

(2008) 02 PAT CK 0157
In the Patna High Court
Case No : CWJC No. 11320 of 2006

Mrs. Madhurima Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 107

Citation : (2008) 2 PLJR 643

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the State. The petitioner is aggrieved by the order of punishment dated 23.8.2006 as communicated to her by memo dated 24.8.2006. It visits her with the punishment of dismissal from service.

2. The charges against the petitioner were based on a memo alleged to have been issued by the office of the District Magistrate bearing letter No. 297 dated 18.1.2003 that she had contracted a marriage with Sri Manoj Kumar, conscious of the fact that he was already married. In the counter affidavit filed on behalf of the official respondents it stands admitted that no such letter had been issued by the office of the District Magistrate.

3. This Court on the previous occasion had issued notice to the earlier wife of Sri Manoj Kumar, now impleaded as Respondent No. 5. She has appeared and filed a counter affidavit. She admits that she was unable to conceive in her marriage with Sri Manoj Kumar, leading to his solemnising a second marriage with her consent.

4. The petitioner's case is that she was unaware that Sri Manoj Kumar was already married. That she learnt of this fact subsequently. That Sri Manoj Kumar

had chosen to remarry as his earlier wife was unable to conceive.

5. The only evidence on the basis of which the Enquiry Officer declined to accept her plea of late knowledge of an earlier marriage of Manoj Kumar was an application by her in a proceeding u/s 107 Cr.P.C. after her marriage stating that she was married to Manoj Kumar. The enquiry report itself notices that the first wife of Manoj Kumar was not living with him. That Manoj Kumar did not obtain divorce from his first wife was thought prudent by the Enquiry Officer to fix responsibility on the petitioner. The Enquiry Officer took into consideration extraneous materials of alleged difficulties being faced by the first wife to arrive at a finding of guilt of the present petitioner. That efforts were made for conciliation which did not materialise because of Manoj Kumar. That Manoj Kumar found it advantageous to marry the petitioner since she was an earning person. Therefore the petitioner violated the Service Conduct Rules by marrying Manoj Kumar.

6. The Bihar Government Servant Conduct Rules, 1976 falls for consideration, more particularly Rule 23, which reads as follows:-

"23. Restrictions regarding marriages-(1) No Government servant shall enter into, or contract a marriage with a person having a spouse living; and

(2) No Government servant, having a spouse living shall enter into, or contract, a marriage with any person:

Provided that Government may permit a Government servant to enter into, or contract any such marriage as is referred to in clause (1) or clause (2) if it is satisfied that-

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than. of Indian Nationality shall forthwith intimate the fact to the Government."

7. It has to be seen that sub-section (b) does give discretion to the Government to permit a Government servant to enter into marriage with a person having a spouse living if "there are other grounds for doing so".

8. It has been noticed above that the Enquiry Officer has taken into consideration extraneous materials to arrive at a finding of guilt of the petitioner. He has laid the responsibility at the door of Manoj Kumar in his discussion to fix responsibility upon the petitioner.

9. Clearly the present is a case where the authorities should have appropriately considered the matter under Rule 23(b).

10. In Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, , it has been held at Para 20 as

follows:-

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

11. This Court is satisfied that the respondents could have invoked Section 23(b) of the Rules to the benefit of the petitioner. The punishment in the facts and circumstances of the case shocks the conscience of the Court. They having failed to do so, the Court orders accordingly. This writ application is therefore allowed and the impugned order of punishment dated 23.8.2006 (Annexure 8) and the communication dated 24.8.2006 (Annexure 8/1) are accordingly set aside.