

(2014) 01 GUJ CK 0026

In the Gujarat High Court

Case No : Letters Patent Appeal No. 976 of 2012 in Special Civil Application No. 15731 of 2011

Daxaben Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Constitution of India, 1950 — Article 104, 105, 19(2), 21, 32
Medical Termination of Pregnancy Act, 1971 — Section 3

Citation : (2014) 3 GLH 14

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Harshal N. Pandya, Advocate for the Appellant; Jaimin Gandhi, AGP, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—A woman employee's right to privacy and the State's inquisitiveness to inquire into her personal affairs are pitted against each other in this appeal. This appeal involves an interesting question which needs to be dealt with a degree of sensitivity. The appellant original petitioner has challenged judgment of the learned Single Judge dated 25th June 2012 in Special Civil Application No. 15731 of 2011 by which her writ petition came to be dismissed.

2. The appeal arises in the following background:-

2.1 The petitioner was married to one Pravinbhai D. Patel, who was a Government servant. He died while in service. The petitioner was given compassionate appointment to the post of Junior Clerk. The petitioner resumed duty on 5th September 1998. She was posted in the District Treasury Office at Himatnagar. In the year 2002, she was transferred to Gandhinagar in the office of Director of Pension and Provident Fund where she continues to work even at

present.

2.2 In the year 2002, the petitioner applied for maternity leave which was granted to her by the competent Authority for the period between 11th November 2002 to 25th March 2003. On 12th December 2002, the petitioner gave birth to a boy child. After completion of the leave period, the petitioner resumed her duty.

2.3 The petitioner as the widow of a Government servant was receiving family pension. As per the rules, if she had remarried, such family pension would be discontinued. In the year 2004, the State Authorities sought information from the petitioner with respect to her family and in particular whether she had got remarried. This was presumably on the premise that since the petitioner had given birth to a child, she would have entered into another marriage. The petitioner represented to the state Authorities under communication dated 25th January 2005 and pointed out that she had not remarried. Merely because she has given birth to a child would not mean that she had got married. She also took a firm stand that the fact that she gave birth to a child and who the child's father was, the office should have no concern with. The State Authorities had in the meantime, discontinued the petitioner's Family Pension without any hearing. After the representation of the petitioner, there was no further action by the respondents. Even the petitioner did not pursue the case of discontinuation of family pension for the reasons best known to her.

2.4 It is the case of the petitioner that she got married to one Hemant Raval on 8th January 2006. As per the petitioner, said Shri Hemant Raval who was previously married had obtained a decree of divorce from the competent Court on 15th December 2005 and later the appeal filed by the previous wife of Hemant Raval also came to be withdrawn in the year 2007.

2.5 Many years later, the Director of Accounts and Treasury issued the impugned chargesheet dated 19th November 2010 calling upon the petitioner to show cause why major penalty should not be imposed on her. The only charge was that while in Government service, she gave birth to a child without entering into marriage and had thereby committed an act which was unbecoming of a Government servant and which also amounted to morale turpitude. She had, therefore committed misconduct as defined under Rule 3[1](3) of the Gujarat Civil Services (Conduct) Rules, 1971 [hereinafter referred to as, "the Conduct Rules"]. It was, therefore, decided to proceed against her in terms of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 [hereinafter referred to as, "the Discipline & Appeal Rules"].

2.6 In the imputation of charges, the allegations were elaborated in which it was stated that while in Government service, the petitioner had proceeded on maternity leave and gave birth to a child on 12th December 2002 and when explanation was called for from her about her remarriage, she represented that she has not entered into any such marriage. Thus, she having obtained

employment on compassionate grounds, upon death of her husband, by giving birth to a child without getting married has acted in a manner which was unbecoming of a Government servant and which amounted to an act of moral turpitude, and therefore, she has committed misconduct as defined in the Conduct Rules.

2.7 The petitioner replied to the chargesheet under her communication dated 15th December 2010 and denied the charges. She admitted that she had given birth to a child and at that time she was not married. She contended that by doing so, she had not committed any crime nor her action can be stated to be one of misconduct or of moral turpitude. She, therefore, had not breached any Conduct Rules. She contended that her giving birth to a child had no connection with her duty. She further contended that after the death of her husband, she had got engaged but could not enter into marriage due to certain circumstances. During which time, she learnt that she had become pregnant. Her only choice, therefore, was to terminate the pregnancy which was not acceptable to her. She never considered giving birth to a child an act of moral turpitude or else she could have proceeded on leave other than maternity leave. She asserted that giving birth to a child even without marriage amounts to no misconduct.

