



W.P.No.29047 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 02.11.2022**

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**W.P.No.29047 of 2016**  
**and**  
**W.M.P.No.25098 of 2016**

J.Bernard Philip Leo

...Petitioner

Vs.

1.The Assistant Director of Survey & Land  
Records,  
Coimbatore – 641 018.

2.The Regional Deputy Director of Survey  
& Land Records,  
Coimbatore – 641 018.

3.The District Collector,  
Coimbatore – 641 018.

4.The Additional Director of Survey & Land Records,  
“Survey House”, Chepauk,  
Chennai – 600 005.

5.The Commissioner of Survey & Settlement,  
Ezhilagam, Chepauk, Chennai – 600 005.

..Respondents



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**Prayer** : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the orders of the fifth respondent in Na.Ka.Gna2/ 21248/ 2015 (Survey) dated 15.12.2015, confirming the appeal order passed by the fourth respondent in Na.Ka. La1/ 26638/ 2014 dated 06.05.2015 which confirmed the second respondent's appeal order made in Na.Ka.A4/ 9450/ 2013 dated 08.05.2014, which confirmed the impugned order passed by the first respondent in Na.Ka.A8/ 3073/ 2012 dated 20.09.2013 and to quash the same as illegal and to issue consequential direction directing the first respondent to reinstate the Petitioner into service with all service and consequential benefits, within the time limit as fixed by the Honourable Court.

For Petitioner : Mr.R.Baskaradoss

For R1 to R5 : Mr.D.Gopal  
Government Advocate

### **ORDER**

The punishment of removal from service as confirmed by the Appellate Authority are under challenge in the present writ petition.



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2. The petitioner states that he was working as Typist in the Department of Survey and Land Records. A charge memo was issued in proceedings dated 04.05.2012 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules with an allegation that the writ petitioner has committed an act of misconduct under Rule 19 (1) (i) and 20 of the Tamil Nadu Government Servants Conduct Rules. The allegation against the writ petitioner was that during the lifetime of his first wife, he contracted for a second marriage and therefore, committed an act of misconduct of Bigamous marriage, which is punishable under the Discipline and Appeal rules. The petitioner submitted his explanation, stating that he had obtained an agreement of divorce from his first wife and they separated due to misunderstanding. The first wife of the petitioner has given an agreement for divorce by consent and thereafter, the petitioner married one Smt.R.Asraf Jani and he married the said Smt.R.Asraf Jani as per the Mohammedan customs. Since the explanation submitted by the petitioner was not convincing to the authorities competent, they have appointed an Enquiry officer, who in turn, conducted an enquiry. The Enquiry officer



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afforded an opportunity to the writ petitioner to defend his case. At the time of disciplinary proceedings, the petitioner filed I.D.O.P.No.629/2012 before the Family Court at Coimbatore under Section 10 of the Divorce Act, seeking dissolution of marriage on 26.05.1982 between the petitioner and his first wife Mrs.J.Mary Josephine @ Anita. The petitioner subsequently also submitted explanations to the respondents on 18.07.2012 and on 13.08.2012.

3. Pertinently, the first wife of the writ petitioner Mrs.J.Mary Josephine @ Anita deposed before the Enquiry officer. The Deed of Divorce submitted by the petitioner was shown to the witness Smt.Anita, who in turn has stated before the Enquiry officer that the signature found in the Deed of Divorce is not her signature. The Deed of Divorce dated 27.08.1990 was created without her knowledge. Further, the first wife of the writ petitioner has stated that she lived with her husband/writ petitioner from 1982 to 1997 for about 15 years and thereafter, a misunderstanding aroused between them and she is living separately along with her son and daughter. She has further deposed that she has not married anybody. The first wife of the writ



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petitioner further deposed that her husband/writ petitioner got married with one Smt.R.Asraf Jani, who was working along with him. The first wife of the writ petitioner has stated that the petitioner has deserted her and her children. From and out of her own earnings, she is maintaining the two children. He has further filed a false document and the signature found in the agreement of divorce is not her signature and further deposed that the petitioner has given false document before the Department.

4. The enquiry officer considered all the documents including the evidences and the deposition of the witnesses and submitted a report on 26.12.2012. The enquiry officer has elaborately considered the documents and evidences and arrived a conclusion that the charges against the writ petitioner are held proved. The copy of the enquiry report was communicated to the writ petitioner, enabling him to submit his further objections and accordingly, he submitted further explanations on 05.02.2013 and based on the materials available on record, the first respondent/Disciplinary Authority passed final orders in proceedings dated 20.09.2013, imposing the penalty of removal from service. The order of the



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Disciplinary Authority is a Speaking order and the documents and the findings of the Enquiry officer has been categorically considered. The petitioner preferred an appeal on 30.10.2013, which was rejected by the 2<sup>nd</sup> respondent in order dated 08.05.2014. Further, appeal filed before the 4<sup>th</sup> respondent was also rejected in order dated 06.05.2015 and the petitioner filed an appeal before the 5<sup>th</sup> respondent, which was also rejected on 15.12.2015. Thus, the present writ petition is filed.

