



W.P.No.14879 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14879 of 2016

S.Mohan

...Petitioner

Vs

- 1.State of Tamil Nadu
Rep by its Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai-600 009.
- 2.The Director of Public Health & Preventive Medicine,
No.359, Anna Salai, Chennai 600 006.
3. The Joint Director (Administration),
Office of the Director of Public Health &
Preventive Medicine,
No.359, Anna Salai, Chennai-600 002.
4. The Workshop Superintendent,
Regional Workshop for Health,
Asthampatti, Salem

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records



W.P.No.14879 of 2016

pertaining to the order dated 03.11.2015 on the file of the 1st respondent made in G.O.(D)No.1391 by confirming the order of the 2nd respondent dated 11.07.2014 made in R.No.8945/DA/S3/11 and quash the same with consequential direction to the 1st respondent to reinstate the petitioner in service with consequential benefits.

For Petitioner : Mr.N.Ramesh
For Respondents : Mr.T.Chezhiyan
Addl. Government Pleader

ORDER

The charge against the petitioner in the Charge Memo dated 27.10.2012 is as follows:

" That the said Thiru.S.Mohan, Assistant Regional Workshop (Health), Salem, has entered into bigamous marriage with Tmt.K.Vijayalakshmi, aged 39 years, who is working as Staff Nurse while the divorce petition against his wife Tmt.Nirmala is pending before the Family Court at Pondicherry filed during 2002 and at Family Court at Bangalore and orders of the Court are yet to be received and thereby violated Rule No.19 of Tamil Nadu Civil



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W.P.No.14879 of 2016

Services (Discipline & Appeal) Rules (i.e.,) No Government Servant having a spouse living shall enter into or contract a marriage with any person, which comes under Bigamous Marriage.”

2. In the Explanation dated 22.12.2012 submitted against the levelled charges, the petitioner had specifically stated that he had not married K.Vijayalakshmi, pending divorce petition against his wife D.Nirmala. He had further stated in the explanation that he had already sent a letter to New Health Insurance Scheme concerned for cancellation of her name in the NHIS Card which has been mistakenly stated that K.Vijayalakshmi was his wife.

3. Not being satisfied with the reply, an enquiry came to be conducted and through the Enquiry Officer's Report dated 10.10.2013, the charge against the petitioner was held as proved. Further explanation of the petitioner dated 09.12.2013 was also not considered and by order dated 11.07.2014, the petitioner was imposed with the punishment of



W.P.No.14879 of 2016

compulsory retirement. The appeal against the order of punishment was also rejected by the first respondent herein in G.O.(D)No.1391 Health and Family Welfare (D2) Department dated 03.11.2015. Challenging these orders, the present writ petition has been filed.

4. Learned counsel for the petitioner submitted that he had never married K.Vijayalakshmi during the subsistence of his first marriage with Nirmala. He also submits that though the name of K.Vijayalakshmi was shown as wife in the New Health Insurance Scheme Card, he had taken steps on 19.10.2007 for removal of her name and this aspect was also mentioned in his explanation dated 22.12.2012 to the Charge Memo and further explanation to the proven charges dated 09.12.2013 which were not considered by the respondents and therefore, sought for interference to the impugned order of punishment.

5. Learned Additional Government Pleader submits that the petitioner has entered the name of K.Vijayalakshmi in the New Health Insurance Scheme, wherein the passport size photo of the petitioner and



W.P.No.14879 of 2016

the said Vijayalakshmi have been affixed and mentioned as the wife of the petitioner and further the petitioner has also signed in the form as a proof of authentication, which clearly reveals that the petitioner has remarried K.Vijayalakshmi and therefore, there is no infirmity in the order of punishment. Learned Additional Government Pleader further submits that a Government Servant cannot enter into a second marriage during the subsistence of the first marriage and since the petitioner committed the act of bigamy, he had violated Rule 19 of the Tamil Nadu Government Servants Conduct Rules, 1973 and therefore, there is no infirmity in the order of punishment.

6. The charges against the petitioner have been levelled under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. As per the said Rule, the levelled charges are to be given in Annexure-I together with statement of allegations in Annexure-II. Annexure-III refers to list of documents which are to be produced in the enquiry to substantiate the charges and Annexure-IV would be the list of witnesses by whom the charges framed against the delinquent are proposed to be substantiated. In



W.P.No.14879 of 2016

the Charge Memo dated 27.10.2012, the documents have been shown, by which, the disciplinary authority intended to establish the charges against the petitioner. However, list of witnesses in Annexure-IV shows as “ Nil”. Among the six documents, which were sought to be produced in the course of enquiry, one document relates to New Health Insurance Scheme, which is signed by the petitioner herein, which may throw light on the charge of bigamous marriage of the petitioner.