2.8 Undeterred by such reply, the disciplinary Authority decided to continue with the departmental proceeding. The disciplinary Authority, therefore, appointed an Inquiry Officer to conduct the inquiry by an order dated 17th September 2011 and asked the Inquiry Officer to submit report within three months. At this stage, the petitioner approached this Court and prayed for quashing the chargesheet. Under judgment dated 25th June 2012, the learned Single Judge rejected the petition. The learned Single Judge recorded that the petitioner gave birth to a child without marriage, which act was not permissible under the Hindu Marriage Act and was also an offence under the Indian Penal Code. It was, therefore, concluded that it cannot be said that the departmental proceedings were initiated without any basis. It is this judgment of the learned Single Judge which is challenged before us by the appellant petitioner.

3. Learned Advocate Ms. Harshal Pandya for the appellant submitted that the action of the petitioner would not constitute misconduct. The disciplinary Authority, therefore, issued a chargesheet without any basis. The learned Single Judge, therefore, committed an error in rejecting the petition.

4. On the other hand, learned AGP Shri Gandhi submitted that the departmental inquiry is still pending. The petition was therefore filed at a premature stage. The department must be permitted to complete the inquiry as per the Rules.

5. It is true that ordinarily the Court in exercise of writ jurisdiction would not interfere with the departmental proceedings, even before they are completed. However, when it is shown that the inquiry is initiated without any Authority of law, or on totally baseless grounds, surely, the discretionary exercise of writ of the High Court would not be barred. In case of *The Secretary, Min. of Defence*

and Others Vs. Prabhash Chandra Mirdha, , the Supreme Court even while observing that the law does not permit quashing of chargesheet in a routine manner, and that ordinarily, a writ petition does not lie against a chargesheet, observed that it does not give rise to any cause of action nor does it amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction to do so.

5.1 In the present case, therefore, our inquiry is whether the disciplinary Authority could have initiated the departmental proceedings on the allegations contained in the chargesheet. If the allegations, even if taken on the face value do not constitute any misconduct, surely, the disciplinary Authority cannot be said to have jurisdiction to issue a chargesheet on the basis of such allegations. We would, therefore, proceed on the basis that the allegations against the petitioner made in the chargesheet are true. Even otherwise, the allegations are brief and are not controverted. They are - that the petitioner on 12th December 2002 gave birth to a child when she had not yet remarried, after the death of her husband. The disciplinary Authority, therefore, contended that this amounts to an act of misconduct on her part since, according to the chargesheet, giving birth to a child when unmarried, is unbecoming of a Government servant and amounts to an act of moral turpitude. In the imputation of the charge, additional element of the petitioner having obtained Government service on compassionate ground as a dependent of the deceased Government servant is brought in.

6. Thus undisputed fact is that after the death of her husband, the petitioner gave birth to a child. She pointed out that for sometime, she was engaged but such engagement could not be culminated into a marriage, during which period, she got pregnant. She did not want to abort the foetus and instead gave birth to a child. Later on, she did get married to the father of the child, once he got a divorce by a decree of the competent Court. We are informed that the wife's appeal against such divorce decree was also ultimately withdrawn. Be that as it may, the question is did the action of the petitioner amount to misconduct?

7. The Disciplinary and Appeal Rules provide for complete mechanism for conduct of departmental proceedings against the Government servants who are alleged to have committed misconduct. The Rules also provide for major and minor penalties, which may be imposed on a Government servant once the charges are proved. The concept of misconduct is, however, elaborated in the Conduct Rules. Rule 3 thereof reads thus

"3 (1) Every Government servant shall at all times

(i) maintain absolute integrity;

(ii) maintain devotion to duty, and

(iii) do nothing which is unbecoming of a Government servant."

8. Rule 3A of the Conduct Rules prescribes number of dos and don'ts for a Government servant to follow and in breach whereof, may amount to misconduct.

8.1 We are not concerned with any of these rules and the answer to the question must come from the interpretation of Rule 3 of the Conduct Rules. It can thus be seen that the term misconduct has not been defined. It perhaps is not possible of a precise definition. The stand of the Government is that the action of the petitioner was unbecoming of a Government servant and was also an act of moral turpitude. There may be many actions amounting to unbecoming of a Government servant. The expression is wide enough to cover a range of activities. Act of moral turpitude would certainly be one spice of this larger category. Nevertheless, the action must come within this expression of unbecoming of a Government servant in order to hold that the petitioner had mis-conducted herself. The other two clauses of sub-rule (1) of Rule 3 i.e., the requirement of maintaining absolute integrity and devotion to duty would for obvious reasons have no application.

