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W.P.Nos.20082 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.20082 of 2014

S.Nagarajan

.... Petitioner

-Vs-

1.The Senior Commandant

Central Industrial Security Force,
(Ministry of Home Affairs),
CISF ASG, Chennai-27.

2.The Deputy Inspector of General/AP-SZ,

Central Industrial Security Force,
(Ministry of Home Affairs),
2nd Floor, “D” Block,
Rajaji Bhavan,Besant Nagar,
Chennai-600 090.

3.The Additional Director General /Airport Sector,

Central Industrial Security Force,
(Ministry of Home Affairs),
13, CGO's Complex,
Lodhi Road, New Delhi.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records connected with order of the third respondent dated 15.04.2014 in No.V-11014/APS/REV-01/SN/LC/2014.3547 and quash the same and consequently direct the



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W.P.Nos.20082 of 2014

respondents to reinstate the petitioner in service with back wages.

For Petitioner : Mr.N.Vignesh,
for Mr.B.Nedunchezhiyan
For Respondents : Mr.G.Ilangovan

ORDER

This Writ Petition has been filed against the order passed by third respondent dated 15.04.2014, thereby dismissing the Revision Petition and confirmed the order passed by the second respondent on 20.06.2013, thereby dismissing the appeal and confirmed the order passed by the first respondent dated 27.03.2013, thereby dismissed the petitioner from service.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The petitioner, while working as a Sub Inspector in CISF No.014501436, EX-SI/EXE of Central Industrial Security Force Unit ASG Tirupati, got married to Mrs.Hemlatha Behara, who is a Lady Constable of CISF No.074340680 on 11.09.2010 at Arya Samaj Mandir, Arya Nagar, Uttar Lalaguda, Secundrabad-500 017 in accordance with Vedic Rituals. Their marriage was also registered on 11.09.2010 under the Arya Marriage Validation Act No.IX of 1937 in Marriage Certificate No.M/2010/377.



W.P.Nos.20082 of 2014

WEB COPY

4. Immediately after their marriage, the petitioner went for training at Ghaziabad for UN Mission at Haiti. When the petitioner returned after training in the month of December 2011, he had joined at Tirupati Airport. There was an objection from his father. Only his mother supported their marriage, unfortunately, she also died on 05.06.2012. Therefore, the petitioner had no other person to support his marriage in his family.

5. When the petitioner went to his native place at Tuticorin, on 21.10.2012, showing the illness of his father, his father and other family members arranged his marriage once again with one Periyamayaki @ Hemalatha on 29.10.2012. It happened without the consent of the petitioner and as such, he had also taken steps to stop the second marriage, but it was of no use. Because of the compulsion of his father, who was on his death bed and his family members, the petitioner was forced to marry the said Periyamayaki @ Hemalatha and he tied thaali, when his first wife is very much alive and his first marriage was in existence. Immediately, the petitioner informed about his second marriage to his legally wedded wife.

6. At that juncture, the first wife of the petitioner got mental agony and



W.P.Nos.20082 of 2014

she had no other option than to inform about his second marriage to the department concerned. On receipt of the said representation, the petitioner was served with a charge memo. On receipt of the same, the petitioner also submitted his detailed explanation denying the charges that he had agreed for second marriage and only on the compulsion, that too on his father's death bed, he was compelled to tie thaali. In fact, immediately after the alleged second marriage, he returned to duty and he never lived with his second wife even for a day. There was no consummation between them and he left her in his native itself and he had joined duty.

7. Without being satisfied with the explanation submitted by the petitioner, an enquiry was ordered and in the enquiry, his first wife was examined as P.W.1. She also stated about their marriage and registration of her marriage. She also produced the marriage certificate. However, the petitioner did not cross examine her. The Enquiry Officer found the charge proved. Thereafter, the petitioner was served with a second show cause notice annexing the enquiry report. However, petitioner failed to submit his explanation and the first respondent passed final order, thereby dismissed the petitioner from his service with immediate effect, by the order dated 27.03.2013. Aggrieved by the same, the petitioner also filed an appeal before the second respondent. While



W.P.Nos.20082 of 2014

pending appeal, his second wife filed a petition to dissolve their marriage under section 12 of Hindu Marriage Act. However, the appeal was also dismissed and aggrieved by the same, the petitioner again preferred revision before the third respondent. Pending revision, the divorce petition was decreed and the marriage solemnized between the petitioner and the second wife was dissolved by the Judgment and Decree dated 26.08.2013. However, without considering the same, the revisional authority, i.e., the third respondent also dismissed the revision petition and confirmed the order of capital punishment of dismissal passed by the first respondent.

8. The learned counsel for the petitioner would submit that the so called second marriage was not solemnized under the Hindu Rights and Customs. The petitioner was compelled to tie thaali, that too on the compulsion of his family members and on his father's death bed. He did not even stay with her even for one day and the next day he returned to duty. Marriage was also not consummated between them. The marriage itself happened without his willingness and without his interest. Therefore, Rule 18 of CISF Act, 1968 does not avail to disqualify or dismissal from service, since the act of the petitioner does not come under the purview of bigamy. Now, he is living with his legally wedded wife and without committing any fault on him, he is now



W.P.Nos.20082 of 2014

suffering the capital punishment of dismissal from service.

