

(2005) 11 PAT CK 0033
In the Patna High Court
Case No : CWJC No. 13476 of 2004

Dinesh Kumar @ Dinesh Rai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-11-2005

Acts Referred:

Defence Service Army Regulations, 1987 — Regulation 333

Citation : (2006) 2 JCR 295 : (2006) 1 PLJR 508

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Ram Balak Mahto, for the Appellant; Arun Kumar Arun, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh, J.—There is no dispute that the petitioner was married to Ms. Sunita Devi. There is also no dispute that the marriage of the petitioner with Ms. Sunita Devi was dissolved by a decree of Court on 23rd June, 2000. Further there is no dispute that the petitioner married Ms. Sangita Devi. The only dispute is while the Army Authorities proceeded on the basis that said marriage was solemnized on 29.11.1998, i.e., when the marriage of the petitioner with Ms. Sunita Devi had not been dissolved by decree of Court, the petitioner is contending otherwise. This marriage of the petitioner with Ms. Sangita Devi has been treated by the Army Authorities as plural marriage of the petitioner and accordingly by an order passed on 27.1.04, the petitioner has been discharged from service. The petitioner contended that he married Ms. Sangita Devi subsequent to 23rd June, 2000, i.e., after obtaining the decree of divorce dissolving the marriage of the petitioner with Ms. Sunita Devi.

2. The Army Authorities are contending that on 17th July, 2000 the petitioner himself while furnishing a declaration certificate as regard his marriage with Ms. Sangita Devi held out to the authorities concerned that the said marriage was solemnized on 29.11.1998 and accordingly, the petitioner is bound by his own

declaration,

3. Two contentions have been raised by the learned Counsel for the petitioner. The first is that the marriage of the petitioner with Ms. Sunita Devi, as found on enquiry by the Army Authority, was void marriage as at the time of such marriage Ms. Sunita Devi was 16 years 5 months old. It was secondly contended that the declaration though had been signed by the petitioner, but the same was filled in by someone else and while the marriage of the petitioner with Ms. Sangita Devi was solemnized on 29th June, 2000 i.e., after the decree of divorce, the same by inadvertence, was recorded as 29.11.1998. It is true that while making an enquiry the Army Authority found that at the time when the petitioner got married to Ms. Sunita Devi, she was 16 years 5 months old, but the fact remains that the petitioner never contended that the said marriage was a void marriage. He proceeded on the basis and held out to the world at large that Ms. Sunita Devi is his married wife. The petitioner, therefore, approached the civil Court to obtain a decree for divorce against Ms. Sunita Devi not on the ground that the said marriage was a void marriage but on some other available ground. Inasmuch as status of the wife is acknowledged by the husband by his own representation to the world and the petitioner having represented to the world that Ms. Sunita Devi is his married wife, the petitioner is estopped by such representation from contending to the contrary even on the basis of any enquiry that may have been carried out by the authority of the Indian Army. It may be true that the handwritten portion of the declaration is not in the hand of the petitioner but the declaration was meant for declaring the marriage of the petitioner with Ms. Sangita Devi. The person who filled in could only be informed by the petitioner that the petitioner has married Ms. Sangita Devi. There is no dispute that in the declaration the correct name of the father of Ms. Sangita Devi has also been mentioned, which suggests that the petitioner himself supplied the said information. If these two informations were supplied by the petitioner, then, unless some thing contrary is shown, the presumption will be that the date of the marriage was also supplied by the petitioner himself. In a situation of this nature by reason of the said representation made, the petitioner is now estopped from contending that his marriage with Sangita Devi did not take place on 29.11.1998.

4. If the petitioner married Ms. Sangita Devi on 29.11.1998, the petitioner committed bigamy or plural marriage i.e., second marriage while the first marriage was subsisting. In terms of Army Regulation 333(c), a member of the force who has indulged in such marriage is liable to be discharged from his service. Learned Counsel for the petitioner submitted that having regard to the fact that the petitioner had a clean and unblemished record of service, as recorded in the impugned order, and it being also an accepted fact that the petitioner was separated from his wife Ms. Sunita Devi for a long period, as also recorded in the impugned order, the punishment of discharge from service should be converted into a lesser punishment. Regulation 333 of said Regulations do not prescribe a penalty for a plural marriage. It only prescribes a standard an Army man is required to maintain, as it provides that an Army man who indulges in

plural marriage has no place in the Army. Accordingly, there is no question of considering a lesser punishment. The writ petition fails and the same is dismissed.