

Neutral Citation No. - 2023:AHC:163695

A.F.R.

Court No. - 10

Case :- WRIT - A No. - 65946 of 2008

Petitioner :- Prabhat Bhatnagar

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Sanjay Kr. Om, Chandra Shekhar Sinha, Dileep Kumar Srivastava, Rajeev Trivedi, S.K. Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Shri Sanjay Kumar Om, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and perused the record.
2. The petitioner was appointed on Group 'G' post as an Apprentice in the office of District Development Officer, Bareilly on 08.04.1999. There is no dispute about the fact that the petitioner married to one Anuraddha Saxena on 24.11.1999, however, the controversy revolves around a second marriage allegedly performed by the petitioner with one Anju Khandelwal who was working with him in the same department. The allegation against the petitioner was to the effect that during the subsistence of first marriage with Anuraddha Saxena, he performed second marriage and, therefore, he committed a misconduct. A charge-sheet was issued to the petitioner raising the same charges. A reply was submitted by the petitioner, in which, factum of performance of second marriage was denied by him.
3. It is the case of the petitioner that no proper enquiry was conducted and simply after considering the reply submitted by the petitioner, alleged enquiry was completed and, later on, by the order

impugned dated 04.07.2005, the petitioner was awarded major penalty in terms of dismissal from service. The petitioner preferred a departmental appeal which was also dismissed.

4. The argument of Shri Sanjay Kumar Om, learned counsel for the petitioner is to the effect that the petitioner's wife Anuradha Saxena moved complaints before the department alleging second marriage and there was no evidence on record to substantiate performance of second marriage and commission of alleged offence of bigamy or misconduct on that line, except that before the department, there was a sale deed, by which, certain property was purchased by Anju Khandelwal, in which, she had described herself as wife of the petitioner and the allegation of his wife Anuradha Saxena. It is further contended that even the said error was corrected by way of execution of supplementary deed (*titamma*). He further submits that departmental enquiry was conducted against Anju Khandelwal also and she was not awarded major punishment but only censure entry was awarded to her by order dated 23.11.2011 which was passed during the pendency of the writ petition and has been brought on record alongwith amendment application. The submission is that once while awarding censure entry to Anju Khandelwal, clear finding has been recorded that no marriage was solemnized in between Anju Khandelwal and the petitioner, the issue that falls for consideration before this Court is that even accepting the fact that Anju Khandelwal had described herself as wife of the petitioner in a sale deed, whether the same itself amounts to sufficient evidence with regard to performance of second marriage by the petitioner during the subsistence of first marriage.

5. Another issue is to the effect that once Rule 29 of the U.P. Government Servants Conduct Rules, 1956 (in short 'the Rules, 1956') clearly provides that, in case, the government servant having a wife contracts another marriage without obtaining permission of the Government, only minor punishment can be awarded in the nature of withholding of increments for three years. Shri Om submits that even this punishment can be awarded only when performance of second marriage is established.

6. Learned Standing Counsel submits that once the lady had described herself as wife of the petitioner, no further evidence was required as relationship between the husband and wife can be established by placing reliance upon any oral or documentary statement made by the parties to the marriage. He further submits that order passed in case of Anju Khandelwal during the pendency of the writ petition is irrelevant inasmuch as when the punishment was awarded to the petitioner, the said order was not in existence.

7. Having heard learned counsel for the parties, I find that conditions of a valid Hindu marriage are narrated under Section 5 of the Hindu Marriage Act, 1955 i.e. to say that, in case, anybody alleges performance of any marriage, whether first or second, it has to be established before the Court or even administrative authorities that marriage was lawfully performed as per the provisions of law, which in the present case, is the Hindu Marriage Act, 1955.

8. Before the Department, there was nothing on record to demonstrate that marriage between the petitioner and Anju Khandelwal was solemnized, except, the aforesaid sale deed and the aforesaid recital contained therein and even that was corrected later on. Though, Anju Khandelwal was also punished in terms of award of a minor penalty in the nature of censure entry, even if for the

sake of argument made on behalf of the State, it is accepted that act of correction of sale deed was an after-thought on the part of Anju Khandelwal to avoid any action in the disciplinary proceedings, the question still remains as to whether, in law even if, status of Anju Khandelwal as wife of the petitioner as described in a sale deed is treated to be substantiated and subsequent correction is ignored, whether the said recital, as it is, would be sufficient to justify the order impugned.

9. In this regard, reference to **Section 50 of the Indian Evidence Act, 1872 (in short ‘the Act, 1872’)** is required to be made. The said provision reads as follows:-

*“50. Opinion on relationship, when relevant.—
When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:*

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).”

10. In view of the above, even if the statement made by Anju Khandelwal in the sale deed or even by the first wife of the petitioner before the department as to the relationship between Anju Khandelwal and petitioner is a fact so as to give an opinion with regard to solemnization of marriage between him and Anju Khandelwal, the proviso to Section 50 of the Act, 1872 would read contrary to this and such opinion shall not be sufficient to prove

marriage in proceedings under the Indian Divorce Act or prosecution under Sections 494, 495, 497 or 498 I.P.C. Meaning thereby that whenever a question arises as to whether an offence has been committed by a person which is punishable under any of the provisions of the aforesaid Sections of I.P.C., the proviso attached to Section 50 of the Act, 1872 would save that person as regards to forming an opinion in connection with second marriage which might be an offence under I.P.C. This principle would apply in examining the aspect of misconduct also in a service matter particularly when the issue is the same, i.e., performance of second marriage during the subsistence of first marriage.

11. Considering the aforesaid factual and legal proposition, as explained in the Hindu Marriage Act, 1955 and Indian Evidence Act, 1872 and there being no other material before this Court or before the Authorities, I find that punishing the petitioner by presuming performance of second marriage during subsistence of first marriage was not according to fact and law.

12. The finding to this effect contained in the orders impugned, is therefore, unsustainable.

13. Insofar as the award of punishment to the petitioner is concerned, even when misconduct to the aforesaid effect is established on the part of the government servant, only a minor penalty can be awarded and not a major penalty.

14. Rule 29 of the Rules of 1956, in this regard is quoted as under:

"29(1): No Govt. Servant who has a wife living shall contract another marriage without fresh obtaining the permission of the Govt. notwithstanding that such

subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Govt. Servant shall marry any person who has a wife living without first obtaining permission of the Govt.

(3) A minor punishment to be imposed in contravention of Sub Rule(1) or Sub Rule (2) shall be withholding of increments for three years."

15. Reference to the following authorities can be made in this regard:-

(a). ***Service Single No. 2681 of 2010 (Ram Milan Dubey Vs. State of U.P. and others);***

(b). ***Shravan Kumar Pandey Vs. State of U.P. and others, 2010 (8) ADJ 243;***

(c). ***2009 (2) LBESR 949 (Allahabad) Smt. Raj Bala Sharma Vs. Sate of U.P. and others.***

16. In view of the above discussion, once I have arrive at a conclusion that there was no evidence to establish performance of second marriage during the subsistence of first marriage, both the orders impugned are unsustainable and are liable to be quashed.

17. The writ petition succeeds and is ***allowed.***

18. The orders dated **04.07.2005 and 23.08.2008** respectively passed by the District Development Officer, Bareilly and Appellate Authority are hereby **quashed.**

19. The respondents are directed to reinstate the petitioner in service **within a month after receipt of certified copy of this order.** The petitioner shall be entitled to **all financial and other**

consequential service benefits from the date of his dismissal from service till his reinstatement and thereafter.

Order Date :- 11.8.2023

Jyotsana

(Kshitij Shailendra, J.)