
(2011) 12 AHC CK 0415

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22770 of 1993

Yogendra Kumar Sarswat

APPELLANT

Vs

D.I.G. PAC, (Pashchimi Anubhag), Moradabad and others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Citation : (2012) 1 ADJ 292 : (2012) 132 FLR 973

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Rajes Kumar, J.—By means of the present petition, the petitioner is challenging the orders dated 30.4.1993 and 30.11.1992, passed by the respondent nos. 1 and 2.

2. The brief facts giving rise to the present dispute are that the petitioner was appointed as a Constable in a Special Police Force on 2.9.1988. After the due selection, he was posted in the Special Police Force at Moradabad. A disciplinary proceeding, by giving a charge sheet dated 24.6.1992, has been initiated against the petitioner alleging therein that the petitioner, having one living wife, had remarried again without obtaining divorce and without prior permission from the Department and as such had committed misconduct under the Uttar Pradesh Government Servant Conduct Rules. Against the charge sheet, the petitioner submitted his reply, stating therein that he married to one Smt. Vimlesh Saraswat, daughter of Kanhaiya Lal, resident of Village Balikavas, Post Gaushi, District Aligarh on 28.6.1991 and he had not married to Smt. Sanyogita Sharma as she had married to one Ajai Kumar, Son of Ram Nath, Resident of Baraot, District Merut. Sri Ajai Kumar was alive and was not divorced by Sri Ajai Kumar. It was further stated that Smt. Sanyogita Sharma was living in Baraot in 1990 and she used to come to the house of Brother of the petitioner Rajendra Kumar. Smt. Sanyogita Sharma is a very clever lady and for the purpose of blackmailing the petitioner, she obtained the signature of the petitioner on a declaration dated

2.2.1990 fraudulently wherein it was stated that she got married with the petitioner. In the month of February, 1990, when the petitioner came to know about such fraudulent declaration, he filed Suit No. 177 of 1990 for declaring the said declaration dated 2.2.1990 as void. Notices were issued to Smt. Sanyogita Sharma, but she did not appear, despite service of notice and the suit was decreed by the judgment and order dated 25.7.1990, declaring the said document as void. The said order has become final and has not been contested before any of the competent court by Smt. Sanyogita Sharma.

3. In the enquiry proceeding, the statements of Smt. Sanyogita Sharma and the petitioner were recorded. The statements of Smt. Kailashwati, wife of Pooran Chand, Ram Kumar Pathak, Son of Brij Mohan, Subodh Kumar, Naresh Kumar and Smt. Veena Sharma were also recorded. The petitioner also examined aforesaid persons on 21.5.1992. The statements of Ameer Singh, Ashok Kumar and Raghubir Singh were also recorded in support of the petitioner. However, in the enquiry proceeding, it has been concluded that the petitioner married with Smt. Sanyogita Sharma and during the subsistence of his marriage he remarried with one Smt. Vimlesh Saraswat.

4. On the basis of the enquiry report, a show cause notice dated 18.11.1992 was given to the petitioner to which the petitioner filed a reply on 20.11.1992, thereafter, the Commandant of the Special Police Force, by the impugned order dated 30.11.1992, terminated the services of the petitioner. Against the termination order, the petitioner filed the appeal, which has also been dismissed on 30.4.1993. Both the orders are being challenged in the present petition.

5. Heard Sri K.K. Misra, learned counsel for the petitioner and the learned Standing Counsel.

6. Learned counsel for the petitioner submitted that the petitioner has never got married with Smt. Sanyogita Sharma. The declaration dated 2.2.1990, on which she obtained the signature of the petitioner fraudulently, has been declared void in Suit No. 177 of 1990 by the Civil Court. The said order has become final, being not challenged in any of the competent court and, therefore, the said declaration cannot be looked into as an evidence. He further submitted that there is no evidence on record to show that the marriage has ever been solemnised in accordance to Hindu rituals, namely, Shaptpadi, etc. Smt. Sanyogita Sharma is a very clever lady. She got the signature of the petitioner fraudulently on a plain paper. She used to come to his brother's house to develop relationship with the petitioner. The petitioner never married with her and has married with one Smt. Vimlesh Saraswat with whom he is living and has children out of their wedlock. The allegation is not substantiated by any evidence and is based on no material.

