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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1883 of 2023

Irfan-Ul-Rahim Khan S/o Late A. R. Khan Aged About 59 Years Presently Serving As In-Charge Superintendent Of Police (S.P.), Police Training School (P.T.S.) Mana, Raipur And Additional Superintendent Of Police District- Bilaspur And Currently Residing At Police Training School (P.T.S.) Mana, Raipur, District : Raipur, Chhattisgarh

... Petitioner

versus

1 - State Of Chhattisgarh Through Secretary, Department Of Home Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Raipur, District : Raipur, Chhattisgarh

2 - Director General Of Police Chhattisgarh Police Head Quarter, Raipur, District : Raipur, Chhattisgarh

3 - Under Secretary Department Of Home (Police) Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Raipur, District : Raipur, Chhattisgarh

4 - Deputy Inspector General Of Police Chhattisgarh (A A V) Police Head Quarter, Raipur, District - Raipur, Chhattisgarh.

5 - Assistant Inspector General Of Police Chhattisgarh (A A V) Credibility Cell, Police Head Quarter, Raipur, District - Raipur, Chhattisgarh.

6 - Smt. Farha Khan W/o Irfan-Ul-Rahim Khan Aged About 47 Years R/o Flat No. 203 Second Floor C.K. Heights, Nehru Nagar, Chadda Badi, Bilaspur, Tehsil- Bilaspur, District- Bilaspur, Chhattisgarh.

... Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Sr. Advocate with Mr. Anmol Verma and Mr. Siddharth Dubey, Advocates.
For Respondents No. 1 to 5/State	:	Mr. D.R. Minj, Dy. Advocate General.
For Respondent No.6	:	Mr. Vivek Kumar Tripathi, Advocate.

Hon'ble Shri Justice Naresh Kumar Chandravanshi, J

CAV ORDER

The petitioner has filed the instant petition under Article 226 of the Constitution of India seeking the following relief:

> "10A.1 Quashing/setting aside Annexure "P/1" (Colly) and as sequitur setting aside/quashing all the disciplinary proceeding(s) emanating from the aforesaid annexure.
>
> 10A.2 Any other relief(s) that this Hon'ble Court may deem fit in the facts and circumstances of the present case."

02. Case of the petitioner, in brief, is that he is presently serving as the In-charge Superintendent of Police (S.P.), Police Training School (P.T.S.), Mana, Raipur, and as Additional Superintendent of Police, District Bilaspur. He is a member of the State Police Service with an

unblemished and distinguished service of approximately 34 years. He was first married in 1991. As the couple remained issueless for nearly sixteen years, he contracted a second marriage with respondent No.6 Smt. Farha Khan in 2007 with the consent of his first wife, which was permissible under his applicable personal law. The petitioner submitted an application in the year 2008 to the State Government seeking prior permission under Rule 22(1) of the Chhattisgarh Civil Services (Conduct) Rules, 1965. However, the State Government has neither granted nor rejected the application, and it remains still pending. During the subsistence of the second marriage, the petitioner was blessed with two children from second wife. Subsequently, the second marriage ended in divorce in 2016 through a settlement deed. Thereafter, allegedly out of vengeance, the petitioner's second wife (respondent No.6 herein) lodged complaints against him before higher police authorities on 24.05.2017, 26.12.2017, and 27.05.2019 (Annexure P/1). Despite the application for prior permission remaining pending with the State Government, as is evident from the official correspondence dated 08.09.2019 obtained under the Right to Information Act, 2005 (Annexure P/3), the petitioner was served with a memorandum of charges dated 14.02.2023 (Annexure P/1, page 7-11). The charge-sheet alleges that the petitioner violated Rule 22(1) of the Chhattisgarh Civil Services (Conduct) Rules, 1965 (in short “the Rules, 1965”) by contracting a second marriage without prior permission and by concealing the fact of the marriage while seeking such permission.

The petitioner contends that the disciplinary proceedings were initiated after an unexplained and considerable delay, and that neither the charge-sheet nor the accompanying documents disclose any reason for the delay in initiating the proceedings. Hence this petition.

