
(2010) 12 MAD CK 0180

Madras High Court

Case No: UW.P. No. 1002 of 2007 and O.A. No. 294 of 2000

Ramakrishnan

APPELLANT

Vs

The Superintendent of
Police and The Deputy
Superintendent of
Police

RESPONDENT

Date of Decision: Dec. 14, 2010

Acts Referred:

- Central Civil Services (Conduct) Rules, 1964 - Rule 24
- Penal Code, 1860 (IPC) - Section 494
- Police Officers Conduct Rules, 1973 - Rule 23(2)

Citation: (2010) 12 MAD CK 0180

Hon'ble Judges: K.Chandru, J

Bench: Single Bench

Advocate: M.S. Soundararajan, for the Appellant; R. Murali, G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.Chandru, J.

The Petitioner was working as a Grade I Police Constable at Tirunelveli District. He had come forward to challenge the order of punishment granted in P.R. No. 131 of 1999 dated 30.11.1999, wherein and by which the Petitioner was dismissed from service for having contravened Rule 23 of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1973.

2. Though the Petitioner had remedy by way of statutory appeal and review before the higher officers, the Petitioner moved the Tribunal challenging the order of dismissal by filing O.A. No. 294 of 2000. The Tribunal admitted the Original Application on 21.1.2000 and granted an interim stay. Subsequently, the interim stay granted was directed to be

continued without any specified time limit by a further order-dated 4.2.2000. Neither in the initial order nor in the order continuing the interim order, prima-facie reasoning was recorded by the Tribunal for grant of such interim order. The Respondents filed M.A. No. 3296 of 2000 seeking for vacating the interim order. For the reasons not explained, the Tribunal did not take up the said application and allowed the interim stay to continue.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered.

4. The facts leading to the dismissal of the Petitioner are as follows:

4.1) The Petitioner was given a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service by a memo dated 19.7.1999. The charge against the Petitioner was that he contracted a second marriage with one Gayathiri Devi while his first wife was alive, thereby committing the offence of bigamy and had also violated Rule 23 of the Tamil Nadu Police Subordinate Officers Conduct Rules. The Petitioner was also placed under suspension with effect from 28.6.1999. The charge memo elaborated by stating that while he was working in the Valliyoor Police Station from 27.5.1997 to 27.6.1999, he married one Muthu, D/o. Ganapathi of Kallidaikurichi on 23.3.1988 and through her he had three children. Subsequently, he married Gayathiri Devi, D/o. M.S. Muthiah of T. Kallikulam as second wife at the Registrar Office, Nagercoil during May 1999. The said act of the Petitioner was in direct contravention of Rule 23 of the Conduct Rules.

4.2) After the charge memo was given, the Petitioner went before the same Registrar's Office and executed another document by canceling the earlier marriage agreement on 21.9.1999. It is not clear under which law the Petitioner can get married by a registered document before a Registrar and subsequently cancels that registered document. Such registration of documents in the matter of marriage between the parties was frowned upon by this Court in more than one case. In any event, it is the stand of the Petitioner that as he got the earlier marriage cancelled by a subsequent document dated 21.9.1999, the charge is not made out.

4.3) Not satisfied with the Petitioner's explanation, an enquiry was ordered to be conducted by the Deputy Superintendent of Police, Valliyur. In the enquiry, on the side of the department, three witnesses were examined. P.W.1 is the original wife of the Petitioner. P.W.2 is one Ganapathy, son of Subbiah. P.W.3 is Mariya Ronkiam, the Inspector of Police of All Women Police Station.

4.4) On the side of the Petitioner, he had examined Gayathri as D.W.1. The enquiry officer on the basis of the materials came to the conclusion that the Petitioner had married Gayathri Devi. Though it was claimed that it was a drama enacted to unite the Petitioner with his first wife, as the relationship between him and his first wife was not satisfactory. That had enacted the drama of getting married to the Petitioner in order to bring back the mental balance of the first wife and this she had to do because the

Petitioner had supported her education by granting certain amounts.

