

(2007) 04 RAJ CK 0082
In the Rajasthan High Court

State of Rajasthan and Others	Vs	APPELLANT
Dr. (Smt.) Shipra Saha		RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 25, 29

Citation : (2007) 4 RLW 2689

Hon'ble Judges : Rajesh Balia, J;Bhanwaroo Khan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajash Balia, J.—This appeal is directed against the judgment of the learned Single Judge dated 5.12.2006 allowing S.B. Civil Writ Petition No. 5380/2006 preferred by the respondent.

2. The facts of the case are that the respondent was in the service of the State of Rajasthan and was inducted as Lecturer in the Government College, Dholpur since 1981. Her first appointment was on ad hoc basis. Later on, she was selected by RPSC. While she was posted as Lecturer in Government College, Barmer in 1994, she married Dr. Sangat Singh, who too was working as Lecturer in Government College, Barmer in 1998. By communication dated 9.10.2002 the petitioner was called upon to explain the allegation against her that she has contracted marriage with Dr. Sangat Singh, who was already married while his First wife was alive. She replied reminded to this effect also on 25.10.2002.

3. The respondent-petitioner submitted in response that she has been knowing Dr. Sangat Singh since about four years before marriage. During this period whenever she has visited the house of Dr. Sangat Singh, she has not found his wife in his house. She was informed by Dr. Sangat Singh that his first marriage has resulted into divorce before Fifteen years and she has no reason to disbelieve said statement. She has not seen his wife at the residence of Dr. Sangat Singh at any time. She was also shown declaration executed by the former wife

of Dr. Sangat Singh that they have already dissolved their marriage. It is in the aforesaid circumstances, that when she was proposed by Dr. Sangat Singh she accepted the proposal and marriage took place with bonafide belief that First marriage stood dissolved. She had fully been assured that Dr. Sangat Singh's first marriage has been dissolved. She also made it clear that she has met Dr. Sangat Singh's first wife, who is also staying in Barmer. She met Smt. Bhanwari Devi in the presence of her mother and brother and they clearly told the petitioner that marriage between Smt. Bhanwari Devi and Dr. Sangat Singh had been dissolved and they have no objection to her marriage with Dr. Sangat Singh. In these circumstances, she married Dr. Sangat Singh. This explanation was submitted in writing on 28.10.2002.

4. Notwithstanding the aforesaid explanation, charge-sheet was issued under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 dated 22.4.2004 alleging that the petitioner is employed as Lecturer (English) at Government College, Barmer since 11.1.1994. During that period the incumbent has married Dr. Sangat Singh, Lecturer (Political Science), who has already married and his first wife was living which is in violation of Rule 25 of the Rajasthan Civil Services (Conduct) Rules, 1971. In the details of the charges while referring to the explanation submitted by the petitioner, it was stated that since under the law the divorce can only be effected through a decree of Court and since the explanation does not refer to any such decree passed by the Competent Court, the act of the petitioner was treated to be in violation of Rule 25 of the Conduct Rules. She stated in her explanation that she married Dr. Sangat Singh on the basis that he was already a divorced person and all surrounding circumstances, which have been referred in detail in the reply suggested that the earlier marriage between Dr. Sangat Singh and his first wife did not exist, a fact which was admitted by Dr. Sangat Singh's wife also and she reiterated that marrying the divorced husband did not result in any violation of Conduct Rules.

5. During the pendency of the enquiry she also reiterated before the enquiry officer after he has ordered to proceed ex-parte that she has submitted a decision of Rawana Rajput Hitkarini Panchayat Sabha", Barmer dated 5.1.1996 stating that the marriage of Dr. Sangat Singh with Smt. Bhanwari Devi has been dissolved as per the customs of Rawana Rajput Hitkarini Panchayat Sabha community which is recognised by the Society and the said customs were recognised by the courts also.

