
(2017) 09 JH CK 0023
In the Jharkhand High Court
Case No : 7204 of 2006

Rup Kumar Ghosh @ Rukua Yadav

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 21-09-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 09 JH CK 0023

Hon'ble Judges : Ananda Sen

Bench : SINGLE BENCH

Advocate : Ritu Kumar, Shrestha Gautam

Judgement

1. Heard Mrs. Ritu Kumar, learned counsel appearing for the petitioner and Mr. Shrestha Gautam, learned counsel appearing for the respondents.
2. In this writ application, the petitioner had prayed to quash the order dated 16.08.2005 communicated to the petitioner on 22.08.2005 (Annexure 1.3), by which the petitioner has been dismissed from the services of Bokaro Steel Plant, Steel Authority of India Limited. Further a prayer has been made to quash the communication dated 18.08.2006 (Annexure 15) along with the order by which the appellate authority has dismissed the appeal of the petitioner.
3. The petitioner was appointed as Recorder-cum-Chaser on 2. 7.03.1982 in Bokaro Steel Plant, Steel Authority of India Limited. At the relevant time, the petitioner was a Senior Planner when a departmental

chargesheet dated 08.05.2004 was issued to the petitioner by the Deputy General Manager. It was alleged that the petitioner has committed an act of misconduct under the Standing Orders of the Company, as such, a departmental proceeding is liable to be initiated against him. The charge against the petitioner is as follows: -

"Married with another woman without prior permission of the Management, while first wife is alive."

4. The petitioner being an employee of Bokaro Steel Plant, is admittedly governed by the Standing Orders of Steel Authority of India Ltd. According to Clause 37(xxiii) of the said Orders, the aforementioned charge is a misconduct under the Standing Orders of the Company, which, if proved, attracts major penalty.

5. The petitioner filed his reply to the said chargesheet, denying the charges levelled against him. He admitted that he was married as per the Hindu rites and customs with Bani Sharan in the year 1969. He stated that in 1982, when he joined Bokaro Steel Plant, her name was entered in the personal records as a wife. He admitted that Vani Sharan never joined him, rather resided in her paternal house. He admitted in the said show cause that as he was living alone, he needed company of a lady to take care of him. He met Anju Sinha and he gave the proposal to Anju Sinha to become his care taker and as Anju Sinha also needed some person, she readily accepted the offer. Then, they started living together. He stated that Anju Sinha is not availing any benefit from the Company and she is still known as Anju Sinha. He stated that in the complaint written by Anju Sinha, she claims herself to be caretaker of this petitioner and nothing more.

6. It is pertinent to mention here that the entire issue arose because of a letter written by said Anju Sinha to the Managing Director, Bokaro Steel Plant. The said letter is at Annexure 4 to this writ application. In the said letter, she makes a prayer to enter her name and the name of her daughter, Gargi Sharan, in the service book of this petitioner as "wife" and "daughter" of the

employee. She writes that she is the married wife of Tripurari Sharan, Staff No.498825 (petitioner), working in the Bokaro Steel Plant and their marriage had taken place in the year 1985 and they have been blessed with a daughter, who is 8 years old. She wrote that inspite of request having been made to this petitioner, time and again, her name and her daughter's name has not been incorporated in the personal records of the petitioner for which they are facing several problems. On this background, she wrote the letter to the Managing Director of Bokaro Steel Plant. This letter is the germane of the departmental proceeding against the petitioner.

7. As the reply to the chargesheet was unsatisfactory, the Company started departmental inquiry. An Inquiry Committee was constituted and opportunity was given to the petitioner to participate in the said inquiry. The inquiry was conducted after following the principles of natural justice. Witnesses were examined and were cross examined on behalf of this petitioner. Said Anju Sinha was also examined as a witness on behalf of this petitioner. After the inquiry was completed, the report was submitted to the Disciplinary Authority. The petitioner was served with a copy of the inquiry report along with the second show cause notice for his comments. The petitioner replied to the second show cause notice. After considering the inquiry report and the reply of the petitioner, as the charge was proved, the disciplinary authority inflicted the punishment of dismissal upon the petitioner vide order dated 16.08.2005, which was communicated to the petitioner on 22.08.2005. Against the order of dismissal, the petitioner preferred an appeal, which also stood dismissed by the appellate authority. Hence, this writ application.

8. After being noticed, the Bokaro Steel Plant, Steel Authority of India Ltd. Appeared and supported the order of dismissal and the appellate order. They did not file any counter affidavit, rather opposed the case of the writ petitioner on the admitted facts and on the points of law. The counsel for the respondents submitted that since the facts are not disputed, it is not

necessary to file a counter affidavit.

