(2006) 05 AHC CK 0207

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 27190 of 1997

Veerpal Singh	APPELLANT
Vs	
Senior Superintendent of Police and Others	RESPONDENT

Date of Decision: May 18, 2006

Acts Referred:

- All India Services (Conduct) Rules, 1968 - Rule 19
- Central Civil Services (Conduct) Rules, 1964 - Rule 21
- Constitution of India, 1950 - Article 21, 226, 25, 25(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Marriage Act, 1955 - Section 17
- Penal Code, 1860 (IPC) - Section 494, 495
- Railway Services (Conduct) Rules, 1966 - Rule 21
- Uttar Pradesh Government Servants (Conduct) Rules, 1956 - Rule 27, 29
- Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 - Rule 14(1), 4(1)

Citation: (2006) 05 AHC CK 0207

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: Prakash Padia, R.G. Padia, G.S. Misra and Alok Tiwari, for the Appellant; M.C. Chaturvedi, K.M. Sahai, S.P. Singh and Mohan Yadav and C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.
The writ petition is directed against the order dated 11th June, 1997 (Annexure-12 to the writ petition) passed by the Senior Superintendent of Police, Agra, (hereinafter referred to as "S.S.P., Agra") dismissing the petitioner from the post of Fireman and a mandamus has been sought directing the respondents not to interfere in working of the petitioner as

Fireman and to pay his full salary for the period of suspension. The petitioner has also challenged the validity of Rule 29 of the U.P. Government Servants Conduct Rules, 1956, (hereinafter referred to as "Conduct Rules, 1956") claiming it to be unconstitutional.

2. The brief factual matrix as disclosed in the writ petition is that the petitioner was appointed on the post of Fireman on 1.11.1989. The respondent No. 5, Smt. Munni Devi claiming herself to be the wife of the petitioner, made a complaint that the petitioner has married another wife namely, Anita and, therefore, is guilty of bigamy. Pursuant to the directions issued by the Chief Fire Officer, Agra on the aforesaid complaint, the petitioner submitted a detailed representation dated 2nd September 1994 explaining that the complainant, respondent No. 5 was married to the petitioner"s maternal uncle, Ram Khilari, and after his death lived with the elder maternal uncle, Shri Sultan Singh, from whom she conceived a child also. She is also receiving the family pension being widow of late Ram Khilari. The petitioner had no relationship of husband and wife with the respondent No. 5 and on the other hand he married Km. Anita Yadav, d/o Shri Jaswant Singh Yadav on 18th December 1.994 in accordance with the Hindu Marriage Rituals in the presence of all relatives and friends. The petitioner submitted that respondent No. 5 has made complaint to extract illegally some monitory gains from the petitioner. The District Probation Officer, Etah, vide his letter No.225/G.Pro.Ka./V.Pe/Aa./95-96 dated 20.6.1995 informed the Chief Fire Officer, Agra that Smt. Munni Devi, widow of late Shri Ram Khilari, R/o Village Nagla Saman, Post Babsa, Tahsil and District Etah is receiving widow pension since April, 1989 @ Rs. 100/- Per Month. After receiving the aforesaid complaint, the petitioner was placed under suspension vide order dated 24th May 1995, which was subsequently revoked and the petitioner was reinstated vide order dated 15th July 1996.

3. It appears that the Chief Fire Officer, Agra was required to submit his report after conducting a fact finding inquiry and in his report dated 19th July 1995, he found that there was no evidence of marriage of Smt. Munni Devi @ Bimla Devi with the petitioner. However, it said that both were living together and their relationship has resulted in the birth of a child. It is also mentioned in the report that earlier Smt. Munni Devi @ Bimla Devi was Mami of the petitioner, but after the death of the maternal uncle of the petitioner, she lived as husband and wife with the petitioner although there is no evidence of solemnization of marriage between the two.