8.2 For the reasons elaborated hereinafter, we do not find any basis to hold that the action of the petitioner amounts to either one of moral turpitude or in any other manner, an act of unbecoming of a Government servant.

9. The petitioner was a Junior Clerk. Her only fault; if at all was of giving birth to a child without remarriage. Contrary to what was recorded by the learned Single Judge neither the Hindu Marriage Act prohibits such act, nor the Indian Penal Code prescribes any punishment for the same. There is no law which prohibits an unmarried women from giving birth to a child. Merely because the petitioner happened to be a Government servant, no different yardstick would apply. It is true that many acts and omissions which are not necessarily criminal in nature may amount to acts unbecoming of a Government servant. There may also be cases where action may not constitute an offence, nevertheless, be one of moral turpitude. We neither can nor mean to generalize and enlist all such actions. We can only suggest that the consideration whether a particular action was one of unbecoming of a Government servant or was one of moral turpitude, cannot be judged in isolation and must be judged on the basis of the position of a Government servant, the nature of her responsibilities and duties as a Government servant and the act alleged.

9.1 In case of Prabhatsinh Samatsinh Vs. D.S.P and Another, , Division Bench of this Court observed as under:--

"23. From the above decisions, it can be seen that the concept of "unbecoming of a Government servant" is sufficiently wide so as to cover variety of actions of an employee. It is not possible to lay down any rigid principles nor is it possible to enumerate exhaustively all such actions which would be covered under the said expression. It must depend on the facts and circumstances of each case particularly nature of allegations and duties being performed by the employee. However, no proposition of universal application can be laid down that every act of an employee in his private life must be excluded from the expression "misconduct". It must be judged on facts of each case."

9.2 In case of M.M. Malhotra Vs. Union of India (UOI) and Others, , the Supreme Court observed that the word "misconduct" is not capable of precise definition and it must receive its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.

9.3 In case of Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Others, , the Apex Court explained the term "misconduct" as under:--

"9. Before advertting to the question involved in the matter, we may see what the term "misconduct" means.

10. In State of Punjab and Others Vs. Ram Singh Ex. Constable, , it was stated:-

"5. Misconduct has been defined in Black's Law Dictionary, 6th Edn. At p. 999, thus:-

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness".

Misconduct in office has been defined as:--

"Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act".

11. In P. Ramanatha Aiyar's Law Lexicon, 3rd Edn., at pg. 3027, the term "misconduct" has been defined as under:-

"The term "misconduct" implies a wrongful intention, and not a mere error of judgment.

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Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word "misconduct" is a relative term and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. "Misconduct" liberally means wrong conduct or improper conduct."

9.4 In case of Union of India (UOI) and Others Vs. J. Ahmed, , the Supreme Court considered what could be stated to be misconduct in the context of Rule 3 of the All India Services [Conduct] Rules which provides that every member of

the service shall at all times maintain absolute integrity and devotion to duty and Rules 4 to 18 which prescribe code of conduct for members of the service. It was observed that, "...The inhibitions in the Conduct Rules clearly provides that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Allegations in the various charges do not specify any act or omission in derogation of or contrary to Conduct Rules save the general Rule 3 prescribing devotion of duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings."

9.5 In case of *W.M. Agnani v. Badri Das & Ors.*, reported in (1963) 1 LLJ 684, the Supreme Court considered whether a private dispute by an employee outside the work-place can be categorized as misconduct. It was observed that it would be difficult to lay down any general rule to consider what would constitute misconduct. It was further observed that, "... acts which are subversive of discipline amongst the employees would constitute misconduct; rowdy conduct in the course of working hours would constitute misconduct; misbehavior committed even outside working hours but within the precincts of the concern and directed towards the employees of the said concern, may, in some cases, constitute misconduct; if the conduct proved against the employees is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. It may, however, be relevant to observe that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees" conduct in relation to strangers not employed in his concern by the use of the coercive process of disciplinary jurisdiction. As we have already observed, it is not possible and we do not propose to lay down any general rule in that behalf. When standing orders are framed, there is no difficulty because they define misconduct. In the absence of standing orders, the question will have to be dealt with reasonably and in accordance with common sense."

