Civil Appeal No. 1662 of 2015

Khursheed Ahmad Khan v. State of U.P.

2015 SCC OnLine SC 105

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
(BEFORE T.S. THAKUR AND ADARSH KUMAR GOEL, JJ.)

Khursheed Ahmad Khan ..... Appellant
v.
State of U.P. & Ors. ..... Respondents

Civil Appeal No. 1662 of 2015
(Arising out of SLP (C) No. 5097 of 2012)
Decided on February 9, 2015

Service Law — Misconduct — Penalty of removal — U.P. Government Servant Conduct Rules, 1956 — R. 29(1) — Government servant — Muslim Law — Contracting second marriage during existence of the first marriage without permission of the Government — Matter no longer res integra — Conduct Rule not violative of Art. 25 of the Constitution — No material on record to show that the appellant divorced his first wife before the second marriage — Finding of violation of conduct rules upheld

(Paras 9 and 11 to 14)

Javed v. *State of Haryana*, (2003) 8 SCC 369, *relied on*

The judgement of the court was delivered by

ADARSH KUMAR GOEL, J.:—Leave granted.

2. This appeal has been preferred against final judgment and order dated 1st March, 2011 of the High Court of Judicature at Allahabad in W.A. No. 36738 of 2008.

3. The question raised for consideration relates to validity of order dated 17th June, 2008 removing the appellant from service for proved misconduct of contracting another marriage during existence of the first marriage without permission of the Government in violation of Rule 29(1) of the U.P. Government Servant Conduct Rules, 1956 (for short "the Conduct Rules").

4. The appellant was employed as Irrigation Supervisor, Tubewell Division, Irrigation Department, Government of Uttar Pradesh and posted at IVth Sub Division, Hasanpur. He was served with a charge sheet alleging that during existence of first marriage with Sabina Begum, he married Anjum Begum and thereby violated Rule 29 of the Conduct Rules and further alleging that he had given misleading information to the authorities that he had given divorce to Sabina Begum. The appellant denied the charge by stating that the complaint made by Shagufta Parveen, sister of his first wife was due to her personal enmity. He had duly divorced

his first wife, before performing the second marriage. However, he had made a statement to the contrary in enquiry proceedings initiated by the National Human Rights Commission due to fear of the police. It was only a mistake that he could not get the name of his first wife corrected in the service book. It is on record that before the charge sheet, on a complaint by the sister of the first wife of the appellant, the National Human Rights Commission had issued notice to the appellant dated 27th October, 2006 and conducted an inquiry through the Superintendent of Police, District Moradabad who submitted a report to the effect that the appellant had in fact performed a second marriage without the first marriage having been dissolved. The S.S.P., Moradabad also wrote to the department for taking action as per rules. It is on that basis that the department appears to have initiated action. In disciplinary proceedings, an inquiry officer was appointed who gave a report that the charge was fully proved. The appellant was furnished a copy of inquiry report and given an opportunity to respond to the same vide letter dated 21st January, 2008. His reply being not satisfactory, the disciplinary authority imposed the punishment of removal on 17th June, 2008.

5. Aggrieved by the order of removal from service, the appellant filed the W.A. No. 36738 of 2008. He impleaded his first wife as respondent No. 5 and her sister as respondent No. 4 to the writ petition. He also filed an affidavit of his first wife that the divorce had in fact been taken place in the year 1999 before his second marriage in the year 2005. However, the first wife-respondent No. 5 filed a counter affidavit denying that a divorce had taken place as claimed by the appellant. She relied upon the statement of the appellant on 3rd December, 2006 before the S.S.P., Moradabad in pursuance of order of the National Human Rights Commission to the effect that both the wives were living with him comfortably. She further stated that on legal advice, the appellant took her signatures on blank papers and manipulated the affidavit which was relied upon in support of the writ petition.

