
(2016) 02 DEL CK 0070

In the Delhi High Court

Case No : W.P. (C) No. 2264 of 2014

Commissioner, Kendriya Vidyalaya Sangatha

APPELLANT

Vs

Dr. Dharmendra Singh

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

CCS (CCA) Rules, 1965 — Rule 11(8), 14, 16, 21(2)

Citation : (2016) 228 DLT 562 : (2017) 1 RSJ 59 : (2016) 3 SCT 190

Hon'ble Judges : G.S. Sistani; Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.S. Sistani, J. - The petitioner has filed the present writ petition which is the third round of litigation with the respondent who joined as a Primary Teacher in the year 1982. The long chequered history of the litigation started in the year 1986, on selection of the respondent as a Post Graduate Teacher (Physics) in Khetri, Rajasthan from where he was transferred to Kendriya Vidyalaya (hereinafter referred to as "K.V.") Patiala in the year 1994 and thereafter to Amritsar in the year 1996. The respondent joined his duties on 19.07.1996 at K.V., Amritsar and then began his bad days. The respondent was not allowed to work in the school as he had spoken objectionable things against a good friend of the Principal of K.V., Patiala. The respondent made a number of representations to the authorities of Kendriya Vidyalaya Sangathan (hereinafter referred to as "K.V.S.") seeking a posting in any other school. He was asked to join KV at Amritsar. Having no other option the respondent reported for duty on 12.12.1996 at K.V., Amritsar.

2. On 31.01.1997 a memorandum was issued to the respondent under Rule 11 (8) of CCS (CCA) Rules, 1965 for refusing to take over the charge of the Physics Laboratory. The Principle also stopped his salary. The respondent made a representation to the Assistant Commissioner of K.V.S. Jammu and requested him to intervene and not to allow the Principal to stop his salary. The Assistant

Director sought explanation from the respondent vide memorandum dated 18.02.1997 for violating Rule 66 of the Education Code for not sending the representation through proper channel. The respondent herein explained vide letter dated 25.02.1997 that since the complaint was against the Principal he had no alternative but to make representation directly on the following issues:

- (i) Payment of salary w.e.f. 2.3.1996 to 11.12.1996.
- (ii) Inclusion of increment from 1993 onward and payment thereon.
- (iii) Reimbursement of medical bills submitted long back in February, 1996.
- (iv) Payment of remaining due salary of 39 days in August and September, 1992 at K.V. 2, Khetri Nagar.

3. Repeated representations made by the respondent herein did not evoke any fruitful result, so he approached the High Court of Delhi vide C.W. No. 3399/1997 seeking the following reliefs:-

- "(i) Pay of salary and allowances for the period 2.3.1996 to 11.12.1996.
- (ii) Payment of salary and allowance for 39 days of August-September, 1992.
- (iii) Payment of increment and consequential benefit thereon w.e.f. 1992 onward.
- (iv) Payment of salary and allowance of the petitioner for the month of February, 1997 onwards till date.
- (v) Payment of medical claim of the petitioner submitted in February, 1996.
- (vi) Payment of TA/DA bills submitted in February, 1996"

The High Court of Delhi vide order dated 10.12.1997, passed the following interim order:-

"In this application the prayer of the petitioner is that he has not been paid the salary and allowances. Even the subsistence allowance @ 75% of the salary admissible under the Rule has also not been paid to the petitioner. Directions are accordingly given to Respondents No.2 and 4 to pay the subsistence allowance as admissible to the petitioner if the same has not been paid, within 2 weeks from today."

4. The petitioner instead of complying with the directions issued by the High Court of Delhi served a Memorandum dated 17.02.1999 to the respondent proposing to hold an enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965. The Statement of Articles of Charge framed against him are as under:-

Article-I

That Dr. Dharmendra Singh while functioning as PGT (Phy) w.e.f. 12-12-96 to 20-11-97 in Kendriya Vidyalaya No. 2 A.F.S. Amritsar Cantt. did not take over the charge of Physics lab and stock ledgers along with stock in spite of office order

and memorandum issued to him by the Principal Kendriya Vidyalaya No.2 Amritsar and instructions of Education Officer of Kendriya Vidyalaya Sangathan (Jammu Region) Jammu. Sh. S.D. Sharma has to take over the charge, during preliminary enquiry held on 14-10-97 and he thus wilfully and deliberately disobeyed the lawful orders and instructions of his superiors which amounts to misconduct and dereliction of duty and thereby he contravened Rule 3(I) (II) and (III) of CCS (Conduct) Rules, 1964. He has therefore rendered himself liable to disciplinary action under CCS (CCandA) Rules, 1965.

