

(2008) 05 OHC CK 0039

Orissa High Court

Case No: None

Smt. Sabitri Pradhan

APPELLANT

Vs

State of Orissa and
Others

RESPONDENT

Date of Decision: May 16, 2008

Citation: (2008) 106 CLT 347 : (2008) 119 FLR 147 : (2009) 1 OLR 471 Supp

Hon'ble Judges: N. Prusty, J; I.M. Quddusi, J

Bench: Division Bench

Judgement

I.M. Quddusi, J.

This Writ Petition has been filed against the impugned Orders Dated 3.2.2004 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 3656 (C) of 2001 and also against the impugned orders of punishment awarded to the Petitioner in the departmental proceeding.

2. The brief facts of the case are that the Petitioner was appointed as a Constable in the Police Department of Government of Orissa on 18.7.1990. In the year 1993, she applied for leave as she fell ill and as per medical advice, she extended her leave. A letter was issued from the Office of Superintendent of Police asking her to attend VIP duty. As she was allegedly ill, she was unable to attend the duty. Consequently, she was put under suspension in April, 1996. Thereafter she submitted her representation along with medical certificate and also approached the Tribunal by filing O.A. No. 1402(C) of 1996 challenging the suspension. By Orders Dated 3.6.1996 passed by the Superintendent of Police, Phulbani, the order of suspension was withdrawn and the Petitioner was reinstated in service indicating that the period of suspension shall be treated as unauthorized absence and without pay. Thereafter departmental proceedings were started against her on the ground that she being a government servant and bound to abide by the Orissa Government Servant's Conduct Rules, 1959, has claimed to be the wife of one Sisir Chandra Mohapatra, who is a married person having wife and children and has thereby violated Rule 24

of the Conduct Rules. The Reserve Inspector of Police, Kandhamal was appointed as the Enquiring Officer, Who after conclusion of the enquiry, submitted his report to the effect that the Petitioner confessed that she has married to a married person Sisir Chandra Mohapatra according to the customs of Kandha Kula but she has not gone for second marriage so far. The Superintendent of Police, Kandhamal agreeing with the findings of the enquiring officer awarded the punishment of one black mark against which the Petitioner preferred an appeal before the D.I.G. of Police. On hearing the appeal, show cause was issued to the Petitioner as to why the punishment be not enhanced to that of dismissal from service. Thereafter vide Orders Dated 6.11.2001, the D.I.G. of Police awarded the punishment of dismissal from service with effect from the date of service of the order against which O.A. No. 3656 (C) of 2001 i.e. the O.A. in question was filed on 24.12.2001 followed with revision petition on 27.15.2001 before the D.G & I.G. of Police wherein she had mentioned that she had married Sisir Chandra Mohapatra in the year 1990 and obtained prior permission from the competent authority (S.P. Kandhamal) as required by the Orissa Government Servant's Conduct Rules which has duly been reflected in her Service Book. Revision petition was kept pending till disposal of the O.A. The Tribunal while disposing the O.A. issued direction to the Revisional authority to dispose of the revision after giving due opportunity of hearing to the applicant within a month's time. The relevant portion of the order passed by the D.G. & I.G. of Police, Orissa dated 15.4.2003 as contained in Annexure-7 is quoted hereunder:

Accordingly, she appeared before me on 5.4.2003 in my office chamber and reiterated the facts stated in her revision petition. She state that she had no knowledge prior to her marriage that her husband was already married. Secondly she asserted that a second marriage is permitted as per customs of the Kandha (Kui) Community. Thirdly she is living with her husband (Sri Sisir Chandra Mohapatra) along with his first wife. She further added in a petition that she had been permitted by the competent authority (S.P. Kandhamal) for her marriage which has duly reflected in her Service Book.

