

Sanjay Kumar Vs. the State of M.P. and ors.

Sanjay Kumar Vs. the State of M.P. and ors.

SooperKanoon Citation : sooperkanoon.com/509539

Court : Madhya Pradesh

Decided On : Aug-04-2008

Reported in : 2009(1)MPHT181

Judge : Dipak Misra and ;K.S. Chauhan, JJ.

Appellant : Sanjay Kumar

Respondent : The State of M.P. and ors.

Advocate for Pet/Ap. : Mr. V.K. Singh

Disposition : Appeal dismissed

Judgement :

ORDER

Dipak Misra, J.

1. In this intra-Court appeal preferred under Section 2 (1) of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 (for brevity 'the 2005 Act'), the defensibility of the order dated 19-9-2007 passed by the learned Single Judge is called in question.

2. The appellant, who was appointed as a Constable on 3-12-1994 on compassionate ground, was issued a charge-sheet on the allegation that he had contracted a second marriage with one Maya Jatt despite the fact that his first

wife, Prabha Jatt, was alive and there had been no divorce. Charge of bigamy was framed under Rule 22 of the M.P. Civil Services (Conduct) Rules, 1965. After the charge was framed, an Enquiry Officer was appointed who submitted the report to the effect that the charge levelled against the petitioner has been proven and he is guilty of the same. The enquiry report was accepted by the Disciplinary Authority and he passed the order of dismissal. On an appeal being preferred, the Appellate Authority concurred with the view expressed by the Disciplinary Authority. Thereafter the appellant knocked at the doors of the M.P. Administrative Tribunal under Section 19 of the Administrative Tribunal Act, 1985, in O.A. No. 2689/99. After the abolition of the Tribunal by operation of law, the writ petition was transferred to this Court and was heard by the learned Single Judge.

3. Before the learned Single Judge, it was contended that the findings recorded by the Enquiry Officer were perverse and did not deserve concurrence by the Disciplinary Authority. It was also urged that bigamy is not a misconduct under the M.P. Civil Services Rules, 1966, on which basis charge has been framed. It was also contended that once it is not a misconduct he could not have been proceeded in the departmental proceeding and punished. The learned Single Judge repelled the submission and dismissed the writ petition.

4. Mr. V.K. Singh, learned Counsel for the appellant, assailing the order, has raised the following contentions:

(a) When M.P. Civil Services Rules, 1966 was mentioned in the charge-sheet the learned Single Judge could not have referred to Rule 22 of the M.P. Civil Services (Conduct) Rules, 1965.

(b) The Conduct Rules do not apply to the case at hand and once it is not a misconduct the question of initiation of a disciplinary proceeding does not arise. In support of the same the learned Counsel has commended us to the decision rendered in *A.L. Kalra v. The Project and Equipment Corporation of India* : (1984) IILLJ186SC .

(c) In conduct of the enquiry proceeding there has been grievous lapse and in fact, the Enquiry Officer has returned the finding without any material on record in

support of the same and when the finding is perverse the same deserved to be lanced, in exercise of extra-ordinary jurisdiction of this Court, and as the same has not been done by the learned Single Judge the order passed by him suffers from incurable infirmity.

(d) The Disciplinary Authority could have determined about the bigamy without prior determination by a Civil Court or a Criminal Court and hence, services of the appellant could not have been dispensed with on that score. To bolster the aforesaid submission the learned Counsel has placed reliance on the decision rendered in *Tanaji Bhandiha Awale v. State of Maharashtra* 1985 (1) SLR 459.

5. Mr. Kumaresh Pathak, learned Deputy Advocate General for the State, resisting the aforesaid submissions, contended that mere erroneous mentioning of a particular rule would not vitiate the charge-sheet. It is put forth by him that the proponement of the learned Counsel for the appellant that bigamy by a Government servant does not amount to misconduct is a spacious argument inasmuch as there is prohibition under the rules not to contract a second marriage and that alone is unbecoming of a Government servant inviting the disciplinary action. Learned Counsel for the State submitted that the law laid down by the Apex Court in *A.L. Kalra* (supra), is absolutely distinguishable as the factual matrix was quite different in the said case. It is urged by Mr. Pathak that the contention that only after a Civil Court or Criminal Court determines the status of the parties then only the Disciplinary Authority can proceed against an incumbent is absolutely fallacious and is, in fact, based on erroneous premises. Learned Counsel for the State submitted that the decision in *Tanaji Bhandiha Awale* (supra), is not applicable to the case at hand inasmuch as the facts are quite different as is perceptible from Paragraphs 9 to 12 of the said decision.

6. To appreciate the submissions raised at the bar, it is apposite to refer to Rule 22 of the M.P. Civil Services (Conduct) Rules, 1965, it read as under:

22. Bigamous marriages.- (1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

7. Submission of the learned Counsel for the appellant is that a different rule, i.e., M.P. Civil Services Rules, 1966, was referred to in the charge-sheet. It is well settled in law that mere erroneous mentioning of a provision would not vitiate the proceeding especially when the substance of the charge remains the same. The employer might have referred to the 1996 Rules and not the 1965 Rules but that does not create any dent in the proceeding.

