

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE DR. JUSTICE G.RADHA RANI**

WRIT PETITION NO: 35702 OF 2024

Between:

1. Smt. Kommu Lavanya, W/o: Kommu Rajesh, aged about 32 years, Occ: House Wife R/o: H.No.1-9-8, Mahankali Nagar, Narayankhed, Sangareddy District, Telangana State Pin Code 502286
2. K. Rajesh, S/o. Narayana, age 37 years, Occ. Process Server (Dismissed), Junior Civil Judges Court, Narayankhed, Sangareddy District R/o. H.No.1-9-8, Mahankali Nagar, Narayankhed, Sangareddy, Telangana State, Pin 502286

(The Name of petitioner No.1 is deleted as per court order dt: 3/12/2024 in I.A. No.1/24)

...PETITIONERS

AND

1. The Registrar (Admn), High Court for the State of Telangana, Hyderabad.
2. The Principal District and Sessions Judge-cum-Disciplinary Authority, Sanga Reddy District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of certiorari calling for the records connected with impugned order passed by the 1st respondent vide D.(D). No.02/2023,C.4 (Con), dated 19.3.2024 against order dated 6.9.2022 of the 2nd respondent, imposing on the 2nd petitioner a major penalty of removal from service, vide his order No.3174/2022, dated 6.9.2022 pursuant to Enquiry Report in Dis.No.516/2022,dated 22.7.2022 of Enquiry Officer-cum-Senior Civil Judge, Zaheerabad, and to quash the same to the extent of removal of service of the 2nd

petitioner from the services of the 2nd respondent Unit, as being illegal, arbitrary, violative to Articles 14, 19 and 21 of the Constitution of India, and excessive, and resultantly to direct the respondents to re-instate the 2nd petitioner, into the services of the 2nd respondent by imposing lesser penalty.

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend operation of the orders dated 19.3.2024 in D.(D) A.No.2/2023, C.4 (Con.) passed by the 1st respondent, and orders dated 6.9.2022 in D.E.No.1/2022, passed by the 2nd respondent, to the extent of removal of 2nd petitioner from the services of the 2nd respondent, and to re-instate him into the services of the 2nd respondent, by imposing lesser penalty on the 2nd petitioner, pending disposal of the main writ petition.

Counsel for the Petitioners: SRI V. RAJA SHEKAR REDDY

**Counsel for the Respondents: SRI VIVEK JAIN, SC FOR THE HIGH COURT
FOR THE STATE OF TELANGANA**

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE SUJOY PAUL
&
THE HONOURABLE Dr. JUSTICE G. RADHA RANI

WRIT PETITION No.35702 OF 2024

ORDER (per Hon'ble Dr.Justice G.Radha Rani):

This Writ Petition is filed by the petitioner seeking:

“To issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records connected with impugned order passed by respondent No.1 vide D.(D).No.02/2023, C.4 (Con) dated 19.03.2024 against the order dated 06.09.2022 of respondent No.2, imposing the petitioner a major penalty of removal from service vide order No.3174/2022 dated 06.09.2022 pursuant to Enquiry Report in Dis.No.516/2022 dated 22.07.2022 of Enquiry Officer - cum - Senior Civil Judge, Zaheerabad and to quash the same to the extent of removal of service of the petitioner from the services of respondent No.2 Unit, as being illegal, arbitrary, violative to Articles 14, 19 and 21 of the Constitution of India, and excessive and resultantly to direct the respondents to re-instate the petitioner into the services of respondent No.2 by imposing lesser penalty and to pass such other order or orders as deemed fit and proper in the interest of justice.”

2. Heard Sri V.Raja Shekar Reddy, learned counsel for the petitioner and Sri Vivek Jain, learned Standing Counsel for the High Court for the State of Telangana.

3. Learned counsel for the petitioner submitted that the petitioner was appointed as an Office Sub-Ordinate in the Court of Junior Civil Judge, Narayankhed in the year 2016 in the unit of respondent No.2 on compassionate grounds after the death of his father, due to heart attack. Subsequently, he was promoted to the post of Process Server in the year 2022. The petitioner was married in the year 2009 as per Hindu rites and customs and out of wedlock, he was blessed with two female children. In the year 2013, the wife of the petitioner got affected with epilepsy and mental disorder besides other health issues. With her consent, the petitioner married one Santoshini on 22.03.2022. The father of Santoshini, who was not interested in the said marriage, filed a criminal case besides filing a complaint before respondent No.2 authority. The respondent No.2 authority initiated departmental enquiry against the petitioner. The petitioner denied the charge. However, an enquiry was conducted and the Enquiry Officer submitted his report to the respondent No.2 holding the charge as proved. Basing on the enquiry report, after giving final notice, the petitioner was awarded with major penalty of removal from service from the service of respondent No.2 vide orders in D.E.No.1/2022 vide

Dis.No.3174/2022 dated 06.09.2022. Challenging the same, the petitioner preferred an appeal. But the respondent No.1 dismissed the said appeal vide impugned orders dated 19.03.2024 in D. (D).No.2/2023, C.4 (Con).

