

A perusal of section 4 shows that the method of recruitment and conditions of service "shall be such as may be prescribed." 'Prescribed' has been defined to mean "prescribed by rules made under this Act." Accordingly, section 4 authorises the Government to determine the conditions of service of the employees by promulgation of rules. No rule has been brought to my notice to show that the conditions of service have to be the same as those of the University employees. Further, a perusal of section 6 shows that the scales of pay have to be prescribed by the Government. It nowhere postulates that the scales of pay shall be such as may be recommended by the University Grants Commission or by the University. Accordingly, even section 6 does not support the claim made by the petitioner.

(6) According to the written statement filed on behalf of the respondents, the petitioners who are working in affiliated colleges in the State of Haryana have been treated at par with those of the University employees. The action is apparently fair. There seems to be no basis for giving the petitioners a preferential treatment vis-à-vis their counter-parts in Government colleges.

(7) Since I am dismissing the writ petition on merits, I am not considering preliminary objections raised on behalf of the respondents.

(8) Accordingly, I find no merit in these petitions. These are dismissed. No costs.

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J.S.T.

Before : S. S. Grewal & A. S. Nehra, JJ.

SMT. BALBIR KAUR,—Petitioner.

*versus*

SMT. HARDARSHAN KAUR AND OTHERS,—Respondents.

*Criminal Appeal No. 377-DBA of 1984*

April 8, 1992.

*Indian Penal Code 1860—Section 494—Bigamy—Evidence—  
Rajinder Singh contracted second marriage with Smt. Pomila during*

*the subsistence of first marriage with Smt. Balbir Kaur—Rajinder Singh filed case against Smt. Pomila for setting aside decree & judgement allowing her petition under section 5(1) and 12(1) (c) of Hindu Marriage Act—Case dismissed such judgement established second marriage of Rajinder Singh & admissible as evidence.*

Held, that after hearing the learned counsel for the parties, we are of the opinion that, in view of Exhibit PW-6/C judgement dated 1st March, 1983 passed by the Delhi High Court, which is admissible in evidence, the second marriage of Rajinder Singh with Smt. Pomila stands established and, therefore, the judgements relied upon by the counsel for the petitioners, are not applicable to the facts of the present case.

(Para 16)

*Appeal from the order of the Court of Shri M. R. Garg, PCS, Judicial 1st Class, Phillaur, dated 21st February, 1984 acquitting the accused.*

R. S. Bindra, Sr. Advocate with Mrs. Renu Bala, Advocate, for the Appellant.

H. S. Sandhu, Advocate with Ramandeep Singh Sandhu and **Sukhjit Singh Joely, Advocates, for the Respondent.**

#### JUDGMENT

A. S. Nehra. J.

(1) This Criminal appeal is directed against the judgment dated 21st February, 1984 of the Judicial Magistrate Ist Class, Phillaur, by which the respondents have been acquitted of the charge under sections 494 and 120-B, Indian Penal Code.

(2) Criminal Revision No. 302, of 1987 (*Rajinder Singh and another v. The State of Punjab and another*) has been filed by Rajinder Singh and Shiv Dyal Singh against the judgment passed by the Additional Sessions Judge, Jalandhar, on 13th December, 1986, by which the conviction of Rajinder Singh petitioner under section 494, Indian Penal Code, and the conviction of Shiv Dyal Singh petitioner under sections 494/109, Indian Penal Code, has been maintained but their sentence has been reduced to a fine of Rs. 2,000 each.

(3) By this judgment, we propose to dispose of this appeal and the above-mentioned revision petition.

(4) Briefly stated, the allegations mentioned in the complaint filed by Balbir Kaur are as follows:—

(5) Balbir Kaur appellant was married to Rajinder Singh on 7th May, 1975 according to *Anand Karaj* ceremonies and the marriage still subsists. They resided at various places as husband and wife. Rajinder Singh used to maltreat his wife and the other members of his family also complained that she did not bring sufficient dowry. As she could not meet their demands of dowry, she was turned out of his house by her husband Rajinder Singh. It is further alleged that in the month of July, 1981, Mohinder Singh, a relation of Balbir Kaur from the maternal side, informed her that her husband Rajinder Singh was roaming about with some other lady and that he came to know that this lady was the second wife of her husband Rajinder Singh. The appellant alongwith her brother went to Delhi and approached Smt. Pomila to enquire if she had married Rajinder Singh and this fact was confirmed by her. It was told to the appellant by Smt. Pomila that the factum of first marriage of Rajinder Singh with Balbir Kaur appellant was never disclosed to her.