6. The High Court after considering the submissions, dismissed the writ petition. It was held:

> "In view of above, this Court has no reason to believe the defence of petitioner which has already been disbelieved by the departmental authorities and they have found petitioner guilty. It is admitted that petitioner never informed the department about divorce of the first wife she was nominated and also did not inform anything about second marriage. The petitioner, in my view, has rightly been held guilty of charge leveled against him. Finding of bigamy recorded by authorities concerned are based on petitioner's own admission and explanation and having not been shown perverse or contrary to record, I find no reason to interfere with such finding of fact."

7. In this appeal, apart from challenging the finding of fact recorded by the disciplinary authority and upheld by the High Court, the appellant has raised the question of validity of the impugned Conduct Rules as being violative of Article 25 of the Constitution.

8. We have heard learned counsel for the parties.

9. As regard the charge of misconduct in question, it is patent that there is no material on record to show that the appellant divorced his first wife before the second marriage or he informed the Government about contracting the second

marriage. In absence thereof the second marriage is a misconduct under the Conduct Rules. The defence of the appellant that his first marriage had come to an end has been disbelieved by the disciplinary authority and the High Court. Learned counsel for the State has pointed out that not only the appellant admitted that his first marriage was continuing when he performed second marriage, first wife of the appellant herself appeared as a witness during the inquiry proceedings and stated that the first marriage was never dissolved. On that basis, the High Court was justified in holding that the finding of proved misconduct did not call for any interference. Learned counsel for the State also submits that the validity of the impugned Conduct Rule is not open to question on the ground that it violated Article 25 of the Constitution in view of the law laid down by this court in *Sarla Mudgal* v. *Union of India*[1]. He further submitted that the High Court was justified in holding that the punishment of removal could not be held to be shockingly disproportionate to the charge and did not call for any interference.

10. We have given due consideration to the rival submissions. We are of the view that no interference is called for by this Court in the matter.

11. As already mentioned above, there is adequate material on record in support of the charge against the appellant that he performed second marriage during the currency of the first marriage. Admittedly, there is no intimation in any form on record that the appellant had divorced his first wife. In service record she continued to be mentioned as the wife of the appellant. Moreover, she has given a statement in inquiry proceedings that she continued to be wife of the appellant. The appellant also admitted in inquiry conducted on directions of the Human Rights Commission that his first marriage had continued. In these circumstances, the finding of violation of Conduct Rules cannot be held to be perverse or unreasonable so as to call for interference by this Court. In these circumstances, the High Court was justified in holding that the penalty of removal cannot be held to be shockingly disproportionate to the charge on established judicial parameters.

12. Only question which remains to be considered is whether the impugned Conduct Rule could be held to be violative of Article 25 of the Constitution.

13. The matter is no longer res integra.

14. In *Javed* v. *State of Haryana*[2], this Court dealt with the issue in question and held that what was protected under Article 25 was the religious faith and not a practice which may run counter to public order, health or morality. Polygamy was not integral part of religion and monogamy was a reform within the power of the State under Article 25. This Court upheld the views of the Bombay, Gujarat and Allahabad High Courts to this effect. This Court also upheld the view of the Allahabad High Court upholding such a conduct rule. It was observed that a practice did not acquire sanction of religion simply because it was permitted. Such a practice could be regulated by law without violating Article 25. This Court observed:

> "49. In *State of Bombay* v. *Narasu Appa Mali* [AIR (1952) Bom 84] the constitutional validity of the Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946) was challenged on the ground of violation of Articles 14, 15 and 25 of the Constitution. A Division Bench, consisting of Chief Justice Chagla and Justice Gajendragadkar (as His Lordship then was), held: (AIR p. 86, para 5)

> "[A] sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole."

50. Their Lordships quoted from American decisions that the laws are made for the governance of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices. Their Lordships found it difficult to accept the proposition that polygamy is an integral part of Hindu religion though Hindu religion recognizes the necessity of a son for religious efficacy and spiritual salvation. However, proceeding on an assumption that polygamy is a recognized institution according to Hindu religious practice, Their Lordships stated in no uncertain terms: (AIR p. 86, para 7)

> "[The right of the State to legislate on questions relating to marriage cannot 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 very desirable and praiseworthy institution. If, therefore, the State of Bombay compels Hindus to become monogamists, it is a measure of social reform, and if it is 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 a citizen freely to profess, practise and propagate religion."