3.1. Learned counsel for the petitioner further submitted that the penalty imposed by the respondents against the petitioner was disproportionate to the misconduct proven against him. The respondents ought to have imposed a lesser punishment. The punishment of removal from service was shockingly disproportionate. The Enquiry Officer found the petitioner guilty merely on the basis of his admission, but failed to observe that no witnesses were examined before the Enquiry Officer to establish that the petitioner performed second marriage as per Hindu rites and customs.

3.2. Learned counsel for the petitioner relied upon the Division Bench judgment of the Allahabad High Court in **Prabhat Bhatnagar v. State of Uttar Pradesh and Others**¹ wherein the punishment for misconduct, as per Rule 29 of the UP Government Servants Conduct Rules, was imposed as withholding of increments for three years and the Court directed reinstatement of the petitioner within a month from the receipt of the certified copy of the order and further placed reliance upon the Division Bench judgment of the Guwahati High Court in Writ

¹2023 Live Law (AB) 279

Appeal No.357 of 2022 in **Union of India v. Pranab Kumar Nath**² dated 18.01.2023, wherein considering that the writ petitioner had a child from the first marriage, who was about 15 years and if the penalty of dismissal was to be upheld, it would cut off the only source of income not only for him but also for his first wife, her daughter and his second wife and considering that the dismissal was the extreme form of punishment, which has the effect of not only cutting off the source of income, depriving him and his dependants of the means of sustenance, held that contracting a second marriage during the subsistence of the first marriage, though was in violation of rules, yet, it could not be said that it was one of the most heinous form of misconducts, for which he must be necessarily visited with the punishment of dismissal, ordered a lesser punishment.

4. Learned Standing Counsel for the High Court for the State of Telangana on the other hand contended that basing on a complaint received from one Sri G.Venugopal on 02.04.2022 alleging that the petitioner induced his daughter to accompany him and forcibly married her, a criminal case in Crime No.70 of 2022 was filed on the file of the Narayankhed Police Station and the said complainant also lodged a complaint with respondent No.2 authority. An explanation was called for from the petitioner and not satisfied with the

² 2023 Live Law (Gau) 24

explanation submitted by the petitioner, an enquiry was initiated. The Enquiry Officer conducted enquiry and found the petitioner guilty of serious misconduct of marrying Kum. Santhoshini during the subsistence of his first marriage and found that he had violated Rule 25(1) of Telangana Civil Services (CCA) and Conduct Rules, 1964. The enquiry report was furnished to the delinquent and thereafter the respondent No.2 imposed the penalty of removal from service on 06.09.2022. The petitioner also preferred an appeal to respondent No.1. The respondent No.1 being satisfied that no grounds were made to disprove the charge against the appellant and there was no error in the order passed by the Disciplinary Authority, observed that there was no reason to interfere with the penalty imposed against the petitioner and dismissed the appeal.

5. Learned Standing Counsel for the High Court for the State of Telangana relied upon the judgment of the Hon'ble Apex Court in **Khursheed Ahmad Khan v. State of Uttar Pradesh and Others**³ on the aspect that performing a second marriage during the subsistence of the first marriage, is considered as a misconduct and removal of the petitioner from service could not be held to be disproportionate to the charge on established judicial parameters.

³ (2015) 8 SCC 439

6. As seen from the record, basing on the complaint filed by one Sri G.Venugopal on 02.04.2022 before respondent No.2 that the petitioner, who was working as a Process Server in Narayankhed Court induced his daughter Kum.G.Santoshini to accompany him and forcibly married her and that he also filed a criminal case in Crime No.70 of 2022 on the file of the Narayankhed Police Station, an explanation was called by respondent No.2 from the petitioner (delinquent) and not being satisfied with the explanation provided by him, charges were framed against him as follows:

Articles of Charge

"That you, Sri K.Rajesh, Process Server, Junior Civil Judge's Court, Narayankhed having first marriage in subsistence and said to have been having two children and married second time Kum. G.Santoshini by abducting her from the custody of her parents as per the recitals of FIR in Crime No.70 of 2022 under Section 366 of IPC of PS Narayankhed and you Sri K.Rajesh, Process Server contacted Second Marriage indulging Bigamous marriage and misconducted yourself within the meaning of Rule 25(1) of Telangana Civil Services (CCA) and Conduct Rules, 1964 and rendered yourself liable for disciplinary action under Rule 20 of Telangana Civil Services (CCA) Rules, 1991."

7. The learned Senior Civil Judge, Zaheerabad was appointed as Enquiry Officer. The Enquiry Officer after conducting an enquiry, found that the said charge was proved against the petitioner. The Enquiry Officer submitted his report on 22.07.2022. On receipt of the

report of the Enquiry Officer, the Disciplinary Authority called for explanation from the petitioner duly furnishing copy of the report and on receipt of the written submission from the petitioner, the Disciplinary Authority i.e. the respondent No.2 passed a final order dated 06.09.2022 imposing major penalty of removal of the petitioner from service. The Appellate Authority i.e. respondent No.1 observed that as per the report of the Enquiry Officer, the petitioner got married Kum G. Santoshini, while his earlier marriage with K.Lavanya was subsisting and that Mrs.K.Lavanya filed a complaint under Section 498-A of IPC and another application seeking maintenance against the petitioner herein. The petitioner admitted before the Enquiry Officer that he married G.Santoshini during the subsistence of the marriage with K.Lavanya and that the only lapse on his part was not obtaining prior permission with the Government before marrying Santoshini. The Enquiry Officer considering that bigamy was not only a personal aspect of the life of the employee, but it was a conduct prescribed by the Service Rules and the Government Servant is expected to abide and obey the Service Rules, held the charge framed against the petitioner as proved.