4.5) The enquiry officer did not swallow the story of the defence put forth by the Petitioner and found that P.W.1, who is the first wife of the Petitioner had sent a written complaint. The said complaint came to be examined by the All Women Police, which was spoken to by P.W.3. Before All Women Police Station, the Petitioner asserted that he had married to D.W.1 and he can keep both wives happily. The Inspector of All Women Police Station submitted a preliminary report to the Superintendent of Police, which was marked as Ex.P.7, confirming the marriage between the Petitioner and the 2nd wife. This marriage had taken place even while the first wife was alive and through her, the Petitioner had got three children. Though an attempt was made that the second marriage was done before the Registrar by a registered document, which document was subsequently cancelled by another document, it was found that the subsequent document was registered only after the charge memo was issued. Therefore the evidence of D.W.1 was not believed and hence the charges leveled against the Petitioner are proved.

4.6) On the basis of the enquiry report dated 30.11.1999, the Petitioner's explanation was called for and thereafter by the impugned order the disciplinary authority agreed with the report of the enquiry officer and found the Petitioner contravened Rule 23 of the Conduct Rules and the documents produced in the enquiry clearly shows that the charges are proved. Even the Petitioner had written Ex.P.4, a statement given by him, which in effect to agree with the charge. Therefore, on the strength of the evidence of P. Ws.1 to 3 and the documents Ex.P.1 to P.7. The competent authority held that a person in the police force should have a good character and the morale of the police force before the eyes of the public should be held high and therefore, the punishment to be given to the Petitioner is only dismissal from service. Accordingly he was dismissed from service and the period from 28.6.1999 to 16.8.1999 shall be treated as suspension for all purposes.

5. On notice, the Respondents filed a counter affidavit.

6. The learned Counsel for the Petitioner submitted that the marriage agreement was not valid and that should be cancelled and it is only a mere drama enacted by the Petitioner along with D.W.1 to bring the first wife P.W.1 to live with him with harmony and therefore no credence can be attached to the same. He also placed reliance upon the evidence of D.W.1 Gayathri Devi, who deposed that there was no relationship between the Petitioner and her.

7. Before proceeding to deal with the stand of the Petitioner, it is necessary to refer to Rule 23, which is as follows:

Rule 23: Bigamous Marriages

1. (a) No police officer shall enter into a contract marriage with a person having a spouse living and b) No Police Officer having a spouse living shall enter into or contract a marriage with any person;

Provided that the Government may permit a Police Officer to enter into or contract any such marriage as is referred to in Clause (a) or Clause (b) if they are satisfied that, I) such marriage is permissible under the personal law applicable to such Police Officer and the other party to the marriage; and ii) there are other grounds for so doing

2. No Police Officer shall involve himself in any act involving moral turpitude on his part including any unlawful act, which may cause embarrassment or which may bring discredit to Government

8. It must be noted that Rule 23(2) was introduced subsequently by an amendment. The amendment was made by G.O. Ms. No. 1015 Home (Police VI) Department, dated 7.7.2003, after noticing that in all cases of bigamous marriage, the defense taken was that for contracting the second marriage, there was no legal proof. On finding that the persons are coming up with such defense, the State Government amended both the Tamil Nadu Government Servants Conduct Rules as well as the Police Subordinate Service Conduct Rules to make it wider than the charge of bigamy as noticed from the above Rule. Even without referring to such a rule, courts have taken exception to such conduct by Government servants by relying upon the omnibus provision found in Conduct Rules.

