



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.06.2022

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

W.P. (MD) No.1782 of 2020  
and W.M.P. (MD) .Nos.1504 & 1506 of 2020

A.David Arokiyaraj

... Petitioner

Vs.

The District Collector,  
Karur, Karur District.

... Respondent

**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 impugned order passed by the respondent in his proceedings in Na.Ka.A3/10368/2019 dated 06.01.2020 and quash the same as illegal and consequently direct the respondent to reinstate the petitioner in his service with all benefits.

For Petitioner : Mr.V.T.Balaji for Mr.J.Jeyakumaran  
For Respondent : Mr.R.Ragavendran  
Government Advocate

**O R D E R**

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

2.The petitioner herein was appointed in the Revenue Department in the year 2011 as Revenue Inspector. At the time of appointment he was married to one Roseline Sahaya Mary. In the year 2011, the petitioner herein had filed a divorce petition, which came to be dismissed and the appeal filed in the year 2015 was also dismissed. It is stated that the first wife of the petitioner herein has been living separately for more than 10 years. At this point of time, the petitioner had contracted a second marriage in the year 2019 with one Thainis. Based on the second marriage, charges came to be framed against the petitioner on 30.08.2019, stating that the second marriage was in violation of Rule 19 of the Tamil Nadu Government Servants Conduct Rules, 1973. During the course of enquiry, the petitioner admitted the second marriage, which resulted in passing of the impugned order of punishment on 06.01.2020 removing the petitioner from his service. The order of punishment is put under challenge in the present writ petition.



3.The learned counsel for the petitioner submitted that the punishment imposed on the petitioner is grossly disproportionate to the charges, for which purpose, he relied on a judgment of the High Court of Madhya Pradesh passed in the case of **Hem Singh Vs. Union of India & Others** in W.P.No.1723 of 2007.

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4.Per contra, the learned Additional Government Pleader placed reliance on the counter affidavit and submitted that Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules specifically prescribes for a major punishment of either compulsory retirement, removal from service or dismissal from service for a misconduct under Rule 19 of the Tamil Nadu Government Servants Conduct Rules, 1973 and therefore, there is no infirmity in the impugned order.

5.Before addressing the ground of disproportionateness, it will be relevant to point out that the petitioner herein has begotten a child through the second marriage and it is stated that the petitioner is now living with the second wife and his infant child

6. The facts in the case of Hem Singh (supra) is also similar with that of the petitioner's present case. The Madhya Pradesh High Court had placed reliance on the decision of the Honourable Supreme Court in the case of **B.C.Chaturvedi Vs. Union of India and another**, as well as the Division Bench's decision from the same Court and had come to the conclusion that the punishment was disproportionate to the levelled charges. Incidentally, the Service regulations governing the State of Madhya Pradesh is almost identical to the Tamil Nadu Government Servants Conduct Rules. It is in this background, it was held therein that the punishment was disproportionate to the charges. By holding so, the Court had also felt it appropriate to substitute the original punishment of dismissal from service into a lesser punishment, in the following manner.

*"20. What happens next is a human problem. Whether a person should be meted out with such a severe punishment for not obtaining prior permission for the second marriage will have to be determined by this Court taking into account the consequences that will be visited on both the first wife as well as the second wife and the children.*

*21. This certainly is a human problem. It involves the future of three innocent children born to the first wife.*

*22. The first wife curiously appeared in the Court and pleaded for clemency on behalf of her husband, the Constable. She stated that if her husband loses his job, the children will be in the streets. The first wife also stated that she has also remarried again after the so called divorce. All that the first wife wanted was to make sure that her first husband pays maintenance for the*



upkeep of the children. She has stated that neither she nor her so called second husband have any means to look after the children born to the appellant.

23. The first wife had categorically stated that she never complained about the second marriage but only wanted the payment of maintenance for the children to continue.

