
(2020) 09 JH CK 0002
In the Jharkhand High Court
Case No : Writ Petition(S) No. 4330 of 2015

Prabhat Ranjan

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 494, 498A
Conduct Rules, 1976 — Rule 23

Citation : (2020) 09 JH CK 0002

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Satish Prasad, Navneet Toppo

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties through V.C.
2. The instant application has been preferred by the petitioner for quashing and setting aside the order dated 01.02.2012, whereby the petitioner has been awarded punishment of dismissal and also for quashing and setting aside the order dated 08.07.2011, whereby the petitioner has been awarded punishment of withholding of two increments.
3. At the outset, learned counsel for the petitioner submits that he has been awarded two punishments; one is removal from service and the other is for withholding of 2 increments, in two separate proceeding but for the same set of charges and for similar cause of action. He further contended that the order of dismissal is for the charge that the petitioner had consummated second marriage during the existence of first marriage and the order for withholding of two increments is for the charge of not properly looking after his first wife and two children and having extra marital relationship with another lady.
4. The facts of the case lie in a narrow compass. The petitioner has been departmentally proceeded vide Departmental Proceeding No.30 of 2007, issued

by the respondent No.3 when he was posted as police constable of STF and deputed in Sahibganj. In the said departmental proceeding, the petitioner has been dismissed from service vide order dated 01.02.2012. The petitioner was also earlier awarded punishment vide order 08.07.2011 in Departmental Proceeding No.39 of 2010, on the charge that he is not looking after his first wife and children and living with another lady having illegal relationship.

5. The case of the petitioner is that when the cause of action is almost same and similar, there is no ground for initiating two proceedings and awarding two different punishments.

6. Learned counsel for the petitioner submits that the punishment order of withholding of increments in pay was passed on 08.07.2011 in the subsequent Departmental Proceeding No.39/2010, whereas the dismissal order has been passed in the earlier proceeding on 01.02.2012 i.e. after more than 6 months from the earlier order of punishment. He further contended that the above mentioned two punishment orders is hit by the principle of double jeopardy which violates individual natural rights and also principle of civil jurisprudence.

7. The learned counsel for the petitioner further submits that the wife of the petitioner has never constituted any case under Section 498 A or 494 of the Indian Penal Code against the petitioner and it is only on the basis of Newspaper publication, Departmental Proceeding No.30 of 2007 was initiated.

8. Learned counsel for the petitioner further contended that the order of dismissal from service is also excessive inasmuch as in similar charges the other officers were awarded lesser punishment like Nindan (Censor), forfeiture of increments or reduction of pay scale on initial pay but in the instant case for similar offence, the petitioner has been dismissed from service. He further referred paragraph Nos. 7, 8 and 9 of the rejoinder which has not been controverted by the counsel for the respondent.

9. Per contra, learned counsel for the respondent opposed the prayer of the petitioner and submits that being a Government servant that too in a disciplined force, the petitioner ought not to have committed such offence and the offence is against Rule 23 of the Conduct Rules, 1976, as such, no leniency should be granted to the petitioner. However, he could not controvert the specific submissions and statements made in the rejoinder affidavit filed the petitioner that in same and similar situation the other officials were awarded lesser punishment and not removal from service.

10. Having heard the learned counsel for the parties at length and after perusing the materials available on record, it is not in dispute that the petitioner is having extra marital relationship with other lady during the life time of his first wife but the first wife remained mum over the issue and did not make any complaint. The matter cropped up only on the basis of paper publication in "Dainik Jagran" and "Hindustan Daily" on 16.05.2007. It is also not in dispute that a proceeding was previously initiated against the petitioner for not keeping his wife and children in

good condition and having extra marital relationship with another woman in which the petitioner was also awarded punishment of lowering down two increments.

11. It is true and a well settled law that bigamy is legally barred under the Hindu Law but for the same offence the petitioner has cited few orders which is annexed as Annexure 8, 9 and 10 of rejoinder in which lesser punishment has been awarded to those delinquents and the said submission has not been controverted by the respondent State. Hence, the said submission and statement made in the rejoinder to that effect remains intact on the doctrine of non traverse.

12. Though generally Court precludes from interfering with the impugned order, unless the punishment order is one which shocks the conscience of the Court and the case in hand, the impugned order for dismissal dated 01.02.2012, appears to be shockingly disproportionate and not commensurate with the charges, hence, on the ground of doctrine of proportionality, the instant application needs interference.

13. In view of the aforesaid facts and discussions, especially the fact that the petitioner was already awarded punishment of lowering down 2 increments on almost same set of allegations, the impugned order dated 01.02.2012 issued by the respondent No.3, whereby the petitioner has been dismissed from service, is hereby quashed and set aside and the instant application is remitted back to the respondent No.3 to pass fresh order on the ground of parity and doctrine of proportionality within a period of 12 weeks from the date of receipt of this order.

15. With the aforesaid observations and directions, the instant writ application is allowed and disposed of.