
(2014) 03 JH CK 0081

In the Jharkhand High Court

Case No : Writ Petition (S) . No. 3784 of 2004

Gaur Sing Munda

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3 4
Penal Code, 1860 (IPC) — Section 34 498A

Citation : (2014) 03 JH CK 0081

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Jitendra Nath, for the Appellant; Bharti Kumari, J.C. to Sr. S.C.I., for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The petitioner is aggrieved by the order of discharge from service passed by the Commandant, Jharkhand Armed Police (J.A.P.) VIth, Jamshedpur in Departmental Proceeding No. 7 of 2000 contained in memo no. 261 dated 11.7.2003. He has also challenged the appellate order rejecting his appeal bearing memo no. 465 dated 18.5.2004.

2. The petitioner was a constable under the erstwhile, respondent-Government of Bihar and was proceeded against on the allegation of one Mukut Mani Devi that she was married to the petitioner and during subsistence of his marriage, the petitioner was going to solemnize the second marriage with one Kumari Jayanti on 27.3.1999. She also had alleged that the family members of the petitioner were demanding dowry in the shape of Motorcycle and T.V. The said allegations were inquired into and the preliminary inquiry conducted by the respondents, prima facie established the allegations. On the basis of the report of one P.P. Nag, Deputy Superintendent of Police, Bihar Military Police, 11, Jamshedpur, which is at Annexure A to the counter affidavit of respondent no. 5 dated 6.11.2006, the

charges were submitted to the petitioner through letter dated 6.1.2000 requiring him to give explanation on the allegations that during the subsistence of his first marriage with Mukut Mani Devi, he had chosen to enter into second marriage with one Kumari Jayanti without seeking permission. It was further alleged that the petitioner had been implicated in a criminal case being Sonahatu P.S. Case No. 20 of 1999 registered u/s 498A/34 I.P.C. read with section 3/4 of Dowry Prohibition Act at the behest of his first wife, Mukut Mani Devi.

3. The petitioner made his representation against the alleged charges on 15.2.2000, on the one hand accepting Mukut Mani Devi as his first wife while denying any effort on his part to enter into marriage with another girl, Kumari Jayanti. He also hurled allegations against Mukut Mani Devi in his representation that her conduct was not good. She indulged in regular quarrel and she had left with valuable articles from his house along with her mother on 15.01.1995. In the said representation he also stated that from 2.10.1995, the relationship with his first wife, Mukut Mani Devi and her mother Shakuntala Devi had almost ended. Therefore, the proposed proceedings may be dropped. However, being dissatisfied with the reply of the petitioner, the departmental proceeding was initiated on 23.3.2000 being Departmental Proceeding No. 7 of 2000 for the same charges. One Mr. S. Tirkey, Deputy Superintendent of Police, Bihar Military Police-11, Jamshedpur was appointed as Inquiry Officer, who issued notices upon him to file statement of defence on 5.4.2000. The petitioner, on receipt of the aforesaid letter initiating departmental proceeding, sought time to file explanation. However, he surrendered on 2.12.2000 before the Trial Court in connection with the criminal case and was released on 3.10.2001. However, petitioner did not inform the Inquiry Officer of the reasons for his absence till he surrendered on 2.12.2000 and only after being released after 18 months of initiation of the departmental proceeding, he reported his arrival to the office of Commandant on 22.10.2001. He did not offer any explanation for the period of his absence and then again proceeded on leave on 3.4.2002 for 6 days but willfully overstayed for 140 days without any intimation and again joined on 1.8.2002. The complainant, in the meantime had appeared in the departmental proceeding regularly and her statement was also recorded on 14.3.2001 after a gap of one year of initiation of departmental proceeding. After the appearance of the petitioner he was given a copy of the statement of witnesses recorded by the Conducting Officer and the proceeding was adjourned for the next date for cross examination of the witnesses by him. Though, the witnesses appeared on different dates, but the delinquent willfully absented and did not appear for cross examination. In the wake of aforesaid conduct of the delinquent, notices were again sent to the address of the delinquent-petitioner as contained in the service book, which is also reflected in the inquiry report submitted by the Inquiry Officer and on his appearance, he was again asked to file his final statement of defence giving him time till 21.7.2002. However, he again made a request for adjournment of the departmental proceeding and also for keeping the departmental proceeding in abeyance because of the criminal case pending

against him before the competent Trial Court.

4. In the background of aforesaid facts and circumstances, the Inquiry Officer, after considering the deposition of the witnesses including the complainant, Mukut Mani Devi, A.S.I., Rajpal Ram and the materials exhibits adduced during the course of inquiry proceeding, found the allegations against the petitioner established. He also observed that despite repeated time being granted to submit his final written statement of defence, the petitioner had not furnished his written statement of defence and simply sought adjournment in the departmental proceeding. Therefore, the allegations of misconduct were found to be established against the petitioner.

