

(2017) 11 RAJ CK 0029
In the Rajasthan High Court
Case No : 14372 of 2017

Jyoti Singhal D/o Narendra Kumar Singhal
Vs
State of Rajasthan Through the Secretary

APPELLANT
RESPONDENT

Date of Decision : 09-11-2017

Acts Referred:

Hindu Marriage Act, 1955, Section 13B
- Divorce by mutual consent

Citation : (2017) 11 RAJ CK 0029

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : Tanwar Singh Rathore, Vikas Choudhary, S.S. Ladrecha

Final Decision : Dismissed

Judgement

1. The petitioner has preferred the present writ petition with the following prayers:-

"// PRAYERS //

It is, therefore, humbly and respectfully prayed that this writ petition of the petitioner may kindly be allowed:-

i) By an appropriate writ, order or direction, any order denying the selection and appointment of the order dated 19.9.2017 for the post of Teacher Grade-III Level-II subject Sanskrit Divorcee Category in pursuance of the advertisement dated 11.08.2013 (Annex-2) may

kindly be quashed and set aside.

ii) By an appropriate writ order or direction, the respondents may kindly be directed to permit the petitioner in the further selection process and provide the appointment on post of Teacher Grade-III Level-II subject Sanskrit Divorcee Category (Class VI to VIII) as per the marks secured by him in Teacher Grade III Level II Examination, 2013 for selection in pursuance of the advertisement dated 11.08.2013 with all consequential benefits.

iii) By an appropriate writ order or direction, the respondents may kindly be directed to consider for the petitioner divorcee decree issued by on dated 24.9.2013 and given appointment for the post of Teacher Grade III Level II Subject Sanskrit category divorcee;

iv) Any other appropriate writ, order or direction which this Hon"ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

v) Writ petition filed by the petitioner may kindly be allowed with costs."

2. Pursuant to the Advertisement dated 11.08.2013 for Teacher Grade-III Recruitment-2013, the petitioner had submitted her application form on 04.09.2013, showing her category as "Divorcee", however, her decree of divorce came to be issued on 24.09.2013, admittedly, after submitting the application form and cut-off date.

3. At the outset, Mr. Vikas Choudhary, Associate of Mr. S.S. Ladrecha, learned Additional Advocate General, submitted that the controversy involved in the present writ petition is squarely covered by a decision dated 10.08.2017 rendered by this Court, in the case of "Suman Choudhary Vs. State of Rajasthan & Ors.", wherein this Court has held as under:-

"I have heard learned counsel for the petitioner and considered the material available on record. The facts are not in dispute that on the date of submitting the application form on 25.7.2016 or till last date of submitting the application form i.e. 01.08.2017, the petitioner's marital status was that of a married woman. It is a different aspect of the matter that at the time of submitting the application form, the petitioner had applied for judicial separation by way of filing divorce petition under Section 13-B of the Hindu Marriage Act, 1955 on 22.7.2016, just three days prior to submitting the application form. Nevertheless merely because a petition for divorce has been filed, the petitioner cannot be treated to be a divorcee on the date she submitted her form, by any stretch of imagination or by any extended statutory interpretation.

As per Section 13-B of the Hindu Marriage Act, a marriage shall stand dissolved only with effect from the date of decree. It will not be out of place of reproduce sub-section (2) of Section 13-B of the Hindu Marriage Act, which reads thus :-

"(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and

not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it things fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree."

In view of unambiguous language as contained in subsection (2) of Section 13-B of Hindu Marriage Act, the petitioner's marriage has dissolved w.e.f. 27.6.2017, when the decree of divorce has been issued. As such the petitioner can be treated to be a divorcee" only w.e.f. 27.6.2017. The petitioner in such circumstances cannot be said to be or treated to be a divorcee, on the date of submitting the application form.

The matrimony comes to an end only on the issuance of a decree of divorce and till then, husband and wife continues to remain in the wedlock, despite all the differences and disputes.