7. Learned Standing Counsel submitted that the declaration on the plain paper clearly establishes that the petitioner got married with Smt. Sanyogita Sharma on 2.2.1990. Recital in the declaration clearly establishes their marriage. There is a signature of the petitioner in the said declaration, which is not being denied by

the petitioner. It is wholly unbelievable that the signature had been obtained fraudulently on the said paper. Such allegation is without any basis and is unbelievable. He further submitted that the allegation of Smt. Sanyogita Sharma is supported by the statement of Smt. Veena Sharma, wife of Gyaneshwar Sharma, who stated that Smt. Sanyogita Sharma is my sister-in-law. She got married with the petitioner in a temple on their own free will and for two days, they stayed at my residence at Kharkhodha, but admitted that they did not come in her presence and came in the presence of her husband, mother-in-law and other members of her family. She has not seen Yogendra Kumar, however, his photographs are with her. In her statement, Smt. Sanyogita Sharma stated that at the time of marriage, Smt. Sheela Devi, the sister-in-law of Yogendra Kumar was present. The statement of Smt. Sheela Devi has not been recorded. Some of the photographs relating to the garlanding etc. have been produced before the Enquiry Officer. Sri Subodh Kumar, Son of Khem Chandra, in his statement stated that two and a half years back, Sanyogita and Yogendra, after their marriage, came to railway quarter and I met with them. I have no relationship with them. On cross-examination, he stated that he met them at Kharkhoda Railway Station in the month of February/March, 1990, when Yogendra Kumar was going to Ambala. Sri Ram Avtar Pathak, in his statement, has stated that Smt. Sanyogita is known to my mother-in-law. They came to live in my house and they possessed marriage paper. I had a vacant room and on the request of my mother-in-law. I had given the said room to them where both of them lived for few days as husband and wife, thereafter, all of a sudden they had gone. On cross-examination, he stated that he did not know when he had given the house to them on rent. The period of stay was about one and a half week. I have not seen Yogendra Kumar in the uniform. Rs.100/= per month was the rent. Smt. Kalawati, in her statement, stated that two and a half years back, Sanyogita got married with Yogendra Kumar and he kept the girl with him and thereafter he left her at my nephew's house at Kharkhoda, but did not come back to take my daughter. Naresh Kumar, in his statement, also stated that he was posted at Railway Station Kharkhoda in the year 1990-91 and his cousin brother, Gyaneshwar was also posted there as gate man where Yogendra Kumar was usually coming and in between he got married with Sanyogita and after the marriage when they came to Kharkhoda, he came to know about the marriage.

8. The petitioner was given opportunity to substantiate his case. He has given the explanation on 2.9.1992. Constable Ameer Singh, Ashok Kumar and Raghubir Singh were also examined. In their statement, they have shown ignorance about the marriage.

9. On the consideration of the aforesaid evidence, the Enquiry Officer came to the conclusion that the petitioner was married with Sanyogita Sharma and without giving divorce he again remarried with Vimlesh Saraswat, without taking the prior permission from the Department and relying upon the enquiry report, the petitioner has been suspended. Before the Enquiry Officer, the petitioner has not adduced any other evidence, except relying upon his statement and the

order of the Civil Court.

10. This Court, while entertaining the writ petition, has stayed operation of the orders dated 30.11.1992 and 30.4.1993 until further orders.

11. In Paragraph 8 of the rejoinder affidavit, filed on 17.7.2010, it has been stated that in view of the interim order, passed by this Court, the petitioner is still working.

12. I have considered the rival submissions and perused the impugned orders as well as the documents annexed alongwith the writ petition.

13. The only document on the basis of which the marriage has been claimed by Sanyogita is the declaration dated 2.2.1990. There is no dispute that in the said declaration, there is a signature of the petitioner.

14. The contention of the petitioner is that the signature has been obtained fraudulently and he never married with Sanyogita. The petitioner filed Suit no. 177 of 1990 before the Civil Court for declaration of said declaratory document as void. The suit has been decreed. It has not been challenged before any of the competent court and as such it has become final. It is nobody's case that the said ex parte decree has been set aside by any competent court.

15. In view of the above, the said declaration cannot be said to be a conclusive evidence of marriage. No eye witness of the marriage has been produced. Various persons, whose statements were recorded, were not eye witness of the marriage. They simply stated that both the petitioner and Sanyogita came to them as husband and wife. No evidence of any rituals of marriage being taken place has been produced. Sanyogita, in her statement, has not denied the statement of the petitioner that she was married with one Ajai Kumar and no divorce took place.

16. On these facts, I am of the view that the marriage of the petitioner with Sanyogita is not established and, therefore, the allegation of the remarriage is not correct and as such termination of the services of the petitioner is liable to be set aside.

17. In the result, the writ petition is allowed. The termination order dated 30.11.1992 and the appellate order dated 30.4.1993 are hereby set aside.