

(2018) 04 RAJ CK 0148
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5472 of 2015

Hema @APPELLANT@Hash State of Rajasthan

Date of Decision : 06-04-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 04 RAJ CK 0148

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : M.S. Purohit, Mukesh Dave

Final Decision : Allowed

Judgement

1. The petitioner has preferred this writ petition under Article 226 of the Constitution of India claiming the following reliefs:

â??(i) The respondents be directed to consider the case of the petitioner for appointment on the post of Informatics Assistant under the OBC Female

category or in the alternative against divorcee quota with all consequential benefits.

(ii) Any other appropriate writ, order or direction which this Honâ??ble Court considers just and proper in the facts and circumstances of the present

case, may kindly be passed in favour of the petitioner.

(iii) Cost of the writ petition may kindly be awarded to the petitioner.â??

2. The petitioner applied for the post of Informatics Assistant, pursuant to the advertisement Annexure-1 dated 25.04.2013. The petitioner filled the

application form in the category of OBC (Non-Creamy Layer); apart therefrom, the petitioner, on account of pendency of the divorce petition in the

competent court, has also mentioned herself to be falling under the Divorcee category. However, the petitioner got the divorce decree only on

05.08.2014, and was provisionally selected, after undergoing the selection process, by the respondents, and she was also called upon for her documents verification on 18.09.2013, 19.09.2013 & 20.09.2013.

3. Thereafter, on finding that the petitioner was not falling under the Divorcee category on the date of submission of the application form, as at the relevant time, she had yet to get her Divorce decree, she was declined appointment on the post in question under the Divorcee Category on account of nonproduction of a valid decree of divorce. Aggrieved thereby, the petitioner has filed a writ petition bearing S.B. Civil Writ Petition No.11952/2013

praying for waiver of condition of production of divorce decree and for consequential appointment on the post in question; but the said writ petition

was dismissed by this Honâ??ble Court on 26.09.2014, refusing her prayer for grant of benefit accruing to her after passing of the divorce decree, as

at the time of submission of the application form and filing of the said writ petition, the divorce decree was not passed by the competent court.

4. The petitioner thereafter, filed another writ petition bearing No. S.B. Civil Writ Petition No.9069/2014 while placing the divorce decree on record,

but the same was also dismissed by this Honâ??ble Court on 09.01.2015 by passing an order, which is on record as Annexure-6 of the writ petition.

Thereafter, the petitioner had preferred an appeal before the Division Bench of this Honâ??ble Court bearing D.B. Civil Special Appeal (Writ)

No.211/2015 decided on 27.03.2015, but the same was dismissed as withdrawn, while giving liberty to the petitioner that she may contest to get herself

treated in the OBC Backward category without getting the benefit of divorcee women category.

â??The learned counsel for the appellant-petitioner submits that the appellant-petitioner may be employed as Informatics Assistant by treating her as

woman belonging to Other Backward Class category without even on getting the benefit of divorce woman category. Looking to this fact, he wants to

withdraw the petition for writ itself with liberty to file a fresh one. Dismissed accordingly.â??

5. Learned counsel for the petitioner Mr. M.S. Purohit points out that once the Division Bench of this Court had given the liberty to the petitioner to

seek appointment in the OBC category, then any adversity in the previous litigation was washed out. Learned petitioner has also pointed out from the

online application form that the petitioner had filled her category as OBC (NonCream Layer).

6. Learned counsel for the respondent Mr. Mukesh Dave has refuted the aforesaid submissions made on behalf of the petitioner on the ground that

the selection process is over and the petitioner had filled her category as a divorcee, and thus, at this belated stage, no appointment can be granted to

her, as the available vacancies must have been exhausted.

7. Learned counsel for the respondent has further pointed out that since non-availability of the divorcee decree was the issue, due to which, the

respondents have rejected the candidature of the petitioner for her appointment on the post in question, therefore, reconsideration of the case may not

be possible.

8. After hearing learned counsel for the parties as well as perusing the record of the case, this Court is of the opinion that since the petitioner had filled

her application form as an OBC (Non-Creamy Layer) category candidate, which is Annexure-9 of the writ petition, therefore, this is not a case where

the petitioner is seeking change in her category, and rather in fact, the petitioner is only seeking implementation of the category already mentioned by

her in the online application form, on the first occasion itself.

9. This Court also finds that in the aforementioned special appeal, the Division Bench of this Honâ??ble Court had given liberty to the petitioner to

file fresh writ petition by raising the cause of action to be treated as a woman belonging to OBC category without getting the benefit of divorcee

women category under the OBC category. Therefore, without going into the facet of giving any relief to the petitioner on account of her belonging to

the divorcee category, we deem it appropriate to adjudicate on the limited point as to whether the petitioner could have been given appointment against

the posts reserved for OBC (Non-Creamy Layer) on account of filling of original form in the same category.

10. This Court further finds that the online application form of the petitioner which is Annexure-9 of the writ petition, clearly indicates her category to

be OBC (Non-Creamy Layer) and therefore, if the respondents were inclined to deprive the petitioner of the preferred status of a divorcee, then at

least the candidature of the petitioner ought to have been considered by them in her original category, which she had mentioned in the online

application form.

11. This Court also takes note of the fact that the petitioner was subsequently having the divorce decree on 05.08.2014. The petitioner is not seeking any change of category, and is merely seeking appointment and consideration on the basis of her own eligibility and merits, as per the conditions of the advertisement in her original category of OBC (Non-Creamy Layer). The petitioner could not have been debarred from consideration of her case by the respondents only on the ground that she was not having a valid divorce decree at the time of verification of the documents because it was imperative upon the respondents to have considered the petitioner against the original category filled by her in her online application form i.e. OBC (Non-Creamy Layer) category.

10. In light of the aforesaid observations, the present writ petition is allowed and the respondents are directed to consider the appointment of the petitioner in pursuance of the advertisement dated 25.04.2013, while taking into consideration her own merit and eligibility as a OBC (Non-Creamy Layer) category candidate, as per the cut off marks and merit list of the appointed candidates. However, it is made clear that the petitioner shall not be considered in the divorcee category, and shall be considered only in the OBC Female (Non-Creamy Layer) category on her own merits, if she falls in merit. The needful be done within a period of three months from today.