Article-II

That Dr. Dharmendra Singh while functioning as PGT (Phy) in the aforesaid Kendriya Vidyalaya is absenting from duty w.e.f 21.11.97 without any sanctioned leave. Thus such wilful absence amounts to unauthorized absence from duty and thereby he contravened Rule (I) (iii) of CCS (Conduct) Rules, 1964. He has therefore rendered himself liable to disciplinary action under CCS (CCandA) Rules, 1965.

Article-III

That Dr. Dharmendra Singh while functioning as PGT (Phy) in Kendriya Vidyalaya No.2 Khetri Nagar entered into second marriage without divorcing his first wife. Thus he has violated CCS (Conduct) Rules 21(2) and rendered himself liable to disciplinary action under CCS (CCandA) Rules, 1965."

5. The respondent had been fighting against the Charge Memo dated 17.02.1999 which ultimately culminated in the order of Disciplinary Authority dated 11.08.2009 dismissing him from service and rejection of his appeal dated 18.08.2009 and the supplementary appeal dated 27.12.2009 vide orders dated 13.09.2010 and 04.11.2010, respectively.

6. The aforesaid orders of the Disciplinary Authority and the Appellate Authority were the third set of orders passed after the previous two sets of orders had been set aside by the Tribunal and upheld by the High Court in separate proceedings.

7. On 30.08.2013, the Tribunal passed an order in favour of the respondent. Aggrieved by the said order, the petitioner filed the present writ petition.

8. Mr. S. Rajappa, learned counsel appearing on behalf of the petitioner submits that the learned Tribunal has exceeded its jurisdiction and has not considered the consent order dated 21.05.2007 passed by the High Court of Delhi in W.P. (Civil) No. 16390/2006, relevant portion of which reads as under

"(i) The petitioners would within a week from today appoint an Inquiry Officer and also reinstate the petitioner.

(ii) The evidence already recorded by the petitioners in the previous proceedings would be taken as evidence led for the purpose of inquiry. The respondent has no objection to the same.

(iii) Respondent hereby withdraws all his legal and other objections to the inquiry being conducted and undertakes to co-operate fully in the inquiry proceedings.

(iv) Respondent would be at liberty to cross-examine the witnesses of the petitioner. Respondent would lead and conclude its evidence within 2 months from the date of completion of the cross-examination of petitioner's witnesses. Respondent would bring his evidence at his own responsibility. Petitioner would be entitled to lead evidence in rebuttal.

(v) The Inquiry Officer shall issue notice for hearing to the respondent at the address contained in the petition. Learned counsel for the respondent states notice may be served through respondents counsel and the same shall be treated as proper service on the respondent for further proceedings.

(vi) The petitioners shall reinstate the respondent within a week. The subsistence allowance, if not already paid to the respondent, shall be paid within a week. Entitlement to pay and allowances shall be decided by the disciplinary authority upon conclusion of the inquiry proceedings.

(vii) The respondent has undertaken to strictly abide by the aforesaid consent terms and shall fully co-operate in the inquiry proceedings.

(viii) The petitioners shall also give necessary leave, as required by the respondent, to defend his case as per rules."

9. Mr. Rajappa, counsel for the petitioner, further submits that the Tribunal was to decide the matter as per the guidelines laid down by the High Court of Delhi in the order dated 21.05.2007, which have been extracted herein above.

10. Learned counsel for the petitioner further submits that the Tribunal has erred in observing that in view of the earlier charge sheet dated 25.04.1994 a second charge sheet could not have been issued on similar lines. The counsel further submits that the Tribunal has erred in reaching a conclusion that the onus was on the petitioner to prove the second marriage of the respondent. Counsel further submits that in the letter dated 28.11.1992 there was a categorical admission of the respondent that he entered into a second marriage. Counsel also contends that the Tribunal has erred in observing that in the criminal proceedings with respect to the FIR lodged regarding the second marriage, the respondent has been acquitted as the standard of proof in criminal cases is different than in a domestic inquiry. Counsel further contends that there is also no explanation by the respondent for his unauthorised absent from the duties and also why he never took the charge at his place of posting.

