

State Of W.B. And Ors. vs Prasenjit Dutta on 8 October, 1993

Equivalent citations: (1994)ILLJ799SC, (1994)2SCC37, AIRONLINE 1993 SC 140, 1994 (2) SCC 37, 1994 SCC (L&S) 638, (1994) 2 CUR LR 20, (1994) 2 LAB LJ 799, (1993) 8 SERV LR 448, (1994) 26 ATC 902, 1994 ALL CJ 1 501, AIRONLINE 1993 SC 76

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Bench: M.M. Punchhi, B.P. Jeevan Reddy

ORDER

M.M. Punchhi, J.

1. Leave granted.

2. This is an appeal by the State of West Bengal and its officers against the judgment and order dated November 18, 1992 passed by a Division Bench of the Calcutta High Court in FMAT No. 2977 of 1992 confirming the decision of the Single Judge passed in CR No.7127(W) of 1984.

3. The respondent is a member of the Police Service of the State of West Bengal. He stood married to one Smt. Bulu Dutta. While so, it is alleged, he married another woman by the name Tulu Dutta Paul during the subsistence of the first marriage. The departmental authorities of the Police Department taking aid of Rule 5(4) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980, initiated a departmental enquiry against the respondent. That sub-rule says that no Government employee who has a wife/husband living shall contract another marriage with out previously obtaining the dissolution of the first marriage in accordance with the law for the time being in force, notwithstanding such second marriage is permissible in the personal law of the community to which he or she belongs. The matter was examined factually by an enquiry officer appointed for the purpose and on his report that the respondent was guilty of the misconduct alleged, an order of dismissal was passed by the disciplinary authority. But, before the order of dismissal could be served on the respondent, he approached the High Court and had the operation of the dismissal order stayed from a learned Single Judge which order was upheld by the Division Bench and which has further led to this appeal.

4. The only ground which appealed to the High Court was that the question of second marriage was a serious matter which could not be left to be decided by the departmental authorities, in proceedings such as these, and a civil or matrimonial court needs to pronounce thereon properly and finally. Aid for the view was sought circumstantially from the event that the first wife, who was

initially responsible for making the allegation of the bigamous marriage, withdrew the allegation against her husband before the Single Judge when summoned by the court. The so-called second wife too on appearing before the Single Judge denied the marriage ever to have taken place. All the same while holding in favour of the respondent and setting aside the order of dismissal, the learned Judge passed an order of maintenance in favour of the first wife whose marriage was not in question.

5. The view of the High Court may be correct that a matter such as the present one concerning the existence or not of a relationship of husband and wife is normally to be dealt with in a Matrimonial or a Civil Court. It cannot at the same time be said that the departmental authorities cannot go into such question for the limited purposes of Sub-rule (4) of Rule 5 of the aforesaid Rules. When contracting another marriage, in the presence of the previous one, has been termed to be misconduct visiting departmental punishment it is difficult to keep suspended action under the Rule till after a proper adjudication is made by the Civil or Matrimonial Court. It would, thus, have to be viewed that the departmental proceeding could not be shut in the manner in which the High Court has done and it would have to go on to some finality at a departmental end, on the culmination of which, it may then give rise to the delinquent approaching the Civil Court for determining his matrimonial status. Thus, we are of the view that the High Court, both at the trial and the appellate stages, committed an error in preventing the dismissal order to take effect on the premises as noted above. However, besides that point, if any other point had arisen in the matter which justified stay of operation of the dismissal order, that could be left to the High Court to be determined in accordance with law. As a result, setting aside both the orders of the High Court, this appeal is allowed passing the following consequential directions:

- (i) the contempt proceedings against the departmental officers shall stand dropped;
- (ii) the operation of the order of maintenance in favour of the first wife is not affected;
- (iii) the stay granted by the Single Judge shall ; be operative for a period of one month from today subject to validation by the learned Single Judge on any other justifiable ground, but not otherwise.