03. Learned senior counsel appearing for the petitioner would submit that he is not disputing the fact that the petitioner performed second marriage with respondent No.6 Smt. Farha Khan on 1.5.2007 and thereafter he moved an application under Rule 22(1) of the Rules, 1965 for post-marriage permission on 26.6.2008. Despite that, no departmental enquiry whatsoever was initiated against the petitioner, rather the department only came in motion in this regard when second wife Smt. Farha Khan (respondent No.6) made complaints twice in the year 2017 against him. Thereafter, vide communication dated 29.6.2019 (Annexure P/1, page 12-13) respondent No.5/Assistant Inspector General of Police reported to respondent No.4/Dy. Inspector General of Police that respondent No.6/complainant Smt. Farha Khan has made complaints against the petitioner that he is harassing her physically and mentally. Being not satisfied with the report of respondent No.5/AIGP, on 27.7.2019 (Annexure P/1, page 14), respondent No.4/DIGP again sought report from respondent No.5/AIGP on certain points i.e. whether bigamy of the petitioner is proved and whether the petitioner obtained permission from the department before contracting second marriage and if not, whether the

act of the petitioner falls within the ambit of violation of the Rules, 1965. Accordingly, respondent No.5/AIGP sent a report on 24.9.2019 (Annexure P/1, page 15), stating that from the statement of Smt. Farha Khan it is proved that the petitioner performed second marriage with her on 1.5.2008 and that the application dated 26.6.2008 of the petitioner seeking permission for second marriage is under consideration.

3.1 Learned senior counsel submits that charge sheet was issued on 14.2.2023 to the petitioner i.e. after 15 years from the date of second marriage which was already informed in the year 2008 while seeking permission from the department for second marriage and after more than two years from communication dated 24.9.2019 by respondent No.5/AIGP to respondent No.4/DIGP. As the petitioner had already informed about his second marriage with respondent No.6 Smt. Farha Khan in the year 2008 itself and despite that the department did not take any action against him, it amounts to condonation of misconduct by the employer. For all these reasons, the impugned charge sheet is liable to be quashed. Reliance has been placed on the decision of the Hon'ble Supreme Court in the matters of ***Amresh Shrivastava Vs. State of Madhya Pradesh and others, 2025 SCC OnLine SC 693; State of Madhya Pradesh Vs. Bani Singh and another, 1990 (Supp) SCC 738; State of Punjab and others Vs. Chaman Lal Goyal, (1995) 2 SCC 570; Raghunandan Prasad Gupta Vs. State of MP and others, 2013 SCC OnLine MP 8455;*** and ***State of MP and others Vs.***

RN Mishra and another, (1997) 7 SCC 644.

04. Per contra, learned State counsel, referring to its reply, would submit that the petitioner performed second marriage with respondent No.6 Smt. Farha Khan on 1.5.2007, as has been stated by her in her statement recorded during internal enquiry but sent application dated 26.6.2008 seeking permission to perform second marriage suppressing the fact in the application that he has already performed second marriage with Smt. Farha Khan on 1.5.2007. Even the petitioner submitted application seeking permission for second marriage subsequent to performance of the same, which is clearly against Rule 22(1) of the Rules, 1965. Learned State counsel referring to original record further submits that the application dated 26.6.2008 submitted by the petitioner was rejected by the concerned authority on 15.10.2013 and it was communicated to the petitioner. Therefore, the statement made by learned counsel for the petitioner that the petitioner's application seeking permission for second marriage is still pending consideration, is incorrect. Referring to the original record, learned State counsel further submitted that for the first time, internal enquiry was initiated against the petitioner on 27.10.2020 on the basis of communication dated 24.9.2019 sent by respondent No.5/AIGP to respondent No.4/DIGP. After internal enquiry being conducted, the impugned charge sheet was issued to the petitioner on 14.2.2023 (Annexure P/1). Hence it cannot be said that there is any delay or

laches in issuing charge sheet to the petitioner. The present petition being without any substance is, therefore, liable to be dismissed.

4.1 Reliance has been placed on the ***judgment dated 21.1.2020*** of Division Bench of this Court in ***WA No.57/2020*** in the matter of ***Mehatru Baddhai Vs. State of CG and others*** in which the learned Division Bench upheld the order passed by learned Single Bench dismissing the writ petition and upholding the punishment awarded to the petitioner therein for his misconduct under Rule 22 of the Rules, 1965. He also placed reliance on the ***order dated 19.12.2025*** of the Hon'ble Supreme Court in the case of ***UOI and others Vs. Pranab Kumar Nath*** passed in ***Civil Appeal No.15068/2025*** in which it has been held that on the issue of performing second marriage, the service rules shall prevail.

