

(2024) 04 GAU CK 0019
In the Gauhati High Court
Case No : Writ Appeal No. 412 Of 2023

Sabbir Ahmed Laskar

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 03-04-2024

Acts Referred:

Assam Civil Services (Conduct) Rules, 1965 — Rule 24, 26

Citation : (2024) 04 GAU CK 0019

Hon'ble Judges : Vijay Bishnoi, CJ;Suman Shyam, J

Bench : Division Bench

Advocate : F.Z. Mazumder, R.K. Borah

Final Decision : Dismissed

Judgement

1. Heard Mr. F.Z. Mazumder, learned counsel for the appellant. Also heard Mr. R.K. Borah, learned Additional Senior Government Advocate, Assam, representing all the respondents.
2. This writ appeal is directed against the order dated 20.09.2023 passed by the learned Single Judge in WP(C) No.5504/2023, whereby the writ petition filed by the appellant/writ petitioner has been dismissed.
3. The brief facts of the case are that the appellant/ writ petitioner was a Constable in the Assam Police. However, during the currency of his first marriage, he contracted a second marriage. The first wife of the appellant/ writ petitioner has filed a complaint with the authorities concerned and on the basis of the said complaint, Disciplinary Proceedings have been initiated against the appellant/writ petitioner and in those Disciplinary Proceedings, the charge relating to the second marriage during the currency of the first marriage was proved against the appellant/writ petitioner and pursuant to that, the Superintendent of Police, Dima Hasao, Haflong has inflicted a punishment of his removal from service, which resulted into passing of the impugned order dated 26.04.2023 removing the appellant/writ petitioner from service. The

Departmental Appeal preferred by the appellant/writ petitioner against the said order has also been dismissed. The said order dated 26.04.2023 was challenged by way of a writ petition.

The learned Single Judge has dismissed the writ petition filed by the appellant/writ petitioner vide the impugned order while holding that there is no illegality in the order of removal from service of the appellant/writ petitioner and the same is not vitiated.

4. Mr. F.Z. Mazumder, learned counsel for the appellant/writ petitioner has submitted that though the charge against the appellant/writ petitioner of contracting second marriage during the currency of the first marriage was proved but the Disciplinary Authority has erred in inflicting the penalty of removal from service of the appellant/writ petitioner and the said punishment is shockingly disproportionate to the charge on the established judicial parameters.

Referring to the Office Memorandum dated 28.10.2023, issued by the Government of Assam, Department of Personnel, annexed as Annexure-A along with the additional affidavit filed on behalf of the appellant/writ petitioner, it is contended by the learned counsel for the appellant/writ petitioner that the said Office Memorandum provides that the Disciplinary Authority may initiate Departmental Proceedings for imposition of penalty, including compulsory retirement, against a Government servant found to have violated Rule 26 of the Assam Civil Services (Conduct) Rules, 1965. It is argued that the Office Memorandum dated 28.10.2023 provides that only the penalty of compulsory retirement can be inflicted against the Government servant, who has contracted another marriage during the currency of the first marriage without first obtaining prior permission from the Government. It is also argued that a Division Bench of this Court, vide judgment & order dated 18.01.2023, passed in Writ Appeal No.357/2022 (The Union of India & Ors. -Vs- Pranab Kumar Nath) has held that contracting a second marriage during the subsistence of the first marriage is in violation of the Rules, yet, it cannot be said that it is one of the most heinous form of misconducts for which an incumbent must be necessarily visited with the punishment of dismissal.

It is contended that in the facts and circumstances of the present case, the charge against the appellant/writ petitioner of contracting second marriage during the currency of the first marriage is proved, but the Disciplinary Authority has erred in inflicting the punishment of removal from service upon the appellant/writ petitioner and the said punishment is shockingly disproportionate to the charge.

It is, therefore, prayed that the writ appeal may kindly be allowed and the impugned order dated 26.04.2023 passed by the Superintendent of Police, Dima Hasao, Haflong may kindly be set aside and a direction be issued to the Disciplinary Authority to impose a lesser punishment upon the appellant/writ petitioner.

5. Per contra, Mr. R.K. Borah, learned Additional Senior Government Advocate, Assam representing the respondent State has vehemently opposed the appeal and has submitted that the learned Single Judge has rightly dismissed the writ petition while relying on the decision of the Hon'ble Supreme Court rendered in Khursheed Ahmad Khan -Vs- State of Uttar Pradesh & Ors., reported in (2015) 8 SCC 439. It is also submitted that the case of Pranab Kumar Nath (supra) relied upon by the learned counsel for the appellant/writ petitioner is of no help to the appellant/writ petitioner as the same was in relation to a personnel of the Central Industrial Security Force (CISF), whereas the appellant/writ petitioner was a Constable in the Assam Police, which is a Force maintaining the law and order in the State and every member of the Police Force is required to adhere to the Conduct Rules in full letter and spirit. It is, therefore, prayed that no case for interference is made out and the writ appeal filed by the appellant/writ petitioner is liable to be dismissed.

6. Heard the learned counsel for the parties and perused the material available on record.

7. At the outset, we would like to clarify that in the Office Memorandum dated 28.10.2023, there is a reference about Rule 26 of the Assam Civil Services (Conduct) Rules, 1965 but it appears that in fact the correct Rule is Rule 24 of the Assam Civil Services (Conduct) Rules and the mention of Rule 26 in the aforesaid Office Memorandum is incorrect.

8. Be that as it may, so far as the charge of contracting the second marriage during the currency of the first marriage against the appellant/writ petitioner is concerned, the same has been proved during the Departmental Proceedings. It is not the case of the appellant/writ petitioner that there was any violation of the procedure provided in the Statutory Rules for conducting Departmental Proceedings. The learned Single Judge has placed reliance on the decision of the Hon'ble Supreme Court rendered in Khursheed Ahmad Khan (supra), wherein the Hon'ble Supreme Court has refused to interfere with the dismissal order in the case of a person employed as Irrigation Supervisor in the Irrigation Department of the Government of Uttar Pradesh, who had also contracted second marriage during the currency of the first marriage. The Hon'ble Supreme Court has held that the penalty of removal from service cannot be held to be shockingly disproportionate in respect of the charge where a Government servant has performed second marriage during the currency of the first marriage.

9. It is to be noticed that the appellant/writ petitioner was a member of the Assam Police (Armed Branch), which is a Disciplined Force and responsible for managing law and order in the State of Assam. From the members of the Disciplined Force it is expected that they will adhere to the Conduct Rules in full letter and spirit in comparison to the employees of the other wings of the State. The reliance placed by the appellant/writ petitioner on the decision of this Court in the case of Pranab Kumar Nath (supra) is of little help as the said case was in relation to an employee of the CISF, which is an institution having different

obligations than the obligations of the Police Force.

10. It is also to be noticed that though the appellant/writ petitioner has claimed that he has contracted second marriage during the currency of the first marriage with the consent of his first wife but it appears that the Disciplinary Proceedings were initiated against the appellant/writ petitioner on the complaint filed by his first wife, who, during the Disciplinary Proceedings, has also levelled allegation against the appellant/writ petitioner of contracting second marriage without obtaining her consent or permission and even without informing her or her family members. She has also stated that the appellant has deserted her. From the record, it is also revealed that the first wife of the appellant/writ petitioner has to approach the Court for monthly maintenance and she has also filed criminal case against the appellant/writ petitioner.

11. Taking into consideration the overall facts and circumstances of the case, we do not find any case for interference with the impugned order dated 20.09.2023 passed by the learned Single Judge in WP(C) No.5504/2023. Hence, the writ appeal is dismissed.