

(2017) 11 PAT CK 0062

In the Patna High Court

Case No : Letters Patent Appeal No. 1502 Of 2013, Civil Writ Jurisdiction Case No.3390 Of 2009

Union Of India And Ors

APPELLANT

Vs

Sanjay Kumar Ojha

RESPONDENT

Date of Decision : 23-11-2017

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 9, 10, 11
Central Reserve Police Force Rules, 1955 — Rule 15

Citation : (2018) 2 PLJR 790

Hon'ble Judges : Rajendra Menon, CJ;Anil Kumar Upadhyay, J

Bench : Division Bench

Advocate : S.D. Sanjay, Rajesh Kumar Verma, Sanjay Kumar Giri, Pranav Kumar, Rajeev Ranjan, Raju Kumar Singh, Kumari Seema Singh

Final Decision : Disposed Of

Judgement

Rajendra Menon, CJ

Seeking exception to an order dated 17.06.2013 passed by the learned Writ Court in C.W.J.C. No. 3390 of 2009 this appeal has been filed by the

Union of India through the Director General of Police, C.R.P.F. Headquarters, New Delhi.

Respondent was a constable working in the force in question and vide order dated 2nd of November, 2007 passed by the Commandant, 4th Battalion,

C.R.P.F., he was awarded punishment of dismissal from service on account of the fact that he has contracted a second marriage while his first wife

was alive and under the Rule 15 of the Central Reserve Police Force Rules, 1955 plural marriage is prohibited.

The learned Writ Court interfered into the matter after hearing the parties concerned primarily on two counts. The first was that a coordinate Single

Bench of this Court in C.W.J.C. No. 10674 of 2002 (Pramod Kumar Yadav Vs. Union of India & Ors.) decided on 24.09.2002 under similar

circumstances had set aside the punishment imposed on a constable in the C.R.P.F. as he had solemnized the second marriage during the life time of

his first wife. The second ground which found favour with the learned Writ Court was that under Section 11 of the C.R.P.F. Act a major punishment

of dismissal from service cannot be imposed until and unless orders are passed with regard to punishment of the delinquent employee for heinous

offences as classified under Section 9 and Section 10.

Heaving heard learned counsel for the parties at length, we find that even though the learned Writ Court has placed reliance on the Single Bench

judgment in the case of Pramod Kumar Yadav (supra), the said judgment in the case of Pramod Kumar Yadav had been set aside by a Division

Bench of this Court in the case of The Union of India & Ors. Vs. Pramod Kumar Yadav- 2003 (3) PLJR 69 0and it has been held that a person who

has indulged in a misconduct of plural marriage has no place to work in an establishment like the military or a para military force and the order passed

by the Writ Court was set aside. That being so, the reliance placed by the learned Writ Court on the Single Bench judgment in the case of Pramod

Kumar Yadav is clearly unsustainable. That apart, the law laid down by the Division Bench in the case of Pramod Kumar Yadav has been followed

subsequently by another Division Bench of this Court in the case of Union of India & Ors. Vs. Subodh Kumar and Anr. - 2003 (4) PLJR 20 7wherein

again on account of misconduct committed under Rule 15 of the Central Reserve Police Force Rules, 1955 an order dismissing an employee from

service on account of contracting plural marriage has been upheld.

In view of the aforesaid enunciation of law by the learned Division Benches of this Court, we find that once the employee is found to have committed

a misconduct which falls under Rule 15 of the Rules of 1955 the action taken for dismissal cannot be interfered with by this Court. That apart, the

findings recorded by the learned Writ Court to say that under Section 11 major punishment of dismissal cannot be imposed is also found to be

unsustainable in view of the law laid down by the Supreme Court in the case of Union of India and others Vs. Ghulam Mohd. Bhat- (2005) 13 SCC

228. It has been held by the Honâ??ble Supreme Court in the aforesaid case that

for a misconduct of over stay of leave which is a civil offence a punishment of dismissal under Section 11 is permissible. The aforesaid law was laid down by the Supreme Court after taking note of various earlier judgments on the issue in question.

Taking note of all these circumstances, we find that the order passed by the learned Writ Court cannot be sustained on both the grounds which found favour with the learned Writ Court.

Accordingly, we allow this appeal, quash the order passed by the learned Writ Court and uphold the action taken by the authorities of the Central Reserve Police Force. The appeal stands allowed and disposed of.