

(2018) 04 BOM CK 0086

In the Bombay High Court

Case No : WRIT PETITION NO. 313 OF 2011

ASHOK RAMAKANT CHOUDHARI

APPELLANT

Vs

THE STATE OF MAH AND ORS S.

RESPONDENT

Date of Decision : 12-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 494

Maharashtra Civil Services (conduct) Rules 1979 — Rule 26

Citation : (2018) 04 BOM CK 0086

Hon'ble Judges : T. V. NALAWADE, K. L. WADANE

Bench : Division Bench

Advocate : R. S. Deshmukh, D. S. Jape, AGP

Final Decision : Dismissed

Judgement

K. L. Wadane, J.

1.The petitioner has challenged the order passed by the Maharashtra Administrative Tribunal in A.O. No. 864/2009 dated 21.04.2010 and the order

passed by the Respondent No. 3 in Appeal on 23.03.2009, the order passed by the respondent No.2 dated 11.11.2008.

2.The petitioner was initially appointed in the year 1992 in the Small Saving Department.Â One Smt. Kalabai Kalu Choudhari lodged the complaint

with the respondent No.2 alleging that the petitioner performed his second marriage with her daughter namely Smt. Ranjana Choudhari during the

subsistence of his marriage with one Smt. Sandhya.Â After receipt of the complaint, the respondent No. 2 appointed one inquiry officer.Â Inquiry

officer recorded the statement of witnesses and after considering the evidence on record, has submitted its reports holding that the petitioner has

contracted and performed second marriage with Smt. Ranjana therefore, the

petitioner contravened the provision of Rule 26 of MCS (conduct) Rules, 1979.Â

3. After receipt of the inquiry report, the respondent No. 2 by its order dated 11.11.2008 dismissed the petitioner from service.Â The petitioner challenged this order before the Respondent No. 3, respondent No. 3 dismissed the appeal of the petitioner on 23.03.2009.Â The petitioner has challenged this order before the Maharashtra Administrative Tribunal who also dismissed the appeal of the petitioner on 21.04.2010.Â Hence the present appeal.

4. We have heard the arguments of Mr. R. S. Deshmukh, learned counsel appearing for the petitioner as well as Mrs. D. S. Jape, learned AGP for the State. We have also perused the reasons recorded by the learned inquiry officer as well the Appellate Courts. On perusal of the same it appears that the charges against the present petitioner was for contravention of Rule 26 of the MCS Rules 1979 which reads as follows: 26. Contracting of marriages.

(1) No Government shall enter into, or contract, a marriage with a person having a spouse living; and

(2) no Government servant, having a spouse living, shall enter into, or contract, a marriage with any person: Provided that the Government may permit

a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that :Â?

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of Indian Nationality shall forthwith intimate the fact to the

Government.Â Â Â Â

5. In order to prove this charge before the inquiry officer, the statement of the witnesses namely Ranjana and a priest by name Dyneshwar Joshi were recorded.Â The priest has stated that the petitioner performed marriage with Ranjana on 1st September 2002 as per the rites. In support of the allegations, the original complainant namely Smt. Kalabai Kalu Chaudhari following documents were presented.Â A copy of the notarized document

dated 02.09.2002, the birth certificate of the child born from Ranjana dated 01.06.2004. The document in the nature of leave relationship

between the petitioner and Ranjana. A document in the nature of the family arrangement with petitioner and his first wife Sandhya. The receipts of clothes, ornaments, photographs etc.

6. The allegations against the present petitioner are that when his first wife was alive, he performed second marriage with Ranjana and reason for that

his first wife Sandhya was issueless for so many years. The learned AGP initially relied on two documents i.e. agreement dated 02.09.2002 in the

nature of leave relationship between the petitioner and his second wife Ranjana and the copy of the family arrangement deed dated 22.06.2002

between the petitioner and his first wife Sandhya. On perusal of the same, it appears that the petitioner made a contract with Ranjana as his first

wife was issueless. On perusal of the contents of the leave relationship contract, it appears that it was agreed between the petitioner and

Ranjana to reside as a husband and wife. If these contents of the leave agreement are read coupled with the evidence of the priest namely Shri.

Dyneshwar Joshi and other relevant document, it appears that those documents are sufficient to prove that the petitioner has contracted the second

marriage with Ranjana inspite of subsisting of his first marriage with Sandhya.

7. Standard of proof in the departmental enquiries are on the basis of the preponderance of probabilities and to prove such marriage, standard of proof

is not required as high as required to prove the offence punishable under Section 494 of Indian Penal Code, nor the marriage of the petitioner with

Ranjana is independently in dispute, therefore, no high degree proof is required to prove such marriage in the departmental enquiry.

8. On perusal of the reasons recorded by the inquiry officer, we are satisfied that there is sufficient evidence to hold that the petitioner has contracted

second marriage with Ranjana in contravention of the Rule 26 of MCS (conduct) Rules, 1979. We have also gone through the reasons recorded by

the Appellate Courts/authorities and we do not find any reason to disturb the findings recorded by the inquiry officer and confirmed by the Appellate

Authority.

9. In view of the above, writ petition is dismissed. No costs. ^ ^ ^