11. Learned Counsel for the petitioner further submits that the findings of the Enquiry Officer should not be easily disturbed unless the findings are perverse and against the principles of natural justice.

12. Learned Counsel for the petitioner contends that the respondent is not entitled to back wages and reliance has been placed upon B.C. Chaturvedi v.

Union of India And Ors., reported at 1995 SCC (6) 749. Counsel for the petitioner also relied upon Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murali Babu, reported at 2014 STPL (Web) 83 SC and Chairman-Cum-M.D., Coal India Ltd. and Ors. v. Ananta Saha. and Ors., Civil Appeal No.2958/2011.

13. It is further contended by the counsel for the petitioner that the Tribunal has failed to appreciate that the order passed by the Disciplinary Authority as well as the Appellate Authority is legal and valid. The Enquiry Officer after conclusion of the enquiry submitted its report to the Disciplinary Authority on 13.5.2009 holding that all the three Articles of Charge have been proved beyond doubt. The report was considered by the Disciplinary Authority after following the prescribed procedure and after giving due opportunity to the respondent, an order of penalty of dismissal from service was imposed upon him, vide order dated 11.8.2009. The Appellate Authority has considered the entire evidence on record and disposed of the appeal by a reasoned order dated 13.9.2010. Further, the supplementary appeal filed by the respondent dated 27.12.2009 was duly considered and rejected vide order dated 4.11.2010. Another submission has been made by the learned counsel for the petitioner that the Appellate Authority after applying the settled principles of law has dismissed the appeal and the circumstances of the case do not warrant any interference with the penalty order dated 11.08.2009.

14. Dr. Dharmender Singh, respondent appearing in person, submits that the Tribunal has reached a fair and just decision. The respondent further submits that the petitioner has harassed him on every occasion possible. It is submitted that a memorandum of charge dated 25.04.1994 was issued against him, which reads as under:

"Article No. I

That the said Sh. Dharmender Singh while functioning as PGT at Kendriya Vidyalaya No. 2, Khetrinagar during the year 1991-92 has wilfully violated the instructions given to him by the Principal, KV no. 2, Khetrinagar from time to time and has deliberately failed to carry out the instructions of the Superior Officer. It is dereliction of duty. Sh. Dharmender Singh is charged with misconduct and doubtful integrity. Thus the said Sh. Dharmender Singh is guilty of violating Rule 3 (1) (ii) and (iii) of CCS (conduct) Rules, 1964 as applicable to KVS employees.

Article No. II

That the said Sh. Dharmender Singh while functioning as PGT (Phy) at Kendriya Vidyalaya No. 2, Khetrinagar as well as internal examiner for Physics practical in A.I.S.S.C Exam, 1991 held in April 1991 at Kendriya Vidyalaya No. 2, Khetrinagar committed deliberate mischief in the aforesaid Practical Examination in physics by changing 30 marks to 03 marks by making overwriting in respect of Master Pankaj Roll No. 1207149. He also removed the answer book of physics practical

examination in respect of Master Pankaj, Roll No. 1207149 before despatching the packet containing Answer Books of the aforesaid practical examination in physics to the Regional Office C.B.S.E Ajmer. As a result the Chairman C.B.S.E had to order for the re-examination in Physics practical in that case. This act on his part amounts to doubtful integrity and unbecoming of a KVS employees. Thus the said Sh. Dharmender Singh is guilty of violating Rule no. 3 (1) (i) and (ii) of CCS (Conduct) Rules 1964 as applicable to KVS employees.

Article No. III

That the said Sh. Dharmender Singh while functioning as PGT (Phy) at Kendriya Vidyalaya No. 2, Khetrinagar did not teach, during physics period, class XII for about one month during Aug, and Sept. 1991, It was complained by the students vide their application dated 20.9.91. In this regard a complaint was received from the parents also through the Chairman, VMC, Kendriya Vidyalaya No. 2, Khetrinagar. Thus the said Sh. Dharmender Singh is found guilty of violating CCS (Conduct) Rule 3 (1) (ii) and (iii) as applicable to KVS employees.