8. The next submission of the learned Counsel for the appellant is that it is not a misconduct and, therefore, there cannot be a departmental proceeding. He has laid immense emphasis on the decision rendered in A.L. Kalra (supra). In the said case, the Apex Court expressed the opinion that where misconduct when proved entails in penal consequences, it is obligatory on the part of the employer to specify and, if necessary, define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. In the said case, the employee working in a public sector corporation was charge-sheeted as he had not returned the advance taken for house building within the time stipulated under the rules framed. The case at hand stands on a different footing altogether. Rule 22 unequivocally postulates that no Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him. This being the rule which is precise and specific, the ratio as enunciated in A.L. Kalra (supra), would not be applicable. It is a settled position that a judgment is a precedent for what it decides. It has been held in *Ambica Quarry Works etc. v. State of Gujarat and Ors.* : [1987]1SCR562, that the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. Thus, the second contention being sans substance stands rejected.

9. The third submission, as urged by the learned Counsel for the appellant, is that unless the status of a party is established in a civil proceeding or there is a finding

by a Criminal Court the Departmental Authority cannot proceed in a departmental proceeding. The rule categorically stipulates about bigamy. In the case of Tanaji Bhandiha (supra), the learned Single Judge of the Bombay High Court while deciding the appeal had overturned the decree on the ground that the Court below had misconstrued two concepts, namely, the concept of marriage, as recognized by the Hindu Marriage Act and the other, relationship between a man and a woman analogous to marriage but not recognised by law to be in the nature of marriage. In the said case, the plaintiff was a married man and contracted the alleged second marriage with one Subhadrabai and the said Subhadrabai was also a married woman. At the time of that marriage, her first marriage subsisted when the so-called marriage with the plaintiff took place. In this background, the learned Single Judge opined that the plaintiff had not contracted a second marriage. The learned Single Judge, as unmistakably clear from the decision, has also expressed the view that in a departmental proceeding, the test of strict proof may not be as grave as in the case of criminal proceedings; but all the same even in departmental proceedings the inference to be drawn by the authorities has to be justified by some evidence on record. If there exists no evidence on record to prove the solemnisation of the marriage and if, on the other hand, there is evidence crying hoarse that the so-called second marriage could be no marriage at all, then the Departmental Authorities will have no justification to arrive at the conclusion which they have arrived at against the plaintiff. If the said decision is read and appreciated with studied scrutiny, the learned Single Judge was dealing with a different factual matrix inasmuch as the alleged contract of second marriage was not a marriage at all. It is interesting to note that the learned Judge has nowhere mentioned that there should be prior adjudication in a Civil or Criminal proceeding. He has only discussed with regard to proof. We have discussed the said decision in extenso as the learned Counsel has placed heavy reliance on the same. The submission that there has to be adjudication with regard to bigamy in the Criminal Court or there should be adjudication with regard to the status of parties in Civil Court and then only departmental proceeding can be initiated for misconduct, if any, is, according to us, a submission which should be nomenclatured as mercurial, having no base or foundation. The rule clearly stipulates that no Government servant, who has a wife living, shall contract

another marriage without first obtaining the permission of the Government notwithstanding that such subsequent marriage is permissible under the personal law. Even if under the personal law one is entitled to marry yet he has to take permission from the Government. It is open to the employee to rebut the charge and deny that he has not entered into a repeat wedlock and that will be in the realm of fact but to say that unless there is an adjudication in the Criminal Court or determination of status in the civil proceeding, no departmental proceeding can be initiated is to render the whole rule otiose. Such a submission, in our considered opinion, is not permissible, for neither service rules allow the same nor does common sense give consent to it. A civil proceeding or criminal proceeding cannot be initiated by the employer if the parties choose to accept the position. Therefore, the submission is sans substratum.

10. One thing is to be seen whether in the present case there has been ample material to show that the appellant had contracted the second marriage. In this context, we may profitably reproduce Paragraphs 8 and 10 of the order passed by the learned Single Judge:

8. The respondents have filed the return and along with the return the respondents have filed the Annexure R-2 to prove that in the service book of the petitioner the name of Prabha Bai Jatt was shown as wife and the name of the petitioner in the service book was entered on 24-11-1995 and the name of Prabha Bai had also been entered into the pension nomination form as well as in DPG/GPF as wife.

9. *** **

10. The aforesaid submission cannot be accepted. The first wife of the petitioner has already been examined in the Departmental Enquiry and stated that she was married to the petitioner in the year 1990 and there had been total four children from the petitioner. She also submitted that the petitioner has second marriage wife with whom the petitioner has solemnised the marriage. In the Departmental Enquiry, Maya Bai Jatt, second wife of the petitioner, has also been examined who has categorically stated that the petitioner has solemnised the second marriage and the relevant certificate has also been submitted by her.

11. In view of the aforesaid finding, there can be no shadow of doubt that the finding recorded by the Enquiry Officer that the appellant had contracted a second marriage cannot be found fault with.

12. We may hasten to clarify that the same is for the purpose of departmental proceeding and the same has been duly proven.

13. In view of the aforesaid, we do not find any merit in this appeal and accordingly, the same stands dismissed. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com