

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.16902 of 2014

A.Kaleeswari

... Petitioner

vs.

1.The District Collector
Virudhunagar District
Virudhunagar

2.The Revenue Divisional Officer
Aruppukottai
Virudhunagar District

3.The Tahsildar
Tiruchuli Taluk
Virudhunagar District

4.S.Durairaj

5.The Secretary to Government
Revenue Department
Secretariat, Fort St. George
Chennai-600 009

6.The Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Fort St.George
Chennai-600 009

... Respondents

(R5 & R6 are *suo motu* impleaded vide Court Order dated 07.08.2019.)

PRAYER : Writ Petitions under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, to call for the records of the second respondent in his proceedings in Na.Ka.A.4/7076/2012 dated 27.05.2014 and quash the same as illegal, violation principles of law and further direct the respondents to appoint the petitioner under compassionate grounds.

For Petitioner : Mr.G.Marimuthu

For Respondents : Mr.K.Mu.Muthu
Additional Government Pleader for R1 to R3, R5 & R6
No appearance for R4

ORDER

The order dated 27.05.2014, rejecting the claim of the writ petitioner seeking appointment on compassionate ground, is under challenge in the present Writ Petition.

2. The learned counsel appearing on behalf of the writ petitioner states that the claim of the writ petitioner was rejected merely on the ground that the daughter of the first wife of the deceased employee raised an objection. Thus, the impugned order is liable to be set aside.

3. The learned Additional Government Pleader appearing on behalf of the official respondents contended that the writ petitioner is the second wife of the deceased employee, who was the second husband of the writ petitioner. In other words, the writ petitioner originally married another person and during his life time, she married the deceased employee as second husband and there is no valid dissolution of marriage in existence between the writ petitioner as well as with her first husband. In the absence of any valid decree of divorce between the first husband of the writ petitioner and the writ petitioner, the claim of the writ petitioner cannot be considered and the second marriage with the deceased employee is null and void.

4. The petitioner states that the second husband of the writ petitioner, namely, D.Ambedkar was appointed as Watchman and he divorced his first wife, namely, Kannaki. On account of some misunderstanding, the deceased employee filed H.M.O.P.No.67 of 2009 and obtained a decree of divorce. Thus, the deceased employee married the writ petitioner as second wife. As far as the marriage of the deceased employee is concerned, he had obtained a valid decree of divorce and entered into a contract of marriage with the writ petitioner, however, the case is *vice versa* in respect of the writ petitioner. The writ petitioner also married another person as a first husband.

During the life time of the first husband, the writ petitioner entered into the contract of marriage with the deceased employee. The writ petitioner has not obtained valid decree of divorce from the competent Court of law, as far as the marriage between the writ petitioner and her first husband is concerned.

5. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner and her first husband have entered into an agreement and that agreement is enclosed in page No.19 of the typed set of papers. Based on the agreement between the writ petitioner and her first husband, the Village Administrative Officer, A.Lakshmiyapuram Village issued a certificate. The certificate itself states that it is a second marriage. The agreement is also accepted by the Village Administrative Officer and he issued a certificate.

6. When this Court questioned the competency of the Village Administrative Officer for issuing such a certificate, there is no convincing answer.

7. Mr.P.Chandrasekaran, Tashildar, Aruppukoottai, who is present before this Court along with Mr.B.Padmanathan, Village Administrative

Officer, Aruppukottai Taluk, is also not in a position to provide correct position, in respect of the duties and responsibilities of the Village Administrative Officers. Contrarily, it is stated that such certificates are frequently issued by the Village Administrative Officers in the district.

8. A perusal of the certificate issued by the Village Administrative Officer on 31.05.2011 reveals that the marriage was solemnized between the writ petitioner and the deceased Government servant in Arulmigu Meenakshi Sokkanathar Thirukovil, Chokkalingapuram, Aruppukottai. The Village Administrative Officer recorded in the certificate that there was a divorce agreement between the writ petitioner and her first husband. On what basis, the Village Administrative Officer accepted and endorsed the agreement of divorce for the purpose of solemnizing the second marriage of the writ petitioner with the deceased Government servant in violation of the law, is not known.

9. Such agreement of divorce is invalid in the eye of law. Customary divorces are not recognized and such customary divorce can be granted only on exceptional circumstances under Section 29 of the Hindu Marriage Act. In such an event, the custom prevailing in the particular area or community

must be established or otherwise the valid decree of divorce must be granted by the competent Court of law. As far as the case of the writ petitioner is concerned, there is no such customary practice in prevalence or otherwise. Thus, the agreement of divorce has no validity in the eye of law. Based on such agreement, the Village Administrative Officer also granted certificate and based on the certificate, the second marriage was solemnized in a temple and all such events are absolute illegalities and the Village Administrative Officer also contributed for such illegalities by issuing certificate, for which he has no power under the law.