Article No. IV

That the said Sh. Dharmender Singh while functioning as PGT (Phy) at Kendriya Vidyalaya No. 2, Khetrinagar during the year 1991-92 has been found indulged in private tuition work on 20.8.91 contrary to the instructions issued by the KVS (Hqrs) from time to time and Education Code Article 55 (19). Sh. Dharmender Singh is therefore charged with private tuition work. Thus the said Sh. Dharmender Singh is guilty of violating the Education Code Article 55 (19) and Rule no. 3 (1) (ii) of CCS (Conduct) Rules 1964 as extended to KVS employees.

Article No. V

That the said Sh. Dharmender Singh while functioning as PGT (Physics) at Kendriya Vidyalaya No. 2, Khetrinagar has entered into second marriage with Sunita on 5.5.92 without getting divorce from his first wife Smt. Sarita Rani with whom he entered into his first marriage on 21.2.85 and the same was agreed by him. Thus the said Sh. Dharmender Singh violated Rule 2 of Rule 21 of CCS (Conduct) Rules 1964 as extended to KVS employees, wherein it is clearly stated that "No Govt. servant having a spouse living shall enter into or contract a marriage with any person" As such the said Sh. Dharmender Singh is guilty of violating Rule no. 3 (1) (ii) and (iii) and sub rule 2 of rule 21 of CCS (conduct) Rule 1964 as extended to KVS employees."

On the basis of the Memorandum of Charge as detailed above, no action whatsoever was undertaken till 1999 and a memorandum dated 17.02.1999 was served upon the respondent to hold an enquiry against him under Rule 14 of CCS (CCA) Rules, 1965. The respondent further contended that the memorandum dated 17.02.1999 could not have been issued on identical or somewhat similar charges. The respondent further submitted that he did not admit that he had married illegally for the second time and referred to Rule 14 (5) (a) of CCS (CCA)

Rules, 1965 that an admission must be unequivocal and unconditional and an admission or apology must be after the charge-sheet. Even, if it is assumed for the sake of arguments that he admitted his second marriage, the same was in the year 1992 and much before the charge-sheet was issued.

15. The respondent further submitted that the principles of natural justice were not followed and he was neither allowed to cross-examine the witnesses of the petitioner nor permitted to take the help from the defence assistance.

16. To substantiate his arguments with respect to attracting judicial interference respondent relied on Jagdish Saxena v. M.P., reported at AIR 1961 SC 1070. He has also drawn the attention of the Court to various paragraphs of the impugned judgment dated 30.08.2013 rendered by the Tribunal wherein the issue with regard to the second marriage has been considered.

17. We heard the learned counsel for the petitioner and the respondent in person and considered their submissions made before us and also carefully examined the impugned order of the Tribunal.

18. The Tribunal while disposing of O.A. No. 4079/2010 on 30.08.2013 gave certain directions to the petitioner as contained in para 45 and 46 of the order summarised below:

45. That the Inquiry Officer, the Disciplinary Authority and the Appellate Authority have failed to perform their quasi-judicial functions in accordance with the principles of natural justice and set aside the Enquiry Officer's report dated 19.07.1999, Disciplinary Authority's order dated 13.09.2010 and Appellate Authority's order dated 04.11.2010 and allowed the O.A. of the respondent.

46. That the respondent shall be deemed to have been reinstated in service from the date he was dismissed from service and shall be deemed to have retired from service on the due date with all terminal benefits as admissible under the Rules.

19. Returning to the facts of the present case, it would be necessary to peruse the various principles such as if the finding of the enquiry officer was based on no evidence or was perverse then judicial interference by the Court would be attracted. The object of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, or result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity.

20. The principle, as laid down by the Hon"ble Supreme Court in Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and Anr. (2007) II LLJ 724 SC, can be reproduced as under:

"29. Normally, when disciplinary proceedings have been initiated and finding of

fact has been recorded in such inquiry, cannot be interfered with unless such finding is based on "no evidence" or is perverse, or is such that no reasonable man in the circumstances of the case would have reached such finding...."

21. In *Union of India and Others v. Gunasekaran*, reported at 2015 2 SCC 610, the Hon"ble Supreme Court observed that the findings of the Enquiry Officer should not be easily disturbed unless the findings are perverse and against the principles of natural justice. The relevant para 18 reads as under:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

22. The question therefore is whether the Tribunal is justified in setting aside the orders dated 13.05.2009, 11.08.2009, 13.09.2010 and 04.11.2010 of the Enquiry Officer, Disciplinary Authority and Appellate Authority respectively on the ground that the authorities have violated the principles of natural justice.