8. The respondent No.1 - the Appellate Authority also considered the contention of the appellant that his first wife had given consent for contracting second marriage, but opined that the same was untenable,

as such consent was illegal and void. If such consent was permitted, then the very purpose and object of the Conduct Rules would be defeated. The public servant by relying on the consent of the first wife, could not seek protection from the Conduct Rules, which otherwise prohibit contracting of second marriage during the subsistence of the first marriage. The respondent No.1 also observed that the appellant neither produced any medical reports to prove the ill-health of his first wife, nor examined the doctor to that effect and that he failed to make out any ground to disprove the charge against him and held that there was no reason to interfere with the penalty imposed by the Disciplinary Authority.

9. The Hon'ble Apex Court in **Khursheed Ahmad Khan v. State of Uttar Pradesh and Others** (cited supra), wherein also the validity of the order removing the appellant from service for proved misconduct of contracting another marriage during subsistence of the first marriage, without permission of the Government, in violation of Rule 29(1) of UP Government Servants' Conduct Rules, 1956, was challenged, held that:

"9. Learned counsel for the State also submits that the validity of the impugned Conduct Rule is not open to question on the ground that it violated Article 25 of the Constitution in view of the law laid down by this court in **Sarla Mudgal vs. Union of India** [(1995) 3 SCC 635 : 1995 SCC (Cri) 569]. He further submitted that the High Court was justified in holding that the punishment of removal could not be held to be shockingly disproportionate to the charge and did not call for any interference.

11. As already mentioned above, there is adequate material on record in support of the charge against the appellant that he performed second marriage during the currency of the first marriage. Admittedly, there is no intimation in any form on record that the appellant had divorced his first wife. In service record she continued to be mentioned as the wife of the appellant. Moreover, she has given a statement in inquiry proceedings that she continued to be wife of the appellant. The appellant also admitted in inquiry conducted on directions of the Human Rights Commission that his first marriage had continued. In these circumstances, the finding of violation of Conduct Rules cannot be held to be perverse or unreasonable so as to call for interference by this Court. In these circumstances, the High Court was justified in holding that the penalty of removal cannot be held to be shockingly disproportionate to the charge on established judicial parameters."

10. In the present case also, the Enquiry Report would disclose that the petitioner performed the second marriage with G.Santoshini during the subsistence of his marriage with K.Lavanya and had taken the defence that he got married with the consent of K.Lavanya. Any consent, which was against the Conduct Rules, could not be considered as a valid consent as far as the public servants are concerned. When the Service Rules contemplate a prohibition and described a particular conduct as a misconduct, then the public servant has to follow the conduct. Even in the case of consent, he is expected to reject the consent. The public servant could not take protection by stating that his first wife has given consent and therefore he contracted second marriage. The Enquiry Officer, after examining the witnesses and on considering the documentary evidence filed before him, found the petitioner guilty of the charge framed against him. The Disciplinary Authority also on considering the entire material available on record and the findings of the Enquiry Officer

and the seriousness of the charge levelled against him, imposed the penalty of removal from service. This Court considers that the penalty of removal was not shockingly disproportionate to the charge levelled against the petitioner and the finding was not found to be perverse or un-reasonable, which calls for any interference by this Court. No humanitarian grounds can be considered when the punishment is found to be proportionate to the misconduct committed by the petitioner.

11. In the result, the Writ Petition is dismissed. No order as to costs.

As a sequel, miscellaneous applications pending in this petition, if any shall stand closed.

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SD/- P.CH.NAGABHUSHAMBA
ASSISTANT REGISTRAR

SECTION OFFICER

- To,
1. One CC to Sri V. Raja Shekar Reddy, Advocate [OPUC]
 2. One CC to Sri Vivek Jain, SC for The High Court for the State of Telangana, at Hyderabad[OPUC]
 3. Two CD Copies

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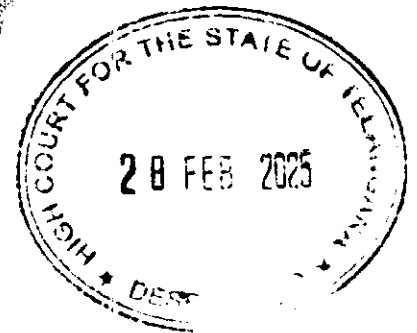
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HIGH COURT

DATED:31/12/2024

ORDER

WP.No.35702 of 2024



**DISMISSING THE WRIT PETITION
WITHOUT COSTS**

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