

(2024) 04 PAT CK 0093

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6886 Of 2018

Mukhtar Ahmad @ Mukhtar Ali

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 29-04-2024

Acts Referred:

Sashastra Seema Bal Rules, 2009 — Rule 11, 11(2), 18, 26, 107, 179
Indian Penal Code, 1860 — Section 494

Citation : (2024) 04 PAT CK 0093

Hon'ble Judges : Dr. Anshuman, J

Bench : Single Bench

Advocate : Kedar Jha, Poonam Kumari Singh

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the Union of India.
2. Learned counsel for the petitioner submits that the petitioner has filed the present writ petition for quashing the appellate order dated 16.05.2016 passed by the appellate authority, i.e. respondent No.3, namely, the Inspector General Frontier HQRS, SSB, Rukunpura House, Baily Road, Patna along with original order dated 24.08.2015 passed by the original authority, i.e. respondent No.5, namely, the Commandant 21st Battalion of SSB, Bagha, West Champaran, Bihar by which the order of dismissal has been passed against the petitioner. Learned counsel further submits that the petitioner has been illegally dismissed from the service without proper consideration of his case under Rule 18 read with Rules 11[2], 26, and 179 of SSB Rule 2009.
3. Counsel for the petitioner submits that the petitioner is a citizen of India and he is entitled to get the benefits and rights guaranteed to the Indian citizen under the Constitution of India. The petitioner was initially appointed as A Constable [GD]IN 44th Battalion SSB and joined the 21st Battalion on a

permanent transfer from 44th Battalion w.e.f. 09.06.2012 till dismissal from service. The petitioner was married to respondent No.5 on 24.01.2011 as per Sunni Muslim custom and rites without any dowry and from the wedlock two daughters were born whose dates of birth are 13.10.2011 and 28.10.2013 and the name of the first daughter was entered in the service book of the petitioner but due to non-availability of birth certificate, the name of second daughter could not be entered in his service book.

4. Learned counsel further submits that the wife of the petitioner namely Rukhsana Khatoon, respondent No.5 visited at 21st Battalion SSB Bagha on 16.08.2014 and submitted a complaint that she got married to the petitioner two and half years back and the petitioner left her at her father's house where she has been staying for the last one year and she gave birth to petitioner's second daughter at her maternal place and asked petitioner for financial assistance which the petitioner denied as he was not in a position to assist financially. On the basis of the complaint submitted by the petitioner's wife, disciplinary action was initiated against the petitioner on 22.08.2014 in which the petitioner filed his written explanation which was found unsatisfactory, and the petitioner was asked to submit his show cause to the office of the Commandant 21st BN SSB, Bagha vide letter No. 13560-61 dated 13.10.2014 issued under the signature of the Deputy Commandant in charge Commandant upon the charges mentioned show cause. In pursuance to the same, the petitioner submitted his reply to the show cause on 22.10.2014 which was received by the office. Thereafter, vide office order dated 02.11.2014, a Court of Inquiry was ordered to be made on the complaint of the petitioner's wife and his explanation and, accordingly, the petitioner appeared before the Court of Inquiry and placed the real facts, but without considering the facts placed by the petitioner, in the Court of Inquiry, the petitioner was held guilty for second marriage without the prior consent of the Central Government. The petitioner was also found guilty of false information to the department while residing outside with another lady. After the report of the Court of Inquiry dated 08.12.2014, the Commandant while writing in remarks passed an order dated 12.01.2015 for payment of Rs. 8,000/- per month as maintenance allowance to the petitioner's wife and instructed the concerned officials to pay a sum of Rs. 8,000/- per month to the lady and her two minor daughters so that they could lead a comfortable life till the case is disposed off departmentally.

