for the UOI

The writ petitioner is aggrieved by the final order of the appellate authority dated 14.10.2020 whereby his appeal against the order of premature retirement/discharge has been rejected.

The principal ground urged by the petitioner is that even in respect of proceedings under Rule 7 of Chapter II of the BSF Rules, 1969, an enquiry is warranted. The appeal was heard by the DIG, BSF Commandant whereas the appellate authority for the petitioner was the IG.

However, this Court is not inclined to interfere with the order impugned. The principal charge against the petitioner is that he contracted a second marriage during the subsistence of his first marriage. The BSF, invoking Rule 7 of the aforesaid 1969 Rules issued a show cause notice to the petitioner. In reply to the show cause, the petitioner denied that he ever married for the second time any lady called Chaina Patua (Bagdi). He submitted that he is still married to Lovely @ Payel Patua Bagadi. The appellate authority has recorded a letter in writing of the petitioner where he admitted to have been forced into marrying Chaina Patua (Bagdi) and that he was taking steps to

obtain a divorce from his first wife namely, Lovely @ Payel Patua.

The appellate authority in its order has recorded as follows :-

c) The petitioner was duly associated in the said Court of Inquiry (COI) proceedings. The petitioner appeared before the Presiding officer of the said inquiry and disposed as witness No. 1 on 30.07.2019. The reply given by the petitioner against the Court's (COI) questions while recording of his statement during the Court of Inquiry proceedings are being mentioned herein below:-

"Yes sir, I am married. I married with Smt. Payal Patua D/o Bijoy Patua, R/o Jowpara, PS-Rampurhat, Distt. Birbhum (West Bengal) on 23.05.2018. Sir, she is my first wife. After that I married with Smt. China Patua (Bagdi) D/o Lt. Himai Bagdi, R/o Vill-Shibagram, PO-Begunia, PS-Mollarpur, Distt. Birbhum (West Bengal) on 27.12.2018. Smt. China Patua is my second wife".

"My first marriage i.e. marriage with Smt. Payal Patua was an arranged marriage but as I was not happy with my marriage I did Court marriage with Smt. China Patua".

"Yes sir, I have photos of marriage. I hereby produce those photos before the Court (COI), which is taken and attached as Exhibit-A in COI proceedings".

"Sir as my first marriage was an arranged one and was done in a haste so no wedding cards were printed. My second marriage was a Court marriage. Marriage certificate is available but that is in the possession of my wife Smt. China Patua and she denied to give that to me. So I cannot produce that before the Court".

"Sir, I was in love with my second wife Smt. China Patua for last five years. I had told to my parents that I would marry with China Patua only but they did not agree and I was made to marry with Payal. I married with Smt. Payal Patua in the pressure of my family and parents, otherwise I was not happy with that marriage. As I was not happy with my marriage life, I decided to do Court marriage with Smt. China Patua. Finally, I married China Patua in a Court".

"No sir, I did not take divorce from my first wife before doing marriage with Smt. China Patua".

"No sir, I did not obtain permission from Central Govt. for second marriage".

Petitioner further recorded his additional statement in the Court of Inquiry which he signed on 01.10.2019 wherein; petitioner stated as below:-

"Yes sir, I have marriage certificate issued by the office of the Muslim Marriage and Devotion Registrar of Rampurhat (PS), Distt-Birbhum, West Bengal. I hereby produce the copy of same before the Court. The marriage certificate produced by the petitioner during Court of Inquiry proceeding has been taken as Exhibit-E of the said proceedings."