7. The Hon'ble Supreme Court, in the case of ***Roop Singh Negi Vs. Punjab National Bank and others*** reported in ***2009 (2) SCC 570***, has held that the contents of the documents produced before an Enquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the enquiry proceedings itself will stand vitiated. The relevant portion of the judgement reads as follows:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to



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W.P.No.14879 of 2016

arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

8. As stated earlier, no witnesses were examined in the enquiry to substantiate the contents of the documents produced in the enquiry particularly, the New Health Insurance Scheme which alleges to carry the name of the petitioner as well as his second wife.

9. Though the enquiry officer had made a reference to the New Health Insurance Scheme Card in his report, the contents of the said card has not been proved by letting in oral evidence. Further more, none of the



W.P.No.14879 of 2016

other documents which were shown in Annexre-III of the Charge Memo have been referred to in the enquiry. Hence in the absence of any oral witness, the entire findings of the enquiry officer would amount to perversity.

10. This apart, the specific charge against the petitioner is that he had entered into bigamous marriage with K.Vijayalakshmi while the divorce petition against his wife Tmt.Nirmala is pending before the Family Court at Pondicherry. During the course of enquiry, the petitioner had deposed that he had not entered into a second marriage, but, there was only a proposal to marry K.Vijayalakshmi and a betrothal has taken place between him and K.Vijayalakshmi on 16.03.2007. A proposal for marriage or a betrothal will not amount to a real marriage and will not attract bigamy. When the charge against the petitioner itself is to the fact that he had contracted a second marriage during the pendency of the divorce petition against his wife Tmt.Nirmala, merely referring to the proposal to marry for the second time or a betrothal that had taken place will not amount to the charge having been proved. The Enquiry Officer had clearly



W.P.No.14879 of 2016

recorded the statement of the petitioner's proposal of marriage and the betrothal that had taken place between the petitioner and K.Vijayalakshmi and thereby came to the conclusion that the petitioner has married for the second time during the subsistence of his first marriage. Such a finding is apparently perverse.

11. When the charges came to be levelled against the petitioner, he had in his explanation dated 22.12.2012, as well as in his further explanation dated 09.12.2013 after the charges were held to be proved, has specifically stated that he had already addressed the New Health Insurance Scheme, seeking for removal of the name of K.Vijayalakshmi. The petitioner has also produced letter dated 19.10.2007 and the subsequent Health Insurance Identity Slip which does not carry the name of Vijayalakshmi. When such an objection has been specifically raised in both the explanations of the petitioner, the disciplinary authority ought to have taken note of the fact, particularly, in the light of the findings of the enquiry officer that there was only a proposal for marriage and not real marriage. On consideration of this ground also the enquiry proceedings



W.P.No.14879 of 2016

would stand vitiated as well as the consequential punishment.

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12. Thus, when the list of witnesses was shown as “Nil” resulting in non recording of any oral evidence, when the enquiry officer has not rendered a single finding about the second marriage of the petitioner and where the disciplinary authority failed to consider the petitioner's claim that he was not married for the second time and that the name of K.Vijayalakshmi which was mistakenly shown in the New Health Insurance Scheme Card was removed, all these perverse actions would render the proceedings vitiated. Thus, the entire disciplinary action initiated by the respondents against the petitioner herein, right from its inception, would be void.

13. Consequently, the order of punishment, as well as the order passed by the appellate authority, are illegal and the petitioner would be entitled for reinstatement.

14. In the light of the above findings, the impugned orders dated



W.P.No.14879 of 2016

11.07.2014 passed by the second respondent and the order dated 03.11.2015 passed by the first respondent are quashed. In view of the quashing of the punishment order, the petitioner would be entitled for all the service and monetary benefits. Consequently, there shall be a direction to the respondents 1 and 2 herein, to forthwith pass appropriate orders, reinstating the petitioner back into service together with all service and monetary benefits within a period of 8 weeks from the date of receipt of a copy of this order.

15. The writ petition stands thus allowed. No costs.

14.02.2023

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
sr

To

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Health and Family Welfare Department,
Fort St.George, Chennai-600 009.
- 2.The Director of Public Health & Preventive Medicine,
No.359, Anna Salai, Chennai 600 006.

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W.P.No.14879 of 2016

M.S.RAMESH,J.

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W.P.No.14879 of 2016

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