



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 885/2024

(THE UNION OF INDIA & OTHERS **VERSUS** SUSHMA SHEKHARBABU WAIRAGADE)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Ms Ashwini Athalye, counsel for the petitioners.
Shri M.G. Burde, counsel for the respondent.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : APRIL 17, 2024

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Heard the learned counsel for the parties.

2. The challenge raised in the present writ petition is to the order dated July 19, 2023 passed by the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur (for short, 'the Tribunal') in Original Application No. 2084 of 2021.

3. *Vide* impugned order, the Tribunal has allowed the Original Application and has quashed and set aside the order dated June 17, 2021 whereby the services of the respondent were terminated. Further a direction was also issued to reinstate the respondent and to take a decision regarding service benefits from the date of her termination till the date of reinstatement.

4 The facts necessary for deciding the writ petition are as under :-

Deceased Shekharbabu Wairagade was married to the respondent and was in the employment of the petitioners. After his death, the respondent came to be appointed on the post of Female Searcher on compassionate ground *vide* order dated November 16, 2020. A show cause notice was issued to the respondent on April 10, 2021 as during police verification it was revealed that she was arrayed as an accused in Regular Criminal Case No.137 of 2010 for the offence punishable under Sections 498-A and 34 of the Indian Penal Code, 1860. It was alleged that the respondent had suppressed the aforesaid fact while obtaining the employment.

5. The aforesaid show cause notice was duly replied by the respondent on April 16, 2021 and April 28, 2021. The petitioners having noticed that there was a suppression of information regarding the prosecution and arrest of the respondent, her services came to be terminated with effect from June 17, 2021. The aforesaid decision of the petitioners terminating the services of the respondent was challenged in the Original Application which came to be allowed *vide* impugned order dated July 19, 2023. Being aggrieved thereby, the petitioners have approached this Court by filing the present writ petition.

6. Ms A.A. Athalye, learned counsel appearing for the petitioners has urged that the fact about the arrest and the prosecution of the respondent was admittedly suppressed. Considering the nature of the duty discharged by the respondent, her conduct of involvement in a criminal offence and suppression of the same including her arrest and prosecution has rightly prompted the petitioners to terminate the services of the respondent. In support of her contentions, the learned counsel for the petitioners has relied on paragraphs 99, 103 and 104 of the judgment of the Apex Court in *Satish Chandra Yadav Versus Union of India & Others* [(2023) 7 SCC 536]. According to her, the Tribunal has failed to consider the very psychology of the respondent and the nature of the establishment in which the respondent was discharging her duties. According to her, suppression of material information speaks of the mindset of the respondent and the person with such mindset is not fit to be continued in the services of the petitioners who are into the field of Defence Production Sector. As such, the counsel for the petitioners would urge that the decision of the Tribunal is liable to be interfered with.

7. As against above, Shri A.Z. Jibhkate, learned counsel for the respondent would support the order of the Tribunal. According to him, Shekharbabu, husband of the respondent, was in the employment of the petitioners and it is upon his death the respondent was granted compassionate appointment by the petitioners *vide* order dated November 16, 2020 in the Security Department. He would urge that on November 20, 2010 in Regular Criminal Case No. 137 of 2010, the respondent was impleaded as Accused no.5 at which time she was already married to Shekharbabu. According to the learned counsel, though the respondent was residing separately with her husband however, based on the false accusation of the complainant, who happened to be the wife of her brother Amol, she was falsely implicated in the offence in question. The counsel for the respondent would invite our attention to the judgment of acquittal dated July 04, 2011 so as to claim that on the date of furnishing of the information at the time of her appointment, the respondent was duly acquitted of the offence in question and as such she thought it fit not to disclose such information to the petitioners. He would further urge that the judgment of the Apex Court in *Satish Chandra Yadav* (supra) is duly considered in *Ravindra Kumar Versus State of U.P. & Others* [2024 SCC OnLine SC 180] and the Apex Court has taken a view of granting reinstatement to the employee against whom the offence was pending at the relevant time. As such, he has sought dismissal of the writ petition.

8. We have considered the rival claims of the parties.

9. Admittedly, the respondent was arrayed as Accused No.5 in Regular Criminal Case No. 137 of 2010 decided by the Judicial Magistrate First Class, Bhadrawati on July 04, 2011 wherein the respondent faced prosecution for an offence punishable under Sections 498-A and 34 of the Indian Penal Code, 1860 and was ultimately acquitted.

10. A perusal of the said judgment reflects that since there were vague allegations against the respondent and since the complainant did not stick to her version in the examination-in-chief, the Court had no option but to pass the judgment acquitting the respondent alongwith other accused persons. The fact remains that after the judgment of acquittal, the husband of the respondent, who was in the employment of the petitioners, had expired on January 22, 2018 as against her marriage on May 18, 2006. The respondent as such started residing with her daughter and mother-in-law. Based on the policy of the petitioners, the respondent was granted an employment on compassionate ground *vide* the appointment order dated November 16, 2020.

11. It is the case of the respondent that while completing the formalities for getting compassionate appointment in the year 2020, she did not disclose the fact about her prosecution for the offence punishable under Sections 498-A and 34 of the Indian Penal Code, 1860 since she was acquitted way back on July 04, 2011. At the outset, this Court has to be sensitive to the fact that on the date of securing employment, there was no offence pending for being investigated against the respondent. It was almost ten years prior to her securing the employment that she was acquitted of the offence punishable under Sections 498-A and 34 of the Indian Penal Code. As such, the respondent's claim that it was not necessary for her to provide such information appears to some extent justified as her prosecution and acquittal was in prior point of time to that of her application for securing the employment on compassionate ground. Apart from above, the fact remains that the offence for which the respondent was required to face the prosecution was not at all of serious nature and was a routine matrimonial dispute, when infact, she was already married and was residing separately with her husband.

12. In the aforesaid background, it can be gathered that the Tribunal while considering the rival claims has rightly so inferred that the offence against the respondent cannot be said to be a serious one which prompts the exercise of powers of termination of services. The offence which was faced by the respondent was neither heinous nor violent. The same appears to be the outcome of the matrimonial discord between the respondent's brother Amol and his wife. In that view of the matter, the action of the Tribunal in interfering with the order of termination of services of the respondent cannot be said to be unjustified.

13. The Apex Court in *Ravindra Kumar* (supra) had an occasion to consider the similar issue. The circumstances which were narrated in the said judgment has prompted the Apex Court to hold in favour of the employee therein. Merely because the respondent employee had faced a prosecution that by itself would not lead to an only inference that the character of the respondent is under clout.

14. In the backdrop of the aforesaid observations, we are of the view that the order of the Tribunal which is under challenge cannot be faulted with and the direction to reinstate the respondent is being held to be justified. Since the writ petition lacks merit, the same stands dismissed. We direct the petitioners to reinstate the respondent forthwith alongwith all consequential monetary and service benefits including that of continuity of service to be paid within a period of eight weeks from the date of such reinstatement.

Order accordingly. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)