6. She has also requested in the first instance by letter dated 13.12.2004 that since Additional Commissioner-Ist has been appointed as enquiry officer she does not want to appear in person and explain. Shortly thereafter in furtherance of this letter she further communicated on 28.1.2005 explaining the genesis behind letter dated 13.12.2004 wherein she clearly stated in the letter wrote to the Government, that the said Additional Commissioner - enquiry officer has number of times called her on phone and entreated her with proposals which

were immodest and he tried to mentally harass her. In these circumstances, she has asked for change of enquiry officer. She clearly stated that because of the conduct of the enquiry officer she had written a letter dated 13.12.2004 and she has asked for enquiry to be conducted by an unbiased enquiry officer. Alongwith this letter petitioner simultaneously sent a communication dated 28.1.2005 about the existing evidence of customary forms of divorce of Dr. Sangat Singh and wife to the enquiry officer.

7. The petitioner's assertion in her communication dated 28.1.2005 explaining her letter dated 13.12.2004 were not responded to and enquiry report was submitted on 5.3.2005 by the same enquiry officer holding the incumbent guilty of misconduct alleged against her. He has referred to letter dated 13.12.2004 to demonstrate the non-cooperation of the petitioner in participating in the enquiry and to buttress his conclusion to proceed ex-parte against the petitioner. However, in the enquiry report nothing was stated about letter dated 13.1.2005 addressed to the Government and letter dated 28.1.2005 bringing to the notice of enquiry officer existence of customary form of divorce supported by evidence of decision rendered by Rawana Rajput Hitkarini Panchayat Sabha, Barmer and that she has married Dr. Sangat Singh, Lecturer (Political Science), who was already married but his marriage with first wife dissolved.

8. In reply to notice to show cause against the finding of the enquiry officer issued by the disciplinary authority, the petitioner reiterated her stand taken in her response. She also made a request for re- enquiry reiterating the allegations against Additional Commissioner about his unbecoming conduct about which she had already complained vide her letter dated 28.1.2005, who was the enquiry officer in the Departmental Enquiry.

9. The disciplinary authority accepted the report of the enquiry officer and passed the order of removal from service.

10. This led to filing the writ petition. The learned Single Judge has allowed the writ petition vide order under appeal and set-aside the judgment of removal from service of the petitioner.

11. Having heard learned Counsel for the parties, we are of the opinion that this appeal must fail.

12. From the narration of facts two things emerged. Facts about which firstly there cannot be any dispute and there is no dispute are that the petitioner incumbent had from the beginning took a clear stand that she had known Dr. Sangat Singh since four years before her marriage and she has not found any woman living in his house though she was informed that he had been married earlier but she was informed also that the first wife and Dr. Sangat Singh have divorced years ago. The petitioner verified this fact from the first wife of Dr. Sangat Singh in the presence of her mother and brother at her residence and also from the colleagues of Dr. Sangat Singh at Barmer and these facts were also corroborated by the Sarpanch of the Panchayat supporting customary divorce.

The only gravamen of the charge was that divorce under Hindu Law is to be taken by the decree from the competent court alone but since according to Explanation it is clear that no decree of the competent court existed, the charge stands proved. It also needs to be noticed the exact provision and scope of Rule 25 of the Conduct Rules, which reads as under:

25. 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.

13. It may be noticed that Clause (1) and (2) operate on two different fields. While Clause (1) operates to all male Government servants desirous of contacting a second marriage while first wife is living. Clause (1) requires a Government servant contacting marriage with another person, who has already a wife living to seek permission of the Government before contacting a second marriage even if such marriage is permissible in accordance with law for the time being in force. Therefore, Clause (1) applies to the cases where the second marriage is contacted by the male Government servant where it is permissible in law.

14. Clause (2) relates to circumstance where a female Government servant wants to marry a person who has a wife living. It prohibits such marriage without first obtaining the permission of the Government. Apparently Clauses (1) and (2) both relate to contacting second marriage by the male while his first wife is living. In the first case where husband wants to marry second time and second case is where a lady wants to marry a married man. Before contacting such marriage, approval of Government is required to be obtained. However, in either case, essential existing circumstance is that first marriage of male (husband) must be subsisting and the first wife must be alive. In case the first marriage is dissolved or wife has died during subsistence of marriage, Rule 25 does not come into play at all.

