

(1996) 03 AHC CK 0103
Allahabad High Court
Case No: C.M.W.P. No. 9726 of 1989

Subedar Dina Nath
Tiwari

APPELLANT

Vs

Union of India (UOI)
and Another

RESPONDENT

Date of Decision: March 1, 1996

Acts Referred:

- Army Act, 1950 - Section 19AA, 20AA
- Army Rules, 1954 - Rule 14, 17
- Criminal Procedure Code, 1973 (CrPC) - Section 125

Citation: (1996) 2 UPLBEC 880

Hon'ble Judges: Paritosh K. Mukherjee, J

Bench: Single Bench

Advocate: A. Kumar and Ashok Khare, for the Appellant; Sisir Kumar, for the Respondent

Final Decision: Allowed

Judgement

Paritosh K. Mukherjee, J.

Sri Dina Nath Tewari. the Petitioner, has challenged the order of termination, dated 14.3.1989, passed by General Officer Commanding, Eastern Command, Fort William, Calcutta-21, being Respondent No. 2, and, which is contained as Annexure S. A. 1 to the Second Supplementary Affidavit.

2. Sri Ashok Khare for the Petitioner and Sri Sisir Kumar, for the Union of India argued the case. According to Sri Khare, the impugned order of termination from service is in gross violation of para 333 (C)(b) of the Army Regulations.

3. According to Sri Khare, Sri O. P. Gulia, Major, CCME for Commandant, Ordnance Depot, Shakurbasti had informed Smt. Kabutari Devi, the alleged wife of the Petitioner, that the Petitioner was found unmarried by the higher military

authorities. This was a finding of fact, arrived at by the higher authorities of the Military Department, after investigation of the whole matter. Once the Petitioner having been exonerated of the charge of plural marriage by the Department, he cannot be punished, on the same charge, for the second time.

4. Sri Ashok Khare vehemently urged that since the matter is sub judice before a court of law in a proceeding u/s 125, Code of Criminal Procedure, for grant of maintenance allowance to the alleged wife, it is not proved that Smt. Kabutri Devi is married wife of the Petitioner. That being so, the impugned order of termination, which has been passed in hot haste by the Military administration, cannot be sustained in law.

5. On the other hand, Sri Sisir Kumar, appearing for the Union of India, contended that Para 333 (C)(b) forbids Court Martial proceedings against the delinquent, but, there is no impediment for administrative action to terminate the services of the delinquent official. He next submitted that the proceedings before a court of law, u/s 125, Code of Criminal Procedure, cannot prohibit the Department to take action against the Petitioner.

6. Having heard learned counsel for the parties, it would be apposite to quote Para 333 (C)(b) of the Army Regulations, which is as follows:

(b) When it is found, on receipt of a complaint from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal shall be taken against him, but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in sub-para (b)(g) above. In cases where cognisance has been taken by civil court of competent jurisdiction, the matter should be treated as sub judice and the decision of the court awaited before taking any action. When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken, to terminate his service under AA Section 19 read with Army Rule 14 or AA Section 20 read with Army Rule 17 as the case may be. No ex post facto sanction can be accorded to such marriage are contrary to the law of the land.

7. It is admitted case of the parties that the Petitioner has not been convicted by any court of law for bigamy. It is also admitted fact that once the matter was investigated by the higher authorities of the Military administration on a complaint of Smt. Kabutri Devi, the alleged wife of the Petitioner and the Petitioner was found "unmarried." Thus, the Petitioner was exonerated of the charge of marriage with alleged Kabutri Devi, as far back as in 1986. That being so, the Respondents cannot be permitted to reopen the issue on basis of filing of subsequent complaint, which is hit by principle of res judicata.

8. There is another aspect of the case, as well. Admittedly, the matter is sub judice before a competent court of law in a proceeding u/s 125 of the Code of Criminal Procedure. The court has not yet given its verdict. Thus, the action of the Respondent authorities in terminating the sendees of the Petitioner, without waiting the judgment of the competent court of law, cannot but be castigated as illegal and in hot haste.

9. Sri Sisir Kumar, learned counsel for the Union of India made a faint effort to derive advantage from a photograph of Smt. Kabutri Devi, the alleged wife of the Petitioner, with the present Petitioner. There is no force in the submission. A mere photograph with the side of a person cannot be a conclusive proof of marriage. If that be so, any one may come forward for claiming monetary benefits by producing such photographs. A proper marriage has to be proved by independent evidence, and material pieces of evidence. Admittedly, in the present case, there is no independent evidence available on the record of the Military administration, except the complaint of Smt. Kabutri Devi, which was not believed by the higher authorities of the Military Administration, as far back as in 1986.

10. So far as voters' list is concerned, which too has been relied upon by the learned counsel for the Respondents, this court is of the view that it is not a conclusive proof of marriage. It is well-known that there is always a chance of error in the voters' list. Moreover, Petitioner being an army personnel, had to remain with the Army for long time. In his absence in the village, possibility of manipulation by the alleged wife cannot be ruled out. Therefore, for the purpose of present case, this court is not in a position to place reliance on such voters' list.

11. In the result, the writ petition succeeds and is allowed. The impugned order, dated 14.3.1989, passed by General Officer Commanding, Eastern Command, Fort William, Calcutta-21 is hereby set aside. The Respondents are directed to reinstate the Petitioner in service within a period of two weeks from the date of production of a certified copy of this judgment and order. The Respondents are at liberty to proceed further against the Petitioner after final orders passed in the proceeding u/s 125 Code of Criminal Procedure. The question of payment of salary for the period from date of order of termination till reinstatement of the Petitioner will be decided by the Respondents after the judgment is finally delivered in the proceedings u/s 125, Code of Criminal Procedure. Parties shall bear their own costs.