(6) Balbir Kaur appellant appeared as her own witness as PW-1 and she examined Gurbachan Dass PW-2, Balbir Singh son of Mohan Singh (PW-3), Rajinder Singh Dhillon PW-4, Mohinder Singh PW-5, Smt. Pomila PW-6, Pritam Singh PW-7 and Satnam Singh PW-8 in support of her complaint.

(7) After the close of the appellant's evidence, the statements of the accused under section 313, Code of Criminal Procedure, were recorded. The factum of the first marriage was admitted by Rajinder Singh and Shiv Dyal Singh. The second marriage with Smt. Pomila was also admitted. However, it was stated by them that the first marriage was dissolved under Customary Law and the second marriage was performed after taking the expert legal opinion of Mohan Bihari Lal, Advocate of the Supreme Court of India, regarding divorce under Customay Law. The other accused have denied the prosecution allegations and stated that they never attended the second marriage of Rajinder Singh with Smt. Pomila. Rajinder Singh and Shiv Dayal Singh, petitioners, have examined Charan Dass DW-1, Ajit Singh DW-2, Ajai Singh DW-3, Bhajan Singh DW-4, Mohinder Singh DW-5, Phuman Singh DW-6, Gurbachan Singh DW-7, Gian Singh DW-8, Hardial Singh DW-9, N. K. Chopra DW-10, Ajit Singh DW-11, Shamsher Singh DW-12 and Jarnail Singh DW-13. These witnesses have been examined in connection with the custom

regarding divorce amongst the Hindu Jat Sikhs of Jalandhar district. N. K. Chopra, Advocate of Nawanshahr (DW-10), proved the execution of divorce-deed Exhibit DW-10/A. Mohan Bihari Lal, Advocate, CW-1 stated that he had given the opinion that the first marriage can be revoked by renunciation among the Hindu Jat Sikhs of Jalandhar.

(8) Piara Singh Gill, respondent No. 2, and his wife Mrs. Piara Singh Gill were prosecuted because, according to the allegations in **the complaint, they acted as go-in-between (Sic) of the second marriage of Rajinder Singh and also put in their appearance at the celebration of that marriage. Smt. Pomila and her brother did testify that both these respondents acted as go-in-between (Sic) of her marriage with Rajinder Singh but the letters Exhibits D-2 to D-4, produced on the file, go a long way to belie this version of Smt. Pomila and her brother. These letters were written by Sardar Pritam Singh, Advocate, father of Smt. Pomila, to Shiv Dayal Singh and the contents thereof do indicate that it was Shiv Dayal Singh who took active part in the settlement of the second marriage of Rajinder Singh with Smt. Pomila and settled the date of marriage and other terms of the marriage. There is no documentary evidence on the record in proof of the fact that Piara Singh, respondent and his wife acted as go-in-between of the marriage of Smt. Pomila.**

(9) The allegations against Hardarshan Kaur and Rupinder Kaur **alias Harinder Kaur are that they alongwith Shiv Dayal Singh petitioner went to the house of Smt. Pomila to have a look at Smt. Pomila. There seems to be no truth in these allegations either. Of course, Smt. Pomila and her brother deposed that Shiv Dayal Singh petitioner, his wife Hardarshan Kaur and his daughter Rajinder Kaur came to Delhi before the marriage to have a look at Smt. Pomila and that they represented that Rajinder Singh was unmarried but, in the complaint, there is a recital to the effect that Smt. Pomila told Balbir Kaur appellant that Rupinder Kaur, sister of Rajinder Singh petitioner, went to Delhi to have a look at her and, in the complaint, no mention to Shiv Dayal Singh and his wife was made on that occasion. No photograph of that occasion was placed in proof of this allegation. So much so that neither Smt. Pomila nor her brother mentioned any specific date when Shiv Dayal Singh, Hardarshan Kaur, and Rajinder Kaur went to Delhi for that purpose. It seems that a specific date of this occasion was not mentioned under the apprehension that, on that particular date, the presence of these persons or any of them might not have been marked at some other**

place and the respondents might lead that proof on the file and thus spoil the entire case of the appellant.

