
(2007) 05 AHC CK 0254
In the Allahabad High Court

Banwari Singh Chauhan (Dead) (Smt. Munni Devi, Smt.
Neelam and Km. Sheeloo Kumari)

APPELLANT

Vs

State of U.P., Deputy Inspector General of P.A.C. and
Presiding Officer, Deputy Commandant

RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Police Act, 1861 — Section 7

Citation : (2007) 7 AWC 7030 : (2007) 3 UPLBEC 119

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Rakesh Tiwari, J.—Heard Counsels for the parties and perused the record.

2. The case of the petitioner is that he was married to Smt. Uma Kumari daughter of Sri Ratan Singh on 13.3.1967 at Moradabad who was posted there as Company Hawaldar Major. It transpired later on that at the time of marriage with the petitioner, Smt. Uma Kumari was pregnant and was admitted in hospital for abortion. After marriage, "bida ceremony" of Smt. Uma Kumari was not performed, as such, she did not return with the petitioner immediately after marriage. Later, on enquiry, it was revealed that Sri Ratan Singh was keeping Head Constable Sri Suraj Pal Singh at his quarter with Smt. Uma Kumari who had illicit relations. He was already married, hence, Sri Ratan Singh could not perform the marriage of his daughter Smt. Uma Kumari with Sri Suraj Pal Singh. Even after marriage of Smt. Uma Kumari with the petitioner, she continued her affairs and illicit relationship with Sri Surajpal Singh and whenever petitioner asked his father-in-law to send her, he avoided it.

3. The petitioner claims that he hails from a respectable family and with a view to avoid defamation, he tried his level best to impress upon Smt. Uma Kumari to sever the Illicit relationship Sri Surajpal Singh as it was bringing bad reputation but his request, had. no effect other. In these circumstances, the petitioner went

to Kashmir in 1971 on duty. He again he went to Moradabad in 1972 and requested Sri Ratan Singh for "bida" but Smt. Uma Kumari refused to go with the petitioner.

4. The petitioner in 1974 came to know that Smt. Uma Kumari has given birth to an illegitimate child at Katra Chand Khan, Bareilly. When petitioner contacted Smt. Uma Kumari and her father, they told him that divorce was the only remedy as his marriage with Smt. Uma Kumari was never consummated. They never lived as husband and wife even for a day.

5. It is claimed by the petitioner that in Mainpuri and Etawah, it is customary to dissolve marriage by written agreement in presence of Panchs. A written agreement was accordingly executed on 29.12.1974 on stamp paper of Rs. 7/- before the PanchsS/Sri Radhey Shyam Gupta, Vakil, Chunni Lal Chaurasia, Madan Lal, Sube Singh and Smt. Man Kaur. The agreement is appended as Annexure 1 to the writ petition.

6. After dissolution of void marriage, the petitioner remarried one Smt. Munni Devi in 1975. He took voluntary retirement from service and was paid provisional pension till September, 1995 but his letiral dues were not paid to him on the ground of his remarriage in the lifetime of first wife.

7. Aggrieved the petitioner has filed this writ petition. At the time of admission on 22.4.1996 the following interim order was passed by the Court:

Hon. S.C. Verma, J.

Admit.

Issue notice.

The affidavits have already been exchanged. The petitioner may initiate proceedings for expeditious hearing of the writ petition itself.

Learned Counsel for the petitioner states that the petitioner has taken voluntary retirement and he was paid interim pension till Septemebt, 1995. The respondents have stopped further payment of retiral benefits that have accrued in favour of the petitioner.

There is no reason why the petitioner be deprived of the post retirement benefits. In the meantime, the respondents are directed to release the post retirement beenfits immediately due to the petitioner.

Dt. 22.4.96/-

S.C. Verma, J.

8. A preliminary enquiry is said to have been conducted by Sri Badri Prasad. Deputy Commandant, P.A.C allegedly behind the back of the petitioner before issuance of charge sheet to him. For recording statements of complainant and her witnesses, 28th January 1991 was fixed and the petitioner was iformed on

that day to be present on 28th January, 1991 at 10 A.M., for recording statements of witnesses in his presence so that he could cross-examine them. However, no statement was recorded on 28.1.1991 in his presence nor any opportunity of cross-examination of the witnesses was afforded to the petitioner. Smt Uma Devi Chauhan did not turn up to give her statement.

9. Thereafter, a second charge sheet dated 30.1.1991 was served upon the petitioner calling upon him to submit his reply within three days along with oral and documentary evidence. He was warned that in case he fails to submit his reply within the aforesaid period, enquiry shall proceed ex parte.

10. Detailed reply dated 2.2.1991 was submitted by the petitioner. The petitioner was informed by the Deputy Commandant vide his letter dated 15.2.1991 that 16.2.1991 is fixed for recording the evidences. Even on that day, no statements of witness were recorded nor the complainant Smt. Uma Devi appeared. Thus, there was no question of any cross-examination of the witnesses.

11. However, vide letter dated 7.3.1991, the Deputy Commandant informed the petitioner that the evidence of complainant had been recorded and evidence stage had come to an end. The petitioner was called upon to submit his written statement in his defence within eight days specifying the name of witness in support of his case.

12. Accordingly, the petitioner submitted his written statement dated 17.1.1992 specifying the names of witnesses to be examined. Thereafter the Deputy Commandant rejected the application of the petitioner vide letter dated 20.3.1991 on the ground that evidence related to divorce and since no divorce was granted by any Court of law, acceptance of written statement and defence evidence will only result in wastage of time and will tantamount to delay in conclusion of the departmental proceedings. The petitioner by means of his letter dated 23.3.1991 requested the Deputy Commandant to provide him an opportunity to examine the witnesses as the divorce was customary and not illegal. He also objected to the departmental proceeding as farce after lapse of 16 years. He urged that the evidence of his witnesses will certainly establish that he had not committed any offence.

13. Without considering the aforesaid plea of the petitioner, the Deputy Commandant submitted his enquiry report dated 7.4.1991 to the Commandant recommending reversion of the petitioner to the lowest pay scale in the grade of Head Constable for three years.

14. Thereafter, a show cause notice was issued to the petitioner calling upon him to explain as to why major penalty be not imposed upon him.

15. The petitioner submitted his reply dated 16.4.1991 to the aforesaid show cause notice reiterating the grounds of appeal. The Commandant on 26.4.1991 is said to have mechanically endorsed the draft order prepared by the Deputy Commandant thus:

I concur with the final order passed.

Sd/- Illegible Commandant 26.4.91.

16. Aggrieved by the aforesaid order, the petitioner preferred statutory appeal before the Deputy Inspector General of P.A.C, which was rejected vide order dated 3.9.91 and communicated to "the petitioner vide letter dated 12.9.1991.

17. It is alleged that the appeal was rejected by a cryptic order without affording any opportunity of hearing to the petitioner.

18. Standing counsel vehemently urged that the petitioner had performed two marriages and had nominated, his second wife for recovering the benefits of his service after his retirement, which is not permissible under the Government Servants Conduct Rules. According to the Standing counsel, a Hindu Government servant cannot remarry during the lifetime of his first wife except with the prior approval of the State Government without there being proper divorce, as such, the petitioner was issued charge sheet dated 26.11.1990 for marrying Smt. Munni Devi during the life time of his first wife Smt. Uma Kumari without obtaining prior permission from the State Government which is in violation of Uttar Pradesh State Employees' Conduct Rules. Therefore, the petitioner is not entitled to retiral benefits.

19. Standing counsel further submits that the proceedings against the petitioner had been initiated in accordance with Section 7 of the Police Act which provides that the Inspector General, Deputy Inspector General, Assistant Inspector General and District Superintendent of Police may at any time dismiss, suspend or reduce in rank any Police Officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same. For the aforesaid misconduct, punishment has also been provided in Section 7 of the Police Act as under:

- a) fine to any amount not exceeding one month's pay ;
- b) confinement to quarters for a term not exceeding fifteen days, with or without punishment-drill, extra guard, fatigue or other duty;
- c) deprivation of good conduct pay;
- d) removal from any office of distinction or special emoluments.

20. He then submits that the case of the petitioner was also of gross violation of Paras 486 and 490 of the Police Regulations and that the findings recorded by the Deputy Commandant and Deputy Inspector General of Police and the final order passed by the Commandant are legal, valid, justified and in accordance with law as well as Police Regulations. It is vehemently urged that there has been no violation of principles of natural justice in the instant case and the enquiry proceeded against the petitioner in accordance with law and principles of natural justice.

21. It appears from records that the petitioner had moved an application on 3.12.1990 to the Deputy Commandant, 12 Bn. P.A.C, Fatehpur, appended as Annexure III to the writ petition, requesting him to supply the copy of complaint and copies of the statements recorded in the enquiry with all other papers to the petitioner so that he may be able to file his written statement. Smt. Uma Devi Chauhan's complaint against the petitioner has been appended as Annexure IV to the writ petition, to which the petitioner submitted his reply, which is contained in Annexure V to the writ petition.

22. From the perusal of record, it is not borne out that the petitioner had remarried during the lifetime of his first wife prior to customary dissolution of his marriage with Smt. Uma Kumari. Moreover, the so called first wife who was pregnant at the time of marriage and was carrying an illegitimate child of another man Sri Suraj Pal Singh and with whom marriage was not even consummated has not come forward claiming retiral dues of the petitioner. The petitioner had applied for change of the name of his wife in his service records and had made Smt. Munni Devi as his nominee as far back as on 18.7.1979 in the Employees State Insurance Form but no action had been taken in this regard then by the respondents. The respondents cannot deny the legitimate claim of the actual nominee now after his retirement from service and passing of the interim order dated 22.4.96 by the Court.