4. However, again the Chief Fire Officer was required to make enquiry and submit his preliminary enquiry report, which was submitted on 31st January 1996 reiterating the earlier findings. The S.S.P., Agra, thereafter directed the Superintendent of Police (City), Agra to inquire as to whether the Chief Fire Officer has conducted an impartial preliminary inquiry or not. The S.P. City, Agra vide his report dated 9th July 1996, however confirmed that Smt. Munni Devi, married the petitioner in the year 1989 after the death of her husband, late Ram Khilari and both were living as husband and wife till 1993. During this period Smt. Munni Devi conceived two daughters, but one of them died and one is alive. The petitioner solemnised second marriage in the year 1994 without the knowledge of

Smt. Munni Devi, who after coming to know of this fact took various legal steps. She also filed an application claiming maintenance u/s 125, Cr.P.C. wherein the Additional Chief Judicial Magistrate, Kasganj vide order dated 20th December 1994 directed for payment of Rs. 400/- per month to Smt, Munni Devi and Rs. 100/- per month for Km. Rubi, their daughter.

5. Thereafter it appears a regular disciplinary proceeding was initiated against the petitioner under U.P. Subordinate Police Officers (Punishment and Appeal), Rules, 1991 (in short "Rules of 1991") and the Assistant Superintendent of Police, Agra was appointed as Enquiry Officer vide S.S.P., Agra"s order dated 16th July 1996. A charge sheet was issued to the petitioner on 16th August 1996. After completion of the oral enquiry, the Enquiry Officer submitted his report holding the petitioner guilty of bigamy and, therefore, guilty of misconduct under Rule 29 of Conduct Rules, 1956. A show cause notice dated 17th April 1997 was issued to the petitioner along with copy of the enquiry report. The petitioner requested that the matter is already sub judice in the court of Additional Chief Judicial Magistrate and, therefore, the proceedings should be deferred till it is pending before the Court. The Disciplinary Authority, however, after perusing the record passed the impugned order of dismissal in exercise of powers under Rule 4(1) of Punishment and Appeal Rules, 1991.

6. A counter affidavit has been filed on behalf of the respondents, wherein it has been stated that after the complaint of Smt. Munni Devi found prima facie correct, a regular departmental enquiry was conducted in accordance with the Punishment and Appeal Rules, 1991 and after giving due opportunity of defence, the order of punishment has been passed on the basis of the material available on record. There is neither any error in the decision making process nor the disciplinary proceedings have been conducted contravening any statutory provisions. It is also stated that Rule 29 of the Conduct Rules is neither invalid nor unconstitutional since it does not violate any of the legal or constitutional rights of the petitioner and, the contention regarding the constitutional validity of the Rule 29 of the Conduct Rules, 1996, is without any basis.

7. Heard Shri Prakash Padia, learned Counsel for the petitioner and learned Standing Counsel for the respondents. The learned Counsel for the petitioner advanced following submissions orally as well as through written arguments:

(1) After the two preliminary enquiry reports submitted by the Chief Fire Officer, there was no occasion for S.S.P., Agra to hold any enquiry against the petitioner.

(2) The procedure prescribed under the Rules has not been followed before imposing penalty of dismissal and in support thereof; he relied upon the following:

(i) Kulwant Singh Gill Vs. State of Punjab,

(ii) 1999 (4) AWC 3227 Subhash Chandra Sharma v. Managing Director, U.P. Cooperative, Spinning Mills Federation;

(iii) Radhey Shyam Pandey Vs. Chief Secretary U.P. and others,

(3) The charge of bigamy is false and there is no proof or evidence showing a valid marriage of the petitioner with Smt. Munni Devi.

(4) Rule 29 of the Conduct Rules, 1956 is unjust, arbitrary and illegal since no guidelines have been provided as to when the permission will be granted for the purpose of second marriage.

(5) The punishment awarded to the petitioner is very harsh and disproportionate to the gravity of the charge.

8. The learned Standing Counsel, however, contended that on the basis of the evidence available during the course of the inquiry proceedings, the authorities have found that the petitioner is guilty of bigamy and unless there is any error in the decision making process, the appreciation of evidence by the Disciplinary Authority will not be re-assessed or re-appreciated in judicial review since the court will not sit in appeal in such matters. It has been pointed out that the petitioner was afforded adequate opportunity to defend himself during the course of the inquiry, but he himself failed to avail the same and in the circumstances, there is no error in the order of dismissal passed by the Disciplinary Authority. The respondents have also placed the entire original record pertaining to disciplinary enquiry conducted against the petitioner for the perusal of the Court.

