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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 57 of 2020

(Arising out of order dated 20.09.2019 passed in Writ Petition (S) No.4365 of 2014 by the learned Single Judge)

Mehatru Baddhai @ Mehatru Ram Baddhai S/o Shri Dhan Singh Baddhai
Aged About 37 Years Ex-Constable No. 598, R/o Babudabena, Post
Potgaon, P.S. Korar, District Uttar Bastar Kanker Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Principal Secretary, Department of Home, Mantralaya Mahanadi Bhawan, Atal Nagar, Naya Raipur District Raipur Chhattisgarh.
2. The Director General of Police, Police Head Quarters, Raipur District Raipur Chhattisgarh.
3. The Inspector General of Police Bastar Range, Lalbagh, Jagdalpur Chhattisgarh.
4. The Superintendent of Police District Uttar Bastar Kanker Chhattisgarh.

---- Respondents

For Appellant : Shri Sunil Verma, Advocate

For Respondent/State : Shri Siddharth Dubey, Deputy Government Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Parth Prateem Sahu, Judge

21.01.2020

1. Challenge in this appeal is to the order dated 20.09.2019 passed by the learned Single Judge in Writ Petition (S) No.4365 of 2014 whereby the writ petition filed by the Appellant was dismissed.
2. The facts of the case in nutshell, are that, the Appellant was appointed on the post of Constable with the Respondent-Department. He submitted an application for adding the name of one Nirasha Ledia and Chitra Baddhai



(minor child), to be added in his service record as nominee. In the application, the Appellant has mentioned that his marriage took place in the year 2005 with Smt. Mamta, but when she did not conceive even after long marital life, she gave her consent to him for performing second marriage. On account of said consent, he performed second marriage with Nirasha Ledia and from their wedlock, they were blessed with a female child, namely, Chitra Baddhai. The said application was filed by the Appellant before the Authorities was put to enquiry and after receiving the report, statement of the Appellant was also recorded, in which, he admitted that he performed second marriage without taking prior permission from the State Government. After considering the enquiry report as well as statement given by the Appellant/employee, the Authorities found that the Appellant has committed misconduct as provided under the Chhattisgarh Civil Services (Conduct) Rules, 1965 (hereinafter referred to as 'Conduct Rules, 1965') and charge-sheet was issued to him. After conclusion of the enquiry, Enquiry Officer found that the Appellant has committed misconduct as provided under Rule 22(1) of the Conduct Rules, 1965 and forwarded the same to the Disciplinary Authority. The Disciplinary Authority imposed the punishment of removal from service, which was challenged by the Appellant by way of departmental appeal, which came to be dismissed vide order dated 23.03.2013. The mercy appeal preferred by the Appellant was also dismissed on 12.10.2013.

3. Against the order of removal from service and dismissal of departmental appeal as well as mercy appeal, made the Appellant to approach this



Court by way of filing Writ Petition (S) No.4365 of 2014. The learned Single Judge taking note of the provisions of Rule 22 of the Conduct Rules, 1965 and also taking note of the ruling rendered by the Hon'ble Supreme Court in the matter of **Union of India and Another v. K.G. Soni** reported in **(2006) 6 SCC 794** and **Khurseed Ahmed Khan v. State of Uttar Pradesh and Others** reported in **(2015) 8 SCC 439**, dismissed the writ petition.

4. Shri Sunil Verma, learned counsel appearing for the Appellant submits that the learned Single Judge has not taken into consideration the fact that second marriage was performed after taking prior consent from the first wife and it is the Appellant himself who had moved an application for entering the names of his second wife and his minor child in the service record; it is not a case where this fact has been suppressed by the Appellant from the Authorities of the Department. He further submits that the punishment imposed by the Disciplinary Authority of removal from service is disproportionate to the misconduct as alleged against him. He also submits that in an identical litigation, the Madhya Pradesh High Court in the matter of **Gopchand Rai v. State of Madhya Pradesh** reported in **2004 (2) MPHT 21**, has passed an order of setting aside the order of termination of the Petitioner therein from service by imposing lesser punishment and in the facts and circumstances of the present case also, the Appellant is entitled for lesser punishment than that of removal from service.
5. Per contra, Shri Siddharth Dubey, learned Deputy Government Advocate appearing for the State submits that the Appellant is an employee of



uniform service and he is employed to maintain the rule of law, therefore, greater responsibility lies on the Appellant to act in accordance with the norms as provided under the Conduct Rules, 1965. It is also contended by the learned counsel for the State that the second marriage in general is prohibited under the law and even if, under the custom or in religion, second marriage is permissible, then also it is for the employee to seek prior permission from the State Government as provided under Rule 22 of the Conduct Rules, 1965. He further submits that Rule 22 of the Conduct Rules, 1965 has not been followed, in fact, violated by the Appellant, therefore, Disciplinary Authority after considering the material available in enquiry report, has rightly imposed the punishment of removal from service. He also submits that the punishment imposed by the Disciplinary Authority against the Appellant has been found to be correct by the learned Single Judge, therefore, the impugned order do not call for any interference.

6. We have heard the learned counsel for the parties and perused the record.
7. Along with the writ petition, the Appellant has filed one consent letter signed by Smt. Mamta mentioning that she is giving consent to her husband for performing second marriage and the ground which has been mentioned is that they are not having any issue and even the doctor has opined that she will not be able to conceive in future. The other document is also filed, which is the permission of the Community of the members of the Tribal Society. In the considered opinion of this Court, both the documents will not come to the rescue of the Appellant in any manner to lesser the gravity of misconduct committed by him.



8. The provisions of Rule 22 of the Conduct Rules, 1965 are extracted below for ready reference :

“22. Bigamous marriages.- (1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

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

9. Rule 22(1) of the Conduct Rules, 1965 provides in very categorical terms that even if the subsequent/second marriage is permissible under the law, then also the Government Servant is required to first obtain permission of the employer/Government.
10. Admittedly, as per the statement made by the Appellant before the Enquiry Officer, he is not even made any application before the Competent Authority seeking permission to perform second marriage.
11. The Appellant being a Constable an employee of uniform service greater responsibility lies upon him to follow and act according to the law of land and to follow the Rules governing his service. His service is for the purpose of maintaining public order and safety, enforcing the law and preventing criminal activities. Second marriage is illegal and not acceptable in our country. The act of the Appellant is having impact on



society. It is in this back ground, gravity of misconduct and punishment imposed is to be looked into.

12. It is a settled law that the punishment imposed by the Employer/Competent Authority is not to be interfered unless and until it is found to be in violation of the principles of natural justice, it is in contravention of the Rules prescribed or the punishment imposed is so shocking to the conscience of the Court. The Hon'ble Supreme Court in the matter of **K.G. Soni** (supra) held thus :

“14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's case* (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

15. To put differently, unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if



the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.”

13. It is the case of the Appellant himself that marriage with his first wife was subsisting and during subsistence of first marriage, he performed second marriage without obtaining permission from the State Government and the same has been held to be a 'misconduct' under Rule 22 of the Conduct Rules, 1965. Taking into consideration the service in which Appellant was engaged and the nature of misconduct committed by him, we do not find any considerable force in the submission made by learned counsel for the Appellant that the punishment imposed is disproportionate.

14. For the foregoing reasons, we do not find any infirmity in the reasoning or rationale given by the learned Single Judge in its order. The writ appeal being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge