

**(1999) 12 AP CK 0060**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 16964 of 1999**

Doddi App Rao (Dead) per LRs.

APPELLANT

Vs

General Manager, Telecom, Rajahmundry, East Godavari Dist.  
and another

RESPONDENT

**Date of Decision : 01-12-1999**

**Acts Referred:**

Central Civil Services (Conduct) Rules, 1964 — Rule 21(2)  
Constitution of India, 1950 — Article 226  
Hindu Marriage Act, 1955 — Section 29(2)

**Citation : (2000) 1 ALD 607 : (1999) 6 ALT 721 : (2000) 1 DMC 563**

**Hon'ble Judges : Ramesh Madhav Bapat, J**

**Bench : Single Bench**

**Advocate : Mr. Nooty Rama Mohana Rao, for the Appellant; Standing Counsel as Amicus Curaie, for the Respondent**

## Judgement

1. The first petitioner herein has invoked the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer as under :

"For the reasons stated and in the circumstances stated in the accompanying affidavit, the petitioners herein pray that this Hon'ble Court in the interests of justice be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari

(a) call for the records relating to and connected with the judgment dated 12-7-1999 in OA No.167 of 1998 on the file of Hon'ble Central Administrative Tribunal, Hyderabad, and quash or set aside the same;

(b) further declare that the order passed by the Appellate Authority No.TD/ EG/ Appeal/DAR/96/4, dated 10-2-1997 as bad in law and unsustainable;

(c) consequently direct the respondents to treat the petitioner as entitled to all benefits without any regard being it had to the proceedings dated 10-2-1997 of the appellate authority by granting all attendant benefits duly treating the period

of his absence from duty as period spent on duly and pass such other or further order or orders as are deemed fit and proper in the circumstances of the case."

2. The writ affidavit was filed by one Doddi Appa Rao, i.e., the 1st petitioner herein, with an averment that he was recruited as a Technician (Phones) on 31-3-1969. Subsequently he was promoted as a Technical Supervisor on 31-9-1981 and he was further promoted as a Senior Technical Supervisor on 1-7-1998.

3. It is the further case of the 1st petitioner that he was married to one Susesla alias Simhachalam on 26-3-1967 in accordance with caste, customs and traditions. It is the further case of the first petitioner that he was married even prior to joining the service with the Government of India. The marriage subsisted for more than two decades. Then Smt. Suseela developed certain set backs in health running her incompetent to continue the matrimonial relations. Therefore, after taking treatment when all attempts failed, the first petitioner divorced his wife according to the custom prevalent in that community on 30-7-1979. Thereafter, the first petitioner married after obtaining the divorce from the first wife with one Venkata Ramalakshmi on 10-10-1979.

4. Now it is the case of the first petitioner that the then District Manager, Rajahmundry has drawn a minimum charge stating that the first petitioner contracted the marriage for the second time without obtaining legal divorce from his first wife and has violated Rule 21(2) of CCS (Conduct) Rules, 1964. It is further pleaded that the first petitioner filed a detailed statement on 8-12-1992 denying the allegations levelled against him. An enquiry was conducted and the first petitioner was awarded punishment with compulsory retirement from service. Aggrieved by the said order, the first petitioner filed an application before the General Manager, Telecom District, Rajahmundry. The General Manager considered the entire matter and passed the order in his proceedings dated 10-12-1997 holding that the imposition of punishment of compulsory retirement against the first petitioner is unsustainable and consequently he set aside the same, but imposed punishment of pay by two stages with cumulative effect for a period of one year and ordered the period of his absence from the duties since the date of compulsory retirement till the resumption of duty as extraordinary leave without break in service. The first petitioner reported and joined service back on 1-12-1999. Aggrieved by the said order, the first petitioner filed OA No.167 of 1998 before the Central Administrative Tribunal, Hyderabad. The said OA, was disposed of on 12-7-1999 with an observation that :

"We find that even the reduced punishment meted out to the applicant appears to be harsh especially when the authorities had not acted in time. The punishment of the appellate authority will affect his pension and pensionary benefits. The department may take a lenient view if he submits a representation for further reduction of his punishment."

Aggrieved by the said order, the present writ petition has been filed.

5. We have learned the learned Counsel for the petitioners and also the learned Amiens Curiae appointed by this Court to help the Court.

6. It is brought to our notice that during the pendency of the writ petition, the writ petitioner named Doddi Appa Rao died and as per the order in WP MP No.30494 of 1999 his legal representatives were brought on record and the writ petition is now prosecuted by the legal representatives.