9. Considering the rival submissions advanced by the learned Counsel for the parties, perusing the record of the writ petition and the original record of the disciplinary proceedings placed before the Court during the course of the hearing with the consent of the learned Counsel for the petitioner, the following facts emerges: 24th May 1995- S.S.P. Agra placed the petitioner under suspension on the allegations of bigamy and threat of life to his first wife Smt. Munni Devi.

22nd June 1995- Shri R.K. Singh, Chief Fire Officer, Agra in his preliminary enquiry report found no evidence of solemnization of marriage of Smt. Munni Devi with the petitioner although both lived together and had a daughter out of the aforesaid relationship.

5th August 1995- S.S.P. Agra pointing out several apparent discrepancies in the preliminary report of Chief Fire Officer directed him to examine the matter again and submit his report.

31stJanuary 1996- Shri R.K. Singh, Chief Fire Officer, Agra again submitted preliminary enquiry report stating that neither the marriage of Smt. Munni Devi with the petitioner was registered in the office of Sub-Registrar, Kasganj, District Etah nor before the Nyay Panchayat nor before the Marriage Magistrate and, therefore, there was nothing to show that she was a legally wedded wife of the petitioner.

5th February 1996- S.S.P. Agra directed S.P. City, Agra to himself inquire into the matter as the correctness of the report of Chief Fire Officer and his role suspected.

9th July 1996- S.P. City, Agra submitted his preliminary enquiry report verifying the relationship of husband and wife between the petitioner and Smt. Munni Devi recommending regular departmental enquiry under Rule 14(1) of Punishment and Appeal Rules, 1991.

15th July 1996- S.S.P. Agra revoked suspension of the petitioner without prejudice to the regular departmental enquiry, which was under contemplation.

16th July 1996- S.S.P. Agra appointed Shri Sunil Kumar, Assistant Superintendent of Police as Enquiry Officer to hold regular departmental enquiry against the petitioner.

16th August 1996- Charge sheet issued to the petitioner containing sole charge of bigamy and violation of the conduct Rules.

21st August 1996- Petitioner replied the charge sheet denying allegations made against him and requesting to drop the entire proceedings at this very stage.

10. The evidence, oral and documentary as referred to in the charge sheet were as follows:

Oral :- Shri Udai Veer Singh, Shri Ramji Lal, Shri Chokhey Lal, Shri Kshetrapal Singh, Bahori, Shri Kunwar Pal Singh, Shri Man Singh , Shri Sirdari, Shri Hardayal, Shri Bhavraj Singh, Shri Siyaram and Shri Balvir Singh.

Documentary :- Statement of Smt. Munni Devi.

29.11.1996- Letter sent by the Enquiry Officer to the petitioner after completion of the departmental witnesses requiring him to submit his written statement, list of defence witnesses and documents in defence etc.

19.02.1997- After completion of the entire oral inquiry, wherein the petitioner participated from time to time and also produced defence witnesses; the Enquiry Officer submitted his report holding the charge proved against the petitioner.

17.04.1997 A show cause notice along with the copy of the enquiry report sent to the petitioner by the S.S.P. Agra.

30.04.1997 Reply given by the petitioner.

11.06.1997 Dismissal order.

11. The proceedings conducted by the Enquiry Officer shows that during the course of the oral hearing, he examined ten witnesses produced by the department to support the

charges, which were also cross examined by the petitioner and two defence witnesses were examined. Therefore, it cannot be said that no oral enquiry has been conducted against the petitioner and the order of the punishment has been passed only after obtaining reply from the petitioner against the charge sheet.