9. In fact, a Division Bench of this Court in State of Tamil Nadu represented by the Chief Secretary to Government, Madras v. PM. Belliappa reported in 1984 writ Law Reporter (summary) page 33, in paragraphs 20 and 21, observed as follows:

20. There is also a reference to the conduct of the Petitioner attracting Ss. 497 and 498 of the Indian Penal Code. The tenability or otherwise of such charges need not be matter of vivisectioning considerations by the Court at this juncture. There is a reference to the Petitioner's conduct amounting to moral turpitude. We have to point out that the expressions "moral turpitude" or "delinquency" is not to receive a narrow construction and it would include conduct contrary to and opposed to good morale and which is unethical. The said expressions have not found categorical definition anywhere but we can satellite it that it would include anything done contrary to the justice, honesty, modesty or good morals and contrary to what a man owes to a fellowman or to society in general. It would imply depravity and wickedness of character or disposition of the person charged with the particular conduct. It may also include an act, which shocks the moral conscience of society in general. It is by now well settled that the misconduct or unbecoming conduct or moral turpitude need not necessarily relate to an activity in the course of the employment and it could relate to an activity outside the scope of the employment. Considering the high nature of the office, the incumbent is placed in and the reputation of integrity that is required for the discharge of the duties annexed to that office, if the act of the Government servant brings down the reputation of not only himself but also the office which he occupies, the employer, the Government, can definitely set the rule in motion for disciplinary action. If the Government servant is found indulging in a conduct which is unworthy or unbecoming of an official of the State, definitely, we cannot put a fetter on the

discretion of the State with regard to the action to be taken by it in this context. The State in keeping its administrative well pruned, cannot behold by the Court as to what type of officers it should entertain and what type of conduct it should tolerate and ignore. The discretion is that of the State in these matters and unless the discretion exercised and the decision taken could come within the mischief of any of the well-settled principles, this Court should not superimpose its ideas and scuttle down the discretion to an illusion. After all, the administration of the State has to set their townhouse in order. We have found that there were enough materials at the relevant point of time; they were not irrelevant or extraneous; the Respondent did advert to the facts step by step and there was application of the mind to the particulars and materials gathered; and the decision was based only after such application of mind and assessment of the materials.

21. If, having regard to the circumstances in any case, the Government is satisfied that it is necessary or desirable or both to place under suspension a member of the service, it can do so. As we have earlier stated, it is not possible to set down the rule that suspension should be resorted to only where it is considered to remove the member from the sphere of his erstwhile activity to facilitate investigation and to avoid embarrassment both to the member and others in the administration in the course of such investigation. Of course if such a case is put forth, the Court may investigate and assess its tenability or otherwise. We are not able to spell out this as the only rule or contingency to govern orders of suspension from any of the judicial pronouncements referred to before us. As pointed out in [The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh](#), Government may rightly take the view that an officer against whom serious imputations are made, should not be allowed to function anywhere before the matter has been finally set at rest after proper scrutiny and holding of departmental proceedings.

10. In the present case, the evidence of P.W.1, namely the 1st wife goes a long way to find the Petitioner guilty of the charges leveled against him. In her evidence, she had stated that D.W.1 was living in the backside of the police line and the Petitioner was having illicit intimacy with her. On reprimanding the Petitioner, the Petitioner did not change his behavior. On the other hand he assaulted her and pushed her to the ground by which she got head injury and was hospitalized. Thereafter her foster parent took her to the house and treated her. She had also stated that when she pleaded the Petitioner to leave from Gayathri Devi, he not only refused to heed to her advice but also tried to convince her that he was capable of maintaining both the wives. P.W.1 did not agree with such an arrangement and gave a written complaint to the Respondents on 10.6.1999. She also made a reference to an enquiry being made before All Women Police Station as spoken to by P.W.3, which report was also marked as Ex.P.2.

11. Apart from the evidence of P.W.1, (who is none other than the first wife of the Petitioner), a very reading of the marriage agreement dated 16.3.1999 will show that the Petitioner had made a statement in the presence of the witnesses before the Sub Registrar, Idalakudy, Kanyakumari District that he gave his address as if he was living in New Street, Idalakudi, Agastheeswaram Taluk that he has the relationship with D.W.1 as

husband and wife and they also took permission from all the relatives and parents. He had also stated that they were living as husband and wife without future separation and grant all the rights to the children that may be born to them. The said agreement though not legally permissible was also witnessed by two witnesses and registered as Document NO.38753 dated 16.3.1999. It is also significant to note that the so-called cancellation of the marriage agreement was done only after the charge memo was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules.

