Neutral Citation No:=2024:PHHC:130024-DB

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP-3580-2021
Reserved on: 16.09.2024
Pronounced on: 30.09.2024

[redacted] .....Petitioner

Versus

Union of India and Others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. R.S.Panghal, Advocate
for the petitioner.

Mr. Bharat Bhushan Sharma, Senior Panel Counsel
for the respondent – UOI.

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SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside the order dated 12.07.2016 (Annexure P-1) as passed by the learned Armed Forces Tribunal concerned, whereby his dismissal from service, vide order dated 08.09.2014 (Annexure A-1), thus became upheld.

Factual Background

2. The petitioner professes Islamic religion and is a resident of West Bengal. He had joined Indian Air Force on 27.12.2005.

3. On 06.07.2009 he married a muslim lady namely Ms. Najmunnahar, and from this wed-lock they have a daughter. Thereafter on 05.12.2012, the petitioner married another Muslim lady named Razia Khatun, allegedly a divorcee and from this second marriage, he has a son. Thus, the petitioner has contracted plural marriage during his rendering service in the Air Force. The said marriage was contracted without his seeking any permission from the competent authority. According to the petitioner, he had disclosed the fact of his contracting second marriage, which resulted in the conducting of Court of Inquiry vide SRO Sr.No. 121/2013 dated 21 Oct 2013, against the petitioner, who at that time was in the rank of CPL. After completion of the enquiry, an appropriate action was recommended.

4. Accordingly a show cause notice Annexure A/2 dated 30.05.2014 was issued, and in response thereof, the petitioner submitted his reply dated 23 June 2014, wherein, he did not dispute the fact of his contracting a plural marriage rather without his seeking permission but he submitted that his religion permits upto 4 (four) valid marriages, provided he could maintain all the spouses equally and give them equal rights. Moreover, he submits that he was unaware of the provisions of Para 579 of the Regulations for the Air Force (RE) 1964 and the contents of AF004/2009, therefore, the violation was out of sheer ignorance, and, without any ill intention or malice. Though he admitted that ignorance of law is no excuse but the error did happen because of ignorance of fact. It was he who had informed about his

second marriage to the authorities on having discussed this issue with the CIO section and prayed for leniency, as besides two spouses and aged parents he has two minor children to support. He also stated that his brothers are also dependent upon him and he is to liquidate the house loan liability. Therefore, he prayed to recall the show cause notice issued under Section 20(3) of Air Force Act, 1950, read with Rule 18 of the Air Force Rules, 1969.

5. On considering the matter in view of his reply and other record the competent authority viz, The Air Officer Commanding-in Chief, Western Air Command, Indian Air Force, held him blameworthy for his contracting plural marriage without prior permission, therefore, ordered his dismissal from service under the above referred provisions and the decision/order dated 08 Sept 2014 Annexure A/1 was conveyed to the petitioner.

6. Feeling aggrieved, the petitioner laid a challenge to his dismissal order dated 08.09.2014 (Annexure A-1). However, vide order dated 12.07.2016, his application was dismissed by the learned Armed Forces Tribunal concerned.

7. Feeling dis-satisfied from the order passed by the learned Armed Forces Tribunal concerned, the petitioner has filed the instant writ petition before this Court.

Submissions of the learned counsel for the petitioner.

8. The learned counsel for the petitioner submits that the petitioner being a poor person could not approach the Hon'ble Supreme

Court at the relevant point of time. However, since the Hon'ble Supreme Court through its verdict rendered in case titled as ***Balkrishna Ram Vs. Union of India and another***, to which ***Civil Appeal No. 131/2020*** became assigned, decided on 09.01.2020, thus conferred the jurisdiction in the Hon'ble High Courts, thus for laying a challenge to the orders passed by the learned Armed Forces Tribunal, thereby after the rendition of decision (supra), the petitioner has filed the instant writ petition before this Court.