7. The point now arises for consideration as to whether the first petitioner was justified in marrying the second wife, secondly whether the 1st petitioner had obtained valid customary divorce from his first wife before he contracted the second marriage and whether the punishment imposed on the 1st petitioner is legal and valid ?

8. It is brought to our notice by the learned Counsel for the petitioners herein that when the departmental enquiry proceeded with, the 1st petitioner filed OS No.328 of 1997 before the Principal District Munsif at Kakinada for a declaration that the marriage of the plaintiff with the defendant (Suseela) was dissolved as per the caste, custom and usage on 30-7-1979 and the defendant is no longer the wife of the plaintiff.

9. It further appears from the record that the said OS, was allowed and the marriage of the first petitioner with Suseela was held to be validly dissolved on 30-7-1979. The learned Counsel Sri Nitty Rama Mohana Rao appearing on behalf of the petitioners submitted to the Bar that the first petitioner belonged to "Setti Balija" community and there is a practice prevalent in the said community to obtain divorce by customary rites. Accordingly, the first petitioner herein had obtained a customary divorce on 30-7-1979 and therefore his relation with his first wife Suseela came to an end and therefore she cannot be called as the spouse of the first petitioner after the marriage was dissolved.

10. The learned Counsel further brought to our notice that Rule 21 of CCS (Conduct) Rules envisages that the permission of the Government is necessary when the other spouse is living and the CCS (Conduct) Rules further empower the Government to grant such permission in special cases. In the present case, it was contended by the learned Counsel for the petitioners that there was no substance of marriage between the first petitioner and Suseela as it was dissolved by customary rites and it was confirmed by the civil Court in decree in OS No.328 of 1997 and therefore the permission of the Government was not necessary and therefore the permission was not obtained by the first petitioner before he contracted the marriage with Venkata Ramalakshmi.

11. We are in agreement with the submission made by the learned Counsel for the petitioners herein. Hindu Marriage Act provides the ground in which the parties to the marriage can obtain divorce. The grounds are given in Section 13 of the Hindu Marriage Act. The divorce petition can be filed in the civil Court and

if the grounds mentioned in the petition are proved that the civil Court can divorce the parties to the marriage. In spite of making provisions and grounds for dissolution of marriage in Section 13 of the Hindu Marriage Act, still the Hindu Marriage Act recognises the divorce by custom. The said provision is contained in Section 29(2) of the said Act. The provision is based on the very principle of Hindu Law "HINDI MATTER" it means that the custom prevails over the statutory law provided the custom is ancient continues and not against the public policy etc.

12. In the present case, the petitioner No.1 and his first wife belong to "Setti Baliya" community. The said custom is prevalent in the said community and therefore the first petitioner had obtained divorce from his first wife according to the customs.

13. It further appears from the record that when the departmental proceedings were instituted against the first petitioner, the 1st petitioner had filed OS No.328 of 1997 before the Principal District Munsif, Kakinada for declaration that the marriage of the plaintiff (petitioner No. 1 herein) with the defendant (Suseela-1st wife) was dissolved as per the caste, custom and usage. The said OS was allowed by the civil Court and it was held that the marriage between the 1st petitioner herein and his first wife-Suseela was validly dissolved on 30-7-1979.

14. When OA No.167 of 1998 was filed by the first petitioner herein before the Central Administrative Tribunal, it ought to have honoured the decree. The Central Administrative Tribunal had no power of superintendence over the civil Court. The Tribunal was under legal obligation to honour the decree of the Court. It could not have taken any other view than expressed by the civil Court.

15. Under these circumstances, we hold that the order passed by the Tribunal is totally without jurisdiction. We further hold that there was no reason for the respondents Department to institute any departmental enquiry against the first petitioner herein. Therefore, we quash the departmental proceedings as well as the order passed in OA No.167 of 1998 and hold that the first petitioner herein was not under any legal obligation to seek the permission of the Department to marry Venkata Ramalakshmi as the first marriage itself was not in existence. Under these circumstances, we direct the respondents herein to give all pensionary benefits now to the legal representatives of the first petitioner herein within a period of two months from the date of receipt of this order and the period of absence of the first petitioner herein from the date of compulsory retirement till resumption of duty be treated as period on duty and the pay for the said period be given to the legal representatives of the first petitioner herein named Doddi Appa Rao. The entire exercise has to be made within a period of two months from the date of receipt of this order.

16. With these observations, the writ petition is allowed. No costs.