12. The learned Counsel for the Petitioner placed reliance upon the judgment of the Bombay High Court Judgment in [Tanaji Dhondlba Awale Vs. State of Maharashtra and Another](#), . In that case, the Bombay High Court dealt with Section 414(2) of Bombay Police Manual, which relates to the offence of bigamy being committed by the policeman. The Court found that the second marriage was not proved and therefore, it cannot be said that the Petitioner therein had contravened Section 414(2) of Bombay Police Manual.

13. The learned Counsel for the Petitioner placed reliance upon the judgment of Gauhati High Court in State of Tripura and Ors. v. Sushendra Kumar Nath reported in 1997 (1) LLN 275. In that case, the Court was concerned about Rule 21 of Central Civil Services (Conduct) Rules, 1964 before its amended form. Therefore, in both the cases, the Court was concerned about the allegation of bigamy made against the Government servant and the ingredients of the second marriage not being proved to the satisfaction of the Department. The Government servants were held to be not guilty of such misconduct.

14. The learned Counsel for the Petitioner further placed reliance upon this Court in B. Kumar v. Management of National Institute of Port Management and Anr. reported in CDJ 2005 MHC 1635. In that case, the person concerned was a worker and therefore when the amended Rule prohibiting the bigamy was issued, the Court found that the amended Rules were not notified in the manner known to law. Therefore, the workman having not been guilty by the Industrial Tribunal, which award came to be challenged in and when some interim orders were granted by this Court under Rule 17-B of the Industrial Disputes Act, it was challenged before the Division Bench and the Division Bench dealt with the main issue and held in favor of the workman. The Division Bench while deciding in favor of the workman, in paragraph 27 observed as follows:

This is not to suggest that we are condoning any act of BIGAMY. However, since bigamous marriage was made a MISCONDUCT in the Rules, which came into force after the second marriage, there is hardly any justification to prolong the agony of the workman.

15. Therefore, the decisions relied on by the learned counsel for the Petitioner have absolutely no scope or application to the facts of the present case. On the contrary, as already seen, the Rule 23(2) of the Tamil Nadu Subordinate Police Officers Conduct Rules is a wider magnitude. On the strength of the said rule, it was unnecessary to prove that there was any bigamous marriage and it was suffice if a married police official lives

with another woman when the marriage with the first wife still subsists. That will be a sufficient misconduct for being punished.

16. This, notwithstanding the fact as held in PM. Belliappa's case cited supra, wherein a similar Rule like Section 24 of the Conduct Rules was pressed into service, Rule 24 of the Conduct Rules shows that a police officer shall at all times maintain absolute integrity and devotion to duty.

17. On the power of the Department in taking action, it is necessary to refer to the judgment of the Supreme Court in [State of W.B. and Others Vs. Prasenjit Dutta](#), . In paragraph 5 it was observed as follows:

5.... It cannot at the same time be said that departmental authorities cannot go into such question for the limited purposes of Sub-rule (4) of Rule 5 of the aforesaid Rules. When contracting another marriage, in the presence of the previous one, has been termed to be misconduct visiting departmental punishment it is difficult to keep suspended action under the Rule till after a proper adjudication is made by the civil or matrimonial court. It would, thus, have to be viewed that the departmental proceeding could not be shut in the manner in which the High Court has done and it would have to go on to some finality at a departmental end, on the culmination of which, it may then give rise to the delinquent approaching the civil court for determining his matrimonial status. Thus, we are of the view that the High Court, both at the trial and the appellate stages, committed an error in preventing the dismissal order to take effect on the premises as noted above. However, besides that point, if any other point had arisen in the matter which justified stay of operation of the dismissal order that could be left to the High Court to be determined in accordance with law.