24. In the meanwhile, the Constable filed an affidavit before the Court in the presence of the first wife. The Constable undertook before this Court to maintain the three children born out of the first wife by paying a sum of Rs. 2,000/- per month to the first wife for the maintenance of the three children. It is relevant to extract the affidavit filed by the appellant/Constable before this Court. The Affidavit reads as follows:--

"I, Gop Chand Rai, s/o Shri Shyamlal Rai, 39 years, r/o Village Hardua, Tehsil & District Katni, do hereby solemnly affirm and state on oath as under:--

(1) I am appellant in the aforesaid case.

(2) I undertake through this Affidavit that I will maintain three children born from my first wife Reena Rai and I further undertake that I will be regularly paying Rs. 2,000/- to Smt. Reena Rai for maintenance of my three children born from Reena Rai.

(3) I further undertake that in case of any default on my part in paying the aforesaid amount the State Government or the disciplinary authority will be at liberty to take disciplinary action against him."

25. As far as the misconduct is concerned, this is an open and shut case. However, the folly committed by the appellant/Constable was that he did not get prior permission from the State Government before the second marriage.

26. For all these reasons, it can be safely said that the punishment of dismissal from service will leave the children shattered and in a state of poverty. We have no doubt that the first wife will look after the children and give them proper education and sustenance in the village although she has married for the second time after the so called divorce.

27. The first wife was present in Court more or less pleading on behalf of her husband that he should not lose his job. It was borne out from the record that the complaint given by her was only with regard to maintenance but then the law took



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its turn, which ended in the dismissal of the appellant/Constable. We feel that both the appellant and his first wife are sincere that the children must have a future and they must be educated and well fed. All this requires money. Our paramount consideration was the welfare of the three minor children born to the appellant and the first wife. Throwing the appellant into the streets without employment would tantamount to throwing the children out of Court without any sustenance.

28. In that view of the matter, we do not think that the first wife is shielding her husband, the Constable, from punishment. She is genuinely interested in caring for the children which is a paramount consideration to her.

29. Does this technical offence call for a punishment of dismissal from service and at what cost ? The divorce was by common usage and may be or may not be acceptable in law.

30. But, the fact of the matter is that the Constable married again and the first wife also married once again and the Constable committed an error in not obtaining permission from the State Government when he got remarried.

31. We feel that this technical error, which undoubtedly is a misconduct, can not lead to the consequences of dismissal from service.

32. In normal circumstances, if we found that the punishment is shockingly disproportionate, we would send it back to the disciplinary authority to deal with the matter in accordance with our directions, but in the facts and circumstances of the case and taking into account the paramount interests of the children, we propose on a broad consensus to deal with the matter ourselves. It is in rare circumstances the Court may substitute a lesser punishment if the punishment imposed by the disciplinary authority is shockingly disproportionate.

33. We have the pronouncements of the Supreme Court which enable us to take this course of action.

34. In *B.C. Chaturvedi v. Union of India* and *Anr.* [(1995) 6SCC 749] the Supreme Court did pronounce that in extra-ordinary circumstances, it is possible for the Court to substitute a lesser punishment without sending it back to the disciplinary authority. The Supreme Court in *Director General RPF and Ors. v. Ch. Sai Babu* [(2003) 4 SCC 331] has pronounced that normally,



the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases, that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned, having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works. The Supreme Court took the same view in *Chairman & Managing Director, United Commercial Bank and Ors. v. P.C. Kakkar* [(2003) 3 SCC 364].

35. Following the pronouncements of the Supreme Court in the facts and circumstances of the case, we substitute the punishment of dismissal from service to that of withholding of one increment with cumulative effect. The Constable/appellant shall not be entitled to back wages. However, he shall be entitled to continuity of service.