9. The learned counsel for the petitioner submits, that the impugned order suffers from a gross illegality and hence is not tenable in the eyes of law. Further, he submits that the first marriage which the present petitioner performed with Ms. Najmunnahar, rather became dissolved on 18.07.2016 whereafters, she had deserted the petitioner. Therefore, he fulfils the conditions laid down under para 579 (a) (i) of the Regulations of the Air Force. No offence under law has been committed by him. The petitioner has committed a minor mistake of not seeking prior permission and the punishment of dismissal is disproportionate.

Submissions of the learned Counsel for the respondent.

10. The learned State counsel submits that the petitioner has filed the present petition on 02.02.2021 i.e. after a period of five years and therefore, the petition deserves to be dismissed on the ground of delay and laches.

11. Further, the learned counsel for the respondent refers to the relevant regulations of the Air Force.

— 579. Plural Marriage by persons in whose case it is permitted by law.

(a) ***A Muslim*** *or other person, except Gorkha personnel of Nepalese domicile, whose personal law permits plural marriage, will not marry again without the prior sanction of the Central Government. If such person wishes to contract plural marriage he may apply for sanction to marry again on one or more of the following grounds only:-*

(i) His wife has deserted him and there is sufficient proof of such desertion;

(ii) His wife has been medically declared as insane;

(iii) Infidelity of the wife has been proved before a court of law;

(b) Applications for such marriages will state the law under which the subsisting marriage was performed and will include the following details where applicable :-

(i) Has the present wife or wives consented to the marriage applied for?

(ii) Will the present wife or wives live with applicant after marriage?

(iii) Amount of maintenance to be paid to each wife.

(iv) Name, age and sex of each child by previous marriage and custody of each child/or children after the proposed marriage.

(v) Amount of maintenance to be paid to each child if he is to live separately.

(vi) The law under which the proposed marriage will be performed.

(vii) The law or custom according to which the applicant claims the right of plural marriage.

(c) In all cases, the applicant will attach with his application a certificate, witnessed by two persons of his unit, to the effect that he is not a Christian, Parsi or Jew, that the Hindu Marriage Act, 1955 does not apply to him and that he has not performed or registered the subsisting marriage under the Special Marriage Act, 1954.

(d) After it is established that the reasons given for the proposed Marriage are fully supported by adequate evidence the application will be forwarded through normal channel to Air Headquarters (Directorate of Personnel). Every Commanding Officer and intermediate commander will consider the case and make his specific recommendation about the proposed marriage with reasons.

(e) A person whose marriage is alleged to have been dissolved under any customary law and not by a court of law will still be required to obtain sanction for contracting another marriage. In such cases, the application will show the circumstances which led to the dissolution of the marriage together with the requisite proof of the existence of the customary Law.

(f) An application not recommended by a formation subordinate to the command will nevertheless be submitted to the command for disposal. It will, however, be forwarded to Air Headquarters only if it is recommended for approval by the A.O.C.-in-C.

(g) When it is found after due investigation that a person has contracted plural marriage without the previous sanction of the Central Government, no disciplinary action by way of his trial by court-martial or under section 82 or 86 of the Air Force Act will be initiated. If the person has committed another offence connected with the act of contracting plural marriage, disciplinary action will be taken only in respect of the connected offence. ***His commanding officer will report his case through normal channel to Air Headquarters (Directorate of Personal Services) with recommendation as to whether ex-postfacto sanction should be granted by Air Headquarters***

or administrative action should be initiated. When forwarding such cases to Air Headquarters, every commanding officer and intermediate commander will make specific recommendation giving reasons for the proposed action.

12. He submits that the prohibition as imposed by the aforesaid provision is in the interest of public order, morality and health, besides to ensure the maintaining of discipline in the forces. In support of his arguments he places reliance upon a verdict made by the Hon'ble Apex Court in case titled as ***Khursheed Ahmad Khan Vs. State of U.P. and Others***, reported in ***(2015) AIR (SC) 1429***. The relevant paragraphs of the verdict (supra) are extracted hereinafter.

