
(2021) 01 RAJ CK 0133
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11534 Of 2019

Indra Rana

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 13-01-2021

Acts Referred:

Special Marriage Act, 1954 — Section 7, 8

Citation : (2021) 01 RAJ CK 0133

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : VR Choudhary, Manish Patel

Final Decision : Allowed

Judgement

1. The petitioner applied for the post of Informatics Assistant pursuant to advertisement dated 27.2.2018 and staked her claim as divorcee ST candidate.
2. Petitioner secured 38.4615 marks and was the sole candidate to be called for document verification.
3. Petitioner appeared for document verification and produced an affidavit dated 28.12.2018 and stated that she belongs to Bheel community and has separated from her husband as per the customs.
4. When the results were declared, the petitioner was not offered appointment by the respondents as she was not considered to be a 'divorcee' for want of decree of divorce.
5. The petitioner has preferred the present writ petition and sought a direction to the respondents to consider her candidature as a 'divorcee ST' category candidate.

6. Mr. Manish Patel, learned counsel appearing for the respondents at the outset submitted that the petitioner does not have a decree of divorce,

which is essential for grant of appointment, when a candidate applies under the category of 'divorcee ST', in view of the conditions of the advertisement.

7. Mr. Choudhary, learned counsel appearing for the petitioner canvassing the cause of the petitioner submitted that the petitioner is a member of

Scheduled Tribe in which customary divorce is a normal practice. He submitted that the petitioner had produced an affidavit dated 28.12.2018

(Annex.12) wherein the petitioner had stated on oath that petitioner, who was married to one Mr. Rajendra Kumar has got divorce as per customs and

a Talaknama dated 16.7.2012 was duly executed between them at Pali. He submitted that in view of the fact that petitioner-a Scheduled Tribe is not

covered by the Hindu Marriage Act, decree of divorce cannot be insisted upon.

8. Learned counsel relied upon the judgment dated 6.10.2018 rendered in the case of Meenakshi Koted Vs. State of Rajasthan & ors. (SBCWP

No.15594/2018) and argued that the present petition also deserves to be allowed in terms of the said adjudication.

9. It may be noted that petitioner has filed an additional affidavit stating that during the pendency of the petition the petitioner has filed an application

for mutual divorce under the Special Marriage Act and the same is pending consideration before the competent Court.

10. Learned counsel for the respondents submitted that in case of Meenakshi Koted (supra), this Court had granted relief after noticing the factum of

pendency of petition seeking mutual divorce, whereas in the present case, the petitioner has filed the application seeking divorce under the provisions

of Special Marriage Act on 13.8.2019 and since the application for divorce was filed after filing of the present writ petition, the petitioner cannot be

given desired relief of being considered as a divorcee'.

11. Heard.

12. In considered opinion of this Court, the petitioner-a divorcee hailing from backward community/Scheduled Tribe is required to be governed by the

law applicable to such category. Provisions of Hindu Marriage Act cannot be made applicable and the respondents cannot insist upon production of a

decree of divorce.

13. Be that as it may. The petitioner has already filed an application for mutual divorce under the provisions of Special Marriage Act; may be, after filing the present writ petition.

14. This Court in case of Meenakshi Koted (supra) has held as under:-

I have considered the submissions made by learned counsel for the parties and have perused the material available on record. The document

Annexure-11 produced by the petitioner for claiming divorce appears to be some document executed before the police authorities during proceedings

between the parties, wherein, the reference with regard to the dissolution of marriage has been made. Whereafter the petitioner has filed proceedings

before the competent civil court seeking declaration regarding dissolution of marriage, which are still pending.

The clause pertaining to the eligibility in the advertisement requires a decree from a competent civil court. However, the fact that in the community, to

which, the petitioner belongs, there is a provision of customary divorce, also cannot be brushed aside lightly.

In the case of Sunita Meena (supra) in a similar nature case, wherein, even the petition seeking declaration filed by the petitioner therein was rejected

by the Court, the learned Single Judge, inter alia, ordered as under:-

In the circumstances, I am of the considered view, as also taken by this Court in the case of Durga Lal Meena (supra), that despite the dismissal of

the petitioner's suit for declaration of her marriage having been dissolved by the Family Court No.1, Jaipur vide order dated 29.07.2010, the petitioner

should be allowed to lay a similar suit afresh before the jurisdictional Family Court seeking a declaration of her marriage to Ramphool Meena having

been dissolved on 11.05.2008. This direction can also be sustained for the reason that the dismissal of the petitioner's earlier suit by the Family Court

vide its order dated 29.07.2010 for purported lack of jurisdiction was contrary to law and the Family Court had wrongly failed to exercise the

jurisdiction vested in it under Sections 7 & 8 of the Act of 1984. It is directed that in the event of the petitioner filing such a suit before the Family

Court No.1, Jaipur, it shall take all requisite steps for deciding it expeditiously and in any event within a period of three months from the date of service

on the defendant. It is directed that in the event of non appearance of the petitioner's ex- husband, despite service of notice in the petitioner's suit the

Family Court's satisfaction of summons having been served, it shall proceed ex-parte.

The facts of the case also require this Court to invoke its extraordinary equitable jurisdiction to save, in the meantime the petitioner's selection as a

Senior Teacher Grade-II (Secondary Education) in the subject of Social Science following the competitive Examination 2011 for a period of 6 months

from today. It is consequently directed that RPSC's order dated 18.02.2015 cancelling the petitioner's selection shall be held in abeyance for the

aforesaid period. One post of Senior Teacher Grade-II(Secondary Education) shall be kept vacant for the duration. In the event the petitioner is able

to obtain a declaration from the Family Court of her marriage having been dissolved on 11.05.2008 within a period of the aforesaid 6 months from

today, she shall be appointed to the post of Senior Teacher Grade-II (Secondary Education) on her satisfying all other requisite conditions.

When the matter reached the Division Bench, the Division Bench after referring to the determination made in the case, opined as under:-

After we have heard counsel for the appellant Sh. Nitin Jain Adv., and going through the order impugned of the Ld. Single Judge dt. 17-1-2017 we

find no error being committed which may call for our interference." The submissions of learned counsel for respondents that the judgment in the case

of Sunita Meena (supra) is distinguishable has no substance, the circumstances of the present case, stand at a better footing, inasmuch as, the

proceedings initiated by the petitioner are already pending before the competent civil court and it is submitted by learned counsel for the petitioner that

the matter is at the stage of evidence of the defendant.

In view of the law laid down in the case of Sunita Meena(supra) the petition filed by the petitioner is allowed. The petitioner's selection as a Teacher

Grade-III subject Hindi TSP shall not be cancelled for a period of six months from today/the same shall be kept in abeyance for the said period of six

months and one post of Teacher Grade-III subject Hindi shall be kept vacant in the category to which the petitioner belongs for the said duration of six

months. In the event the petitioner is able to obtain the declaration from the competent court, regarding dissolution of her marriage i.e. by 15.04.2019,

she shall be appointed to the said post on her satisfying all other requisite conditions. On her failure to obtain such a decree, her selection shall stand

cancelled.

15. In view of the aforesaid, the present writ petition is allowed. The respondents are directed to keep the post of Informatics Assistant against which

the petitioner was selected, vacant for a period of six months. In case the petitioner produces a decree of divorce, she shall be issued an appointment

order and allowed to join as 'divorcee-ST'.

16. Needful be done within a period of six weeks of placing the certified copy of the decree of divorce.

17. The stay application also stands disposed of accordingly.