5. The learned counsel for the petitioner mainly contended that the petitioner's first wife was having illicit relationship with some other person and therefore, there was a misunderstanding aroused. Thus, she was living separately for long years and has given an agreement of divorce by consent. Thereafter, the petitioner has got married with the second wife, who was working along with him. Therefore, the decree of divorce given by his first wife by consent is to be taken into consideration and therefore, the second marriage is a valid marriage and consequently, the punishment of removal is to be set aside.



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6. Beyond the deposition of the first wife of the writ petitioner, the point to be considered is that, whether the agreement of divorce entered into between the petitioner and his first wife can be considered as a valid document. Such a consent divorce is invalid in the eye of law and cannot be considered as a valid divorce for the purpose of recognising the second marriage solemnized between the petitioner and his second wife Smt.R.Asraf Jani.

7. The petitioner has not obtained a valid decree of divorce from the competent Court of law, dissolving the marriage between himself and his first wife/ Mrs.J.Mary Josephine @ Anitha. During the lifetime of his first wife, he contracted the second marriage with Smt.R.Asraf Jani and therefore, the second marriage is invalid and cannot be considered as a valid marriage in the eye of law. A Government servant contracting a second marriage during the lifetime of his first wife is a misconduct under the Tamil Nadu Government Servants Conduct Rules. Thus, the authorities have initiated disciplinary proceedings against the petitioner and by following the



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procedures, disposed of the disciplinary proceedings.

WEB COPY 8. The enquiry proceedings were conducted by following the procedures and by affording opportunity to the writ petitioner. Thus, there is no infirmity in the enquiry proceedings conducted by the Disciplinary Authority. The findings of the enquiry officer was also based on the evidences and in the present case, the petitioner could not able to establish that he had divorced his first wife in the manner known to law. Contrarily, the petitioner has created a false document and produced before the authorities, so as to establish that he got an agreement of divorce with his first wife. The first wife of the writ petitioner deposed that she had not signed any such agreement and it is a false agreement created by the petitioner for the purpose of escaping from the clutches of disciplinary proceedings. Even presuming that the first wife of the petitioner signed such an agreement, it cannot be treated as a valid divorce in the eye of law and therefore, the said agreement for divorce cannot be trusted upon for the purpose of validating the second marriage solemnized by the petitioner with Smt.R.Asraf Jani.



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9. As far as the report of the enquiry officer is concerned, the enquiry officer has considered all the documents and evidences as well as deposition of the witnesses. Thus, there is no infirmity and the Disciplinary Authority also considered the entire facts and circumstances as well as the documents and evidences and imposed the penalty of removal from service. Thus, the principles of natural justice has been complied with and the charges proved are based on the evidences and further, this Court do not find any disproportionality in the quantum of punishment imposed on the writ petitioner.

10. A public servant contracting a second marriage during the lifetime of his first wife is a grave misconduct and therefore, the punishment of removal from service cannot be construed as excessive or disproportionate. Multiple appeals filed by the writ petitioner before various authorities were also rejected. Though there are no such multiple appeals contemplated under the rules, the authorities have entertained such appeals and rejected the same. The authorities hereinafter should ensure that the appeals filed under



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the rules alone are entertained and dispose of in the manner contemplated under the rules. The authorities, who all are not having powers or jurisdiction to entertain the appeal shall not entertain any such appeal and pass orders on merits. The punishing authority, Appellate Authority, Revisional Authority and Review Authority are well enumerated in the Discipline and Appeal Rules. Therefore, such authorities specified in the rules alone are competent to entertain the appeal, revision or review as the case may be. In this regard, the 5<sup>th</sup> respondent, Commissioner of Survey and Settlement shall issue appropriate instructions to all the authorities across the State of TamilNadu to ensure that powers contemplated under the Discipline and Appeal Rules are exercised by the competent authorities as specified in the rules and excessive exercise without jurisdiction is to be viewed seriously. Such excessive exercise, if permitted, would lead to administrative indiscipline and further, pave way for Favouritism, Nepotism or corrupt activities or passing orders on extraneous considerations. Therefore, administrative discipline in exercising the powers in accordance with the Discipline and Appeal Rules must be scrupulously followed at all circumstances by the competent authorities concerned.



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11. As far as the present writ petition is concerned, the misconduct against the petitioner was proved beyond any pale of doubt and the procedures as contemplated were followed by the authorities and there is no violation of principles of natural justice. Thus, the punishment of removal from service cannot be construed as excessive or disproportionate and for all these reasons, this Court do not find any other reason for the purpose of interfering with the orders impugned.

12. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**02.11.2022**

Index : Yes  
Speaking order: Yes  
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To

1. The Secretary to Government,  
Environment and Forest Department,

11/13



Fort St.George,  
Chennai – 600 009.

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2.The Principal Chief Conservator of Forest,  
Panagal Building,  
Saidapet,  
Chennai – 600 015.



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**S.M.SUBRAMANIAM, J.**

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