> *9. As regard the charge of misconduct in question, it is patent that there is no material on record to show that the appellant divorced his first wife before the second marriage or he informed the Government about contracting the second marriage. In absence thereof the second marriage is a misconduct under the Conduct Rules. The defence of the appellant that his first marriage had come to an end has been disbelieved by the disciplinary authority and the High Court. Learned counsel for the State has pointed out that not only the appellant admitted that his first marriage was continuing when he performed second marriage, first wife of the appellant herself appeared as a witness during the inquiry proceedings and stated that the first marriage was never dissolved. On that basis, the High Court was justified in holding that the finding of proved misconduct did not call for any interference. 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 and others. 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.*
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> *xxxxx xxxx*

> *14. In Javed vs. State of Haryana, this Court dealt with the issue in question and held that what was protected under Article 25 was the religious faith and not a practice which may run counter to public order, health or morality. Polygamy was not integral part of religion and monogamy was a reform within the power of the State under Article 25. This Court upheld the views of the Bombay, Gujarat and Allahabad High Courts to this effect. This Court also upheld the view of the Allahabad High Court upholding such a conduct rule. It was observed that a practice did not acquire sanction of religion simply because it was permitted. Such a practice could be regulated by law without violating Article 25.*

Inferences of this Court.

13. Initially, *prima facie*, the instant writ petition is completely time barred. Resultantly the instant time barred petition is hit by the vices of delay and laches and *prima facie* thus requires dismissal.

14. Moreover, though the counsel for the petitioner submits, that since in terms of the verdict rendered on 09.01.2020, by the Hon'ble Apex Court, in case titled as ***Balkrishna Ram Vs. Union of India and another*** *(supra)*, the jurisdiction to challenge the orders rendered by the learned Armed Forces Tribunal became vested in the High Court. He further, submits that since in quick sequel to the making of the said verdict, thus the present petitioner did institute the instant writ petition. Therefore, he contends that since as of now, the writ petition is maintainable before this Court. Resultantly, the bar of the delay and laches does not work as a stumbling block against the present petitioner in his assailing the impugned decision recorded on 12.07.2016, by the learned Armed Forces Tribunal concerned.

15. Even the said argument *prima facie*, cannot be accepted by this Court, as unless in contemporaneity to the passing of the impugned verdict in the year 2016, the Apex Court through passing any interim orders rather had permitted the High Courts to exercise jurisdiction upon verdicts pronounced by the learned Armed Forces Tribunal, thereupons, the remedy then available to the present petitioner, thus was to access the Hon'ble Apex Court rather for his therebys challenging the impugned order. However, he did not do so. Contrarily, subsequent to the passing of the decision by the Apex Court in case titled as ***Balkrishna Ram Vs. Union of India and another (supra),*** and, that too in the year 2020, thus after almost five years elapsing since the passing of the impugned decision by the learned Armed Forces Tribunal, he has chosen to challenge the said decision made on 12.07.2016 by the learned Armed Forces Tribunal before this Court.

16. Importantly also when the decision rendered in case titled as ***Balkrishna Ram Vs. Union of India and another (supra)*** was made on 09.01.2020, over the SLP (supra) which became registered/filed before the Apex Court in the year 2017, whereas, the impugned order became passed in the year 2016. Resultantly theretos, thus a prompt challenge was required to be made, whereas, the challenge thereto became delayed uptil 2021, whereupon an inference ensues, especially when no tangible explication, emanates from the petitioner for his omitting to promptly recourse his apt remedies against the impugned

order, qua the writ petition being *prima facie*, stained with pervasive vices of delay and laches.

In the impugned verdict, it becomes declared that any Air Force personnel, swearing allegiance to islamic religion, though in terms of his personal law, thus is permitted to contract plural marriage(s), but yet with an ordainment that he should do so but only after his obtaining the requisite prior permission from the Army Authorities.

17. Since evidently, the petitioner prior to his contracting a plural marriage did not obtain the requisite permission from the competent authority, thereupon, in terms of clause (g) of Regulation 579 (supra), the administrative action as became initiated against the petitioner, thus became declared in the impugned verdict rather to be warranting validation.