The above mentioned statements of the petitioner were made by him on oath during the COI proceedings, which he has signed duly certifying that the recorded statements were read over to the petitioner in the language Hindi which he understood best and he signed it as correct.

d) Further, petitioner was given due opportunity to cross-examine witness(es) who had given evidence against him, make statement and call witness in his defence in terms of BSF Rule 173(8), during the said inquiry but petitioner declined

to avail such opportunities and signed to this effect on 21.08.2019 in the COI proceedings.

e) The Court of Inquiry after due appraisal of the evidence and documents produced during the course of said inquiry, found the Petitioner blameworthy for contracting second marriage without getting divorce from his first wife and without having prior permission of Competent Authority in violation of the provisions of Rule 21(2) of CCS (Conduct) Rules, 1964 read with Rule 7 of BSF Rules, 1969.

f) The Commandant 93 Bn, BSF, while agreeing with the findings/opinion of COI directed to take further action against the Petitioner for contracting second marriage in violation of CCS (Conduct) Rules, 1964 R/W Rule 7 of BSF Rules, which entails him unsuitable for further service in BSF in terms of Rule 26 of the BSF Rules 1969.

g) Therefore, as per outcome of the said inquiry, by following due procedure of Law established and enshrined under BSF Rule 26, a Show Cause Notice was served upon to the petitioner vide 93 Bn, BSF Letter No. 3073/Estt/93 BN/2019/14906 dated 05/12/2019 causing him to show that due to second marriage performed by the petitioner during the subsistence of the first marriage without seeking permission of the prescribed authority in terms of Rule 21 of the CCS (Conduct) Rules read with Rule 7 of the BSF Rules, he has rendered himself unsuitable for Govt. Service, for which action in terms of Rule 26 of the BSF Rules warranted his retirement on the ground of unsuitability, therefore, if he had anything to urge against the proposed action for his retirement from service on the ground of unsuitability, he could submit the same within 15 days from the receipt of the said notice, failing which, it would be assumed that he had nothing to urge in his defence against the proposed action and further decision will be taken in the matter.

h) In response to the said show cause notice, petitioner submitted written reply duly signed by him on 19/12/2019, wherein; submissions made by the petitioner are reproduced verbatim as below:-

"Most respectfully and with humble submission I beg to state that No. 120906240 Ct Asim Patua F Coy of this unit & I am Sir I had no idea about the fact that I need to inform first. That I am going for second marriage. Now I am going to take divorce from my first wife Smt. Payal Patua. Smt. Payal Patua submitted divorce paper. The second wife Smt. China Patua got married with me by cheating by force. She make me to do that, now I require 30 days E/L to complete the divorce matter with my first wife Smt. Payal Patua. I am requesting you to take positive action on above matter.

Therefore, this information will help you to take a positive action against me, I hope that you kind enough with on my future.

Thanking you,

Yours faithfully,

Sd.....

No. 120906240

Rank: Ct.

Name: Asim Patua

Coy/Unit: "F" 93 BN BSF"

There are other contradictions that have been brought to the notice of this court. In the body of the petition, the petitioner has stated that he belonged the Scheduled Tribe he and his

family follow the Holy Mohammad and Muslim practices in their daily life. The writ petition has been affirmed by the petitioner claiming that he is a Hindu. Even proceedings for declaration of his marriage with Chaina Patua (Bagdi) is illegal, pending before the learned Civil Judge (Junior Division), 2nd Court at Rampurhat, Birbhum in T.S. No. 63 of 2020, he declared himself as a Hindu. It is understood as to how the petitioner could have been forced into marriage with Chaina Patua (Bagdi) and then how he came to live with Chaina Patua (Bagdi) who he brought to his place of posting and introduced her as his wife.

While there may be some sustainable ground that the appellate authority against the petitioner ought to have been the IG and the impugned order was passed by the DIG, BSF, this Court is of the view that given the rampant contradictions in the proceedings and the admission in course of proceedings in the BSF, the statements made in the writ application and the affidavit, this Court is not inclined to pass any order in favour of the petitioner.

It is now well-settled that a person seeking equity must come to Court with clean hands. This Court notices without hesitation the blatant contradictions in the stand taken by the petitioner.

Hence, this court is of the view that referring the matter back to the authority is a useless formality.

This Court, therefore, sees no reason to entertain the writ application and the same is hereby dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for,
be given to the parties on usual undertaking.

(Rajasekhar Mantha, J.)