10. The invitation for marriage is enclosed in Page No.20, which shows that the marriage between the writ petitioner and the deceased Government employee was solemnized in the house situated at Kamaraj Street, Karuppiyah Street, Palayampatti. As per the application submitted before the Village Administrative Officer, the marriage was solemnized in Arulmigu Meenakshi Sokkanathar Thirukovil, Chokkalingapuram, Aruppukottai. The statements are self contradictory and the Village Administrative Officer also issued a certificate beyond his jurisdiction and committed an illegality.

11. The Village Administrative Officer, who is present before this Court, is unable to establish that the book of register is maintained for the purpose of issuing certificates to the persons, who are all submitting applications.

12. The learned Additional Government Pleader appearing on behalf of the official respondents made a submission that no such register is maintained by the Village Administrative Officers. However, the certificates are issued on request without even maintaining the book of register to ensure the validity or for ascertaining the genuinity of such certificates. Thus, the practice being adopted by the Village Administrative Officers is that whenever a request is made, certificates are issued then and there. Such a procedure is not known to the administration. Any certificate issued must be registered in a book of register, so as to ascertain the genuinity or otherwise or for future verification. But, no such register is maintained.

13. It is an unfortunate situation, where the Village Administrative Officers are issuing various certificates at request by any person without even maintaining the register. This situation is to be viewed very seriously. Such a situation will lead large scale corrupt activities. In respect of the performance

of the duties and responsibilities of these Village Administrative Officers, there is a large scale allegations in the public domain that these Village Administrative officers are issuing certificates at their whims and fancies and on extraneous considerations. Thus, the Government must take serious action against all these Village Administrative Officers and ensure that these Village Administrative Officers are performing their duties and responsibilities in accordance with the provisions of the law rules and Government Orders in force.

14. Taking note of the fact that the marriage certificate is issued by the Village Administrative Officer in this case without even verifying the legality of the writ petitioner to marry second husband during the life time of the first husband, the writ petitioner had abetted for the offence of bigamous marriage, which is a punishable offence, under Chapter XX of I.P.C. This apart, the writ petitioner is claiming appointment on compassionate ground. The writ petitioner is having a living first husband and she contracted the second marriage with the Government employee. On his death, she has submitted an application, seeking appointment on compassionate grounds.

15. This being the facts and circumstances, this Court is of the considered opinion that the Village Administrative Officer has also contributed the abetted for the commission of offence of solemnizing the second marriage with the second husband of the writ petitioner.

16. When it is conceded that the Village Administrative Officers are not empowered to issue certificates, this Court is of the considered opinion that all proper actions are to be initiated against the Village Administrative Officer concerned and against the officials, who are all responsible to review the activities of the Village Administrative Officer. Even the Tashildar, who is present before this Court, states that such certificates are issued in large scale manner. Such certificates are issued across the district by many such Village Administrative Officers. Thus, an urgent action to prevent the issuance of such illegal certificates are to be undertaken and the District Collector in this regard also to ensure that the Village Administrative Officers are performing their duties and responsibilities, within the ambit of law and corrupt activities of these Village Administrative Officers are prevented and suitable actions are to be taken by prosecuting them under the criminal law as well as under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

17. It is relevant to consider that the Tamil Nadu Civil Services (Discipline and Appeal) Rules were framed during the year 1955. As the corrupt activities in the public administration are in ascending mode, it is highly imminent for the State Government to improve the system in order to suit the current day level of corrupt activities across the State of Tamil Nadu.

18. The existing provisions in the Discipline and Appeal Rules are insufficient and not working effectively and efficiently. The delinquent Government officials had already dugged out various loopholes in the procedures and processes. They are protracting and prolonging the disciplinary proceedings and conveniently escaping from the clutches of such proceedings.

19. Planning, designing and escaping are the modern trend being concurred by the delinquent Government officials. Even the repeated disciplinary proceedings against corrupt officials have miserably failed to reach its purpose and object.

20. The delinquent Government officials are submitting unnecessary

representations knowing the procedures and adopting delay tactics, at the stage of giving initial explanation / reply. When there is no reply from the competent authorities, the delinquent Government officials are filing line of writ petitions one after the other with an ulterior motive to crush the disciplinary proceedings. They are succeeding on many occasions. That is the agony and pity about the efficiency level of the existing rules.

21. The long pendency of the writ petitions in the High Courts are also an adding advantage to the delinquent Government officials. Once an interim order is granted, the delinquent Government officials, who filed the writ petitions, are working hard for the non-disposal of the writ petitions and of course, with the help of some legal brains.