37. It is made clear by consent of the appellant/Constable that the maintenance amount of Rs. 2,000/- per month shall be paid to the first wife regularly and without fail on or before 10th of each calendar month. The appellant also undertakes before this Court that if the amount of Rs. 2,000/-per month is not paid, the first wife is at liberty to take such steps in accordance with law and may report the matter to the superior authorities and the superior authorities shall, out of the salary of the Constable, pay the maintenance amount by deducting it from the salary of the Constable/appellant directly to the first wife. This, in our view, would meet the ends of justice. It will not only save the appellant from the rigor of dismissal but also his reinstatement will give succour to the first wife and his three minor children. Time granted for reinstatement as indicated by this Court shall be one month from the date of receipt of this order. This order is made without prejudice to any civil rights that may be agitated in a court of law by the parties"

The Division Bench keeping in view the judgment delivered in the case of *B.C. Chaturvedi v/s Union of India and Another* (1995) 6 SCC 749 has



substituted the punishment keeping in view the extraordinary circumstances and a punishment of withholding of one increment with cumulative effect has been awarded.

The only difference in the present case is that in place of Rule 22 of the M.P. Civil Services (Conduct) Rules, 1965, Rule 21 of the Central Civil Services (Conduct) Rules, 1965 is applicable and the same reads as under:-

"21. Restriction regarding marriage- (1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and (2) No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause(2), if it is satisfied that-

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and (b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of India Nationality shall forthwith intimate the fact to the Government."

In light of the aforesaid and keeping in view Rule 21 of the Central Civil Services (Conduct) Rules, 1964, this Court is of the opinion that the punishment awarded to the petitioner is certainly disproportionate and deserves to be quashed and is accordingly quashed and the punishment of dismissal be substituted to that of withholding of one increment with cumulative effect.

Not only this, in another case decided by Manipur High Court in the case of Union of India & three others v/s Mohammad Jakir Hussain 2015 SCC Online Mani 67, a similar view has been taken in respect of Constable of CRPF and the punishment of dismissal has been set aside.

Not only this, in the case of Rameshwar Kumbhakar v/s State of M.P. & Another passed in W.P.No.3816/2006 decided on 24.03.2015, again in case of second marriage during the life time of the first wife, a similar view has been taken by this

<https://hcservices.ecourts.gov.in> and the punishment of dismissal from the



services has been substituted to that of withholding of one increment with cumulative effect.

Resultantly, the present writ petition also stands allowed. The punishment of dismissal is substituted to that of withholding of one increment with cumulative effect. The Constable/petitioner will not be entitled for backwages, however, he will be entitled for continuity in the services and for all other consequential benefits. The respondents are also directed to reinstate the petitioner within thirty days from the date of receipt of certified copy of this order in case he has not attained the age of superannuation.

7. In the present case also, though Rule 8 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules provides for a punishment of removal from service for violation of Rule 19 of the Tamil Nadu Government Servants Conduct Rules, 1973, by applying the ratio laid down in *Hem Singh's* case *Supra* and by taking a sympathetic consideration of the plight of the family of the second wife, I am of the view that a lesser punishment can be substituted, in line with the decisions of the Honourable Supreme Court in *B.C. Chaturvedi's* case (*supra*) as relied upon in *Hem Singh's* case (*supra*).

8. Since the present order is being passed in the peculiar circumstances of this case, this order shall not be quoted as a precedent for any other case.

9. In the light of the above findings, the impugned order passed by the respondent in his proceedings in Na.Ka.A3/10368/2019, dated 06.01.2020, is hereby quashed. Consequently, there shall be a direction to the respondent herein to pass appropriate orders, imposing a punishment of stoppage of increment for a period of one year with cumulative effect. The respondent shall pass such orders within a period of two weeks from the date of receipt of a copy of this order.

10. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/06/2022

Sub Assistant Registrar (CS)



To  
The District Collector,  
Karur, Karur District.

+2 CC to M/s.J.JEYAKUMARAN, Advocate ( SR-24644[F] dated 08/06/2022 )

+1 CC to M/s.SPL.GP ( SR-24877[F] dated 09/06/2022 )

**W.P. (MD) No.1782 of 2020**  
**08.06.2022**

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