Issuance of Second charge-sheet on 17.02.1999 without withdrawal/cancellation of the charge-sheet dated 24.04.1994

23. It is a matter of record that in the present case the respondent was initially issued a charge-sheet on 24.04.1994 and without withdrawal/cancellation of this charge-sheet after a period of five years another charge-sheet dated 17.02.1999 was issued.

It is a settled principle of law that whenever an earlier charge sheet is dropped and a fresh charge-sheet is issued the new memo containing the fresh charges should record the reasons for cancellation of the original charge-sheet. The instructions to this effect are contained in DG, PandT letter No.114/324/78-Disc. II dated 05.07.1979. The Disciplinary Authorities would be debarred from initiating fresh proceedings against the Delinquent Officer unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. Thus, it is clear that as per the said instructions the Disciplinary Authorities cannot initiate fresh proceedings against the delinquent officer unless the reasons for cancellation of the original charge-sheet under Rule 14 or Rule 16 of the CCS (CCA) Rules, 1965 are appropriately

mentioned.

24. In the present case, though a charge memo was issued to the delinquent officer for the second time on 17.02.1999 however there was no explanation how the Articles No. 1 to IV contained in first memo dated 24.04.1994 were dealt with.

Marriage of the respondent

25. In connection with the second marriage the respondent explained in his letter dated 28.11.1992 that he married Sarita (first wife) D/o Shri S.P. Singh of Village Mahamdpur (U.P.) on 21.02.1985 as per social customs but she left the matrimonial home after four days of the marriage and thus the contract of marriage was rescinded by Sarita as per their social custom and since then she started living separately. Despite efforts and intervention of the family members no settlement could be arrived at and the contract of marriage came to an end as per the social customs.

26. The Tribunal while disposing of the O.A. 4079/2010 of the respondent quashed the order of the Enquiry Officer, Disciplinary Authority and the Appellate Authority and found that the respondent was not guilty of bigamy as no Government servant having a spouse living could enter into or contract, a marriage with other person except when the Government servant may be permitted to such marriage under the personal law applicable. It would be necessary to refer to Rule 21 (2) of the CCS (Conduct) Rules, 1964 which deals with restriction regarding marriage on Government servants and the same is recapitulated as under:

"21. Restriction regarding Marriage:

1) No Government servant 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 Central 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,-

(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."

According to the proviso to sub-rules (1) and (2) of Rule 21, Central Government may permit a Government servant to enter into, or contract any marriage with a person having a spouse living or a marriage with any person while his/her spouse living, if it is satisfied that (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 doing so.

27. The Hindu Marriage Act, 1955 Section 3 (a) reads as under:-

(a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family;

Provided that the rule is certain and not unreasonable or opposed to Public Policy; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

28. The plea of the respondent was that he entered into the second marriage under the cursory rights available to him as it was permissible and his case is squarely covered under the aforesaid Rule and he had not violated any Conduct Rules. The contention of the respondent further is that the Enquiry Officer had concluded that the respondent himself accepted having entered into second marriage illegally. Then, according to sub-rule (5) (a) of Rule 14 of the CCS (CCA) Rules, 1965 which reads as under:

"5(a) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an Inquiring Authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15."

The Disciplinary Authority was required to record its findings and impose appropriate punishment but to the contrary the respondent was informed that "an enquiry will be held only in respect of those articles of charge as are not admitted". In that case, the authorities were clear that there is no admission and that holding of an enquiry was necessary to find out the second marriage of the respondent. During the enquiry proceedings the petitioner failed to summon Smt. Sarita (first wife of the respondent) as a witness in the disciplinary proceedings against the respondent is contrary to the principles laid down by the Apex Court in the case of *Ministry of Finance v. S.B. Ramesh* AIR 1998 SC 853. The concerned authorities failed to summon SSP, Aligarh but took into consideration his report dated 25.09.1992. If a letter or other document is produced to establish some fact which is relevant to the enquiry, the writer must be produced or his affidavit in respect thereof be filed and opportunity be afforded to the opposite party who challenges that fact. Such a procedure is in violation of the principles laid down by the Apex Court in *Bareilly Electricity Supply Co. Ltd. v. The Workmen and Others* AIR 1972 SC 330 wherein, it has been held that when a document is produced in a Court or Tribunal, the question that naturally arises is whether it is a genuine document or not? What are its

contents and are the statements contained therein are true? But, in the present case, no effort was made by the authorities in this direction.