05. Mr. V.K. Tripathi, learned counsel appearing for respondent No.6 extended support to the contention made by learned State counsel.

06. In reply, learned senior counsel for the petitioner would submit that contention made by learned State counsel that the application filed by the petitioner seeking permission for second marriage was rejected on 15.10.2013 and that internal enquiry against the petitioner was going on since 2017, is baseless as no pleading has been made in this regard and no document has been filed along with the return to substantiate the aforesaid fact. Being so, the aforesaid baseless factual assertion cannot be permitted to be raised at this stage and,

consequently, cannot be relied upon.

07. Heard learned counsel for the parties and perused the material available on record.

08. It is not in dispute that the petitioner contracted second marriage with respondent No.6. It is equally not in dispute that the petitioner himself disclosed the factum of second marriage by submitting an application dated 26.06.2008 seeking permission under Rule 22(1) of the Rules, 1965. Thus, the alleged misconduct was never concealed from the employer after the application dated 26.06.2008 came to be submitted. The respondents were, therefore, fully aware of the alleged violation since the year 2008. The record further demonstrates that even after acquiring knowledge of the alleged misconduct, no disciplinary proceedings were initiated against the petitioner for nearly fifteen years. Even according to the State/respondents, the issue again surfaced only on account of complaints submitted by respondent No.6 Smt. Farha Khan during the years 2017 and 2019. Thereafter, respondent No.5/AIGP submitted a report dated 24.09.2019 to respondent No.4/DIGP specifically stating that the petitioner's application seeking permission for second marriage was under consideration. Despite such report, the charge-sheet came to be issued only in February, 2023.

09. The explanation sought to be offered by the State/respondents during the course of hearing that the petitioner's application had

already been rejected on 15.10.2013 cannot be accepted. A party is bound by its pleadings. Neither in the return any averment has been made regarding rejection of the application on 15.10.2013 nor has any such order or communication showing rejection of petitioner’s application been brought on record. On the contrary, the information furnished to the petitioner under the Right to Information Act, 2005 (Annexure P/3, page 41) dated 08.09.2019 and the official communication dated 24.09.2019 (Annexure P/1, page 15) issued by respondent No.5/AIGP clearly indicate that the petitioner's application was still under consideration. In absence of any pleading or documentary evidence to the contrary, this Court is unable to place reliance upon the submission advanced by the State counsel on the basis of the original file. Consequently, the plea of the State/respondents regarding rejection of the petitioner's application on 15.10.2013 deserves to be rejected.

10. The State/respondents also failed to furnish any plausible explanation for the enormous delay in initiating disciplinary proceedings. Even if the State/respondents are permitted the benefit of computing limitation from the report dated 24.09.2019, no explanation has been offered as to why the departmental proceedings were initiated only in February, 2023. Mere assertion that an internal enquiry commenced in October, 2020 does not explain the delay, particularly when neither the order initiating such enquiry nor the proceedings

thereof have been placed on record. Though no statutory period of limitation is prescribed for initiating disciplinary proceedings, such proceedings must nevertheless be commenced within a reasonable period. An inordinate and unexplained delay strikes at the very root of fairness in disciplinary action. The object of disciplinary proceedings is to maintain administrative discipline and not to keep a sword hanging over the head of an employee indefinitely. Unexplained delay causes serious prejudice to the delinquent officer, as with the passage of time evidence disappears, witnesses become unavailable and the officer loses effective opportunity of defending himself.

