

Court No. 2

18.08.2023

(JPD 15)

(B.P.)

Calcutta High Court
In the Circuit Bench at Jalpairuri
Appellate Side

W. P. No. 25 of 2020

**Shri Lakpa Gyalboo Sherpa
Vs.
The Union of India & Ors.**

Mr. Amalesh Roy
Mr. Deborshi Dhar
Mr. SK Dhar
Ms. Esha Acharya
Ms. Oshmita Mukherjee

... for the petitioner

Mr. Sudipto Kumar Majumdar
Mr. Ajy Kumar Singhinya
Mr. Saptak Sarkar
Mr. Sourav Roy

....for the Union of India

The petitioner has challenged one order dated 02.08.2019 whereby the petitioner has been dismissed from service with immediate effect.

This is a matter I have been told by learned advocate for the respondent which comes under Rule 11 of the Sashastra Seema Bal Rules 2009. The Rule is reproduced herinbelow:

“11. Ineligiblity.- (1) No person, who has more than one wife living or who having a spouse living marries in any case in which such marriage is void by reason of its taking place during the life time of

such spouse, shall be eligible for appointment, enrolment, or employment in the Force.

(2) Any person subject to the Act, who contracts or enters into a second marriage during the life-time of his first spouse shall render himself ineligible for retention in service and may be dismissed, removed or retired from service on ground of unsuitability:

Provided that the Central Government may, if satisfied that there are sufficient grounds for so ordering, exempt any person from the operation of this rule”.

Under the said Rule, as the petitioner had married again during the life time of his spouse, he was not eligible for employment in the Force.

The petitioner submits that this order of dismissal is only one executive order and no more disciplinary proceeding was conducted before his dismissal and he further submitted that he did not contract the second marriage during the life time of his first wife. Therefore, this order is required to be set aside.

On the other hand, the learned advocate for respondent has shown some documents from the affidavit-in-opposition first one of which is annexure

R-2 where the petitioner himself penned through his wife's name and wrote a short note with the heading divorce entry. This was dated 27.11.2015. By writing this he wanted to show that he was divorced and subsequently got married to another lady. However, from another document being Annexure R-5 of the affidavit-in-opposition, he has drawn my attention to the fact that his second wife Smt. Salam Priya Devi intimated the commandant through proper channel while submission of nomination papers that she got married to one Sri Lakpa Gyalboo Sherpa on 07.03.2015. The divorce decree passed by the competent court was also shown to me from the writ application (Annexure P-3) wherefrom it is found that the divorce decree was passed on 27.11.2015.

Therefore, according to the second wife of the petitioner, the second marriage took place in the month of March 2015 whereas the first marriage was dissolved in November 2015. Therefore, it has been submitted that when the petitioner entered into the second marriage his first marriage was not dissolved and, therefore, for eight months or so he had committed a wrong of having two wives which comes within the said Rule 11 of the above named Rules 2009. Apart from that the petitioner himself admitted by one clarification memo, which is annexure R-12 where he has stated that he married his second wife prior to the divorce.

Now, the question is whether a proceeding was required or not and the other question whether the petitioner really married for the second time while having his first wife. In respect of first question I hold that in view of the statement made in writing by the second wife of the writ petitioner and in view of his admission as appears from the said clarification memo dated 05.12.2018 (vide Annexure R-12 of the affidavit-in-opposition) and the copy of the certified copy of the divorce decree nobody could retract from the facts admitted and, therefore, a disciplinary proceeding was not required when there was unambiguous, admission as to the second marriage during the subsistence of the first marriage. Therefore, I hold in such a case where admissions are unambiguous further disciplinary proceeding is not required. Apart from the above in the said Rule 11 it is not indicated that the ineligibility would be declared after holding an enquiry. In respect of the second question as to his date of marriage was 23.03.2016 as appears from the certificate of marriage, I hold that the certificate of marriage is prepared on the basis of the declaration given by the parties while filling up the form for the registration of marriage and there is no question of enquiry further by the Marriage Registrar to see whether the particulars declared given in the form are correct or not. Therefore, if some wrong information is given that will go straight in the certificate of marriage with the said error. Therefore the certificate of marriage on the basis of

which the submission has been made before this court that the petitioner got married after the divorce decree was passed as appears from the certificate of marriage is not acceptable to this court.

Therefore, I do not find any illegality or infirmity in this executive order which is based on Rule 11 of Sashastra Seema Bal Rules, 2009 and I do not interfere with the said dismissal order.

Learned advocate for the petitioner has relied upon a judgment reported in 1966 SC 614. Relying upon paragraph 7 there, he submitted that the statement admitting the second marriage is certainly not evidence of the marriage so far as the appellants therein are concerned. But I find that in the said judgment that the statement admitting the second marriage was by some other persons and not by the appellant himself. In this backdrop the Supreme Court said that such admission of those persons certainly the evidence of marriage of the appellant. But here not only the appellant had admitted in this clarification memo (Annexure R-12) but his second wife also has admitted that she was married on 7th March, 2015. His second wife also works in the said force namely, Sashstra Seema Bal.

Therefore, I further hold that as there is no infirmity in the said proceeding which resulted in the executive order of dismissal this court refrain itself from interfering into the matter.

The writ application is dismissed.

(Abhijit Gangopadhyay, J.)