5. Learned counsel further submits that the evidence of petitioner's friend Rajiya Praveen with whom the petitioner alleged to have performed a second marriage, has not been taken during the Court of Inquiry. In fact, there was no lady claiming a second marriage with the petitioner nor any evidence has come in this regard before proceeding except the mere allegation. Counsel further submits that during the preliminary investigation, on the complaint of his wife, petitioner was forced by his Commandant, Assistant Commandant, Inspector, and Sub Inspector to accept that he entered into a second marriage [court marriage] with his friend namely Rajia Praveen without corroborating any document. In fact,

during the Court of Inquiry, not a single evidence including the Court marriage certificate etc. on the basis of which the second marriage has been accepted. Save and except, the confession made by him before the Court of Inquiry forcefully.

6. Learned counsel further submits that when his wife is not able to extract money from the petitioner as the petitioner was dismissed from service on her wrong complaint she is cutting a sorry figure and now she is ready to apologize for her mistake of giving wrong complaint before any authority and even ready to appear and give a correct statement for fresh Court of Inquiry if ordered by this Hon'ble Court after setting aside the order of dismissal passed by the original Court as well as the appellate Court.

7. Learned counsel further submits that according to Section 11[2] of SSB Rule, 2009, the Central Government may if satisfied that there are sufficient grounds for so ordering exempt any person from the operation of this rule. In the Petitioner's case, no opinion has been taken from the Central Government of India [Ministry of Home Affairs]/Superior Authority of the SSB by the Commandant who has also passed ultra vires maintenance order of Rs.8,000/- per month from the petitioner's salary to his wife(respondent NO.5) during pendency of Civil Suit No. 42 of 2015 filed for restitution of conjugal rights pending before the Principal Family Court, Maharajganj by the petitioner on 16.02.2015.

8. Learned counsel further submits that the impugned order passed by the Commandant is liable to be set aside on this ground alone. Moreover, learned counsel further submits that his wife Rukhshana Khatoon (respondent No.5) is ready to reconcile the mistake and ready to give a statement of her free will that the petitioner was never married to any lady other than his wife. Hence, the final order and the appellate order both were passed without considering the facts and circumstances of the case and consequently, the petitioner was dismissed from the service without pension/any other pensioner benefits w.e.f. 24.08.2015 on the grounds of unsuitability.

9. Learned counsel further submits that the complaint has been made by his wife Rukhsana Khatoon under mental distress and there is a provision under section 107 of the SSB Rules, 2009 that against the order of dismissal as well as appellate order, a fresh Court of Inquiry may be conducted about which the petitioner has made the request before the authorities and the matter is kept pending. Learned counsel further submits that Rule 11 of the SSB Rules, 2009 is also in his favour as there are fresh grounds for exception from the rule applicable to the petitioner. Learned counsel further submits that for a second marriage, there is a provision in IPC under Section 494 and until and unless it ought not to be proved, the petitioner may not be punished. The petitioner filed Civil Misc. Writ Petition No. 23604 of 2016 before the Hon'ble Allahabad High Court for direction to decide the appeal dated 20.11.2015 within a reasonable time period, but the writ petition has become infructuous and it was withdrawn

on 26.05.2017. Learned counsel for the petitioner concludes his argument with a prayer that he is subject to victimization by virtue of the dismissal order dated 24.08.2015 as well as the appellate order dated 16.05.2016.

10. On the other hand, learned counsel for the Union of India submits that there is nothing in the original order as well as the appellate order warranting interference of this Hon'ble Court due to the reason that in the departmental proceeding, the Hon'ble High Court is not a Court of appeal. The High Court has to look into any procedural lapse or disproportionate punishment. Counsel further submits that here in the present case, from the impugned order and the appellate order, it becomes crystal clear that a complaint has been made by the wife of the petitioner namely Rukhsana Khatoon, and on that basis, the petitioner has been served with show cause. Considering the complaint and reply to the show cause, the matter had referred to the Court of Inquiry. Thereafter, on the basis of the material available in the complaint and the reply to the show cause, the Court of Inquiry has settled the matter, and on the basis of which the final order, subsequently, the appellate order has been passed.

11. Upon going through the pleadings and the argument advanced by learned counsel for the parties, this Court is of the firm view that the petitioner had been afforded all the opportunity at every level to defend himself and the order passed by the original and the appellate authority need no interference.

12. Hence, this writ petition is dismissed.