

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.687 of 2018

In
Civil Writ Jurisdiction Case No.5779 of 2016

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
 2. The Principal Secretary, of Hon'ble Chief Minister, Govt. of Bihar, Patna.
 3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
 4. The Joint Secretary, General Administration, Department, Government of Bihar, Patna.
 5. The Deputy Secretary, General Administration Department, Government of Bihar, Patna.
 6. The Joint Commissioner, Department Inquiry, Saran Division Chapra Cum Inquiry Officer, Saran at Chapra
 7. The District Collector, Saran at Chapra.
 8. The Secretary, Government of Bihar

... .. Appellant/s

Versus

1. Sheweta Mishra D/o Sri Dinesh Kumar Mishra, Resident of House No. G-105, Sector Goverdhan Kalindipuram, Allahabad U.P. 211011, the then Dismissed Senior Deputy Collector, Kaimur, Bhabhua BPSC Serial No. 1312/11, P.S. Bhabhua District-Kaimur at Present.
Petitioner-Respondent
2. Gyanendra Kumar Tripathi, Son of late Bolakanth Tripathi, Resident of Village and P.O. - Paharganj, District- Amethi, Presently Posted as Deputy Commissioner, (AR) in the office of the Commissioner (AR) Customs, Excise and Service Tax Appellate Tribunal (CESTAT) 38 MG Marg Civil Lines, Allahabad, 211011, State (U.P).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. S.D. Yadav, AAG-IX
Mr. Braj Bhushan Mishra, AC to AAG-9
Mr. Prem Ranjan Kumar, AC to AAG-9

For the Respondents : Mr. S.D. Sanjay, Senior Advocate
Mr. Mohit Agarwal, Advocate
Ms. Priya Gupta, Advocate
Mr. Anand Kumar, Advocate
Mr. Kamlesh Kumar Singh, Advocate

For the Complainant : Mr. Sanjay Kumar Ghosarvey, Advocate



Mr. Ramesh Gupta, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY**

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-07-2023

1. The allegations of an extra marital affair levelled against the 1st respondent, led to her dismissal from service, after an enquiry. The allegations were levelled by the wife of the person with whom the 1st respondent was alleged to have had an extra marital relationship and also entered into a marriage. Admittedly, there are litigations galore within the State of Bihar and in the neighbouring States; initiated by the wife alleging bigamy, domestic violence and so on and so forth.

2. We are concerned with only the initiation of domestic enquiry and the findings thereon, as a consequence of which the 1st respondent was dismissed from service and the interference caused to the dismissal by the learned Single Judge. The learned Single Judge set aside the dismissal order finding statutory violation in the enquiry initiated as also the enquiry having brought forth absolutely no valid evidence to support the finding of the delinquent employee having entered



into a marriage with a person who had a subsisting marriage. The complainant, the wife of the person, who is alleged to have married the 1st respondent, was present in Court with an Advocate representing her seeking intervention in the matter. We were of the opinion that the said person has absolutely no reason to intervene in the present proceedings, which is between the State and the 1st respondent. Her personal grievances, if at all against her husband and the 1st respondent has to be agitated elsewhere; which proceedings she has already initiated. Moreover, we are apprised of certain facts which occurred during the litigation, from the orders passed by a Division Bench, which we have to necessarily notice before proceeding to decide the matter in dispute.

3. A Division Bench of this Court on 28.03.2019 directed notice to be issued to the 1st respondent by a detailed order. On 03.07.2019 noticing the allegations as also the application for intervention in the proceedings, made by the spurned wife, the Court directed the husband against whom allegations were raised of bigamy, to be impleaded in the proceedings. It was specifically noticed that the matter would be heard on merits, in the background in which the entire dispute had arisen, which possibly could be resolved by way



