
(2015) 03 AHC CK 0078
In the Allahabad High Court
Case No : Special Appeal No. 799 of 2013

Satya Deo Singh Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Citation : (2015) 3 ADJ 389 : (2015) 5 ALJ 285 : (2015) 110 ALR 673 : (2015) 3 AWC 2955 : (2015) 2 ESC 1184

Hon'ble Judges : Rakesh Tiwari, J;Vijay Lakshmi, J

Bench : Division Bench

Advocate : Anil Kumar Srivastava, Swapnil Kumar, Swarn Kumar Srivastava and Vivek Prakash Mishra, for the Appellant

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J.—This Intra Court Appeal is directed against the judgment and order dated 18.4.2012 passed in Writ-A No. 38093 of 2005, Satya Dev Singh Yadav v. State of U.P. and others, whereby the writ petition filed by the petitioner-appellant has been dismissed. We have heard learned counsel for the appellant and learned Standing Counsel appearing on behalf of the respondents and have perused the record.

2. On 3.2.2015 when this case was listed earlier the following order was passed:

"This case is listed peremptorily today.

This Special Appeal has been preferred against the judgment and order dated 18.4.2012 whereby the learned Single Judge has dismissed the writ petition filed by the appellant.

We have heard learned counsel for the appellant and learned Standing Counsel and perused the record.

The petitioner-appellant was terminated from his services for having performed bigamous marriage in contravention of Rule 29 of the Uttar Pradesh Government

Servants Conduct Rules, 1956.

Learned counsel for the petitioner-appellant submitted that the services of the petitioner-appellant were not liable to be terminated in view of the clear provisions of sub-rule 3 of Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956. Learned counsel for the appellant has also relied upon the following judgments to support his contention:

1. Civil Misc. Writ Petition No. 27963 of 2007 decided on 23.7.2009.
2. Laws (ALL)-1997-4-115, Paras Nath Pandey v. Assistant Director Administration Directorate of Training and Employment U.P. Lucknow.
3. Civil Misc. Writ Petition No. 70379 of 2009, Shravan Kumar Pandey v. State of U.P. and others, decided on 2.7.2010.

Learned Standing Counsel has raised a preliminary objection that Sub-Rule 3 in Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956 has now been omitted by notification No. 22/2/1969-Karmik-1 dated October 20, 1976.

Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956, before such omission of sub-rule 3 is reproduced below:

"29. Bigamous marriages: (1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

(3) A minor punishment to be imposed in contravention of sub-rule (1) or sub-rule (2), shall be withholding of the increments for three years."

Learned Standing Counsel has submitted that after omission of sub-rule (3) which prescribed for minor punishment of withholding of increments the petitioner-appellant was disqualified from Government services and his services have rightly been terminated.

At this stage learned counsel for the appellant prayed for and is granted a week's time to cite some case laws in favour of the appellant.

List peremptorily in the next cause list.

Order Date: 3.2.2015"

3. No new case law after the aforesaid order was cited by learned counsel for the appellant. However, earlier by way of filing a supplementary-affidavit he had filed the following case laws:

1. Smt. Raj Bala Sharma v. State of U.P. and others, 2009 ILR (All) 617.

2. Nepal Singh Vs. State of U.P. and Others, AIR 1985 SC 84 : (1985) 50 FLR 77 : (1985) LabIC 587 : (1986) 2 LLJ 343 : (1984) 2 SCALE 693 : (1985) 1 SCC 56 : (1985) 2 SCR 1 : (1985) 17 UJ 287

3. Paras Nath Pandey v. Assistant Director Administration, Directorate of Training and Employment, U.P., Lucknow, Laws (ALL) 1997-4-115.

4. Civil Misc. Writ Petition No. 70379 of 2009, Sharvan Kumar Pandey v. State of U.P. and others, decided on 2.7.2010.

4. We have carefully gone through all these judgments and on perusal of these judgments, we are of the view that the appellant cannot avail any benefit out of these judgments because the facts of all these cases are entirely different from the facts of the case of the appellant. Moreover, all these judgments have been passed by learned Single Judges of this Court and the judgment passed by the learned Single Judge has no binding effect on a Division Bench. In most of these cases it was not found proved that the petitioner had performed a second marriage during the lifetime of his/her first spouse. In these judgments the Single Judges have directed that in view of Sub-rule 3 of Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956, a minor punishment of withholding of three increments may be imposed on the petitioner, without keeping in view the fact that Sub-rule 3 of Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956, has been omitted far back in 1976 by the notification No. 22/2/1969-Karmik-I dated October 20, 1976.

5. In Shravan Kumar Pandey's case the learned Single Judge of this Court has wrongly held that sub-rules 1 and 2 of Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956 clearly gives an indication that whoever contravenes the provisions contained in sub-rules 1 and 2 of Rule 29 of the aforesaid rules shall be awarded with minor penalty, whereas a perusal of sub-Rules 1 and 2 of Rule 29 of the aforesaid Rules clearly shows that there is no such indication in this Rule.

6. Now reverting back to the case in hand, admittedly, the petitioner-appellant has performed a second marriage during the lifetime of his first wife. Although the petitioner-appellant has taken a plea that he had divorced his first wife on 12.5.1998 before entering into the second marriage by way of an agreement but in absence of any such provision whereby divorce can be taken by a private agreement between two parties and without any decree of competent Court/Family Court it cannot be held that any divorce has taken place between them. We have also noticed that the agreement dated 12.5.1998 relying on which the appellant has stated that he had divorced his first wife, itself records that if in future the petitioner-appellant and his first wife have an issue, then that issue will be given due recognition and all the rights. This in itself indicates that the first marriage of the appellant was never determined finally amongst the parties even by mutual agreement/consent.

7. The record shows that against the order of dismissal from service, the

petitioner-appellant had filed a departmental appeal, which too was dismissed. Against the said order of dismissal of appeal, he had filed a revision before the authority concerned, which was also dismissed. The orders passed by the appellate authority and the revisional authority are available on the record, which clearly show that the agreement on which the petitioner-appellant is relying was obtained fraudulently from his first wife.

8. Thus it is clear that the first marriage of the petitioner-appellant was never finally determined by any competent Court of law and the appellant, by performing second marriage, committed a clear violation of Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956, which completely bars a Government servant to perform a second marriage in the lifetime of his spouse without first obtaining permission of the Government.

9. It is not the case of the appellant that he even tried to obtain permission of Government. Moreover, the petitioner being a Hindu could never have been granted such permission to marry second time because the provisions of Hindu Marriage Act applicable to the petitioner-appellant completely forbid such marriage by declaring them void.

10. In view of the clear mandate of Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956, the petitioner-appellant was disqualified from Government service and he has been rightly discharged from the services by his department. The learned writ Court has rightly dismissed the writ petition filed by him and there is no need to interfere in the impugned order. The appeal lacks merit and is accordingly dismissed.