11. In ***State of Punjab v. Chaman Lal Goyal*** *(supra)* the Hon'ble Supreme Court held that where delay in initiating disciplinary proceedings remains unexplained and causes prejudice, the Court may interfere. Similarly, in ***State of Madhya Pradesh v. Bani Singh*** *(supra)*, the Supreme Court held that initiation of departmental proceedings after an inordinate and unexplained delay is liable to be quashed. The same principle has recently been reiterated in ***Amresh Shrivastava v. State of Madhya Pradesh*** *(supra).*

12. The conduct of the respondents, in the facts of the present case, also attracts the doctrine of condonation of misconduct explained by the Supreme Court in ***State of M.P. v. R.N. Mishra*** *(supra)* where it has held in para 4 of its judgment as under:

“4. Before we advert to the argument of the learned counsel for the appellant, it may be seen as to what is the doctrine of condonation of misconduct under the ordinary law of master and servant. Under ordinary law of master and servant, an employer has the option to punish an erring employee on the ground of misconduct committed by him, but the employer if voluntarily elects not to take any action to punish the delinquent officer, then it would be a case of condonation of misconduct by the master. In Labor and Labor Relations (48 Am Jr 2d 636) it is stated thus:

> "636. Condonation of misconduct. The doctrine of condonation prohibits an employer from misleadingly agreeing to return his employees to work and then taking disciplinary action for something apparently forgiven. [Packers Hide Asso. v. NLRB (CAB), 360 F 2d 59.] Condonation can be found, however, only where there is clear and convincing evidence that the employer has completely forgiven the guilty employee for his misconduct and has agreed to a resumption of the employer-employee relationship as though no misconduct had occurred. (Packers Hide Asso. v. NLRB.)"

In L. W. Middleton v. Harry Playfair, AIR 1925 Cal 87 (AIR at p. 88), it was held thus:

> "... If a master on discovering that his servant has been guilty of misconduct which would justify a dismissal, yet elects to continue him in his service, he cannot at any subsequent time dismiss him on account of that which he has waived or condoned."

In Distt. Council v. Vithal Vinayak Bapar, AIR 1941 Nag 125 : 1941 Nag LJ 98, it was held that: (AIR Headnote)

> "Once a master has condoned any misconduct on part of servant which would have justified dismissal or a fine, he cannot, after such condonation, go back upon his election to condone and claim a right to dismiss him or impose a fine or any other punishment in respect of the offence which has been condoned."

13. In the present case, admittedly, the petitioner had himself informed the employer regarding the second marriage by submitting the application dated 26.06.2008. Thereafter, the State/respondents neither decided the application within a reasonable time nor initiated disciplinary proceedings for more than a decade. The petitioner continued to serve the department and earned promotions and important assignments. Such prolonged inaction, without any contemporaneous objection or disciplinary action, reasonably conveyed that the employer had elected not to proceed against the petitioner. Therefore, the State/respondents cannot now be permitted to revive a stale cause of action after allowing the matter to remain dormant for about 15 years.

14. The contention of the respondents that the petitioner suppressed the fact of having already contracted second marriage while submitting the application, also cannot justify the impugned proceedings at this belated stage. Assuming such allegation to be correct, the State/respondents had knowledge of all relevant facts at least from 2008 and certainly by September, 2019. Yet, no satisfactory explanation has been furnished for the extraordinary delay in initiating disciplinary action. The unexplained delay itself vitiates the proceedings.

15. The judgment relied upon by the State/respondents in ***Union of India v. Pranab Kumar Nath*** *(supra)* only lays down that service

conduct rules prevail over personal law while considering misconduct arising from a second marriage. The said proposition is not in dispute. The present case is not concerned with the legality of the petitioner's second marriage under his personal law. The controversy here relates to the legality of initiating disciplinary proceedings after an inordinate and unexplained delay despite long-standing knowledge of the alleged misconduct. Consequently, the said decision is of no help to the respondents.

16. Considering the totality of facts and circumstances, this Court is of the considered opinion that permitting the disciplinary proceedings against the petitioner to continue would be arbitrary, unfair and an abuse of the disciplinary jurisdiction. Consequently, the impugned memorandum of charges dated 14.02.2023 cannot be sustained in law and deserves to be quashed.

17. Accordingly, the writ petition is allowed. The impugned memorandum of charges dated 14.02.2023 (Annexure P/1) is hereby quashed and, as a necessary consequence, all disciplinary proceedings arising therefrom stand set aside.

18. Pending application(s), if any, shall stand disposed of. No order as to cost(s).

Sd/

(Naresh Kumar Chandravanshi)

Judge

MOHD AKHTAR KHAN
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