of a conciliatory or negotiatory effort. On 25.07.2019 again after hearing the 1st respondent, the 2nd respondent; who appeared through counsel and the intervener, the Court noticed the litigations between the parties and noticed the order dated 03.07.2019 in which the Court had requested the intervener to ensure the presence of her parents also before Court, at the next posting date; which too was obeyed. The Court proceeded to embark upon a conciliatory proceeding with the 1st respondent and the husband and wife duo, being the 2nd respondent and the intervener as also the parents of the intervener; present in person. The Court having spent considerable time in conciliation arrived at a one time settlement, directing the husband to pay the wife/intervener an amount of Rs.50,00,000/- (Rupees Fifty Lahks) and the 1st respondent to pay a further amounts of Rs.10,00,000/- (Rupees Ten Lakhs). Time was granted to pay the said amounts and it was specifically observed that the order was passed in the presence of the intervener and her parents, and it was directed that the intervener endorse her signature on the order-sheet as she was not represented by counsel. The Court dispensed with the presence of the parents and directed the respondents as also the intervener to be present on the next



date, which was fixed on 08.08.2019.

4. On 08.08.2019, the intervener filed an Interlocutory Application No.04 of 2019 and represented herself through an advocate. Without going into the details, the intervener alleged that the learned Judges though had agreed to give a share of land belonging to the 2nd respondent, the same was not mentioned in the order dated 25.07.2019. There was appearance through a counsel who also vigorously canvassed the case of the intervener despite the earlier order passed, which was also in the presence of the intervener. The Court by order dated 08.08.2019 expressed deep reservations, not only on the conduct of the intervener but also of the advocate who had repeatedly alleged unfair treatment of the intervener. In fact, it was specifically noticed that the respondent nos.1 and 2 through their learned counsel had come with bank drafts, for settlement. However, finding the application made by the intervener having further complicated the matter, which was also an attempt to get undue advantage of the leniency shown by the Court, the modification application filed was dismissed and it was also stated categorically that the Court declines to proceed further at the instance of the intervener.



5. In this context, the Court also noticed that there was an earlier LPA filed by the intervener as LPA No.1426 of 2017, against the very same order impugned in this appeal. The same was rejected by another Division Bench on 08.12.2017 finding the intervener who was appellant therein, to have no *locus standi* to challenge the order passed by the learned Single Judge. The learned Judges in the order dated 08.08.2019 expressed consternation at precious time having been wasted. However, restrained themselves from imposing costs, since the conciliatory effort was one initiated on the part of the Court; which necessarily would not have been possible if a strict view was taken on the subject matter of the appeal. The said order passed by the Court rejecting the application for modification was taken up before the Hon'ble Supreme Court by Special Leave Petition (Civil) Diary No(s).37658/2019 which was rejected by order dated 04.11.2019. The Hon'ble Supreme Court found the reasoning of the High Court to refuse intervention by the petitioner to be unexceptionable. The only reservation made by the Hon'ble Supreme Court was with respect of the observations made by the High Court, not coming in the way of the petitioner/intervener in any pending or future proceedings



pertaining to the personal rights and contentions of the petitioner in her matrimonial dispute.

6. Based on the reservation on the earlier occasion, the intervener, who was present in person in Court, insisted that she should be heard in the appeal which was pending when the Hon'ble Supreme Court rejected her Special Leave Petition. At that point itself we informed her that the Hon'ble Supreme Court had specifically referred to 'any pending or future proceedings pertaining to the personal rights arising in her matrimonial dispute' and the present Letters Patent Appeal is not one which arise from her matrimonial dispute and not concerning her personal rights, since it is against a disciplinary proceedings initiated by the State against 1st respondent on the allegation raised of bigamy.

7. We have heard Sri S.D. Yadav, learned Additional Advocate General IX for the State and for the 1st respondent Sri S. D. Sanjay, learned Senior Counsel.

8. We have gone through the enquiry report and also the basis on which the interference was caused by the learned Single Judge.

9. Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 delineates the



procedure for imposing major penalties. Sub-rule (3) of Rule 13 provides for the disciplinary authority to draw up or cause to be drawn up the substance of the imputations of the misconduct or the misbehaviour as a definite article of charge and the statement of facts of the imputations, which under sub-rule (4) has to be delivered to the delinquent employee, with a list of documents and witnesses in support of each of such charges. The disciplinary authority was further required to direct the delinquent employee to submit her explanation within a specified time on receipt of which by sub-rule (5), the disciplinary authority may by himself or by an authorized person conduct an enquiry into the charges alleged in which the enquiry the allegations have to be proved by substantiating evidence.

10. The learned Single Judge found that there were two show cause notices issued as against the 1st respondent to which the 1st respondent had filed a reply. However, no further proceedings were taken by the disciplinary authority to reduce the allegation into a formal charge and thereby initiate a disciplinary proceeding. In fact, the State by Annexure-8 dated 27.11.2013 issued a copy of the charge memo and directed the petitioner to file her reply before the enquiry



officer; which was quite in violation of the stipulation in Rule 17(3). The disciplinary authority going by the prescription of Rule 17 has to issue a show cause notice with definite charges framed, based on factual statements of allegations; and if a reply is filed, consider it and then conduct an enquiry or authorize an enquiry officer to carry out an enquiry. The disciplinary authority cannot abdicate his powers and direct the show cause against the charge memo to be considered by the enquiry officer.

11. We perfectly agree with the order of the learned Single Judge, but we also enter a caveat insofar as, the trite principle, on any irregularity in a disciplinary proceeding being detected, the same allowed to be resumed from the stage at which, the irregularity occurred. We would have normally resorted to the said procedure, but for the fact that in the enquiry conducted, there was no evidence led against the delinquent employee.

12. The learned Single Judge looked at the enquiry report and found that the allegations were found proved, only on the basis of photographs produced. The complainant, who was the intervener in the appeal, had not been examined, nor was the photographer examined or the negatives produced.



The specific defence of the 1st respondent before the enquiry officer was that the photographs were doctored. Mere reliance on the photographs of a marriage ceremony, cannot lead to an allegation of bigamy, especially in a disciplinary proceeding.

13. We specifically refer to the Bihar Government Servant Conduct Rules, 1976 in which Rule 23 specifically speaks of no government employee being permitted to enter into a marriage or an agreement of a marriage, with a person whose marriage was subsisting. Mere production of a photographs cannot be proof of violation of the Conduct Rules and cannot definitely result in the onerous consequence of dismissal from service. We find no reason to interfere with the judgment of the learned Single Judge.

14. Only in the circumstance of the presence of the intervener, we heard the learned counsel who was present with her; Sri Sanjay Kumar Ghosarvey. The learned counsel would allege that in fact there was an agreement that a house owned by the mother of the husband of the intervener would be conveyed to her. We have to immediately notice that this is not relating to the subject matter of the instant appeal and the intervener is attempting to rake up issues which were attempted to be settled by this Court earlier. The settlement



attempted between the parties; was only a pious attempt by the Court, to bring in a quietus to the disputes pending, so that all three persons involved, can get on with their lives. We cannot but say that the entire exercise carried out by the Court had turned futile, only on the intervener turning turtle in the end and refusing to accept the substantial sums offered by respondent nos.1 and 2. The learned counsel would then point out that the property owned by the mother of the husband of the intervener was conveyed in the name of the 1st respondent. We cannot but say that this alone does not establish the specific charge of bigamy, levelled against the husband of the intervener on the allegation of a marriage with the 1st respondent. We heard the intervener's counsel only because we thought that a person who was present in Court, is not sent out without a hearing. This was despite the fact that we were aware of the callous attitude of the intervener on the earlier occasion, through the previous orders, especially the rejection of the application to intervene; which rejection by a Division Bench was confirmed by the Hon'ble Supreme Court.



15. We find no reason to interfere with the judgment dated 06.09.2017 passed in CWJC No.5779 of 2016 by a learned Single Judge and reject the Letters Patent Appeal.

(K. Vinod Chandran, CJ)

Partha Sarthy, J. I agree.

Sunil/- **(Partha Sarthy, J)**

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