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**(2020) 03 RAJ CK 0109**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 3059 Of 2020**

Mamta Kanwar

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

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**Date of Decision :** 03-03-2020

**Acts Referred:**

**Citation :** (2020) 03 RAJ CK 0109

**Hon'ble Judges :** Dinesh Mehta, J

**Bench :** Single Bench

**Advocate :** Vijay Jain

**Final Decision :** Dismissed

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## Judgement

1. The petitioner has approached this Court while raising a grievance that notwithstanding the fact that the petitioner being divorcee having secured 200.7578 marks has not been given appointment when the cut off for general divorcee candidate was 149.9432.

2. Mr. Jain, learned counsel for the petitioner highlighting the facts of the present case submitted that though the petitioner had initially furnished her application form as a general female, however, when she secured the decree of divorce on 23.1.2019, she file an online application form for correction in the application form, which request was acceded to and petitioner's category was permitted to be corrected as a divorcee.

3. Learned counsel contended that since the petitioner's category has been permitted to be changed to divorcee, her candidature ought to have been considered as a divorcee and petitioner having secured more marks than the cut off marks, should have been offered appointment. In support of his arguments, learned counsel for the petitioner relied upon the judgment dated 30.8.2013 rendered in the case of State of Rajasthan & Ors. Vs. Ms. Jamna Rajpurohit reported in 2013(4) CDR 2275 (Raj.) (DB) and judgment dated 26.2.2014 rendered in the case of Reetu Kalasua Vs. State of Rajasthan & Ors. reported in

4. Heard

5. It is settled proposition of law that the candidature of a candidate is required to be reckoned on the date of cut off date or last date of application form. Indisputably, at the time of submitting application form and even on the late date of submitting application form, the petitioner was not having a decree of divorce in her favour.

6. In so far as the judgments cited by learned counsel for the petitioner in the cases of Ms. Jamna Rajpurohit and Reetu Kalasua (supra), suffice it to say that this Court in the case of Suman Chuodhary Vs. State of Raj. & Ors. (S.B. Civil Writ Petition No.9649/2017) after considering similar facts and circumstances of the case gave following findings:

"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 incurium 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."

7. In view of what has been noticed herein before and following the judgment in case of Suman Choudhary (supra), the writ petition is dismissed.

8. Stay petition also stands dismissed accordingly.