In obedience to the order of the Hon"ble O.A.T., I carefully examined the revision petition and connected records/documents thread-bare and find that the Petitioner has admitted to have married a person (Sisir Chandra Mohapatra) who has his living wife and children. She claimed to have obtained permission from the competent authority for such marriage as required under Rule 24(2) of Govt. Servant's Conduct Rules. But Rule 24(2) of Orissa Govt. Servant's Conduct Rules prescribed that no Govt. servant having a spouse living shall earlier enter into or contract, a marriage with any person unless permitted by Government which she had not obtained. The evidence against the Woman Constable being a conclusive to prove the charge of moral turpitude and violation of Orissa Govt. Servant's Conduct Rules, the punishment of one "Black Mark" awarded by the S.P. was felt inadequate to the gravity of the charge in terms of PMR 826. Hence, the D.I.G.P, SR, Berhampur while

considering the appeal petition, reviewed the programme file in terms of PMR 853 and has rightly awarded her the punishment of dismissal from service after a show cause. Her plea that her marriage is possible under the prevailing local customs of Kandha (Kui) Community is not acceptable in view of the provisions outlined in Government Servant's Conduct Rule according to which prior permission of the competent authority i.e. the Government for such bigamous marriage is mandatory even if it is possible under any personal law. Besides she has admitted in her written defence that she had knowingly married a person (Sisir Chandra Mohapatra) who had already married and living with his family members.

In her revision petition she had mentioned that she had obtained permission from the competent authority. Similarly in her personal appearance before me on 5.4.2003 followed by a written report, she had stated that a second marriage is permitted as per customs of the Kandha (Kui) Community. I am unable to accept her plea. She has violated the provisions outlined in Orissa Government Servant's Conduct Rules. The Petitioner has been provided with adequate opportunity to defend herself. There has been no procedural flaw. The punishment awarded is commensurate with the act of her delinquency.

The Petitioner, in her revision petition, has not brought out any new facts to warrant any interference with the orders passed by the Appellate authority.

Being bereft of any merit, the revision petition is rejected.

Sd/- (N.C. Padhi)

D.G & I.G. of Police, Orissa, Cuttack

3. In the counter affidavit, it has been denied that the marriage of the Petitioner was possible with a person as per the prevailing tradition and custom of Kandha community on the basis of the report of the Superintendent of Police, Kandhamal as contained in Annexure-A/4 dated 1.6.2001 addressed to the D.I.G. of police, Southern Range, Berhampur. But this was not a part of the enquiry proceeding. The Petitioner was not given an opportunity to meet the allegation that it was not the caste custom of Kui Samaj to perform marriage with an already married person. However, the revision petition has been dismissed inter alia on the ground that the Petitioner claimed to have obtained permission from the competent authority as required under Rule-24(2) of the Government Servant Conduct Rules. But Rule-24(2) prescribes that no Government Servant having a spouse living shall enter into or contract a marriage with any person unless permitted by the Government which the Petitioner had not obtained. But it has not been considered as to whether the Petitioner obtained permission from the S.P., Kandhamal for her marriage and if the S.P. was not competent to grant such permission, he should have referred the matter to the State Government for granting permission as the Petitioner as a constable was not competent to send a letter to the State Government directly for obtaining permission. Enhancement of the punishment of one black mark to that of

dismissal from service by the D.I.G. of Police is based on the allegation that her misconduct amounts to moral turpitude. However, in case it was customary in a particular caste i.e. Kandha Kui which is a Scheduled Tribe, it could not have been termed as a conduct involving moral turpitude.

4. In view of the above mentioned facts and circumstances, the order of dismissal of the revision as well as the order passed by the D.I.G. in appeal is liable to be quashed and the matter is liable to be remitted to the D.I.G. of Police concerned for deciding the appeal afresh in the light of the observation made above. Accordingly, we quash Annexures-6 and 7 and remit the matter to the D.I.G. of Police, Southern Range, Berhampur for fresh disposal of the appeal. Consequently, the Orders Dated 3.2.2004 passed by the Tribunal in O.A. No. 3656(C) of 2001 is also quashed.

5. However we do not think it appropriate to quash the order of punishment passed by the Superintendent of Police as in our view there is no illegality or impropriety in that order. It is made clear that we have not expressed any opinion with regard to the status of the Petitioner during the interim period. She shall not be entitled to any financial benefit for that period applying the principle of no work no pay, except the benefit of seniority, in case the order of the Appellate authority goes in her favour.

6. In the result, this Writ Petition is allowed to the aforesaid extent. There would be no order as to costs.

N. Prusty, J.

7. I agree.