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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2021

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.19548 of 2009

J.Jayaraj

.. Petitioner

vs.

1. The Director General of Police,
Chennai, Tamil Nadu.

2. The Deputy General of Police,
Armed Police, Chennai.

3. The Commandant,
TN Special Police-II,
Bn. Avadi, Chennai.

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the order No.த.பெ. எண் 05/2007 விதி3(பி) dated 24.07.2007, passed by the 3rd Respondent and order No.R No.C2/Appeal.15/2007, dated 09.10.2007, passed by the Second Respondent and Order No.Rc, No.211637/AP3(1)/2007, dated 18.01.2008, passed by the 1st Respondent and quash the same and to direct the Respondents to reinstate the Petitioner in service w.e.f. 24.07.2007 with all consequential benefits, including arrears of pay and allowances, continuity of service and consideration for promotion to the next higher post/s on par with his immediate junior.

For Petitioner : Ms.Y.Kavitha, Advocate for
M/s.P.V.S.Giridhar & Sai Associates

For Respondents : Mr.C.Harsha Raj, Counsel for the State

O R D E R

The Petitioner challenges an order of removal from service passed originally on 24.07.2007 by the disciplinary authority, which was affirmed in appeal by order dated 09.10.2007 and upon review by order dated 18.01.2008.



2. The petitioner joined the services of the police department as a Special Police Constable in the year 2003. A charge memo was issued against the petitioner on 24.04.2007 containing four charges. The first charge was that he married T.Sasirekha (Sasirekha) while her marriage with T.Venkatesan was subsisting, but the second and most significant charge against the petitioner was that he had married T.Sasirekha on 15.11.2004 at a temple in Tiruverkadu and suppressed such marriage and married another person, M.Parvathi (Parvathi), on 18.02.2005. The other charges relate to causing embarrassment and disrepute to an organization like the police that places great value on good conduct and discipline by entering into two marriages and fathering children through both women, as also by receiving dowry in the form of jewellery, a Hero Honda motorbike and other items at the time of the second marriage. The admitted position is that the petitioner was provided an opportunity to respond to such charge memo. At the inquiry, the record shows that evidence was adduced and the petitioner was provided an opportunity to cross-examine witnesses. Eventually, on the basis of the inquiry report and upon consideration of the petitioner's representation in respect thereof and other material aspects, the disciplinary authority by order dated 24.07.2007 imposed the penalty of 'removal from service' upon the petitioner. This was carried in appeal by the petitioner and such appeal was dismissed by order dated 09.10.2007. The petitioner presented a revision petition against such order and the said revision petition came to be dismissed on 18.01.2008. These orders of dismissal are impugned in the present writ petition.

3. Learned counsel for the petitioner contended that the principal charge against the petitioner, namely, that he had married Sasirekha on 15.11.2004 was not proved. In order to substantiate such contention, learned counsel referred to the appellate order, which records the delinquent's contention that there was no documentary or other evidence to prove that the petitioner had married Sasirekha. According to learned counsel, the conclusion of the appellate authority "that bi-gomy (sic) is confirmed beyond reasonable doubt" is ex facie erroneous after noticing and not rejecting with reasons the contention that there is no documentary or other evidence to prove such marriage. In addition, it is contended that the appellate authority and the authority in revision did not apply their mind independently to the evidence on record. By relying upon the orders of the appellate authority and the authority in revision, learned counsel contended that the orders of such authorities clearly evidence non-application of mind and mechanical affirmation of the order of the disciplinary authority.



4. In support of the aforesaid contention, learned counsel relied upon the judgment of the Jaipur Bench of the Rajasthan High Court in Mahesh Chand Sharma v. State of Rajasthan in S.B.Civil Writ Petition No.2067 of 1999, wherein the Rajasthan High Court concluded at paragraph 44 of the judgment that disciplinary proceedings should not be instituted because the Government Servant concerned commits adultery and that such matters should be left to the individual concerned for initiation of appropriate proceedings for divorce or other proceedings before the civil courts.

5. Learned counsel also relied upon the counter affidavit of the State wherein the State had indicated that the petitioner had failed to exhaust the remedy of submitting a mercy petition before filing the writ petition. On this basis, it is contended that the petitioner should be permitted to at least submit a mercy petition to the respondents seeking reinstatement without continuity of service and back wages.

6. On the contrary, Mr.Harsha Raj, learned counsel for the State, submits that this is an unusual case wherein the evidence is sufficient even for purposes of establishing the charges beyond all reasonable doubt. For this purpose, learned counsel relied upon the statements made by the two ladies in question, viz., Parvathi and Sasirekha. From the statement of Parvathi, he pointed out that Sasirekha had made a telephone call to Parvathi and stated that she is the real wife and that Parvathi was in the place that she should have occupied. By relying upon the statement of Sasirekha, learned counsel pointed that Sasirekha admitted categorically that a marriage ceremony was conducted between her and the petitioner on 15.11.2004 at Angalamman Temple at Thiruvankadu, near Chennai, which included the traditional symbols of marriage, i.e. tying of 'Thaali' and exchange of garlands.

