

(2018) 02 DEL CK 0206

In the Delhi High Court

Case No : Civil Writ Petition No. 1088 Of 2018, Civil Miscellaneous No. 4552 Of 2018

Mohd Siraj Ali

APPELLANT

Vs

Boarder Security Of Force & Anr

RESPONDENT

Date of Decision : 06-02-2018

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 21(1), 21(2)
Indian Penal Code, 1860 — Section 376
Code Of Criminal Procedure, 1973 — Section 39

Citation : (2018) 02 DEL CK 0206

Hon'ble Judges : Hima Kohli, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Brajesh Pandey, Spiti Sarkar, Ripu Daman Bhardwaj

Final Decision : Dismissed

Judgement

1. The present petition has been filed by the petitioner who was recruited in the respondent No.2/BSF on the post of a Constable (GD) on 15.01.2012,

praying inter alia quashing his termination order dated 24.09.2016 and for directing the respondents to continue him in service.

2. The brief facts of the case are that the petitioner was recruited as a Constable (GD) in the respondent/BSF on 15.01.2012. On 16.06.2014, he got

married to one Ms.Gulafsan. The petitioner claims that within a period of three months, reckoned from 16.06.2014, he was forcibly made to marry

Ms.Zeenat Ara, his neighbour. It is the version of the petitioner that he had to perform â??Nikahâ?? with Ms.Zeenat Ara under the Muslim Law, on

pressure being exerted by a lady Police Officer in the Mahila Police Station, Dhanbad and he was being threatened that if he does not do so, he shall

be framed in a case under Section 376 IPC. The petitioner claims that on threats

being extended by the family members of Ms.Zeenat Ara, who had arranged a Qazi, his â??Nikahâ?? was performed at her residence on 17.09.2014, where none of his family members were present.

3. On a perusal of the petition filed by the petitioner under Section 39 of the Code of Criminal Procedure, before the Sub-Divisional Magistrate,

Dhanbad, it transpires that on 19.06.2014, Ms.Zeenat Ara had lodged FIR No.05/2014 at the Mahila Police Station stating inter alia that the petitioner

had established physical relations with her and that she got pregnant twice and had to undergo abortions on his advice.

4. We have enquired from the learned counsel for the petitioner as to whether the petitioner had taken any legal action against the lady police officer,

by filing a complaint before her superiors, for coercing him and threatening him to perform a second marriage, the answer is in the negative. We have

also enquired from learned counsel for the petitioner that as it is petitionerâ??s version that the Qazi, who performed the Nikah ceremony, was

aware of the fact that he was being compelled to perform a second marriage against his wishes, had he taken any action against the Qazi. Again, the

answer is in the negative. Admittedly, the petitioner did not lodge any complaint with the local police station with regard to the threats extended to him

or the coercion faced by him at the hands of Ms.Zeenat Ara and the lady Police Officer.

5. On receiving a complaint against the petitioner from Ms.Zeenat Ara vide order dated 13.06.2015, the respondents/BSF, ordered a Court of Inquiry

to investigate into the circumstances under which he had entered into a dual marriage with Ms.Zeenat Ara, while living with the first wife. The Court

of Inquiry found the petitioner guilty of plural marriage. Vide order dated 25.06.2016, the Commandant, 167 Battalion, BSF issued a Show Cause

Notice to the petitioner informing him that as per the Central Civil Services (Conduct) Rules, 1964, particularly Rule 21, Sub Rule (1) & (2), there is a

restriction on plural marriage of Government servants and no Government servant having a living spouse, can contract or enter into a marriage with

any person. The petitioner was called upon to explain why he should not be retired on the ground of unsuitability from the service due to the aforesaid

misconduct.

6. The petitioner responded to the said Notice of Show Cause vide letter dated

26.07.2016, seeking extension of time to submit a reply to the Show

Cause Notice. Vide order dated 03.08.2016, the petitioner was granted an extension of 30 days to submit his reply. On 17.09.2016, the petitioner

submitted a cursory reply to the Notice of Show Cause stating inter alia that Ms.Zeenat Ara had registered a false and frivolous case against him with

a motive to blackmail him but she failed to produce any material before Court and the said case is still pending adjudication. Except for filing a copy of

the petition filed by the petitioner against Ms.Zeenat Ara, no explanation was offered by the petitioner with regard to the circumstances under which

he was allegedly coerced to perform a second marriage with the lady, Ms.Zeenat Ara. After considering the reply of the petitioner and examining the

Rule position vide order dated 24.09.2016, the Disciplinary Authority i.e. the Officiating Commandant, 167 Battalion, BSF declared that the petitioner

was un-suitable for further retention in the Forces and he shall be retired from the service w.e.f. 24.09.2016, without any pensionary benefits.

Aggrieved by the said order, the petitioner has filed the present petition.

7. Learned counsel for the petitioner submits that his client has been framed by Ms.Zeenat Ara; that he never got married to her voluntarily; that

Ms.Zeenat Ara and her family members had pressurized him to solemnize a second marriage with her; that the impugned termination order is not

sustainable in the eyes of law because the second marriage itself is in question before the Family Court where the petitioner has filed a divorce petition

against Ms.Zeenat Ara.

8. Per contra, learned counsel for the respondents defends the impugned dismissal order and submits that the petitioner did not take any steps against

the lady police officer who had allegedly coerced him to perform a second marriage with Ms.Zeenat Ara, while he was having a living spouse.

9. We have already enquired from the learned counsel for the petitioner as to what was the need for the petitioner to approach the Family Court when

he had contracted a second marriage under the Muslim personal law, which at that point in time, permitted him to divorce her under the very same

law. There is no answer coming forth from the learned counsel for the petitioner, nor has he been able to explain the inaction on the part of the

petitioner in failing to lodge any complaint against the lady police officer or against the Qazi who had forcibly got the â??Nikahâ?? of the petitioner

with the lady.

10. We are of the opinion that the entire story set up by the petitioner is a sham and bereft of truth. There is no justification for us to interfere in the

impugned order dated 24.09.2016 whereunder the petitioner has been retired after rendering services for a limited period of 4½ years.

11. The petition is accordingly dismissed in limine, alongwith pending application.

12. At this stage, learned counsel for the petitioner states that though no such prayer has been made in the writ petition, a prayer has been made in the

interim application for release of the balance provident fund of Rs. 1,80,000/- lying deposited with the respondent/BSF.

13. Learned counsel for the respondents assures us that if that is the position, then appropriate step shall be taken to release the amounts payable to

the petitioner, in accordance with law.

14. Needful shall be done within four weeks from today.