

(2009) 04 MAD CK 0127
In the Madras High Court
Case No : Writ Petition No. 15831 of 2005

R. Gopinath

APPELLANT

Vs

The Senior Divisional Operations Manager and Others

RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Railway Services (Conduct) Rules, 1966 — Rule 21, 21(1), 21(2)

Citation : (2009) 04 MAD CK 0127

Hon'ble Judges : P.K. Misra, J;D. Hariparanthaman, J

Bench : Division Bench

Advocate : V. Raghavachari, for the Appellant; V.G. Suresh Kumar, for Respondents 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—This case represents the travails of a much married man and the legal consequences of such illegal activities.

2. The petitioner, who is relatively speaking highly educated person, joined the Railway Administration as Assistant Station Master and, in course

of time, he was promoted to the post of Station Master in 1986. While the matter stood thus, a departmental proceedings was initiated against him

by issuing the following articles of charges:

(i) He contracted second marriage with Miss.D. Sarojini, D/o. Shri. T.R. Durairaj on 7.5.1989 while he has a spouse living by name Smt. P.

Tamilselvi;

(ii) contracted another marriage with Miss. P. Anbumalar on 15.9.94, while the spouse Smt.D. Sarojini living; &

(iii) has not obtained permission from the Government (Railway administration)

for contracting marriage with D. Sarojini while his first spouse

Smt.P. Tamilselvi is living and again contracted marriage with Ms. G. Anbumalar while his spouse Smt.D. Sarojini is living.

2.1 In his explanation, the petitioner stated that his first marriage took place in the year 1985 with one Tamilselvi but, soon after the marriage, Tamil

Selvi stated that she was forced to enter into such marriage, though she was in love with someone else. In 1987, the petitioner filed an application

seeking for dissolution of the marriage with Tamilselvi. It is further claimed that since Tamilselvi had left and divorce proceedings were pending, the

mother of the petitioner, who was aged and suffering from cancer, was crest fallen. To satisfy her wishes, without seeing the girl and undergoing

any formality of marriage, a ceremony was conducted on 7.5.1989 only to satisfy the sentiments of the ailing mother. The formalities of the

marriage were never completed and in law, there was no marriage at all and even the marriage was not consummated and a document to that

effect was executed on 12.12.1993. It is further claimed that no valid marriage could have taken place at that point of time in 1989 as previous

marriage with Tamilselvi had not been dissolved in a manner known to law and the application was pending and such first marriage was dissolved

only on 30.9.1991. It was admitted by him that after dissolution of such marriage, he had entered into a matrimonial alliance with Anbumalar on

15.9.1994 and, through such marriage, two children were begotten.

2.2 The enquiry officer, after analysing various materials on record including several documents, came to the conclusion that the delinquent had

contracted the second marriage with one Sarojini, while the first marriage was subsisting and, moreover, he contracted another marriage with

Anbumalar, while his spouse Sarojini was alive. The enquiry officer further concluded that the delinquent had not obtained permission from the

Department for contracting the marriage with Sarojini, while his first marriage was subsisting and again contracting the marriage with Anbumalar,

while his spouse Sarojini was living. The disciplinary authority by accepting the enquiry report, imposed the punishment of removal from service.

However, the appellate authority, while agreeing with the conclusion relating to the bigamous marriage, thought that the punishment of removal from

service was too harsh and, therefore, modified the same to one of "compulsory

retirement"" from service on and from 15.12.2002.

2.3 Such order came to be challenged before the Central Administrative Tribunal (in short ""Tribunal""), which on an independent assessment of materials on record, apparently concurred with the findings of the departmental authorities and dismissed the Original Application. Hence, the present writ petition.

3. Learned Counsel for the petitioner contended with much vehemence but less conviction that the marriage with the first wife Tamilselvi was against the wishes of Tamilselvi herself and ultimately she had eloped with her former lover and a proceeding for dissolution of marriage was pending and, at that stage, the petitioner had simply undergone the charade of some marriage function with Sarojini only to allay the emotional agony of his mother, who was terminally ill, and since such ""marriage"" was void firstly on the ground that first marriage had not been dissolved and secondly on the ground that Sarojini was coming within the prohibited degree of relationship, it cannot be said that he had flouted any conduct rule of the Department. In this connection, it is further submitted that since the first marriage was dissolved in the year 1991 and the second marriage was void and a document to that effect had already been executed, contracting a marriage with Anbumalar during the year 1994 cannot be said to be in contravention of any Rules. It is further contended that even assuming that there was a second marriage with Sarojini and similarly there was a third marriage with Anbumalar, when marriage with Sarojini was yet to be dissolved, since the Society does not frown upon such bigamous marriages, as apparent from the fact that many persons in high places have entered into bigamous marriages, a relatively lowly paid employee serving under the Railway, should not be made to lose his job and, therefore, at least the punishment of compulsory retirement should be modified as such punishment is shockingly disproportionate. It is further submitted that, if the petitioner would be compulsorily retired, he would lose his means of livelihood which would drive his family consisting of Anbumalar and his two children in utmost penury and, therefore, a sympathetic view ought to be taken. It is also submitted that the only contravention seems to be the fact that no prior permission was obtained from the Railway administration for contracting any bigamous marriage and for such technical

violation, the punishment of compulsory retirement is shockingly disproportionate.