12. The first submission that after the two enquiry reports were submitted by the Chief Fire Officer, there was no occasion to Senior Superintendent of Police, Agra to direct for any further enquiry is without basis and can not be accepted. It is always open to the disciplinary authority to get a preliminary fact finding enquiry conducted to find out whether the allegations made against an employee are prima facie correct or not. Such an enquiry has to be conducted to the satisfaction of the disciplinary authority and whenever he has any doubt, it is always open for him to ask for further or fresh preliminary enquiry to be conducted by the same or another officer. A preliminary enquiry is not a substitute of regular disciplinary proceeding conducted against the government servant and finding either way arrived at in a preliminary enquiry can not be said to be final in any manner. Such an enquiry is conducted with a view to collect material and form satisfaction regarding prima facie truth of the act or omission constituting "misconduct" on the part of the employee. The facts as discussed above and available on record shows that after the report of the Chief Fire Officer received by the disciplinary authority, he doubted even the conduct of the Chief Fire Officer and therefore, directed the Superintendent of Police, City, Agra to conduct a preliminary enquiry and also find out whether the Chief Fire Officer has conducted impartial enquiry. Superintendent of Police submitted his report finding prima facie act of misconduct on the part of the petitioner although the Chief Fire Officer was exonerated of any deliberate or intentional involvement. Even otherwise holding of more than one preliminary enquiries would not vitiate the regular disciplinary enquiry conducted against an employee in accordance with rules. Moreover any irregularity in the preliminary enquiry would not affect order of punishment passed in pursuance to a regular enquiry conducted in accordance with rules unless regular inquiry itself is found to vitiate in law. Therefore, the first submission of the learned Counsel for the petitioner that after two preliminary enquiries reports submitted by the Chief Fire Officer the disciplinary authority could not have directed to hold further enquiry is rejected.

13. The next contention of the learned Counsel for the petitioner that the oral enquiry has not been conducted after giving him due opportunity of hearing is clearly without any basis and has not been substantiated either by placing any or sufficient material or by necessary pleadings. Even otherwise, the record shows clearly that the petitioner from time to time participated in the oral enquiry, cross examined the witnesses, produced his defence witnesses and hence it cannot be said that the proceedings have been conducted in violation of the procedure prescribed in Rules of, 1991. Learned Counsel for the petitioner also could not point out as to how and what manner the petitioner was denied adequate opportunity of defence causing any prejudice to him which has the effect of vitiating the entire proceedings.

14. In the cases pertaining to disciplinary enquiry, the scope of judicial review is very limited and is confined to the extent of decision making process and not to appreciate the decision itself unless it is found to be vitiated in law on account of malafide, bias or in violation of natural justice, or in case it can be shown that the findings recorded in the disciplinary proceedings are based on no evidence at all. Recently after analyzing earlier case law on the subject a Division Bench of this Court in Special Appeal No. 1280 of 2005 Sarvesh Kumar Sharma v. Nuclear Power Corporation of India Limited and Anr. decided on 20.2.2006 has culled out the following principles in respect to the judicial review in disciplinary matter.

(1)The Tribunal exercising quasi judicial functions neither bound to follow the procedure prescribed for trial of actions in Courts nor bound by the strict rules of evidence.

(2)They may obtain all information material for the points under enquiry and act upon the same provided it is brought to the notice of the party and fair opportunity is afforded to explain.

(3)The judicial enquiry is to determine whether the authority holding enquiry is competent, and whether the procedure prescribed is in accordance with the principle of natural justice.

(4)There should exist some evidence accepted by the competent authority which may reasonably support the contention about the guilt of the officer. Adequacy or reliability of the evidence can not be looked into by the Court.

(5) The departmental authorities are the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the Court.

(6) There is no allergy to hear-se evidence provided it has reasonable nexus and credibility. All materials which are logically probative for a prudent mind are permissible.

(7) The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice.

(8) It is not necessary that the Disciplinary authority should discuss material in detail and contest the conclusions of the Inquiry Office.

(9) The judicial review is extended only when there is no evidence or the conclusion or finding be such as no reasonable person would have ever reached on the basis of the material available.

15. In the circumstances, the contention of the petitioner that the enquiry has not been conducted after giving him due opportunity or defence is incorrect, contrary to material on record and, therefore, rejected.

