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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 19 of 2019

**Bijay Mahali
-versus-
Union of India & Ors.**

Mrs. Pampa Dey (Dhabal)
... for the petitioner

Mr. Sudipto Mazumder, Asst. Solicitor General
Mr. Arijit Ghosh
...for Union of India

The petitioner was a constable attached to the C.I.S.F. He was appointed in the year 2007. Following submission of articles of charge a disciplinary proceeding was initiated in the year 2013 against the petitioner. The content of charge was that the petitioner married for the second time during subsistence of his first marriage. The Disciplinary Authority proposed removal from service against the petitioner. The petitioner accordingly was removed from his service by his employer. He filed a statutory appeal. The appeal received the same fate`. Then he made a representation before the competent authority and the said representation was also dismissed.

Against the said order the petitioner moved in the Constitutional Writ Jurisdiction by filing W.P. 24327 (W) of 2018. A Co-ordinate Bench of the High Court at Calcutta passed the following direction.

“Accordingly, I direct the Inspector General, C.I.S.F. being the added respondent No.7 to take a reasoned decision on the petitioner’s representation dated 13th February, 2018 without going into the question of delay in making the representation in

accordance with the applicable rules/regulations/circulars/notifications within a period of eight weeks from the date of communication of this order. In the event the respondent No.7 deems it necessary, he will grant an opportunity of hearing to the petitioner. The decision so taken by the respondent No.7 shall be communicated to the petitioner within a week from the date of the decision.”

In pursuance of such direction the competent authority reconsidered the representation submitted by the petitioner and confirmed the penalty of removal from service against the petitioner.

Being aggrieved the said order is challenged in the instant writ petition.

- (i) The learned advocate for the petitioner has made three-fold submission assailing the order passed by the competent authority after the order in the subsequent writ petition was passed without considering the merit of the case.
- (ii) The first wife of the petitioner has withdrawn the criminal case filed against the petitioner by her.
- (iii) The petitioner being accused in the said criminal case was either acquitted or discharged from the penal charge.
- (iv) The petitioner has already given divorce to her first wife by mutual consent under Section 13(b) of the Hindu Marriage Act.
- (v) The petitioner being a member of Scheduled Tribe second marriage during the subsistence of first marriage is admissible within the said tribe.

The competent authority did not consider all the aforesaid aspects and arbitrarily passed the said order.

The learned advocate for the respondents, on the other hand submits that the Central Industrial Security Force Rules, 2001 clearly lays down in Rule 18 that “no person, who has entered into or contracted a marriage with a person having a spouse living; or who, having a spouse living, has entered into or contracted a marriage with another person, shall be eligible for appointment to the post.”

Therefore, the rule provides a statutory disqualification in respect of second marriage of an employee belonging to the C.I.S.F. Therefore, the order of removal from service is just a reasoned order and there is no ground to interfere with the said order.

It is contended by the learned advocate for the petitioner that there is a proviso appended to Rule 18 of the said Rules which states that “the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for so to do, exempt any person from the operation of this rule.”

At this stage the point for determination is as to whether second marriage of the petitioner during the subsistence of his first marriage is permissible under the personal law or not. It is forcibly contended by the learned advocate for the petitioner that such marriage is admissible in the tribe of the petitioner.

I am not in a position to accept such argument advanced by the learned advocate for the petitioner on the ground that the petitioner obtained divorce from the first wife under Section 13(b) of the Hindu Marriage Act on mutual

consent. Therefore, the marriage between the petitioner and his first wife was on the Hindu law. Section 5 of the Hindu Marriage Act prohibits second marriage. If the petitioner is admittedly governed under the Hindu Marriage Act, she cannot contract second marriage during the subsistence of her first marriage. Admittedly, he contracted second marriage on 3rd November, 2012 and the order of divorce under Section 13(b) of the Hindu Marriage Act was passed against his wife on 6th September, 2017. Thus, at the time of her second marriage he had his first marriage subsisting.

For the reasons stated above, I do not find any infirmity in the order passed by the competent authority. Therefore, there is no merit in the instant writ petition and the same is, accordingly, dismissed, however, without costs.

(Bibek Chaudhuri, J.)