18. Be that as it may, yet this Court is required to be advancing the cause of justice. Moreover, this Court is also required to be doing substantial justice. Importantly also in case the initially made order is stained with vices of any statutory breaches, thereupon, when the initially made order is *prima facie* void abnitio. Resultantly therebys the bar of limitation and/or of the belated claim being hit by the vices of delays and laches rather would not become attracted.

19. Reiteratedly, in the said endeavour, the bar of limitation may not become a stumbling block for this Court proceeding to decide the *lis* on merits, especially, when upon an incisive reading of the records, it becomes unfolded that there is gross non application of mind by the respondent concerned in making the impugned order. Moreover,

when therebys given the present petitioner, being the solitary bread earner for his entire family, wherebys, the right of livelihood of the petitioner, and, of the dependents upon him thus would become direly prejudiced. Resultantly therebys the deprivation of any source of livelihood to the petitioner and to his family members, but would cause jeopardy to Article 21 of the Constitution of India. Moreover, it is also got to be discerned from the records whether qua excepting the above purported misdemeanor, rather the present petitioner throughout his service rendered in the Indian Air Force, did have an unblemished record, as a patriotic soldier.

20. Though a reading of the entire record reveals, that excepting the purported misdemeanor (supra), the present petitioner did diligently serve the Indian Air Force. Resultantly this Court is required to be further discerning from the records whether the impugned order is harsh, disproportionate to the purportedly committed misdemeanor. Moreover, this Court is also required to fathoming from the records whether the impugned order suffers from some non-application of mind, vis-a-vis the relevant extenuating attendant circumstances to the commission of the purported misdemeanor by the present petitioner.

21. In the above regard, it is clear that the present petitioner belongs to the Muslim community and therebys in terms of the above extracted relevant regulations of the Indian Air Force, wherebys, in commensuration with the Mohammedan Personal Law, he is permitted to contract a plural marriage, which he did so. However, the said

endowment of a latitude to the present petitioner to contract a plural marriage is subject to his obtaining a prior permission from the Government. The said permission however became not obtained. Therefore, action takings were done against the present petitioner.

22. The first spouse of the present petitioner evidently, did not complain about the present petitioner contracting a second marriage. Resultantly, therebys, it appears that the first spouse of the present petitioner consented, to the latter contracting a second marriage with subsequent spouse of the petitioner. Moreover, it also appears that may be, both consented to live together. Even the first marriage of the petitioner became dissolved on 18.07.2016 and subsequently the first spouse of the petitioner deserted the latter. Though, the second marriage of the petitioner became performed on 05.12.2012, rather despite the first marriage of the petitioner being in subsistence, in the year 2012, but yet the subsistence of the first marriage of the petitioner with his former spouse, does become meaningless, in the light of this Court, rather drawing a conclusion arising from no protest theretos becoming made by the first spouse of the petitioner. Resultantly, when therebys she but consented to the performance of the second marriage by the present petitioner. If so, when the said consent, by the former spouse of the present petitioner, becomes also declared in the Rules, which become extracted hereinafter to be a relevant mitigating consideration. In sequel, therebys, the said meted consent by the former spouse of the petitioner to the latter, to re-marry, but was required to be assigned

some deference. Importantly, also when under the Mohammedan personal law there is permission to contract plural marriages.

— 579. Plural Marriage by persons in whose case it is permitted by law.

(a) xxxxxxx

(b) Applications for such marriages will state the law under which the subsisting marriage was performed and will include the following details where applicable :-

(i) Has the present wife or wives consented to the marriage applied for?

(ii) Will the present wife or wives live with applicant after marriage?

(iii) Amount of maintenance to be paid to each wife.

(iv) Name, age and sex of each child by previous marriage and custody of each child/or children after the proposed marriage.

(v) Amount of maintenance to be paid to each child if he is to live separately.

(vi) The law under which the proposed marriage will be performed.

(vii) The law or custom according to which the applicant claims the right of plural marriage.

23. Be that as it may, yet the provision (supra) ordains that any member of the defence personnel who swears allegiance to Islamic religion, is yet required to be, before entering into a plural marriage, rather obtaining the consent of the Central Government. The petitioner did not do so.