5. Upon submission of the inquiry report on 26.8.2002, the Disciplinary Authority by the impugned order dated 11.7.2003 proceeded to pass the order of discharge of the petitioner from service. A perusal of the impugned order indicates that after submission of the inquiry report, on 2.9.2002 the petitioner was asked to furnish his reply to the second show cause notice also enclosing the copy of the inquiry report submitted by the Inquiry Officer, who found the charges against him established. The petitioner, in fact made a representation thereto also once again seeking the indulgence of the Disciplinary Authority to keep the proceeding under abeyance in view of the criminal case pending before the competent Trial Court. The Disciplinary Authority, after considering the materials adduced during the course of inquiry and also findings recorded in the inquiry report, found the petitioner guilty of serious acts of misconduct, whereupon the impugned order has been passed. The Appellate Authority has also rejected the appeal of the petitioner finding no infirmity in the original order of punishment.

6. In the background of aforesaid facts of the case, learned counsel for the petitioner has sought to challenge the impugned order on the ground that in the criminal case the petitioner has been acquitted by the Appellate Court vide judgment dated 17.1.2005 in Criminal Appeal No. 40 of 2004. The said judgment is annexed to the supplementary affidavit filed on behalf of the petitioner on 6.9.2006. It is therefore submitted that the very basis of the departmental proceeding is wiped off on account of his acquittal in the criminal case arising out of same charges. Apart from that, learned counsel for the petitioner submitted that proceedings have been conducted in an ex-parte manner, while the petitioner was admittedly in jail for almost a year from 2.12.2000 to 3.10.2001. Therefore, in a case where the departmental proceeding was initiated on the same charge as that of criminal case, instituted at the behest of one Mukut Mani Devi, the respondents ought to have kept the departmental proceeding in abeyance instead of proceeding with the inquiry and punishing him on the same basis.

7. A perusal of the judgment passed in the appeal of the petitioner's case shows that the Appellate Court found that the Informant was not the legally married wife of the petitioner and that it was the third marriage of the appellant/

petitioner herein, which was going to be conducted on 27.3.1999. The Informant/ Complainant was the second wife of the petitioner, which has been supported by the mother of the Informant stating that the petitioner was married for the first time in Village Kombo, Jaridih and his first wife is alive. In the wake of the aforesaid statement made by the mother of the Informant and after considering that the Trial Court has also found that it was the third marriage which was going to be performed by the appellant/petitioner, the Appellate Court found that the offence u/s 498A I.P.C. and 3/4 of the D.P. Act were not made out against the appellant/petitioner, herein. On the aforesaid basis, he has been acquitted of the criminal charges by the Appellate Court. In the departmental proceeding, however the Complainant, Mukut Mani Devi had not only deposed but fully substantiated the allegations that the petitioner was married to her and that during the subsistence of his marriage he sought to enter into the second marriage with Kumari Jayanti. As a matter of fact, when the petitioner was asked to submit his reply to the proposed charges issued on 6.1.2000, he himself in his reply on 15.2.2000 accepted that Mukut Mani Devi was his first wife. The said letter as indicated herein above is annexed to the counter affidavit of the respondent no. 5 filed on 6.11.2006.

8. In the wake of such conduct of the petitioner, which was established during the course of departmental proceeding on the basis of the material adduced, the Inquiry Officer, rightly held the petitioner guilty of the alleged charges. As has been noticed herein above, the petitioner remained absent for considerable length of time during the conduct of the departmental proceeding without any explanation or information to the Inquiry Officer. The petitioner was in custody for the period from 2.12.2000 to 3.10.2001 but even after appearing on being released, before the Commandant and after being served copies of statement of witnesses who were examined earlier, instead of cross examining the said witnesses, he again sought for adjournment and in fact went on further leave which continued unauthorizedly for a period of 140 days. The petitioner was served with notices by the Inquiry Officer to furnish his statement of defence on his address recorded in the service book which was also received subsequently, but he again sought abeyance of the departmental proceeding instead of furnishing reply. The Disciplinary Authority after submission of the inquiry report also gave him opportunity to reply to the proposed punishment to which the petitioner also responded once again asking for the proceeding itself to be kept in abeyance in view of the pending trial without furnishing defence on merit. Therefore, it cannot be said that the proceeding was conducted ex-parte or that it was conducted in violation of Principles of Natural Justice without giving any due notice of the conduct of the proceeding or show cause before passing the impugned order of punishment. The plea of acquittal in the criminal case taken on behalf of the petitioner will not cut much ice in view of his own acceptance in his reply given on 15.2.2000 that the Complainant Mukut Mani Devi was his wife. The respondent-employer, therefore has sufficient reason to pass the order of discharge of an employee like the petitioner in an uniformed Police Force, who

during the subsistence of his marriage had chosen to indulge in a second marriage or intended to enter into third marriage with another lady. In this context, the Principles under which a Disciplinary Authority can continue with disciplinary enquiry and arrive at a decision for imposing punishment on a delinquent employee even during the subsistence of a criminal charges of similar nature has been considered and laid down in the judgment rendered by the Hon"ble Apex Court in the case of Avinash Sadashiv Bhosale Vrs. Union of India and others reported in JT 2012(9) SC 566. In these facts and circumstances, therefore, the petitioner has failed to make out a case for interference in the impugned order of punishment in the present writ application. Accordingly, the writ petition is dismissed.