9. The counsel appearing on behalf of the petitioner submits that in the departmental proceedings, findings arrived by the inquiry officer is perverse and against the evidence on record. She submits that there is no proof that the petitioner has solemnised second marriage. It is argued that the essential ingredients of a Hindu marriage, i.e., invocation before the sacred fire and Saptapadi with the alleged second wife, have not been proved by the management and in absence of such proof, no findings can be arrived at as to whether this petitioner has married for the second time. It is submitted that since the petitioner has not married for the second time, during the life time of the first wife, the question of taking permission does not even arise. It is argued that it is within the domain of Civil Court only to declare whether the petitioner has solemnised second marriage and no such finding can be arrived at by the Inquiry Officer. It is further argued that the punishment is too harsh and does not commensurate with the gravity of the misconduct and thus, the petitioner submits that this writ application is liable to be allowed by setting aside the impugned order of punishment and also the appellate order.

10. The counsel for the Bokaro Steel Plant argued on the basis of materials on record. He submitted that a chargesheet was submitted against the petitioner for committing misconduct of marrying for the second time during the life time of the existing wife, without taking any permission. He submits that a proper departmental proceeding was held wherein full opportunity was given to the petitioner. Petitioner appeared and participated in the departmental proceeding. After conclusion of the departmental proceeding, the inquiry report was furnished to the petitioner and he was also allowed to file reply to the second show cause. After considering the entire aspects, as it was proved that the petitioner has committed the misconduct, he was awarded the major penalty of dismissal. He submits that the charge was grave in nature, which attracts major penalty as per the rule. He also submits that in the departmental proceeding, the Law of Evidence is not

applicable and the guilt of the delinquent employee is not to be proved beyond reasonable doubt, rather on the preponderance of probability. He submits that since the management has proved the charge against the petitioner on the said principle, the petitioner has been rightly punished. It is submitted that there was no illegality or irregularity in the departmental proceeding itself and that being the position, scope of interference is absolutely minimum in this case. He lastly submits that it is prerogative of the management to impose a punishment and since it has been imposed as per the Rules of the Company, which this Court should not interfere with. It is also submitted that it is the petitioner, who by conduct has admitted that Anju Sinha is his wife, which is evident from the documents produced by the petitioner himself.

11. I have perused the records and heard the arguments advanced by the counsel for the parties. The petitioner has been chargesheeted by the employer and the misconduct of the petitioner is that he married another woman without prior permission of the management while the first wife is alive. The petitioner was proceeded against because one Anju Sinha complained before the Managing Director, stating therein that she is the wife of this petitioner. Their marriage had taken place in the year 1985 and they have a daughter of 8 years old. In spite of request having been made to this petitioner, the name of Anju Sinha and her daughter are not being entered in the personal records of the petitioner maintained by the Company. The petitioner replied and admitted that he is married to Smt. Beena Sharan in the year 1969 and as Smt. Beena Sharan is not residing with him, he was staying alone. He needed company of a woman for taking care of him as a result of which he proposed Anju Sinha to become his caretaker to which she also acceded and they started living together. This admission proves the fact that the petitioner and Anju Sinha are residing together since long. In the departmental proceeding, said Anju Sinha was examined by the delinquent. She admitted that she has given the complaint to the management and the

said complaint was also identified by her along with her signature. Thus, from this evidence, it is clear that she admits the contents of the complaint and the complaint itself. She admitted that she has got knowledge about the contents of the said complaint. She, while replying to one question, has denied the fact that they are married, but, admitted that they are residing together and this petitioner assured that he will marry her. She admitted in cross examination also that she is residing with Tripurari Sharan and with his daughter Gargi Sharan. She admitted that father of Gargi Sharan is Tripurari Sharan. From this evidence, it is clear that the petitioner is residing with this lady and the petitioner is the father of Gargi Sharan and Anju Sharan is the mother of Gargi Sharan. She also states that she is wearing Mangalsutra and applying vermilion on her head and she accepts this petitioner as her husband, but as per law marriage has not taken place. It is also apparent from the record that the petitioner has produced an insurance policy of Life Insurance Corporation of India, showing Anju Sinha as his wife. The report card of Gargi Sharan also proves that her father is this petitioner and mother is Anju Sinha. All these facts clearly suggest that the petitioner is the husband of Anju Sinha and is father of Gargi Sinha. It is admitted that the first wife of the petitioner is still alive.

12. The Hon''ble Supreme Court also in the case of *Tulsa versus Durghatiya* reported in (2008) 4 SCC 520 in paragraph 15 has held that where the partners live together for long spell as husband and wife, there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person, who seeks to deprive the relationship of legal origin to prove that no marriage took place. This presumption can be attracted in this case also to prove the charge against the petitioner on the admitted facts basing on the principle of preponderance of probability.