24. Now, the validity of the drawn/or the drawable disciplinary action against the present petitioner as arose from the above misdemeanor, has to be gauged from a reading of the provision (supra).

25. Moreover, to be gauged therefroms, also are thus the modes for drawing disciplinary action against the present petitioner. In the said regard, a reading of clause (g) as embodied in regulation no. 579 (supra), clause whereof becomes extracted hereinafter, unveils that in the event of any member of the defence personnel purportedly committing the misdemeanor (supra), thereupon, no disciplinary action by way of his trial by court-martial or under Section 82 or 86 of the Air Force Act, will be initiated. However, the Commanding Officer concerned, is required to be reporting the case, through normal channel to the Air Headquarters with the recommendation, as to whether ex-post facto sanction should be granted by Air Headquarters or administrative action should be initiated. Moreover, thereins an echoing also occurs that when forwarding such cases, to the Air Headquarters, every commanding officer and intermediate commander is required to be making specific recommendation giving reasons for the proposed action. However, the course (supra) became evidently never adopted by the respondent concerned, whereas, there is empowerment in the respondent concerned, to even upon the above stated misdemeanor becoming committed by the petitioner, to consider the granting of ex-post sanction. However, the said empowerment appears to become relegated to the backburner. Contrarily, an extremely harsh punishment of dismissal from service became awarded to the present petitioner.

— 579. Plural Marriage by persons in whose case it is permitted by law.

(a) to (f) xxxx

(g) When it is found after due investigation that a person has contracted plural marriage without the previous sanction of the Central Government, no disciplinary action by way of his trial by court-martial or under section 82 or 86 of the Air Force Act will be initiated. If the person has committed another offence connected with the act of contracting plural marriage, disciplinary action will be taken only in respect of the connected offence. ***His commanding officer will report his case through normal channel to Air Headquarters (Directorate of Personal Services) with recommendation as to whether ex-postfacto sanction should be granted by Air Headquarters or administrative action should be initiated. When forwarding such cases to Air Headquarters, every commanding officer and intermediate commander will make specific recommendation giving reasons for the proposed action.***

26. Evidently, there is lack of application of mind by the respondent(s) concerned, vis-a-vis the empowerment vested in them, to consider the grant of ex-post sanction to the plurality of marriage, as became contracted by the present petitioner, especially when *prima facie* the former wife of the present petitioner, did consent to the petitioner's entering into a subsequent marriage, despite the earlier marriage becoming dissolved rather in the year 2016. Moreover, yet when in the face of no protest being made by the former wife of the present petitioner vis-a-vis the latter entering into a second marriage, with his subsequent spouse, whereupon, the same may have been a mitigating circumstance for the respondent concerned, to favourably exercise the empowerment vested in it vis-a-vis the petitioner, thus as appertaining to the grantings of ex-post sanction. Resultantly, the

evident lack of application of mind to the (supra), by the respondent concerned, does make the impugned order to suffer from the vice of gross arbitrariness.

27. Resultantly since therebys the above non application of mind by the respondent concerned, thus vitiates the Administrative order with the vice of the same derogating from the statutory procedure (supra). As such, the vice (supra) ingraining the order of dismissal from service, as made upon the petitioner, rather does not attract qua it the bar of limitation.

28. Paramountly, when therebys the fundamental right to life endowed upon the present petitioner, and, also his family members would becomes breached. Moreover, also when excepting the above, the petitioner has rendered an unblemished service in the Indian Air Force. In consequence, irrespective of the purported vices of delay and laches, the prima dona factum of the impugned order being harsh and arbitrary, besides its suffering from gross non application of mind, thus constrains this Court to allow the writ petition.

Final Order of this Court.

29. Consequently, the writ petition is allowed. The impugned order passed by the learned Tribunal concerned, is quashed and set aside. However, with a direction to the respondent concerned, to in terms of the empowerment (supra) vested in it, for according ex-post sanction to the purported misdemeanor committed by the petitioner, thus, consider to exercise the same vis-a-vis the present petitioner. The

said be done within a period of three months from today but after hearing all affected concerned.

30. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.09.2024
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No