
(2003) 09 MP CK 0012
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4025 of 2002

Om Prakash Dubey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 494

Citation : (2003) 4 MPHT 394 : (2004) 3 MPLJ 49

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : K.K. Pandey, for the Appellant; Anoop Nair, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a writ petition under Article 226 of the Constitution of India for quashing order dated 12-44989 (Annexure P-2) by which the services of the petitioner have been terminated.

It is not in dispute that the petitioner was working as Lance Naik in the Army. His number was 7771580 X L/NK (MP). He was appointed on 7-7-1979. He was married to Smt. Subhadrabai in the year 1973. On 25-5-1987 a show-cause notice was issued to the petitioner. A copy of that show-cause notice is Annexure R-4. In this notice it was alleged that the petitioner has remarried Prabhabei. The petitioner submitted a reply dated 5-12-1988 (Annexure R-6). In this reply the petitioner has admitted that he has remarried on 21-7-1986. The petitioner was also prosecuted for the offence punishable u/s 494, IPC on a complaint filed by his first wife. The petitioner has been acquitted of the charge u/s 494, IPC by judgment dated 26-5-2001 of the Judicial Magistrate First Class, Katni.

The petitioner's case is that charge of bigamy has not been proved against him in the Court and, therefore, termination of his services on the ground of contracting "plural marriage" is illegal.

The respondents' case is that in the departmental proceedings the petitioner has been found guilty of contracting plural marriage and this is in contravention of Para 333 of Regulation for the Army, 1987 and, therefore, the services of the petitioner have been terminated. It is submitted that the acquittal of the petitioner subsequently by the Court does not have any effect on the termination of his services.

Learned Counsel for both the sides have been heard. A copy of the reply dated 5-12-1988 to the show-cause notice has been filed with the return. In this reply the petitioner has clearly and unequivocally admitted that he has contracted second marriage on 21-7-1986. In the show-cause notice (Annexure R-4) it was mentioned that the petitioner has remarried Prabhabai. Thus there was admission on the part of the petitioner that he has remarried Prabhabai during subsistence of marriage with his previous wife Subhadrabai. The termination of the services of the petitioner was valid.

The petitioner has filed a certified copy of the judgment dated 26-5-2003 of the Judicial Magistrate First Class, Katni in Criminal Case No. 22 of 1999. A perusal of that judgment shows that the complainant could not prove beyond reasonable doubt that the petitioner's second marriage has been performed as per "essential ceremonies constituting the marriage". The evidence of a number of witnesses was recorded and that evidence was on the point that the petitioner was living with Prabhabai and she was also Sarpanch of the same village. The acquittal was on the ground that the performance of the ceremonies of "Saptapadi" of the second marriage was not proved. Thus, this acquittal was on the ground that one of the ingredients of Section 494, IPC was not proved. This does not take away the admission of the petitioner in his reply dated 5-12-1988 (Annexure R-6) that he had contracted second marriage on 21-7-1986.

It is well settled that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. The acquittal in the criminal case does not confer right upon the employee for his reinstatement into service. In the disciplinary proceedings standard of proof required is that of "preponderance of probability" and not proof beyond reasonable doubt. The law on this point was neatly summed up by Gujarat High Court in *Motising v. S.D. Mehta* AIR 1966 Guj 233 : "The departmental proceedings and the criminal proceedings are entirely different in nature. They operate in different fields and they have different objectives. The materials or the evidence in the two proceedings may or may not be the same and in some cases, at least, material or evidence which would be relevant or open for consideration in the departmental proceeding may absolutely be tabooed in the criminal proceeding. The rules relating to the appreciation of evidence in the two enquiries may also be different. The scope of an enquiry in a criminal trial is to determine whether an offence against the law of the land has taken place and if so, to punish the person who has been guilty of that offence. The scope of a departmental enquiry is to determine whether a

public servant has committed a misconduct or delinquency and even if the same constitutes, from one point of view, a crime, to consider the question whether the delinquent deserves to be retained in public service or to be reverted or to be reduced in rank or otherwise suitable dealt with for the delinquency concerned. In criminal trial, an incriminating statement made by an accused, in certain circumstances or before certain individuals is totally inadmissible evidence. In a departmental proceeding, the enquiry officer is not bound by any such technical rule. The degree of proof which is necessary to record an order of conviction is different from the degree of proof which is necessary to record the commission of the delinquency. The rule relating to appreciation of evidence in the two proceedings is also not identical." The Supreme Court has also observed in *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, : "When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings. Again in *Senior Superintendent of Post Offices, Pathanamthitta and Others Vs. A. Gopalan*, , it has been held by the Supreme Court that acquittal in a criminal case on benefit of doubt is no bar to imposition of penalty in departmental proceedings.

In view of the above legal position, the petition is dismissed.