29. Plural marriage has nothing to do with the disobedience, neglect of duty or remissness in the discharge of duty. In *Subodh Kumar v. The Union of India and Ors.* reported in 2002 (3) BLJR 2300 the Patna High Court dealt with the similar issue and held as under:

"The question then arises is as to whether even if the charge against the petitioner is held to be proved, the punishment of dismissal could be justified. Ordinarily, this Court does not interfere with the quantum or nature of punishment which falls within the realm of power of the disciplinary authority. The Supreme Court, however, held that even though the High Court cannot interfere with the nature or quantum of punishment, in an appropriate case where the punishment awarded to a delinquent is found to be harsh, excessive or disproportionate, it may direct the disciplinary authority to reconsider the same. The act of committing plural marriage would undoubtedly attract the mischief of Rule 15 of the CRPF Rules and for that purpose, taking recourse to CCS (Conduct) Rules may not be necessary. It is well-settled that special provisions are applicable to the exclusion of general provisions and since specific provisions have been made with respect to the members of the Force governed by the CRPF Act it may not be necessary to travel beyond. The question is whether the act of committing plural marriage should invite the extreme punishment of dismissal. Rule 15 occurs in Chapter III of the CRPF Rules titled Composition of the Force. It contains provisions, relating to, inter alia, recruitment. In that context it is provided that no member of the Force having a wife living shall contract any other marriage without prior permission of the Government. The provisions relating to discipline and punishments are contained in another chapter, namely Chapter VI titled "Disciplined. Though, thus, the act of contracting plural marriage may undoubtedly be violative of the statutory provisions pertaining to conduct of the person concerned, it may have no connection with the acts of "disobedience, neglect of duty, or remissness in discharge of any duty and/or other misconduct in his capacity as a member of the Force" in context of Section 11(1) of the CRPF Act. Clearly, plural marriage has nothing to do with the disobedience, neglect of duty or remissness in the discharge of duty. The words "other misconduct" also have to be understood ejusdem generis as having some nexus with the official duties. It is also evident from the words following "in his capacity as a member of the Force"

30. Keeping in mind the entire material on record it is evident that the charge of second marriage was re-issued to the respondent with an intention of harassing him. The mala fide of the authorities is writ large from their actions that they selectively resurrected the charge of second marriage and ignored the other charges and denied the respondent his valuable right to cross examine the witnesses and to establish the veracity of his case.

31. Unauthorized Absence The petitioner charged the respondent with that of

unauthorized absence from 21.11.1997. Few facts need to be mentioned to decide the above aspect. The respondent joined K.V. No. 2 at Amritsar on 19.07.1996 but soon after his joining problems arose as the principal did not allow him to work and he made a number of representations. On 02.12.1996 he was asked to join the K.V. No. 2 at Amritsar and the respondent reported for duty on 12.12.1996. A memo dated 31.01.1997 was issued to him for refusing to take the charge of Physics lab. Disciplinary action was taken against him under Rule 11(8) CCS CCA Rules of 1965 and the principal also stopped his salary. The respondent wrote to the Assistant Commissioner of K.V.S., Jammu to intervene and not to allow the principal to stop his salary. After the respondent approached the Assistant Commissioner of K.V.S., Jammu a memorandum dated 18.02.1997 was issued asking him to explain the reason for making the said representation directly to the Assistant Commissioner. The respondent explained that since the complaint was against the Principal the representation was made by him directly to the senior authorities. The respondent in his letter dated 25.02.1997 claimed his salary w.e.f. 02.03.1996 to 11.12.1996, inclusion of increment and reimbursement of medical bills etc. Since the representations made by the respondent failed to yield results he filed a writ petition in the High Court of Delhi wherein an interim order dated 10.12.1997 was passed directing the petitioner to pay subsistence allowance to the respondent as admissible under the Rules.