9.6 However, in case of *Daya Shankar Vs. High Court of Allahabad and Others through Registrar and Others*, , the Supreme Court considered a situation where a judicial officer was found guilty of using unfair means in the University examination. In such context, it was observed that, "the judicial officers cannot have two standards one in the Court and another outside the Court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. A Judicial Officer, who has been found guilty of using unfair means in the L.L.M. examination, is undoubtedly not a fit person to be retained in judicial service."

9.7 In case of *Government of Tamil Nadu and Others Vs. Badrinath and Others*, , the Supreme Court considered a situation where an employee holding the post of Commissioner of Archives & Historical; Research gave speech at a function organized by a College. Apparently, in the speech, he criticized certain time capsule buried in the precincts of the Red Fort describing it neither historic nor fiction. The Supreme Court held that the speech delivered by him on the occasion could not be treated to be an official act of his.

9.8 In case of *State of Punjab and Others Vs. Ram Singh Ex. Constable*, , the Supreme Court observed that, "... Thus, it could be seen that the word "misconduct" though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behavior; unlawful behavior, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."

9.9 In the facts of the case, when a police constable was found drinking heavy alcohol on duty and became uncontrollable, while on duty, even once amounts to misconduct of gravest nature.

10. Reverting back to the facts of the case, by no stretch of imagination, can it be stated that the act of the petitioner of giving birth to a child had any relation to her duty, particularly looking to her position of a Junior Clerk. By no stretch of imagination, such act can be stated to be one of "unbecoming of a Government servant". Giving birth to a child when a woman is unmarried may be unacceptable to many people in the society. We are, however, not judging her conduct on the basis of societal morals. We are only called upon to decide whether the act can be categorized as one of moral turpitude. Even though the society still puts great value on the family ties and the institution of marriage, the option of a woman to be a single mother is neither taken away by the law or by the Constitution.

11. The question can be seen from a slightly different angle. No law prohibits romantic relations between two adult members of opposite sex nor does the law prohibit physical relationship between two consenting members merely because they are not married to each other. If in the process, the woman conceives, does the law require her to abort the foetus? The Medical Termination of Pregnancy Act, 1971 prescribes specific grounds on which pregnancy may be terminated by a registered medical practitioners. Sub-Section (1) of Section 3 provides that notwithstanding anything contained in the Indian Penal Code, a registered medical practitioner shall not be guilty of any offence under the said Code or any other law for the time being in force, if any pregnancy is terminated by him in

accordance with the provisions of the Act. Sub-Section (2) of Section 3 provides that a pregnancy may be terminated by a medical practitioner, if the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Thus, a pregnancy can be terminated only on the grounds mentioned above. The ground that the conceiving mother was unmarried is not a valid ground on which the pregnancy can be terminated. In fact, under certain circumstances, causing miscarriage is a punishable offence under the Indian Penal Code.

12. When the act of the petitioner of giving birth to a child even though herself not being married has no relation whatsoever with the discharge of the duty of a post of Junior Clerk that she was holding, in our opinion, such act cannot constitute any misconduct against her. If a lady Government servant giving birth to a child without marriage constitutes misconduct, we wonder what would be the position of the father of the child !! Interestingly, in the present case itself, the father of the child also happens to be a Government servant. Learned Counsel Ms. Pandya pointed out from the record that the father of the child was questioned under communication dated 20th January 2006. He replied to such communication on 21st March 2006. He pointed out that he was married to one Gauriben in the year 1990, who had left matrimonial home in the year 1993 and never returned. He subsequently also obtained a decree of dissolution of marriage. Interestingly, no further action was initiated against him by the Department.

13. Yet another and vital aspect that needs reference here is of right of privacy under the Indian Constitution. Article 21 which pertains to right to life and liberty law would also include right to privacy. Any right of privacy must encompass and protect the personal intimacies of the home, the family, marriage, procreation, motherhood and child bearing.

13.1 The Apex Court in case of Gobind Vs. State of Madhya Pradesh and Another, , while discussing the right to privacy in relation to right to liberty under Article 21, discussed the same at length by holding that the right to privacy will necessarily need to go through a process of case by case development. The Court made reference to various decisions of United States Supreme Court and also of articles of the European Convention on Human Rights which recognizes the right to respect for a person's private and family life, his home and his correspondence and observed as under:--

"22. There can be no doubt that privacy dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that acclaimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling state interest test. Then the question would be whether a state

interest is of such paramount importance as would justify an infringement of the right. Obviously, if the enforcement of morality were held to be a compelling as well as a permissible state interest, the characterization of a claimed rights as a fundamental privacy right would be of far less significance. The question whether enforcement of morality is a interest sufficient to justify the infringement of a fundamental right need not be considered for the purpose of this case and therefore we refuse to enter the controversial thicket whether enforcement of morality is a function of state.