(10) In view of the above-mentioned discussion, we find no merit in Criminal Appeal No. 377-DBA of 1984 and the same is dismissed.

(11) Mr. H. S. Sandhu, learned counsel for the petitioners in Criminal Revision No. 302 of 1987 (*Rajinder Singh and another v. State of Punjab and another*) has argued that the second marriage of Rajinder Singh with Smt. Pomila does not stand proved. He has referred to *Bhaurao Shanker Lokhande and another v. The State of Maharashtra and another* (1), wherein it has been held that for proper application of section 494, Indian Penal Code, marriage must come within 'solemnized marriage'; that 'solemnized' means "to celebrate the marriage with proper ceremonies and in due form" and that mere going through certain ceremonies with intention of marriage will not make the ceremonies prescribed by law or approved by custom. In *Darshan Singh v. The State of Punjab* (2), it has been held:—

"It appears that the essential four *Lavans* (circum-ambulations) made by the groom followed by the bride around the holy Guru Granth Sahib amidst the chanting of the recitations of the hymns composed by the fourth Guru, Guru Ram Dass, are the only essential ceremonies of the *Anand Karaj*. Somewhat parallel is the *Saptpadi* in the Hindu Marriage. They are the formal rounds of acceptance of the nuptial vows."

Learned counsel for the petitioners has further contended that there is no proof to the effect if necessary ceremonies were performed at the time of the second marriage and so the offence under section 494, Indian Penal Code, is not made out against the petitioners. In support of his argument, he has relied upon *Chand Singh v. Surjit Kaur and another* (3), and *Kanwal Ram and others v. The Himachal Pradesh Administration* (4).

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(1) A.I.R. 1965 S.C. 1564.

(2) 1980 P.L.R. 243.

(3) 1966 Criminal Appeals Reporter 299 (S.C.).

(4) A.I.R. 1966 S.C. 614.

(12) Mr. H. S. Sandhu, learned counsel for the petitioners, has further argued that where there is no proof of essential ceremonies, conviction for bigamy is not justified and the admission of accused is no evidence of it for the purpose of proving marriage in adultery or bigamy cases. In support of his argument that mere admission by accused that he had contracted second marriage is not enough and that essential religious rites must be proved regarding solemnization of second marriage, he has relied upon *Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh* (5).

(13) The learned counsel for the petitioners has further submitted that Smt. Pomila has not stated anything if necessary ceremonies were performed. Rajinder Singh Dhillon PW-4, brother of Smt. Pomila, has only stated that the marriage of Smt. Pomila was performed with Rajinder Singh according to *Anand Karaj*. The learned counsel for the petitioners has strongly contended that there is no mention by either of these two material witnesses, namely, Rajinder Singh PW-4 and Smt. Pomila PW-6, as to what essential ceremonies were performed at the time of marriage by way of *Anand Karaj* and their mere saying that the marriage was performed by *Anand Karaj* is not sufficient unless there is proof to the effect as to what essential ceremonies were performed and as to what religious rites were observed. It has been contended by the learned counsel for the petitioners that there is no proof to the effect that four *Lavans* were performed by going around the holy Guru Granth Sahib amidst recitation of "*Path*" from Guru Granth Sahib concerning four *Lavans* and that, on this fact alone, the petitioners are entitled to acquittal, because the factum of second marriage according to law is not proved.

(14) The learned counsel for Balbir Kaur respondent has referred to the statement of Rajinder Singh accused-petitioner who admitted it to be correct that he had filed a petition for restitution of conjugal rights in the Court at Jalandhar against the second wife Smt. Pomila, which was dismissed for want of jurisdiction. He contended that this shows that Rajinder Singh accused-petitioner was fully aware of the fact that he had contracted second marriage with Smt. Pomila and, for that very reason, he had filed a petition under section 9 of the Hindu Marriage Act against his second wife Smt. Pomila. He further pointed out that Rajinder Singh accused-petitioner further stated that he had remarried after obtaining legal

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(5) A.I.R. 1971 S.C. 1153.

advice and after his customary divorce as per custom prevalent in his community; and that there was exchange of letters between the father of Rajinder Singh accused-petitioner and the father of Smt. Pomila, which shows that the marriage had been solemnized between Smt. Pomila and Rajinder Singh.

