

State of Karnataka and Another

Vs

T. Venkataramanappa

Civil Appeal No. 12312 of 1996

(M. M. Punchhi, K. S. Paripoornan JJ)

20.09.1996

ORDER

1. Leave granted.

2. This is an appeal against the order of the Karnataka Administrative Tribunal (the Tribunal) at Bangalore whereunder the respondent seemingly was absolved from facing a departmental enquiry on the charge of having contracted a second marriage in the presence of the one subsisting with his acknowledged wife and, as a result of which, the orders of suspension passed against the respondent were lifted conferring consequential benefits. It appears from the record that the respondent, a Police Constable, faced prosecution at the instance of his wife, before the criminal court and was discharged for want of evidence of the 2nd marriage. On the other hand, a departmental enquiry was instituted against the respondent for which, priorly, he was suspended. He, in turn, approached the Tribunal for the twin relief of (i) lifting the suspension order and (ii) to stop the enquiry on the ground that the criminal court had on 14-1-1988 discharged him of the offence of bigamy. These pleas found favour with the Tribunal and, resultantly, the departmental proceedings were quashed and the suspension lifted.

3. When this matter was brought to this Court, it was pleaded that the said order of the criminal court, dated 14-1-1988 had been subjected to revision and there was a likelihood of the view of the Magistrate being reversed. Now, it transpires that the Court of the Additional Sessions Judge concerned vide order dated 11-9-1990, has affirmed the view of the trial Magistrate with the result that the respondent remains discharged. This apparently is on the basis that strict proof of solemnisation of the second marriage must be proved before conviction can be recorded for such offence. There is a string of judgments of this Court whereunder strict proof of solemnisation of the second marriage, with due observance of rituals and ceremonies, has been insisted upon. 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 under Section 494 IPC, may not, to begin with, be necessary. We therefore explain away the orders of the Tribunal to the afore 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 favour of the respondent, his continued suspension during the enquiry was totally unwarranted. Let the enquiry be held.

4. There is thus partial success for both the parties. The appeal stands ordered with these observations and directions.