

(2019) 04 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4750 Of 2019

Ram Pravesh Yadav

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 10-04-2019

Acts Referred:

Hindu Marriage Act, 1955 — Section 9
Code Of Criminal Procedure, 1973 — Section 125
Sashastra Seema Bal Act, 2007 — Section 61(2)(i), 63
Indian Penal Code, 1860 — Section 498A
Sashastra Seema Bal Rule, 2009 — Rule 181

Citation : (2019) 2 PLJR 930

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Raghwendra Sharan Pandey, Nadim Seraj, Dhurendra Kumar, S. D. Sanjay, Kanak Verma

Final Decision : Dismissed

Judgement

1. A supplementary affidavit has been filed during the course of arguments.
2. Let it be kept on record.
3. Heard learned counsel for the petitioner and learned Additional Solicitor General, Mr. S. D. Sanjay, for the Union of India.
4. The petitioner, who is a Constable in SSB force and is presently posted at Motihari, has challenged the order dated 09.06.2018 passed by the Commandant, 71st Battalion SSB, Motihari Camp at Piprakothi, District - East Champaran (Bihar), signed and communicated to the petitioner by the Deputy Commandant contained in Memo No. 4695-97, whereby 30 per cent of the pay and allowances of the petitioner has been directed to be deducted for the purposes of the same to be remitted in the account of the wife of the petitioner, namely, Smt. Ranju Yadav.

5. The petitioner is facing matrimonial dispute with his wife who had showed up before the Commandant and had informed him that despite her request to reside with the petitioner as his legally wedded wife, the petitioner refused to live with her. Under such circumstances, the petitioner was asked to furnish his explanation with respect to various facts, namely, whether any order had been passed by any Court of competent jurisdiction with regard to maintenance of his wife or was there any family/social arrangement with the approval of the petitioner and his wife with respect to payment of any maintenance amount. The aforesaid notice which has been given to the petitioner on 06.04.2018 is stated to have been replied by him. The petitioner submits that he categorically informed his superior officer that he has filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights with his wife as she had voluntarily deserted him, which application is still pending consideration before a competent Court of law. The petitioner also admitted that a case under Section 498A has been filed by his wife against him and other members of his family and she has also filed an application under Section 125 Cr.P.C. seeking maintenance from the petitioner. In none of these petitions, any order has been passed by any competent Court.

6. Under such circumstances, the order impugned dated 09.06.2018, deducting 30 per cent of the pay and allowances of the petitioner to be remitted in the Bank account of his wife has been passed.

7. Learned counsel for the petitioner has challenged the order on two grounds; one being that the application for restitution of conjugal rights and the willful refusal of the wife to stay with the petitioner has not been taken into account by the commanding officer/Commandant and the other that the order, though is stated to have been passed by the Commandant, who only is the authorised/prescribed officer under the SSB Act of 2007, the same has been signed by the Deputy Commandant, who is not authorized to pass such order.

8. Both the aforesaid contentions of the petitioner have been noted only for being rejected.

9. Section 61(2)(i) empowers the prescribed officer to direct for payment of maintenance to the wife of an employee or his legitimate or illegitimate child or step child, subject to the limitation of Section 63 of the Act, which proscribes any deduction of more than 50 per cent for the aforesaid purpose.

10. The prescribed officer has been defined under Rule 181 of the SSB Rules of 2009 which in case of subordinate officers and enrolled persons, like the petitioner, is the Commandant.

11. From the perusal of the order dated 09.06.2018 contained in Annexure- 1, it is clearly reflected that after consideration of the facts in a dispassionate manner, the order of deduction of 30 per cent of the pay and allowances of the petitioner has been passed by the competent authority, namely, the Commandant which has been communicated to the petitioner by the Deputy Commandant.

12. There is no reason for this Court to interfere with the order as 30 per cent would be 1/3 of the pay and allowances of the petitioner which is required to be paid for maintenance of his wife. The aforesaid order also appears to be temporary/interim in nature.

13. Should a competent Court decide about the quantum of maintenance to be paid by the petitioner to his wife, it would be open for the petitioner to make available that order before the Commandant and make a request to him for revisiting the impugned order. In case of restitution of conjugal rights of the petitioner and his wife also, the petitioner would have the liberty to have the order varied/ modified/rescinded.

14. Thus, for the present, this Court not finding any fault with the order impugned dated 09.06.2018, the writ petition must fail.

The writ petition is dismissed with the observation as indicated above.