16. The judgments cited by the learned Counsel for the petitioner in support of the aforesaid contention are also inapplicable in view of the facts as discussed above based on the material available on record. In Kulwant Singh Gill (supra), a major penalty was imposed after issuing a show cause notice and receiving explanation without holding any oral enquiry whatsoever. In the circumstances, the Apex Court found the proceedings illegal and contrary to Rule 5 (iv) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which provides that a major penalty may be imposed after holding inquiry as prescribed under the Rules. This judgment is evidently inapplicable to the case in hand since in the present case after issuance of charge sheet and receiving reply from the petitioner, detailed oral enquiry has been conducted, wherein as many as 12 witnesses from both the sides were examined and, thereafter, the enquiry report was submitted, show cause notice was issued and after receiving further reply from the petitioner, the punishment order has been passed.

17. Similarly in Subhash Chandra Sharma''s Case, (Supra) no oral enquiry was conducted and after issuing the charge sheet without holding any oral enquiry, the proceedings were closed and punishment was imposed as is apparent from the following observations of this Court:

All that was done that after receipt of the petitioner''s reply to the charge-sheet, he was given a show cause notice and thereafter the dismissal order was passed. In our opinion, this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was Jed in our opinion, the impugned order is clearly violative of natural justice.

18. This case, thus, is also not applicable since in the present case, the oral enquiry has been conducted. For the similar reason the law laid down in Radhey Shyam Pandey (supra), is also not applicable since in the said case there was no attempt made by the department to serve even charge sheet upon the employee and without serving any charge sheet or enquiry report or show cause notice, actually upon the employee, major punishment was imposed. This is apparent from the following observations made in the judgment of this Court:

Non-payment of subsistence allowance, not furnishing the charge-sheet, not informing the date fixed in the enquiry and not giving the copy of the enquiry report and the show cause notice regarding proposed punishment only leads to the inference that the respondents have conducted the entire proceedings in a manner which is not warranted in law and has thus vitiated the entire proceedings. This the entire proceedings commencing from suspension of the petitioner leading to his dismissal being actuated with malice in law is liable to be quashed.

19. The contention of the petitioner, therefore, is rejected that the enquiry has been conducted without affording adequate opportunity of defence to the petitioner and without conducting any oral inquiry.

20. Comming to the next contention that the charge of bigamy is false and there is no proof or evidence showing valid marriage of the petitioner with Smt. Munni Devi, learned Counsel for the petitioner submits that there was no evidence of solemnization of marriage between the petitioner and Smt. Munni Devi who claimed to be his legally wedded first wife. It is also submitted that assuming that the petitioner and Smt. Munni Devi were living together and maintaining relationship of husband and wife, yet in the absence of any proof of solemnization of marriage it cannot be held that the petitioner was guilty of bigamy and therefore violated Rule 29 of the Conduct Rules. In support of the submission the learned Counsel for the petitioner has placed reliance on the following.

(1) Surjit Kaur Vs. Garja Singh and Others,

(2) 1994 (58) AWC 1357 Smt. Urmila v. State of U.P. and Ors. .

(3) Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another,

(4) AIR 1971 SC 1153 Priya Bala v. Suresh Chandra.

(5) 2002 (1) ESC 341 Shahjahan Khan v. State of U.P.

(6) 1999 (36) ALR 737 Lajja Ram v. U.P. State Tribunal and Ors. .

21. A perusal of the enquiry report shows that in holding that Smt. Munni Devi is the first wife of the petitioner, the enquiry officer has relied upon the following evidence.

(1) Electoral Roll 193 of Kasganj Vidhan Sabha constituency 347 wherein at page 8 serial No. 774 Smt. Munni Devi was shows an wife of Veer Pal i.e. the petitioner.

(2) The identification card issued by the Election Commission of India verifying the photograph and identity of Smt. Munni Devi as wife of Veer Pal.

(3) The order dated 20.12.1994 passed by the A.C.J.M. Kasganj, Etah directing the petitioner to pay Rs. 500/- for maintenance of Smt. Munni Devi and her daughter.