32. The petitioner instead of complying with the aforesaid orders, served the respondent with a memorandum dated 17.02.1999 proposing to hold an enquiry against him under Rule 14 or Rule 16 of the CCS (CCA) Rules, 1965. Moreso, the petitioner raised the plea of unauthorized absence after more than a year and initiated departmental proceedings against him with a mala fide intention without following the prescribed procedure which is an illegal order passed by the Disciplinary Committee and does not assume character of the legality only because it has been affirmed in the appeal .

It is pertinent to mention here that the writ jurisdiction has always been exercised to further the ends of justice. Writs have been described as speedy remedies provided by the Constitution.

Having said so, we are of the considered view that after applying the law as laid down in State of Maharashtra v. Digambar (1995) 4 SCC 683 wherein, the Hon'ble Supreme Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the Court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

33. So far as grant of back wages is concerned, it depends upon case to case.

The issue of payment of back wages on reinstatement of a workman has been discussed by this court in LPA No. 24/2013 titled "Delhi Transport Corporation v. Sarjeevan Kumar" decided on 21st January, 2013, the legal proposition in this regard was enunciated as under:-

"(i). Payment of full back wages is not automatic on Labour Court/Tribunal granting reinstatement of workman.

(ii). The same principle is equally applicable in case an order of dismissal is set aside by the Labour Court/Tribunal on the ground of non-compliance of Section 25F of the I.D. Act.

(iii). The Labour Court/Tribunal shall give reasons for determining the specified quantum of back wages.

(iv). The burden is on the workman to show that he is entitled to full back wages or to a reasonable back wages and he is not gainfully employed during the period he was not in service of the management.

(v). Once materials are placed by workman on the above, the burden shifts on to the Management to disprove such claim.

(vi). In the event, the Labour Court/Tribunal fails to give any reason to quantify back wages, the High Court can go into the said issue and decide on quantum."

34. In Writ Petition No.966 of 1995 titled Vijay D Wani v. The Cantonment Executive Officer Cantonment Board and ors., the Bombay High Court has granted 50% back wages to the delinquent employee which was upheld by the Hon"ble Supreme Court in Cantonment Executive Officer and Anr. v. Vijay D. Wani and Ors. reported in AIR 2008 SC 2953 relevant para 9 and 10 are recapitulated as under:

"9. So far as grant of back wages is concerned, it depends upon case to case. But in the present case as the respondent was found guilty by the Cantonment Board but the order of Cantonment Board was set aside because it suffered from bias and it will be unfair to deny 50% back wages to the respondent (herein). The Division Bench also directed that more than 13 years have passed, therefore, it did not permit the respondent to proceed against the petition afresh. The Division Bench decided the matter on 10th January, 2005 and now more than 16 years have lapsed. Therefore, it would not be fair to permit the respondent to proceed afresh in the matter. Consequently, we do not find any merit in this appeal and the same is dismissed.

10. The respondent be reinstated with the benefit of 50% back wages and continuity of service."

35. On a careful perusal of the findings of the Tribunal in the light of the material placed before us, we do not think that there is any case for interference. The Tribunal was therefore, justified in setting aside the impugned Enquiry Officer's report dated 13.05.2009, Disciplinary Authority's order dated 11.8.2009 and the

Appellate Authority"s order dated 13.9.2010 and 4.11.2010 holding as under:-

"We in the above facts, circumstances and the settled law in the matter, allow this OA and set aside the impugned Enquiry Officers report dated 13.05.2009, Disciplinary Authority"s order dated 11.08.2009 and the Appellate Authority"s order 13.09.2010 and 04.11.2010. Since the applicant has already attained the age of superannuation, during the pendency of this OA before this Tribunal, he shall be deemed to have been reinstated in service from the date he was dismissed from service. Further, he shall also be deemed to have retired from service on the due date with all terminal benefits as admissible under the rules. As far as the pay and allowances for the period between his date of dismissal and date of superannuation is concerned, the competent authority shall take appropriate decision in accordance with the rules. The aforesaid directions shall be complied with, within a period of two months from the date of receipt of a copy of this order and appropriate order shall be issued under intimation to the applicant."

36. In view of the above settled position of law as well as circumstance of the present case, we find no infirmity in the Order dated 30.08.2013 passed by the Tribunal. We further direct to grant 50% back wages to the respondent from the date of dismissal to the date of superannuation. The writ petition is without any merit and the same is dismissed. No order as to costs.