(15) Another fact pointed out by the learned counsel for Balbir Kaur respondent is that this matter regarding second marriage had come up before the Delhi High Court and the second marriage had been dissolved. In support of his argument, the learned counsel relied upon Exhibit PW-6/C (judgment dated 1st March, 1983 passed by the Delhi High Court in FAO No. 14 of 1983). FAO No. 14 of 1983 was filed by Rajinder Singh against Smt. Pomila for setting aside the judgment and decree dated 27th November, 1982 passed by the Additional District Judge whereby the petition of Smt. Pomila under sections 5(1) and 12(1)(c) of the Hindu Marriage Act was allowed and the marriage between the parties was annulled by a decree of nullity. The FAO was dismissed and the letters patent appeal against that judgment dated 1st March, 1983 of the Single Judge was also dismissed on 5th May, 1987. The learned counsel for Balbir Kaur respondent has further submitted that it is well settled that judgments *in rem*, like judgments passed in probate, insolvency, matrimonial or guardianship or other similar proceedings, is admissible in all cases, irrespective of whether such judgments are *inter partes* or not. In support of his argument, the learned counsel has relied upon *State of Bihar and others v. Shri Radha Krishan Singh and others* (6), which is fully applicable to the facts of the present case. It has been further submitted by the learned counsel for the respondent that the point adjudicated upon in a judgment *in rem* is always as to the status of the *res* and is conclusive proof against the whole world as to that status, whereas in a judgment *in personam* the point whatever it may be, which is adjudicated upon, it not being as to the status of the *res*, is conclusive only between parties or privies. A decision *in rem* not merely declares the status of the person or thing, but *ipso facto* renders it such as it is declared; thus a decree of annulment of marriage not only annuls the marriage but renders the wife *feme sole*.

(16) After hearing the learned counsel for the parties, we are of the opinion that, in view of Exhibit PW-6/C, judgment dated 1st

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(6) A.I.R. 1983 S.C. 684.

March, 1983 passed by the Delhi High Court, which is admissible in evidence, the second marriage of Rajinder Singh with Smt. Pomila stands established and, therefore, the judgments relied upon by the counsel for the petitioners, are not applicable to the facts of the present case.

(17) In view of the above-mentioned discussion, Criminal Revision No. 302 of 1987 is dismissed.

J.S.T.

Before Hon'ble M. R. Agnihotri & R. S. Mongia, JJ.

P. N. SHARMA,—Petitioner.

versus

PUNJAB AND HARYANA HIGH COURT THROUGH ITS REGISTRAR AND OTHERS,—Respondents.

Civil Writ Petition No. 16589 of 1992

October 13, 1993.

*Constitution of India, 1950—Art. 226 and 227—High Court Establishment (Appointment and Conditions of service) Rules 1973—Rule 8(ii) (b)—Promotion—Petitioner seeking promotion to post of Deputy Registrar retrospectively—Petitioner's name left out of consideration by Registrar while recommending case for filling vacancy—Held that once statutory rule provided for post of Deputy Registrar to be filled "by selection from amongst Assistant Registrars who are graduate and have experience of working as such for a minimum period of three years", it was duty of Registrar to consider all those Assistant Registrars who fulfilled requisite qualifications.*

*Held, that it is quite surprising that ever though the name of the petitioner was duly included by the Joint Registrar (Rules), amongst the five names of the Assistant Registrars, while forwarding the case to the Registrar, for considering them for promotion as Deputy Registrar yet the then Registrar omitted the name of the petitioner, from the list of Assistant Registrars to be considered for promotion as Deputy Registrar. Once the statutory rule provided, that the post of Deputy Registrar was to be filled "by selection from amongst the Assistant Registrars who are graduates and have experience of working as such for a minimum period of three years", it was the duty of the Registrar to consider all those Assistant Registrars who fulfilled the requisite qualifications.*

(Para 6)