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9. The learned counsel for the respondents filed counter and submitted that admittedly the petitioner got married to another woman, when his first marriage was very much in existence. In fact, the first wife herself lodged a complaint and on the said complaint, charge was framed against the petitioner and enquiry was conducted. During enquiry, the first wife categorically stated that her marriage was solemnized with the petitioner under the Vedhic rituals and it was also registered on 11.09.2010 itself. In fact, after their marriage, the petitioner should have informed the Department about their marriage or when he was in UN Mission or at least, immediately after returning from UN Mission by furnishing the marriage declaration in a prescribed form.

10. However, the petitioner had failed to inform about his marriage, till the receipt of the complaint from his first wife about his second marriage. Therefore, he suppressed the earlier marriage and on the advice of his family members, he got second marriage. It clearly attracts bigamy and as such he was disqualified from doing any service. Being a Government servant it is his prime responsibility to inform about his marriage to his department immediately and he failed to do so, which is violation of Rule 21(1)(2) CCS (Conduct) Rules.



Though the petitioner obtained decree of divorce, it would not absolve the offence committed by him. Though the petitioner had specifically taken a stand that he was compelled to marry the second wife, he did not even produce any material to show that he was compelled to marry the second wife.

11. Therefore, the petitioner had committed grave misconduct, which is irreversible at this stage. The appellate authority and the revisional authority also confirmed the order passed by the first respondent and it does not require any interference by this Court.

12. In support of his contention, he relied upon the Judgment of this Court in ***W.P.No.28792 of 2010*** dated ***09.08.2019***, in which this Court held as follows:-

“32. As far as the present case is concerned, the petitioner, who got employed as CISF personnel, is governed by the appropriate fundamental rules of CISF which does not permit contracting of 2nd marriage in the presence of or subsistence of the first marriage. The petitioner's second marriage in the name of religion cannot be accepted. A women may be from any religion, but, when deserted by men she is addressed with a prefix as a destitute woman. The trauma underwent by a destitute woman and children cannot be explained in words. These organisations has the name of religion cannot encourage second marriages in the subsistence of first marriage. The organisation has got no power under the eye of law to issue direction or even give opinion to dissolve marriage or to give permission to contract any marriage as no religious organisation can exercise the power of Court under any



circumstances and such exercise made by the Jamath or any other religious organisation is condemnable and such interference by any religious organisation should be dealt with very seriously by the concerned authorities. The petitioner being in uniform service, has to act as a model for other person in the community and should not act otherwise.”

13. He also relied upon the Judgment of this Court in ***W.P.No.11900 of 2009*** dated **26.08.2014**, in which this Court held as follows:-

“9.In view of the above narrated facts and circumstances, this Court is of the view that the irregularity said to have committed by the petitioner by marrying another woman while the first marriage was subsisting, cannot be viewed leniently since the same would amount to a punishable offence under the Indian Penal Code and as rightly contended by the learned Standing Counsel for the respondents, it is in violation of CRPF Rules and therefore, I do not find any scope to interfere with the major punishment by showing leniency towards the petitioner. Even after this, if the case of the petitioner is considered, it would become as a bad precedent and hence, the same cannot be entertained.”

14. This Court held that the irregularity committed by the delinquent by marrying another woman, while the first marriage is in existence cannot be viewed leniently since the same would amount to a punishable offence under the Indian Penal Code. The petitioner, being in uniform service, has to act as a model for other person in the community and should not act otherwise.

15. Admittedly, the petitioner married one Hemalatha Behra, who is a



W.P.Nos.20082 of 2014

Lady Constable, on 11.09.2010. The marriage was also registered under the Arya Marriage Validation Act No.IX of 1937 in the Marriage Certificate No.M/2017/377. Further, they themselves got married and it was not an arranged one. Though it was later informed to his mother to get approval from his father, his mother died on 05.06.2012. Similarly, he also did not inform to his department regarding his registered marriage with Hemalatha Behra. However, immediately after his marriage i.e., on 12.09.2010, he went for training at Ghaziabad for UN mission at Haiti and also both decided that they would declare their marriage after getting consent from their family members. Thereafter, the petitioner went to his native on the ground of his father's illness, on 29.10.2012. On the death bed of his father, his father and his family members compelled the petitioner and on his objection and unwillingness, he tied thalli to another woman, namely Periyanyaki @ Hemalatha. It happened due to unavoidable circumstances. From the next day, he left her and joined duty. He explained to his first wife and on the fur of the moment, the first wife got agitated and submitted a representation to the first respondent herein.