4. So far as the alleged bigamous marriage is concerned, even though the learned Counsel for the petitioner strenuously contended that no marriage ceremony had been performed and the petitioner had only enacted a "drama" just to satisfy the fancy and emotional sentiment of his mother, we do not think such a contention can at all be accepted. The departmental authorities have analysed all the materials on record and come to the conclusion that the delinquent had married Sarojini in 1989, while the first marriage was still subsisting. The plea of the petitioner that he had merely gone through the charade of "ceremony of marriage" without there being actual marriage can at best be described as an interesting filmy story which may appear to be true in "reel life" and not in "real life". The findings of fact rendered by the departmental authorities have been confirmed by the Tribunal and, obviously the High Court, while exercising jurisdiction under Article 226 of the Constitution, particularly when the Tribunal envisaged under the Constitutional scheme of things has already exercised a similar jurisdiction, is not expected to re-appreciate the materials on record to come to a different finding. Therefore, the conclusion that the petitioner had entered into a bigamous marriage with Sarojini while the first marriage was still subsisting, is bound to be confirmed.

5. Learned Counsel, however, ingeniously contended that since such a marriage could have been permitted as contemplated in Rules 21(1) and (2) of The Railway Services (Conduct) Rules, 1966, mere infraction of not taking permission cannot be construed as such a serious violation inviting punishment of compulsory retirement.

6. The submission made by the learned Counsel for the petitioner to the effect that with the permission of the Department an employee can contract a second marriage appears to be misconceived. Rule 21 is to the following effect:

21. Restrictions Regarding Marriage:

(1) No Railway Servant shall enter into or contract, a marriage with a person having a spouse living and,

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

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

Provided that the Government may permit a railway 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 railway servant and other party to the marriage; and

(b) there are other grounds for so doing.

7. Rule 21(1) clearly indicates that no Railway servant can enter into or contract a marriage with a person having a spouse living. Rule 21(2)

contemplates that no railway servant having a spouse living shall enter into a marriage with any person. Learned Counsel for the petitioner,

however, seems to have been inspired by the proviso, which is to the effect that the Government may permit a railway servant to enter into or

contract into any such marriage as is referred to in Clause (1) or Clause (2). However, the learned Counsel has completely ignored the effect of

Clause (a) in such proviso which is conditional upon the satisfaction of the Government that such marriage is permissible under the personal law

applicable to such railway servant and other party to the marriage. In other words, only where the personal law permits a second marriage to be

performed during the subsistence of the first marriage, the question of railway servant having a spouse living and seeking for permission to marry

for the second time may crop up. Where the personal law of the party does not permit for a second marriage, the question of seeking permission

or otherwise does not arise. It is thus obvious that the petitioner had clearly violated the Rule 21(2).

8. Learned Counsel for the petitioner has also raised a faint submission to the effect that when the Society does not frown upon such second

marriage, even though not strictly permissible under the personal law and such offence of bigamous marriage is punishable only on the complaint

filed by the aggrieved person, i.e., the wife, the departmental authorities should not have imposed a harsh punishment of compulsory retirement.

Learned Counsel has also further submitted that a lowly paid Government servant need not be penalised in such a harsh manner when many high

profile persons have entered into such bigamous marriages.

9. We do not think the learned Counsel intends such a submission to be taken seriously and one can describe such a submission as based on desperation, rather than on any conviction. It is no doubt true that a bigamous marriage is punishable only when the complaint is made by the aggrieved person"". But, that does not mean that if there is infraction of the Government servant conduct rules, which specifically proscribes a Government servant from marrying again if he has a spouse living, the courts cannot expect to condone such violation of conduct rules merely because it is perceived that similar infractions are made by many people and may be even in high places. We are also unable to accept the submission that the punishment of compulsory retirement can be described as grossly excessive warranting any interference in this ""third court of appeal"". The departmental appellate court has already shown leniency by modifying the punishment of removal from service to one of compulsory retirement, obviously with a view to enable the delinquent to get some of the benefits of his earlier service in the shape of pension and other retirement benefits. The matter has again been vetted and confirmed by the Tribunal. We do not think there is any scope whatsoever for taking any different and lenient view on this aspect.

10. In course of hearing, the learned Counsel for respondents/Railway Department submitted that in fact the authorities have not been able to sanction the pensionary benefits to the petitioner as the petitioner has not submitted necessary pension papers. It is made clear that in case the petitioner submits the pension papers, all those papers shall be processed and necessary decision shall be taken within a period of three months from the date of such submission of pension papers.

11. Subject to the above observation, the writ petition is dismissed. No costs.