(4) Legal opinion dated 2.1.1997 obtained by the Enquiry Officer from Senior Prosecution Officer, Agra on the aforesaid issue.

22. Evidently there was no direct evidence proving the solemnization of the marriage of the petitioner with Smt. Munni Devi as per Hindu rituals. The witnesses produced before the Enquiry Officer have stated that Smt. Munni Devi and petitioner were living together and begot a daughter out of their relation living together. Petitioner and Smt. Munni Devi both decided to live as husband and wife before the Panchyat and this was stated by many of the witness before the Enquiry Officer. Smt. Munni Devi however, also deposed her statement and said to produce a copy of the marriage certificate dated 11.8.1990 showing that Veer Pal had married her before the Registrar (Marriage) at Kasganj as a

result whereof they were living as husband and wife. Admittedly there is no evidence showing solemnization of marriage with Hindu rituals but there is evidence that the petitioner and Smt. Munni Devi married in court, blessed with a daughter out of their relationship of living together as husband and wife and in various documents Smt. Munni Devi was shown as wife of the petitioner. In these circumstances, it can not be said that the findings recorded by the Enquiry Officer and accepted by the Disciplinary enquiry that the petitioner was guilty of bigamy based on no evidence at all. The evidence of marriage between the petitioner and Smt. Munni Devi does exist and the sufficiency or adequacy thereof is not within the realm of judicial review of this Court.

23. In R.S. Saini Vs. State of Punjab and Others, the Apex Court held that the standard of proof required in disciplinary proceedings is that of preponderance of probability and where there is some relevant material which the competent authority has accepted and such material if can reasonably support the conclusion drawn by the disciplinary authority regarding the guilt of the employee, the court will not reappreciate such evidence to arrive at a different conclusion since the question of adequacy or reliability of evidence can not be canvassed before the court.

24. Again in High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, it was held that the disciplinary authority, is the sole judge of the facts if the enquiry has been properly conducted. If there is some evidence on which the findings can be based then adequacy or even reliability of that evidence is not a matter to be canvassed before the Court. In the circumstances, the contention of the petitioner the findings that the petitioner is guilty of bigamy is perverse and can not be accepted.

25. Coming to the various case law cited by learned Counsel for the petitioner in support of his submission, I am of the view that none is applicable to the facts of this case.

26. In Surjeet Kaur (Supra) the question was whether there was a valid marriage solemnized under Hindu Marriage Act. The Apex Court held that mere living as husband and wife does not confer the status of wife and husband even though they may hold themselves out before the society as husband and wife and the society treats them as such. There has to be a marriage valid in law and if there is no valid solemnization of the marriage it is not a marriage in the eye of law. In the present case Smt. Munni Devi has not pleaded that the marriage took place in accordance with Hindu rituals but the basis of the marriage was the certificate issued by Registrar (Marriage) of Kasganj. Therefore, the aforesaid judgment lends no help to the petitioner. Same is the position in the case of Bhaurao Lokhande (Supra) and Smt. Priya Bala (Supra) and Smt. Urmila (Supra). It is also worthy to mention that all the aforesaid judgments are with respect to an offence u/s 494 I.P.C.

27. In Shahjahan Khan (Supra) and Lajja Ram (Supra) the court held rightly that if the man is living with woman that itself would not amount to a marriage and therefore Rule 29

of the Conduct Rules will not be attracted in such a case. The aforesaid judgment would have helped the petitioner in case there would have not been any evidence showing marriage of the petitioner with Smt. Munni Devi. Since I am of the view that on the basis of the material available on record it can not be said that there is no evidence to show that the petitioner has contacted marriage with Smt. Munni Devi, in such circumstances, the law laid down in the aforesaid cases does not help the petitioner at all.