16. On the strength of the representation, the first respondent served charge memo to the petitioner with the following charge:-

Article of Charge-1



W.P.Nos.20082 of 2014

“An act prejudicial to good orders and discipline of the Force on the part of No.014501436 SI/Exe S.Nagarajan of CISF Unit ASG Tirupathi as he entered into a marriage with a lady in spite of having a living spouse. This act on the part of No.014501436 SI/Exe S.Nagarajan of CISF Unit ASG Tirupathi tantamounts to gross indiscipline and misconduct to the Force also”

17. Thereafter, he submitted a detailed explanation. Admittedly, except the second marriage, there is no other allegation as against the petitioner with regards to any in-disciplinary activities or any such activity which will be harmful to anybody. Further, though he tied thalli to an unknown person, their marriage relationship was never consummated between them and he simply left her in native and joined duty. The alleged second marriage was happened on 29.10.2012. Due to the said circumstances, the second wife namely, Periyanyaki @ Hemalatha filed a divorce petition under HMOP No.138 of 2013 on the file of the Sub Court, Tuticorin. A perusal of the petition filed by her revealed that their marriage relationship was not consummated. They never lived together and the petitioner had no interest in their physical relationship.

18. Therefore, it shows that only as against the interest and willingness of the petitioner, the alleged second marriage was happened on his family members compulsion. Admittedly, the petitioner had taken leave to attend his father's illness, who was bed ridden. On his death bed, there was compulsion



from his family relatives and also from his father and therefore, he got married to his second wife. He had to get permission from his father for his first marriage through his mother. Unfortunately, his mother also died on 05.06.2012. Therefore, no one was there to explain about his position. Further, the first wife did not lodge any complaint before the Police persons, in order to punish him. No FIR was registered and no criminal Court convicted the petitioner for the offence of Bigamy. Except the representation made before the first respondent by his first wife, no one made complaint by way of Jurisdictional Police or by way of private complaint.

19. It is relevant to extract the provisions under Section 494 of IPC, as follows:-

“494. Marrying again during lifetime of husband or wife —

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception— This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or



her knowledge.”

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20. No complaint was registered under Section 494 of IPC as against the petitioner and no Court convicted the petitioner for the said case. That apart, when the appeal was pending as against the order of dismissal, the second wife filed a divorce petition, on the ground that their marriage itself was not consummated for the reason of his unwillingness to live with her.

21. The disqualification describes under the Rule 18 of CISF Rules, which is as follows:-

“18. Disqualification - No person, - (a) who has entered into or contracted a marriage with a person having a spouse living; or (b) who, having a spouse living, has entered into or contracted a marriage with another person, shall be eligible for appointment to the Force;

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for so doing, exempt any person from the operation of this rule.”

22. Thus, it is clear that the said second marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for so doing, exempt any person from the operation of this rule.

23. In the case on hand, though the personal law does not apply to the



W.P.Nos.20082 of 2014

petitioner, due to other circumstances, i.e., on compulsion, that too on his father's deathbed, he was compelled to marry another woman. In fact, immediately after their so called marriage, he left her and joined duty. It is also evident from the divorce petition filed by his second wife and the Court declared the second marriage as null and void.

24. Therefore, the alleged second marriage did not happen on the petitioner's willingness or with his knowledge. All of a sudden, when the petitioner visited his native place to attend his father's illness, he was compelled to marry another woman. The petitioner was not in a position to speak about his earlier marriage, which was a registered one.

25. That apart, now the petitioner is living with his first wife. They also gave birth to a male child. On a direction issued by this Court, both the petitioner and his first wife are present before this Court. They deposed that they are living happily and the petitioner is suffering without any employment. The second wife also got married and she is living happily with her husband.

26. As stated supra, the petitioner did not commit any in-discipline to



W.P.Nos.20082 of 2014

the department or he never involved in any other crime. When he was in employment, no other charge was framed on him except the charge of bigamy.

27. Though the Rule does not permit anyone to contract second marriage in subsistence of the first marriage, due to the unavoidable circumstances as stated supra, the petitioner got married to his second wife. Now, the legally wedded wife is living with the petitioner happily and also gave birth to a male child. Therefore, the Judgments cited by the learned counsel for the respondents are not helpful to the case on hand.

28. In view of the above, this Court feels to treat the present case as a special one and treat it exempting from the charge of bigamy, since the petitioner was not convicted by any criminal Court for the charge of bigamy. Further, it happened without any fault on the part of the petitioner.

29. Therefore, the order of dismissal passed by the first respondent and the order passed by the second respondent, thereby dismissing the appeal and the order of the revision passed by the third respondent are hereby set aside. The respondents are directed to reinstate the petitioner into service with service continuity forthwith. However, the petitioner is not entitled for any backwages.



W.P.Nos.20082 of 2014

The period of unemployment shall be calculated for all other benefits of the petitioner.

30. Accordingly, this writ petition stands allowed. There shall be no order as to costs.

16.08.2023

Internet : Yes
Index : Yes
Speaking order



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W.P.Nos.20082 of 2014

G.K.ILANTHIRAIYAN, J.

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To

- 1.The Senior Commandant
Central Industrial Security Force,
(Ministry of Home Affairs),
CISF ASG,Chennai-27.
- 2.The Deputy Inspector of General/AP-SZ,
Central Industrial Security Force,
(Ministry of Home Affairs),
2nd Floor,"D" Block,
Rajaji Bhavan,Besant Nagar,
Chennai-600 090.
- 3.The Additional Director General /Airport Sector
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W.P.No.20082 of 2014

16.08.2023