18. The Supreme Court while dealing with similar misconduct in [State of Karnataka and Another Vs. T. Venkataramanappa](#), in paragraph 3 of the said judgment observed as follows:

3. The prosecution evidence in the criminal complaint may have fallen short of those standards but that does not mean that the State was in any way debarred from invoking Rule 28 of the Karnataka Civil Service Rules, which forbids a government servant to marry a second time without the permission of the Government. But, here, the Respondent being a Hindu, could never have been granted permission by the Government to marry a second time because of his personal law forbidding such marriage. It was thus beyond the ken of the Tribunal to have scuttled the departmental proceedings against the Respondent on the footing that such question of bigamy should normally not be taken up for decision in departmental enquiries, as the decisions of competent courts tending to be decisions in rem would stand at the highest pedestal. There was a clear fallacy in such view because for purposes of Rule 28, such strict standards, as would warrant a conviction for bigamy u/s 494 IPC, may not, to begin with, be necessary. We therefore explain away the orders of the Tribunal to the extent that Rule 28 can be invoked,

but would certainly maintain the orders of revocation of suspension since in the presence of the orders of discharge in favor of the Respondent, his continued suspension during the enquiry was totally unwarranted. Let the enquiry be held.

19. The above discussion leaves no doubt that the charges leveled against the Petitioner are clearly established. The last question that this Court is called upon to decide is on the proportionality of the punishment. There were days when the Department was dealing with such misconduct by a Government servant with leniency, as if it was a trivial and a natural phenomenon occurring in the society. But, after the advent of the International Women's Year in 1975, the Government came up with a stern guidelines holding that such misconduct should not be treated with kid gloves and that a major penalty should be imposed on erring Government servants. It issued a circular that such conduct cannot be treated with soft approach and it requires stringent punishment to be made so that the public policy of the State is known to all. Therefore, the Government itself had recommended a major penalty in cases of such misconduct. In the present case, as rightly held by the Respondents, such conduct on the part of the police will bring disrepute to the police force, especially when they are expected to be exemplars in an uniformed force. Therefore, there is no scope for interference by this Court on the penalty.

20. The Supreme Court vides its judgment in [Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu](#), has held that a well reasoned order of the Department cannot be interfered with on the basis of sympathy or sentiment. When the procedural formalities are applied by the authorities, the Court cannot ordinarily disturb the penalty. In such case, the Court has only limited jurisdiction to have a judicial power over such a penalty.

21. A last submission was made in desperation by the learned Counsel for the Petitioner. The Petitioner having worked under the strength of the interim order should not be asked to go away at the tail end of his service and therefore leniency should be shown. Alternately that the Petitioner must be allowed to continue in service by modifying the penalty. It must be noted that an interim order does not survive after the final disposal of the Writ Petition and only on the strength of the interim order, the Court cannot grant any order. Further the interim order only survives till a final verdict in the main case and that by itself cannot become the final order.

22. A Division bench judgment of this Court in C. Kamatchi Ammal v. Kattabomman Transport Corporation Ltd. and others reported in AIR 1987 MAD 173 has held that interlocutory orders made in the course of proceedings will necessarily lapse with the decision of the suit unless the suit is one for permanent injunction and the interim injunction is made permanent as a part of the decreta order made by the court.

23. The Bombay High Court vide its decision reported in Ramesh Akre and Ors. v. Smt. Mangalabai Pralhad Akre and Ors. reported in AIR 2002 Bom 487 has held as follows:

21. Similarly, it is also not necessary that suit should be disposed of only on merits in order to bring an end to interim order. What is contemplated in law is that such interim order would continue to operate till suit is disposed of one way or the other and would come to an end on the day suit is disposed of. Whether suit is disposed of for want of prosecution or on merits is not the criteria to decide existence of interim orders. These orders by their very nature are temporary and remain in force only during the pendency of the suit and come to an end when the suit is disposed of one way or the other.

24. In view of the above, no case is made out and the Writ Petition fails and the same is dismissed. In the circumstances, no cost is ordered.