The argument of Mr. Sajjan Singh based on the language and expression used in various clauses of "Li"Vhdj.k" reproduced earlier, to the effect that the respondents have specified that the caste certificate should be issued on the date prior to the last date of submitting applications, but have not provided such condition in relation to divorce that her decree of divorce should precede the date of advertisement, is untenable and hence rejected. His endeavour that such absence of stipulation should be read in petitioner's favour is fallacious and baseless.

The condition of being a candidate belonging to

a particular caste is by virtue of birth and the certificate is a mere documentary proof. Whereas the divorce is a judicial process and the marriage gets dissolved only on passing a decree under the provisions of Hindu Marriage Act, 1956. The incidence of divorce or status of divorcee is attained on the dissolution of marriage. The decree of divorce is not a certificate, but a foundation of divorce. A person would continue to belong to a particular caste or class, notwithstanding a caste certificate, but a person cannot be called a divorcee, unless a decree of divorce has been issued. As such there was no requirement of providing that the decree of divorce should be of a prior date. Same is the situation of widowhood. Conceiving such an expression much less providing, would be preposterous, "that in case of a widow, the death certificate of husband of a candidate should be of a prior date than the date of advertisement.

As far as the Division Bench judgment of this Court dated 30.08.2013 in case of Ms. Jamna Rajpurohit (supra) is concerned, suffice it to observe that the Division Bench has invoked its extra ordinary equitable jurisdiction by holding that unforeseen circumstance of death of a person is a force major or an "act of God" and looking to the intention of the rule making authority for providing reservation to the destituted women, this Court had directed to consider the said petitioner as a widow. Whereas in the present case, judicial separation cannot be treated to be a

"force major" or an "act of God". Apart from this, the Division Bench judgment dated 30.08.2013 has been held to be per incuriam by another Division Bench of this Court in its judgment dated 09.09.2016 rendered in DB Civil Special Appeal (Writ) No.611/2016 in the matter of State of Rajasthan & Ors. Vs. Jagdish Prasad & Ors. Relevant part of the said judgment is reproduced hereunder :-

"In Jamna Rajpurohit (supra) significantly the Division Bench itself observed that permitting change of category after the last date for submission of applications would make the selections an unending process and yet proceeded to direct it to be done on basis of sympathy. Jamna Rajpurohit (supra) has therefore to be held as per incuriam. The order under appeal based upon the same is also held to be unsustainable."

It is settled proposition of law that candidature and eligibility of an incumbent is required to be decided on the date of advertisement. Until and unless the terms of advertisement notification permits consideration of subsequent event into account, the same cannot be claimed as a matter of right. The undisputed facts obtaining in the present case are that on the date of submitting the form, petitioner did not fall in the ambit of divorcee and as such she cannot be considered as a candidate belonging to "Divorcee Women Category.

Somewhat similar view has been taken by this Court in judgment dated 13.07.2017 rendered in SB Civil Writ Petition No.5230/2017 (Ms Richa Sharma Vs. State of Raj. & Ors.), wherein petitioner's request to change her category from Female General to Female Divorcee was rejected. The relevant part of

the judgment reads thus :-

"Having considered the arguments of Mr. Jain and on perusal of the factual matrix, this Court finds no substance in the petition and force in the arguments raised by the petitioner.

It is not in dispute that on the date of filling the form, the petitioner's status was that of a married woman. It is a different aspect of the matter that the petitioner subsequently became a divorcee. But such change of status took place on 01.07.2016, much after the date of filling of the form. Even the petition for dissolution of marriage, which culminated into a final decree of divorce on 28.01.2017, was filed later in point of time."

In light of the discussion above, this Court is of the considered view that the petitioner having applied for divorce, cannot be treated to be a divorcee" until and unless a decree of divorce by a competent court is passed. Since the petitioner's marriage stood dissolved w.e.f. 27.6.2017, the petitioner cannot claim a right of consideration as a divorcee", pursuant to her application submitted on 25.07.2016.

There is no merit in the petitioner's stand and force in her counsel's arguments. The writ petition is thus rejected."

In view of the above, the present writ petition is dismissed, while following the judgment dated 10.08.2017, rendered in the case of Suman Choudhary (supra).