23. It would not be out of place to observe that bare perusal of records clearly shows that the findings recorded by the Deputy Commandant, final order passed by the Commandant and order of rejection of appeal by the Deputy Inspector General of P.A.C are not only illegal but also arbitrary and whimsical in clear violation of Police Regulations as well as in violation of principles of natural justice for the reasons that:

i) The departmental proceedings were initiated on the alleged complaint of Smt. Uma Kumari which was lodged after 16 years of dissolution of her marriage with the petitioner. Moreover, Smt. Uma Kumari did not appear to give her evidence on any of the dates fixed for this purpose and the petitioner was suddenly informed one fine morning by letter dated 19.3.91 that the evidence of the complaint was recorded but he was deprived of the opportunity of cross examining.

ii) The observation of Deputy Commandant that she could not be procured despite efforts necessitated that the proceedings ought to have been dropped and the petitioner cannot be punished on the basis of a false complaint without any evidence.

iii) The reply dated 2.2.1991 submitted by the petitioner appears to have not been considered by the Commandant and Deputy Inspector General of P.A.C. wherein the petitioner had categorically stated that Smt. Uma Kumari was living with one Sri Birju alias Raghunath at Talak Mahal 57/138 Parade Bazar, Kanpur and was a prostitute by profession. It appears that Smt. Uma Kumari, in fact,

had not made any complaint but the complaint might have been sent by some imposter. It is established from perusal of record that the authorities could not procure attendances of Smt. Uma Kumari and could not have been able to have her statement.

iv) The authorities failed to consider that marriage of petitioner with Smt. Uma Devi was a void marriage as it was never consummated. They never lived as "husband and wife" even for an hour. At the time of marriage, Smt. Uma Kumari was pregnant owing to illicit relationship with Sri H.C. Suraj Pal Singh; admitted in the hospital for abortion and was brought from the hospital showing that she was ill. She was also not sent with the petitioner at the time of bida of Barat. Later on, she also gave birth to an illicit child at Bareilly. Thus, the marriage being void ab initio, the departmental authorities ought to have taken notice of these facts before passing of the impugned orders.

v) The departmental authorities ought to have considered the vital aspect of the matter that customary dissolution of marriage was permissible before the Panchs in the caste of the parties in Etawah and Mainpuri districts. In the absence of any finding to the contrary on the issue and in absence of any enquiry having been conducted in this regard, the plea of the petitioner that no divorce decree from Court of law was necessary, has force.

vi) Dissolution agreement is of 1974 origin. Marriage between the petitioner and alleged second wife Smt. Munni Devi took place in 1975 and her name was recorded as nominee in Employees State Insurance Form in 1979. Her name was recorded as legal heir of the petitioner in his service records in 1986. If there was any doubt in the mind of the departmental authorities, immediate action should have been taken at that point of time. There appears to be no cogent reason in initiating proceedings against the petitioner merely on the basis of a complaint of an imposter after 16 long years.

vii) It was incumbent on the part of the departmental authorities to have hand writing expert's opinion as to whether signatures of Smt. Uma Kumari on the dissolution agreement and the complaint tallied or not.

viii) A bare perusal of impugned orders reveals that the punishment order has been passed merely on the basis of an alleged complaint by Smt. Uma Kumari without affording any opportunity of defence to the petitioner.

x) Rejection of the application of the petitioner for cross-examination of the witnesses and production of oral and documentary evidence in support of his case in the high handed manner resulted in deprivation of opportunity of self-defence to him with ulterior and mala fide motive. It amounts to clear violation of principles of natural justice and fair play.

x) Section 7 of the Police Act relied upon by the respondents relates to remissory negligence in discharge of duty. In the present case, there appears to be no case of remises or negligence in performance of duty by the petitioner, hence

proceedings u/s 7 of the Police are were illegal, arbitrary and whimsical.

24. The respondents cannot be permitted to keep money of its employee when they themselves created dispute regarding first or second wives. Admittedly, the petitioner had been punished and was reverted and humiliated. The petitioner, due to humiliation, was constrained to seek voluntary retirement. He is, therefore, in the circumstances, entitled to his retiral benefits. If there is any dispute, it was between first and the second wives. The petitioner had given address and whereabouts of the first wife to the respondents and they never secured her presence. In spite of the fact that the petitioner had brought on record that the first wife had become a prostitute carrying on her profession at Kanpur, no effort was made by the respondent-authorities to secure her presence for evidence and entire proceedings were held behind the back of the petitioner.

25. If an employee nominates someone, it is the responsibility of the nominee to make payment to other legal heirs as per law but the department where the employee has served and has become entitled for retiral benefits after rendering hard labour for number of years, cannot raise dispute regarding nominee and keep the money with itself. Such an act amounts to usurpation of money of the employee.

26. For all the reasons stated above, in view of interim order passed by this Court, quoted in the body of this judgment, the writ petition is disposed of in terms of interim order dated 22.4.1995. Respondent No. 4 is directed to ensure payment of entire retiral dues to the nominee of the petitioner together with 9% simple interest from the date of retirement of the petitioner till the date of actual payment within a period of 3 months from the date of production of certified copy of this judgment. No order as to costs.