13. The arguments of the petitioner that it is only the Civil Court, who has the jurisdiction to decide on the point of second marriage cannot be accepted while deciding a misconduct of this type in a departmental

proceeding. In a departmental proceeding the standard of proof is absolutely different than that necessary in a civil suit or in a criminal proceeding. In a criminal proceeding, the facts are to be proved beyond all reasonable doubts. In a departmental proceeding, on the preponderance of probability, a conclusion can be arrived at to prove the charges. The Hon''ble Supreme Court in the case of Mazdoor Sangh versus Usha Breco Ltd. Reported in (2008) 5 SCC 554, has held that standard of proof in departmental proceeding is not that the misconduct must be proved beyond all reasonable doubt but the standard of proof is as to whether the test of preponderance of probability has been met.

14. Further, the Hon''ble Supreme Court in the case of State of W.B. and Others versus Prasenjit Dutta reported in (1994) 2 SCC 37 has held that in a departmental proceeding of a charge of bigamy, the departmental authorities are not precluded from examining the question of second marriage for limited purpose of departmental action. It has also held that the departmental proceeding cannot be suspended till proper adjudication by Civil or Family Court.

15. Thus, applying the said principles in a departmental proceeding, it is not necessary to prove Saptapadi and invocation before sacred fire. It is also not necessary that only the first wife will have a right to make a complaint about a bigamy committed by her husband. In the departmental proceeding, if the misconduct comes to light, may be through any one, the proceeding can be initiated against the delinquent employee. Proving Saptapadi and invocation before sacred fire is required in a civil proceeding for declaration of a valid marriage between the parties. The same standard of proof cannot be applied in the departmental proceeding as in the departmental proceeding proof on basis of preponderance of probability would suffice.

16. In view of what has been discussed above, I find that the petitioner admits that his first wife is alive. He admits that he is residing with Anju Sinha. It is admitted that there is a life insurance policy purchased by this petitioner

showing Anju Devi as his wife. He admits the report card of the daughter Gargi Sharan, wherein it has been entered that this petitioner is her father and Anju Devi is her mother. Combining the effects of all these facts, I find that there is a strong probability and circumstances that this petitioner has married Anju Devi. There cannot be any other conclusion. These circumstances are enough for proving the guilt of the petitioner. Thus, I find that the misconduct of the petitioner has been proved by the employer in the departmental proceeding.

17. There is no procedural irregularity in conducting the departmental proceeding. Petitioner has also not brought anything on record to suggest that proceeding was illegal or irregular. Petitioner was given full opportunity to defend himself in the departmental proceedings. The witnesses were examined and cross examined by the petitioner. There is no lacuna in the proceeding. The High Court possibly would not be within its power to interfere with an order of punishment inflicted in a departmental proceeding until and unless any lacuna in the departmental proceeding is noticed or found. [Re : (2003) 9 SCC 286 (State of Rajasthan versus Sujata Malhotra)].

18. Thus, there is no scope of interfering with the findings of the departmental proceeding in this application under Article 226 of the Constitution of India.

19. As held earlier, the charge has already been proved in this case. Now the question is what would be the quantum of punishment. The employer has inflicted the punishment of dismissal of the petitioner from services. It is well established that in a departmental proceeding, when there is no legal infirmity in conduct of the proceedings, then, it would not be appropriate in exercise of jurisdiction under Article 226 to interfere with the quantum of punishment. Normally, the Court, in exercise of powers under Article 226 of the Constitution of India, does not interfere with the quantum of punishment alone if the charges are established against the delinquent and there is no lacuna in the procedure adopted in the departmental proceeding.

But, at times, when the punishment inflicted is grossly unjust and shocks the conscience, then in appropriate cases, the Court can interfere.

20. In a similar nature of case, which was before the Hon''ble Supreme Court and reported in (2015) 8 SCC 439 [Khurshid Ahmed Khan versus State of Uttar Pradesh & Others], the Hon''ble Supreme Court was dealing with a charge, which is similar to the charge in the present case. In the case before the Hon''ble Supreme Court, a plea was taken by the delinquent that he being Muslim, can marry for the second time, during life time of his first wife as per their personal law. In that case also, contacting marriage for the second time during existence of the first marriage without the permission of the Government was a misconduct. Same is the situation here. The Hon''ble Supreme Court, after dealing with the entire facts, has held that penalty of removal from service cannot be held to be shockingly disproportionate to the charge and ultimately dismissed the appeal of the delinquent.

21. Thus, the Hon''ble Supreme Court has settled the issue on the quantum of punishment, that dismissal and/or removal from service when the charge of contacting second marriage during life time of the first wife, when proved, is not shockingly disproportionate to the charge. Thus, applying the said judgment in this case, I find that the punishment imposed is not shockingly disproportionate and needs no interference.

22. On evaluation of the entire facts along with principles laid down by the Hon''ble Supreme Court, and on the findings discussed above, I find that this writ application is bereft of any merit and the same is, accordingly, dismissed.