7. Learned counsel for the State placed considerable reliance on a statement given by the petitioner on 17.10.2006, wherein the petitioner categorically admitted that he married Sasirekha at the Angalamman Temple, Thiruverkadu, on 15.11.2004 and that they lived as husband and wife thereafter. He also referred to the representation of the petitioner dated 23.07.2007 in response to the inquiry report and pointed out that, even at that stage, the petitioner agreed that he had performed a marriage ceremony with Sasirekha but attempted to convey that it was not a valid marriage. Indeed, his contention is that the petitioner attempted to gradually modify the story at each phase of the proceedings, and that the denial of the marriage to Sasirekha was raised only at the appellate and revision stages of the proceedings.



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8. In view of the aforesaid evidence, learned counsel contended that the charge of bigamy against the petitioner was duly established. In this regard, he relied upon Rule 23 of the Tamil Nadu Police Conduct Rules which provides as under:

Rule 23. Bigamous Marriages:

(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;

Provided that the Government may permit a Police Officer to enter into or contract any such marriage as is referred to in clause (a) or clause (b) if they are satisfied that,

(i) such marriage is permissible under the personal law applicable to such Police Officer and the other party to the marriage; and

(ii) there are other grounds for so doing.

(2) No Police Officer shall involved himself in any act involving moral turpitude on his part including any unlawful act, which may cause embarrassment or which may bring discredit to Government.

9. For reasons set out above, it was submitted on behalf of the State that the present petition is liable to be rejected and even the punishment imposed on the petitioner is clearly not disproportionate to the offence committed by him.

10. Upon considering the rival contentions, the question that arises for consideration is whether the impugned orders of removal from service are liable to be interfered with. This Court clearly does not function as an appellate forum in such matters. In other words, the scope of judicial review is largely confined to the following questions:

(i) Whether the principles of natural justice were complied with?

(ii) Whether there was a contravention of applicable laws or rules with regard to jurisdiction or otherwise?

(iii) Whether the orders impugned are perverse?

11. In the case at hand, the principal charge is that the petitioner, who had previously married Sasirekha, bigamously married Parvathi. By way of evidence in respect of such charge, the State relied upon the statements of both Parvathi and Sasirekha. More importantly, reliance has been placed upon the admission by the petitioner. On the other hand, the petitioner contends that the factum of marriage to Sasirekha was not proved by adducing sufficient evidence even on the standard



of 'preponderance of probability'. To put it differently, according to the petitioner, other than the statements adverted to above and a photograph, no other evidence was adduced to establish the marriage of the petitioner to Sasirekha or indeed to establish the validity of such marriage. Even assuming arguendo that such contention is credible, in judicial review, the Court does not reappraise evidence or interfere because the quality of evidence was not up to requisite standards. In such matters, interference is warranted only if the decision was based on no evidence or if the evidence relied upon was totally irrelevant or if vital evidence, which goes to the root of the matter, was disregarded. It certainly cannot be said that the evidence adduced in the present case is irrelevant or that the conclusions were based upon no evidence. The petitioner has neither contended nor established that vital evidence, which goes to the root of the matter, was disregarded. Consequently, the orders impugned cannot be interfered with on this ground.

12. A contention was raised that the appellate order and the order in revision do not indicate an independent application of mind. Upon perusal of the relevant orders, the said contention cannot be rejected out of hand. However, an appellate authority or an authority in revision is not required to set out extensive reasons for its conclusions especially when such authority affirms the order of the original disciplinary authority. In the present case, when the records are considered in totality, the orders impugned herein do not call for interference on this count also.

13. The question of the nature of punishment imposed on the petitioner remains to be considered. In matters relating to imposition of punishment, since the Court does not sit in appeal, the only question is whether the punishment awarded to the delinquent is within the spectrum of reasonable punishments in the facts and circumstances.

14. A Police Officer is prohibited from entering into a bigamous marriage in terms of Rule 23 unless the said marriage comes within the exceptions stipulated therein, whereas the petitioner herein married a second time while the first marriage was subsisting and also fathered children through both women. In this statutory and factual context, the judgment of the Rajasthan High Court does not advance the cause of the petitioner, and the contention that the punishment is grossly disproportionate to the offence cannot be countenanced. Therefore, this contention also fails.

15. For the reasons aforesaid, the petitioner has failed to make out a case to interfere with the orders impugned herein. Nevertheless, in light of the statement of the respondents at



paragraph 6 of the counter affidavit to the effect that the petitioner had failed to exhaust the remedy of submitting a mercy petition to the Government, the present writ petition is disposed of by leaving it open to the petitioner to submit a mercy petition to the Government in relation to his removal from service. Such mercy petition, if any, shall be submitted by the petitioner within a period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the respondents are directed to consider and dispose of the same by a written communication to the petitioner within a period of three months thereof. It is made clear that such leave is granted solely in view of the non-exhaustion of this avenue by the petitioner by leaving it open to the State to deal with such petition as it deems fit. Nothing in this order should be construed as enabling the petitioner to re-agitate the matter in a new round of litigation pursuant to the decision on the mercy petition.

16. W.P. No.19548 of 2009 is disposed of on the above terms without any order as to costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

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3. The Commandant,
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+1CC to Government Pleader SR.No.36956

Writ Petition No.19548 of 2009

GPL (CO)
B.VC (17/08/2021)