

Court No. - 18

Case :- WRIT - A No. - 5129 of 2025

Petitioner :- Mohd. Mohsin Khan

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko. And 3 Others

Counsel for Petitioner :- Lalta Prasad Misra, Prafulla Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Karunesh Singh Pawar, J.

Heard Shri L.P. Mishra, learned Advocate assisted by Shri Prafulla Tiwari, learned counsel for the petitioner and learned Standing counsel for the respondents.

Learned counsel for the petitioner submits that the impugned suspension order, annexed as Annexure No. 1, has been passed mechanically by the State Government solely on the basis of the recommendation dated 06.03.2025 of the Additional Director General of Police, without any independent application of mind.

It is next submitted that the charge against the petitioner that he was having sexual relationship with another woman has been disputed. Being in a sexual relationship with another woman despite being married does not constitute misconduct. He also submits that an FIR No. 570/2024, under Section 69 of BNS was lodged against him at the instance of the complainant. The petitioner has challenged this FIR by filing Criminal Misc. Writ Petition No. 23395 of 2024, titled "*Mohammad Mohsin Khan vs. State of U.P. and Others*", in which a Division Bench of this Court passed an interim order dated 19.12.2024, staying the filing of the charge sheet.

Learned counsel for the petitioner further submits that under Rule 29(1) of the U.P. Government Servants Conduct Rules, 1956, entering into a second marriage during the subsistence of the first is deemed misconduct. However, merely maintaining a relationship with another woman while still legally married

does not amount to misconduct. Therefore, the charges mentioned in the impugned suspension order will not entail any penalty/major penalty. The impugned order is also bereft of any independent satisfaction recorded by the disciplinary authority.

Perused the record.

On due consideration to Rule 29(1) of the U.P. Government Servants Conduct Rules, 1956, the judgment and order dated 27.10.2015 passed by the Division Bench in Writ Petition No. 58619 of 2015 ("V.N. Daipuria vs. State of U.P. and Others") and the judgment of the Division Bench in "Shahjahan Khan vs. State of U.P. and Others", 2002 SCC OnLine All 46, the operation of the impugned suspension order is ***stayed*** until further orders of the Court.

The learned Standing Counsel is directed to file a counter affidavit within four weeks.

Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List the matter on 28.07.2025.

Order Date :- 9.5.2025

R.C.