15. Secondly, the technical rule is prior approval of the Government is required to be sought. Contacting such marriage is not prohibited in absolute. One cannot presume that Section 25 would deal with requiring permission for contacting invalid and illegal marriage prohibited by law.

16. Moreover, in either case it is inherent that permission is required to be sought only when the Government servant knows about the fact of subsisting first marriage and that the first wife is living. In case the person contacting the marriage is not even aware about first marriage or bonafide believes that the first marriage already stands dissolved and there is no subsisting first marriage, the question of seeking permission before contacting such marriage simply cannot arise. A person cannot be required to seek permission in regard to fact

which according to him/her does not exist. To illustrate, if the Government servant marrying another person does not know about first marriage, the clause of seeking permission would not arise for that incumbent and it cannot result in any misconduct under Rule 25. A person can be guilty of a conduct if he knows facts necessary for taking a particular course of action required of him. In ignorance of basic facts, if he has acted with due diligence he cannot be guilty of misconduct under Rule 25.

17. In the present case, right from the beginning, the explanation submitted by the incumbent was that when she contacted marriage with Dr. Sangat Singh she has from all sources come to know that first marriage was not surviving and it was a question of contacting second marriage with a divorcee. From the entire material on record, the enquiry officer nowhere found that the petitioner-respondent had contacted marriage knowing about subsisting first marriage. The averments made by the petitioner soon after the explanation was called from her before instituting enquiry and soon after service of the charge- sheet and during the course of enquiry in communicating to the enquiry officer about existence of a valid divorce recognized by the customs prevalent in the community of the petitioner's husband. The enquiry officer or the disciplinary authority has declined to elude to this aspect of the matter at all, rather they were obsessed with the idea that under the personal law, divorce is permissible only by a decree of Court. The explanation furnished by the petitioner was not found to be untrue and false so as to doubt her believing that she is marrying a divorcee whose first marriage was not subsisting. Such marriage neither required a prior approval of Government nor would amount to misconduct. To hold otherwise will be to vilifying the existing thread of gender justice.

18. If the respondent-petitioner is deemed to know the law, the enquiry officer and disciplinary authority are the first person to know law on the subject. A bare look at Section 29(2) of the Hindu Marriage Act goes to show that the customary form of divorce prevalent before the commencement of the Act had been saved. Sub-section (2) of Section 29 which provides the savings and repeals as a result of commencement of Hindu Marriage Act declares in unequivocal terms that nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu Marriage, whether solemnized before or after the commencement of this Act.

19. The petitioner has clearly made out her case in first explanation and second explanation that she has verified from Smt. Bhanwari Devi, the first wife of Dr. Sangat Singh about his statement that his marriage with Smt. Bhanwari Devi is dissolved long back which was confirmed by her. She had referred to declaration in this regard and has submitted the document recognising the divorce having taken place between Dr. Sangat Singh and Smt. Bhanwari Devi according to the customs. Therefore, merely because there was no decree of the competent court granting a decree of dissolution of marriage u/s 13 of the Hindu Marriage Act

cannot result in presumption that there is second marriage contracted by Dr. Sangat Singh during subsistence of first marriage. No material was brought in support of this conclusion on the face of undisputed stand taken by the petitioner.

20. Finding that no part of the explanation submitted by the petitioner was incorrect, learned Single Judge in our opinion, was right that if the petitioner after having taken all precautions with bonafide belief that the first marriage was dissolved and there was no subsisting marriage, contracted the marriage, question of violation of Rule 25 did not arise. Therefore, without entering into the procedural aspect of the conduct of the enquiry on substantive aspect of the matter, the respondent petitioner has succeed before learned Single Judge and we do not find any reason to interfere in this appeal.

21. The appeal fails and is hereby dismissed with costs, which is quantified at Rs. 10,000/-.