22. The Discipline and Appeal Rules framed under Article 309 of the Constitution of India and enacted in the form of statute must ensure that such rules enacted or constituted have achieved the constitutional mandates and perspectives. Any rule or outdated rule, which is not working effectively, is to be suitably amended or modified or re-drafted. By not doing so, the State Government is failing in its duty to achieve the constitutional goals and perspectives.

23. Efficient public administration is a constitutional mandate. Efficiency in public administration is of paramount importance for the implementation of the public welfare schemes. In the event of inefficient administration, the constitutional schemes, philosophies and ethos are not reached and cannot be achieved as resolved by “we the people of India” in the preamble of our Constitution of India. Thus, any outdated and ineffective Discipline and Appeal Rules shall be periodically amended or re-drafted or an Act is to be enacted.

24. Codification of punishments may also one of the idea to cater the needs of the present day situation. Codification of Discipline and Appeal Rules shall minimize the discrimination and curtail the wrongful exercise of discretionary power by various competent authorities. Codification of Discipline and Appeal Rules not only would improve the system, but it would be helpful to maintain consistency and uniformity in dealing with the discipline and appeal cases and to impose various penalties contemplated.

25. The authorities competent shall be effectively prevented from

indulging in corrupt activities in the matter of dealing with departmental disciplinary proceedings and for imposing punishments. Wider discretion in deciding the quantum of punishments to the authorities may result in denial of justice to the delinquent Government official and equally, for similar misconducts, varied punishments are imposed. Such inconsistencies can be averted possibly.

26. The Village Administrative Officers across the State of Tamil Nadu are facing large scale corruption cases. The worst form of corruption brought to the notice of this Court is that “for issuance of death certificate in the Villages, the Village Administrative Officers are demanding and accepting bribe when the corpse (dead body) is placed in the burial ground”. From birth certificate to death certificate, these Village Administrative Officers are demanding and accepting bribe. An average citizen of our great Nation is facing the social evil of corruption from his birth to death. The common men are being harassed on account of the demand and acceptance of bribe by these officials in Taluk Offices.

27. The Village Administrative Officers are assisting, colluding and providing information for encroachments of public lands by the land grabbers

and realtors. These Village Administrative Officers are issuing incorrect and false certificates for the purpose of availing the Government welfare schemes and all ineligible persons are benefited from the Government welfare schemes and thereby, causing monetary loss to the taxpayers money.

28. The growing children require shoes to suit their feet. Equally, the growing corruption requires suitable Discipline and Appeal Rules to deal with the cases and to provide social justice to the citizen of this great Nation. Thus, it is duty mandatory on the part of the Government to actively consider amending or redrafting the Discipline and Appeal Rules as well as the quantum of punishments to be imposed for various offences, misconducts, dereliction of duty, negligence, lapses, misappropriations etc.

29. In view of the facts and circumstances of the case and taking note of the current day scenario in respect of the functioning of the Village Administrative Officers, this Court is inclined to pass the following orders:

- (i) The relief sought for in the present writ petition stands rejected.
- (ii) The respondents 5 and 6 are directed to actively consider for constituting a Rule Committee for the

purpose of amending the Discipline and Appeal Rules suitably or to re-draft the entire rules, whichever would be more effective, so as to ensure that the corrupt Village Administrative Officers as well as the Government Officials committing such offences, misconducts, negligence, dereliction of duty, misappropriation etc., are effectively dealt with and proportionate punishments are imposed for the proved charges uniformly and consistently by the competent authorities.

- (iii) The respondents 5 and 6 are directed to issue instructions / orders for conducting surprise inspections by the higher officials and frequent raids, through the Department of Vigilance and Anti-corruption, in Taluk Offices and in the Village Administrative Offices.
- (iv) The respondents 5 and 6 are directed to issue suitable circular / consolidated instructions to all the District Collectors to verify the asset details of the Village Administrative Officers in their respective

jurisdiction and in the event of identifying any discrepancy or disproportionate wealth with reference to the details recorded in the service register, then all suitable actions, including prosecutions, are to be initiated.

- (v) The respondents 5 and 6 are directed to communicate the duties and responsibilities of the Village Administrative Officers to all the District Collectors enabling them to circulate the same to the Village Administrative Officers for effective and efficient performance of their duties and responsibilities in the villages.
- (vi) The respondents 5 and 6 are directed to issue circulars to all the Village Administrative Officers to maintain a permanent book of registers for the purpose of entering the certificates issued by them to the public at their request and to enter all such information and details regarding the village and other details, which all are essential permanent records.

30. With these directions, the writ petition stands disposed of. No costs.

07.08.2019

Index : Yes / No

Internet : Yes / No

myr / krk

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