28. Now coming to last question regarding validity of Rule 29 of the Conduct Rules, the petitioner has contended that Rule 29 is arbitrary, unjust and illegal, no guidelines have been given as to when the permission will be granted for the purpose of second marriage under the proviso to the said rule and therefore, it is ultra vires. The submission is wholly baseless and misconceived. No law, custom or practice has been brought to the notice of the court showing that solemnizing more than one marriage is necessary religious or otherwise activity. Decades ago people used to marry more than once inspite of having spouse living. It is said that in Muslim Personal Law marriage with four women is permissible. However, to the knowledge of the court no personal law maintains or dictates it as a duty to perform more than one marriage. No religious or other authority has been brought to my notice providing that marrying more than one woman is a necessary religious sanction and any law providing otherwise or prohibiting bigamy or polygamy would be irreligious or offence the dictates of the religion. Polygamy cannot be said to be an integral part of any religious activity, may be Hindu, Muslim or any other religion. A distinction has to be drawn between religious faith, belief and religious practices. Even Article 25 of the Constitution guarantees only the religious faith and belief and not the religious practices which if run counter to public order or health or policy of social welfare which the state has embarked, then the religious practices must give way before the good of the people of the state as a whole.

29. A Division Bench of Bombay High Court consisting of Chief Justice Chhagla and Gajendragadkar (as his lordship then was) in The State of Bombay Vs. Narasu Appa Mali, while upholding the validity of Bombay provision of Hindu bigamy Marriage Act 1946 observed as under,

The right of the state to legislate on question relating to marriage can not be disputed. Marriage is undoubtedly a social institution, an institution in which the state is vitally interested. Although there may not be universal recognition of the fact, still a very large volume of opinion in the world today admits that monogamy is a desirable and praise worthy institution. If, therefore, the State of Bombay compels Hindu to become monogamists its a measure of social reform, and if it''s a measure of social reform then the State is empowered to legislate with regard to social reform under Article 25(2)(b) notwithstanding the fact that it may interfere with the right of citizens freely to profess, practice and propagate religion.

30. It was also held that the will expressed by the legislature constitute desire of all the chosen representative of the people in a democracy who are supposed to be responsible

for the welfare of the State, understand will of the people and if they lay down the policy which a State should pursue such legislative wisdom with respect to welfare of the State is not a matter in the court of law to sit in judgment and held that it is not in welfare of the State. The aforesaid view of the Bombay High Court has been approved by the Apex Court in Javed and Others Vs. State of Haryana and Others, of the judgment.

31. Presently bigamy and polygamy is prohibited under various statues such as:

(a) Section 17 of Hindu Marriage Act, 1955 which reads as under;

17. Punishment of bigamy:- Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code shall apply accordingly.

(b) Section 494 of Indian Penal Code which reads as under:

494. Marrying again during lifetime of husband or wife:- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception:- This section does not extent to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, Nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person fort he space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

32. Rule 29 of the Conduct Rule applicable to U.P. Government Servants recognize and follow the legislative wisdom and policy laid down in the aforesaid provisions. Such a rule has been framed not only in respect to the State of U.P. but similar rule has been framed in respect to almost all the services whether central or other State Governments some of which may be referred as under.

(a) Rule 21, Central Civil Services (Conduct) Rules.

(b) Rule 21, Railway Services (Conduct) Rules, (c) Rule 19, All India Services (Conduct) Rules.

(d) Rule 26, Assam Civil Services (Conduct) Rules.

(e) Rule 22, Madhya Pradesh Civil Services (Conduct) Rules.

(f) Rule 26, Maharastra Civil Services (Conduct) Rules.

(g) Rule 21, Punjab Government Employees (Conduct) Rules.

(h) Rule 25, Rajasthan Civil Services (Conduct) Rules.

33. The validity of Rule 21 of Central Civil Services (Conduct) Rules, 1964 came up for consideration before a Single Judge of Delhi High Court in M.S. Man v. Union of India 1976 (1) SLR 350 and upholding the said provision the Hon Delhi High Court observed that:

Rule 21 of the Conduct Rules is challenged and it is urged that it is invalid on the ratio of the above judgments. In my opinion the argument has no force. Rule 21 has been made in furtherance of a valid law, namely, the Hindu Marriage Act, 1955. The employer could lay down conditions on which he would employ a person, viz., that the employee will have only one living spouse but if a second marriage was intended permission had to be obtained before hand. The Rule cannot be said to offend the phrase "conditions of service" because an employer is at liberty to have such reasonable condition as he thinks fit on which he would give employment and retain people in employment, particularly when the condition is in accordance with the law of the land. A second marriage while the first is subsisting is no longer permitted by the law of the land affecting Hindus, as define by the Hindu Marriage Act, 1955. The validity of that Act is not questioned and so, the rule must be held to be in support of a valid law of the land and not ultra vires any provision of the Act.

