

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA NO. 2131 OF 2006

% Date of Decision : 30th November, 2007.

NEENA SINHA Appellant.

Through Ms. Geeta Luthra & Mr. Jai
Bansal, Advocates.

VERSUS

UNION OF INDIA & OTHERS Respondents.

Through Mr. Suresh Kait, Central Government
Standing Counsel for respondent Nos. 1 & 2.

Ms. Malvika Rajkotia, Advocate for the respondent
No. 3.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be
allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ?
YES

SANJIV KHANNA, J:

1. The appellant-Ms. Neena Sinha is wife of Mr. Jyoti Kalash.

She impugns order dated 23rd May, 2006 passed by the learned Single Judge dismissing her writ petition W.P. (C) No. 8868/2006 seeking initiation of departmental proceedings against Ms. Pramila Sharan, the respondent No. 3 on the ground that she is having an extra marital affair with her husband.

2. Learned counsel for the appellant submitted that respondent No. 3 has violated Rule 3(1) (iii) of the Central Civil Service (Conduct) Rules, 1964, which requires that every Government servant shall not act in a manner which is unbecoming of a Government servant. She also relies upon MHA letter No. 43/56/54-AVD dated 22nd October, 1964 issued by the Government of India, which provides for suspension of a

Government servant involved in acts or conduct involving moral turpitude. Learned counsel for the appellant has also drawn our attention to the judgment of Madras High Court in the case of ***State of Tamil Nadu versus P.M. Belliappa***, reported in 1984 (3) SLR 534.

3. We may mention here that learned counsel for the respondent No. 3 has denied allegations made by the appellant against the respondent No. 3. Learned counsel for the respondent No. 3 has also drawn our attention to order dated 2nd August, 2007 passed by Civil Judge, Delhi dismissing the suit filed by the appellant herein against respondent No. 3 on similar allegations holding that the plaint did not disclose any cause of action.

4. We may note here that the present appeal is barred by limitation and an application for condonation of delay of 129 days has been filed. The only ground given in the application is

mentioned in paragraph 3, which is reproduced below:-

“That the appellant has been under depression for crisis being faced by her in marital life. Besides, the appellant went out of Delhi along with her children during summer vacation so to come out from her depression. It took time for the appellant to come out of the depression and think coherently and that is why, there is delay in filing the instant appeal.”

5. Courts are very liberal in condoning delay and the term "sufficient cause" has been interpreted capaciously to take into account disabilities and disadvantages, which a party suffers from. However, the reasons stated above are bereft of grounds and particulars. The mere fact that the appellant had gone out of Delhi and was facing marital problems, does not justify and constitute sufficient cause to explain delay of 129 days in filing the appeal. The impugned order was passed on 23rd May, 2006 and the present appeal was filed only on 29th September, 2006, though intra court appeal is to be filed within 30 days.

6. On merits also, we agree with the Ld. Single Judge, who refused and was not inclined to exercise extraordinary jurisdiction under Article 226 of the Constitution of India. The appellant has alleged extra marital affair between her husband and respondent No. 3, both of them are Government servants but the appellant wants initiation of departmental proceedings only against respondent No. 3 and not against her own husband. In fact, when the writ petition W.P. (C) No. 8868/2006 had come up for hearing before the learned Single Judge, he had expressed his view that the husband of the appellant should be impleaded as a party. Despite opportunity granted for the said purpose, the husband of the appellant was not impleaded as a party by the appellant. In the grounds of appeal, it is submitted by the appellant that she does not want any departmental action against her husband but she wants action to be taken against respondent No. 3 only, even though it is her allegation that her

husband and respondent No. 3 have a adulterous relationship. We do not think it is possible to segregate and treat the husband of the appellant and respondent No. 3 separately, if we treat the allegations made by the appellant as correct. Two different yardsticks cannot be applied. In these circumstances, learned Single Judge was justified in refusing to entertain writ petition on the ground that the appellant has given a mala fide colour to the petition by seeking initiation of departmental action against the respondent No. 3 and leaving her husband out of the same.

7. It may also be noted that divorce proceedings are already pending between the appellant and her husband and the respondent No. 3 and her husband on various grounds. Husband of respondent No. 3 has also initiated criminal proceedings against respondent No. 3 and the husband of the appellant. The said matter is pending consideration before a criminal court. The appellant had filed a civil suit against

respondent No. 3 again making allegations of adultery, which were categorically denied by respondent No. 3. The said civil suit has been dismissed as not disclosing any cause of action vide order dated 2nd August, 2007 passed by the Civil Judge . It is, therefore, apparent that the alleged allegations of adultery and extra marital affair are already subject matter of the matrimonial proceedings as well as a criminal case. Disputed questions of fact are involved. The appellant had made representations to the Government for initiation of departmental proceedings against respondent No. 3. Inspite of the representations, the Government has not taken any action and it is apparent that they are satisfied and convinced that no departmental proceedings should be initiated. In the present case departmental proceedings have not been initiated and we are not examining the question whether departmental proceeding should be quashed. Judicial parameters and scope

for intervention in both cases will be different. In these circumstances, we are not inclined to exercise our power under Article 226 of the Constitution of India and issue specific direction to the Government of India to initiate departmental proceeding against respondent No. 3.

8. The case of ***P.M. Belliappa*** (supra) relied upon by the appellant is distinguishable. In the said case, the respondent therein had used his official position to appoint wife of the complainant in a job with REC and the allegations made were that the said respondent had enticed the complainant's wife, who had developed deep sentiment of gratitude on account of employment she had procured through the help of the respondent therein.

9. In view of the above factual background and the already pending litigations between the parties, we agree with the findings recorded by the learned Single Judge, who refused to exercise his discretion in entertaining the writ petition under Article 226 of the Constitution of India. We find no merit in this appeal and the same is accordingly dismissed. We, however, make it clear that no part or observation and views expressed

herein would be read as views expressed on the merit of any other case. These findings are recorded only for the purpose of deciding this appeal. No Costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

NOVEMBER 30, 2007.

VKR/P