51. What constitutes social reform? Is it for the legislature to decide the same? Their Lordships held in *Narasu Appa Mali* case that the will expressed by the legislature, constituted by the chosen representatives of the people in a democracy, who are supposed to be responsible for the welfare of the State, is the will of the people and if they lay down the policy which a State should pursue such as when the legislature in its wisdom has come to [pic]the conclusion that monogamy tends to the welfare of the State, then it is not for the courts of law to sit in judgment upon that decision. Such legislation does not contravene Article 25(1) of the Constitution.

52. We find ourselves in entire agreement with the view so taken by the learned Judges whose eminence as jurists concerned with social welfare and social justice is recognized without any demur. Divorce, unknown to ancient Hindu law, rather considered abominable to Hindu religious belief, has been statutorily provided for Hindus and the Hindu marriage which was considered indissoluble is now capable of being dissolved or annulled by a decree of divorce or annulment. The reasoning adopted by the High Court of Bombay, in our opinion, applies fully to repel the contention of the petitioners even when we are examining the case from the point of view of Muslim personal law.

53. The Division Bench of the Bombay High Court in *Narasu Appa Mali* also had an occasion to examine the validity of the legislation when it was sought to be implemented not in one go, but gradually. Their Lordships held: (AIR p. 87, para 10)

> "... Article 14 does not lay down that any legislation that the State may

> embark upon must necessarily be of an all-embracing character. The State may rightly decide to bring about social reform by stages and the stages may be territorial or they may be communitywise."

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 noticed.

55. In *Badruddin* v. *Aisha Begum* [(1957) All LJ 300] the Allahabad High Court ruled that though the personal law of Muslims permitted having as many as four wives but it could not be said that having more than one wife is a part of religion. Neither is it made obligatory by religion nor is it a matter of freedom of conscience. Any law in favour of monogamy does not interfere with the right to profess, practise and propagate religion and does not involve any violation of Article 25 of the Constitution.

56. In *R.A. Pathan* v. *Director of Technical Education* [(1981) 22 Guj LR 289] having analysed in depth the tenets of Muslim personal law and their base in religion, a Division Bench of the Gujarat High Court held that a religious practice ordinarily connotes a mandate which a faithful must carry out. What is permissive under the scripture cannot be equated with a mandate which may [pic]amount to a religious practice. Therefore, there is nothing in the extract of the Quaranic text (cited before the Court) that contracting plural marriages is a matter of religious practice amongst Muslims. A bigamous marriage amongst Muslims is neither a religious practice nor a religious belief and certainly not a religious injunction or mandate. The question of attracting Articles 15(1), 25(1) or 26(b) to protect a bigamous marriage and in the name of religion does not arise.

57. In *Ram Prasad Seth* v. *State of U.P.* [AIR (1957) All 411] a learned Single Judge held that the act of performing a second marriage during the lifetime of one's wife cannot be regarded as an integral part of Hindu religion nor could it be regarded as practising or professing or propagating Hindu religion. Even if bigamy be regarded as an integral part of Hindu religion, Rule 27 of the U.P. Government Servants' Conduct Rules requiring permission of the Government before contracting such marriage must be held to come under the protection of Article 25(2)(b) of the Constitution.

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 to all religions practised by whichever religious groups and sects in India.

59. In our view, a statutory provision casting disqualification on contesting for, or holding, an elective office is not violative of Article 25 of the Constitution.

> 60. .....It may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any other community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. What is permitted or not prohibited by a religion does not become a religious practice or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is permitted. Assuming the practice of having more wives than one or procreating more children than one is a practice followed by any community or group of people, the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does."

15. In view of the above, we are unable to hold that the Conduct Rule in any manner violates Article 25 of the Constitution.

16. As a result of the above, we do not find any merit in this appeal which is dismissed. No costs.

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[1] (1995) 3 SCC 635

[2] (2003) 8 SCC 369