34. A Division Bench of this Court also considered validity of Rule 27 of the U.P. Government Servant (Conduct) Rules (old) prohibiting bigamy in the case of Ram Prasad Seth Vs. The State of Uttar Pradesh and Others, and the Hon"ble Court observed that there is no law making it necessary to solemnize second marriage. It was held that even under the Hindu religious belief marrying a second wife in order to obtain a son when the first wife can not provide one was only a practice followed by the people and not a sanction or mandate of law. The Hon"ble Court also held when bigamy is prohibited under various legislative Acts, permission to marry a second wife can not be granted and that itself is a sufficient guideline under law. This Court accordingly upheld Rule 27 of the U.P. Government Servant (Conduct) Rules which prohibited bigamy and declared it a misconduct for the government servant.

35. Although not directly challenged but the provisions pertaining to government servant prohibiting bigamy have been noticed and observed to be valid by the Apex Court in the case of Javed (Supra) and the relevant observations in para-54 & 58 of the judgment may be reproduced as under:

54. Rule 21 of the Central Civil Services (Conduct) Rules, 1964 restrains any government servant having a living spouse from entering into or contracting a marriage with any person. A similar provision is to be found in several service rules framed by the States governing the conduct of their civil servants. No decided case of this Court has been brought to our notice wherein the constitutional validity of such provisions may have been put in issue on the ground of violating the freedom of religion under Article 25 or the freedom of personal life and liberty under Article 21. Such a challenge was never laid before this Court apparently because of its futility. However, a few decisions by the High Courts may be notices.

58. The law has been correctly stated by the High Courts of Allahabad, Bombay and Gujarat, in the cases cited hereinabove and we record our respectful approval thereof. The principles stated therein are applicable in a/l religions practiced by whichever religious groups and sects in India.

36. In Javed"s case (Supra), the Apex Court in para 57 and 58 also confirmed the Division Bench Judgment of this Court in Ram Prasad Seth (Supra) and recorded its approval of law laid down therein.

37. It was also sought to be argued that since enquiry with respect to bigamy is likely to result in making a declaration of Civil status of persons and would have for reaching effects, therefore such an enquiry should not be allowed to be conducted by departmental authorities unless a court of law has recorded its finding either way. The submission is noticed to be rejected in as much as a similar question was considered and rejected outright by the Apex Court in the following cases and this Court is bound by the law laid down therein.

(a) State of Karnataka and Another Vs. T. Venkataramanappa,

(b) State of W.B. and Others Vs. Prasenjit Dutta,

(c) Rameshwari Devi v. State of Bihar and Ors. J.T. 2000(4) SC 328.

38. In view of the aforesaid discussion it can not be said that Rule 29 is arbitrary or illegal and utra vires. The contention of the petitioner to this effect is also rejected.

39. Lastly the petitioner contended that the punishment is harsh and not commensurating to the offence and therefore, is liable to be set aside. Once the misconduct of the petitioner has been found proved, the scope of interference in the matter of punishment is extremely limited. It is only when the punishment imposed is so disproportionate to the act or omission constituting misconduct that it shocks the conscience of the court or a person of ordinary prudence, only then the court may interfere and not otherwise. In any country where bigamy is an offence, a government servant guilty of committing an offence cannot ask to continue in service after award of minor or lesser punishment. Therefore, I do not find any reason to hold that the punishment imposed in the present

case is arbitrary or so disproportionate to the act of misconduct so as to warrant interference by the Court in exercise of powers under Article 226 of the constitution.

40. In the result, the writ petition fails and is accordingly dismissed without any order as to costs.