23. Individual autonomy, perhaps the central concern of any system of limited Government, is protected in part under our Constitution by explicit constitutional guarantees. "In the application of the Constitution our contemplation cannot only be of what has been but what may be." Time works changes and brings into existence new condition Subtler and far reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet. Yes too broad a, definition of privacy raises serious questions about this propriety of judicial reliance on a right that is not explicit in the Constitution of course, privacy primarily concerns the individuals. I therefore relates to and overlaps with the concept of liberty. The most serious Advocate of privacy must confess that there are. Serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other right and values.

24. Any right to privacy must encompass and protect the personal intimacies of the home, the family marriage, motherhood, procreation and child rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of that distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty."

13.2 In case of Distt. Registrar and Collector, Hyderabad and Another Vs. Canara Bank Etc., , the Apex Court held and observed as under :-

"18. The right to privacy and the power of the State to "search and seize" have been the subject of debate in almost every democratic country where fundamental freedoms are guaranteed. History takes us back to Semayne's case, 77 ER 194 (B) decided in 1603 where it was laid down that "Every man's house is his castle." One of the most forceful expressions of the above maxim was that of William Pitt in the British Parliament in 1763. He said:--

"The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter, the rain may enter but the kind of England cannot enter all his force dare not cross the threshold of the ruined tenement."

13.3 The Apex Court in case of R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, , was dealing with a case where publication of a

life story or biography of a citizen exposing misdeeds of some public officials was challenged. The autobiography of the convict depicted the close nexus between the prisoner and several highly placed officers. The petitioner chose to commence serial publication of the autobiography and announced the same in the magazine. When the petitioner was asked by the Inspector General of Prisons to immediately stop publishing the same, the petitioner filed a writ petition under Article 32, where the Apex Court examined the question of right to privacy vis-a-vis freedom guaranteed under Article 21 before the Apex Court challenging the letter and asserting the freedom of press. The broad principles evolved and laid down in the said decision needs apt reproduction here:--

"26. We may now summarize the broad principles flowing from the above discussion:--

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency Article 19(2) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in

matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of Court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local Authority and other organs and institutions exercising Governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media."

13.4 A reference to Black's Law Dictionary, at this stage, is necessary where the right of privacy means, "the right to personal autonomy". It is noted that the U.S. Constitution does not explicitly provide for a right of privacy or for a general right of personal autonomy, but the Supreme Court has repeatedly ruled that a right of personal autonomy is implied in the "zones of privacy" created by specific constitutional guarantees." [2] "The right of a person and the person's property to be free from unwarranted public scrutiny or exposure."

14. Examining this very issue from yet another angle, if we permit the inquiry, sustaining the version of the respondent State that becoming the mother by a single woman without marriage is to be termed "either misconduct or moral turpitude", we would miss yet another vital aspect. We cannot be oblivious of the scientific advancements in the medical field which has revolutionized the traditional manner of child bearing. A woman can choose to become mother without sexual intercourse with another man. She can also lend her womb to become surrogate mother to help another woman, who herself cannot for medical reasons or otherwise become a mother. The law on surrogacy also does not insist that only a married woman can become a surrogate mother. The surrogate mother is commissioned to bear a child by a married couple unable to have child themselves. Surrogate is a latin word for subrogate which means, "appointed to act in place of. Neither the question of surrogacy nor of becoming mother from the sperms of fridged in the sperm Bank is an issue in the instant case. It was only to test the right of privacy which not only law recognizes but which has been expanded by various judicial pronouncements that the discussion above was found warranted. Additionally, we also find that the fact of the petitioner having given birth to a child was known to the respondents. That she was not married was also known at least in the year 2005. In fact, it has come on the record that after conducting preliminary inquiry, through a conscious decision, the employer decided not to proceed further. It was only much later

when the first wife of Hemant Raval made representations to the Government that the chargesheet came to be issued in November 2010. Considering all these aspects, we see no reason to permit the respondents to proceed further with the departmental inquiry. The same is, therefore, quashed. Judgment of the learned Single Judge is reversed. Appeal is allowed and disposed of accordingly.