
(2013) 02 MAD CK 0040

In the Madras High Court

Case No : W.A. No. 1365 of 2011 and M.P. No. 1 of 2011

G. Sekar

APPELLANT

Vs

Commissioner of Police and Another

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 MLJ 520

Hon'ble Judges : M.M. Sundresh, J; M. Jaichandren, J

Bench : Division Bench

Advocate : K. Jayaraman, for the Appellant; M.S. Ramesh, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This writ appeal has been preferred against the order of the learned single Judge, dated 20.12.2010, made in W.P.

No. 2733 of 2008, confirming the order passed by the respondent management dismissing the appellant from service, by the order, dated

11.5.2007. The appellant was working under the second respondent, as a Police Constable, Armed Reserve. While so, on 14.7.2006, he had

been suspended from service, by the second respondent, pending enquiry into grave charges. Thereafter, a charge memo, dated 10.8.2006, had

been issued to the appellant, by the second respondent. In the said charge memo, it had been stated that the appellant, who is a government

servant, had married three persons, namely, Arasu, Thandavani and Kamatchi, contrary to Rule 23 of the Tamilnadu Subordinate Police Officers"

Conduct Rules, 1964, and thus he had ruined the reputation of the police department. For the said charge memo, dated 10.8.2006, the appellant

had submitted an explanation, dated 14.8.2006. As the explanation submitted by the appellant was not convincing, an enquiry officer had been appointed, on 13.9.2006, to enquire into the charge levelled against the appellant. The enquiry officer had submitted a report finding the appellant guilty of the charge levelled against him, as per the charge memo, dated 10.8.2006, issued by the second respondent. Based on the enquiry report, the second respondent had issued the dismissal order, dated 11.5.2007, dismissing the appellant from service. Challenging the said order of dismissal, dated 11.5.2007, the appellant had filed an appeal on 1.6.2007, before the first respondent. The first respondent had dismissed the appeal filed by the appellant, by an order, dated 24.9.2007. Challenging the same, the appellant had filed the writ petition before this Court, in W.P. No. 2733 of 2008, under Article 226 of the Constitution of India. This Court, by its order, dated 20.12.2010, had confirmed the order of dismissal passed against the appellant. Hence, the appellant has filed the present writ appeal before this Court, challenging the order of the learned single Judge, dated 20.12.2010, made in W.P. No. 2733 of 2008.

2. The main contention of the learned counsel appearing on behalf of the appellant is that the allegation against the appellant is that he had married one Thandavani, as the second wife, while his marriage with the first wife namely, Arasu, had not been dissolved. Even though it had been claimed by the appellant that his second marriage with Thandavani had not taken place, the enquiry officer had found that the appellant had married Thandavani, as his second wife. It is noted from the records available that the appellant had married Thandavani, on 30.8.1985. However, she had committed suicide, subsequently. It is the specific case of the appellant that he did not marry Kamatchi, as his third wife, as alleged by the second respondent in the charge memo, dated 10.8.2006. The learned counsel appearing on behalf of the appellant had also pointed out that the charge memo, dated 10.8.2006, issued against the appellant, refers to Rule 23 of the Tamilnadu Subordinate Police Officers' Conduct Rules, 1964. The said rules reads as follows:

23. Bigamous marriages -

(1)(a) No Police Officer shall enter into or contract, a marriage with a person having a spouse living and

(b) No Police Officer having a spouse living shall enter into or contract, a marriage with any person.

Provided that the Government may permit a Police Officer to enter into or contract, any such marriage as is referred to in Clause (a) or Clause (b),

if they are satisfied that-

(i) such marriage is permissible under the personal law applicable to such Police Officer and the other party to the marriage; and

(ii) there are other grounds for so doing;

2. No Police Officer shall involve himself in any act involving moral turpitude on his part including any unlawful act, which may cause embarrassment or which may bring discredit to Government.

3. A reading of Rule 23 would make it clear that no police officer shall either enter into or contract a marriage with a person having a spouse living,

and that no police officer having a spouse living shall enter into or contract, a marriage with any person. It is an admitted fact that the appellant had

been appointed as a police constable, on 31.10.1997. However, it is alleged that the appellant had married Kamatchi, as the third wife, in the year,

2006. However, the enquiry officer had found that the allegation that the appellant had married Kamatchi, as his third wife, had not been proved

beyond reasonable doubt. Thus, it is clear that the allegation that the appellant had entered into a contract of marriage, after he had entered into

service, cannot be sustained.

4. The learned counsel appearing on behalf of the respondents had also submitted that Rule 23 of the Tamilnadu Subordinate Police Officers"

Conduct Rules, 1964, would be applicable only to a person, who had already entered into service, As such, Rule 23 of the Tamilnadu Subordinate

Police Officers" Conduct Rules, 1964, cannot be applied in the case of the appellant to hold that he had entered into a bigamous marriage, after he

had been appointed as a police constable, on 31.10.1997. In such circumstances, this Court finds that the reasonings given by the learned single

Judge, in her order, dated 20.12.2010, made in W.P. No. 2733 of 2008, cannot be held to be correct in the eye of law. Hence, this Court finds it

appropriate to set aside the order of the learned single Judge, dated 20.12.2010, made in W.P. No. 2733 of 2008. Accordingly, the respondents

are directed to reinstate the appellant in service, without any backwages.

However, the appellant's service during the period in question would be counted for calculating his pensionary benefits and for other service benefits. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.