

(2014) 07 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4917 of 2013

Mukesh Kumari

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Hindu Marriage Act, 1955 — Section 13, 13B

Citation : (2015) LabIC 581 : (2015) 2 RLW 1223

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Suresh Chand Sharma, Advocates for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by Mukesh Kumari challenging the order dated 9.1.2013 and 17.1.2013 by which she was denied joining on the post of Teacher. In fact, the petitioner was married to one Lalit Kumar Morodia on 4.12.1998. Within two years of her marriage, her husband instituted a petition against her for divorce under Section 13 of the Hindu Marriage Act in the Family Court, Jaipur. Eventually, the proceedings were converted into one under Section 13B of the Act for decree of divorce by mutual consent. The decree for divorce/dissolution of marriage was drawn by judgment and decree dated 18.10.2005. Commissioner, Elementary Education for Rajasthan issued an advertisement on 28.11.2006 inviting applications for appointment on 3225 posts of Teacher Gr.III from amongst widows and divorcees. The candidates were required to possess the qualification of Senior Higher Secondary, but it was indicated in the advertisement that preference shall be given to those who hold the B.Ed., degree. 23.12.2006 was the last date of submission of admission form. Widows-candidates were required to enclose along with application copy of the death certificate of the husband. In case of divorcee-candidates decree of divorce was required to be proved. Petitioner submitted application duly accompanied with the requisite documents. The Joint Director, Elementary Education for Rajasthan addressed a letter to the petitioner

on 16.8.2007 dilating that she has been selected as trainee teacher and she is required to acquire training qualification such as STC or B.Ed., within three years of her appointment as trainee teacher. It was further advised that if she fails to acquire the training qualification of STC or B.Ed. within three years of her appointment as trainee, her appointment/selection would stand cancelled.

2. Petitioner was appointed as trainee teacher vide order dated 30.5.2008 and was posted at Government Primary School, Barda Ki Dhani. She submitted her joining on 9.7.2008 in the office of Block Primary Education Officer, Pisangan wherefrom she was relieved to join at Government Primary School, Barda Ki Dhani. According to the petitioner, she submitted all the documents which were required by order dated 30.5.2008 including the "no-re-marriage" affidavit at the time of joining as trainee teacher. After the petitioner joined at the Government Primary School, Barda Ki Dhani, she sought permission from the District Education Officer for acquiring qualification of B.Ed. Such permission was granted on 21.10.2008. After completion of B.Ed. training, petitioner was permitted to join again at Government Primary School, Barda Ki Dhani on 10.10.2009. It was thereafter that result of her B.Ed. was declared on 16.1.2010 in which she was declared pass. Petitioner wrote a letter to District Education Officer on 22.2.2010 informing him about the fact that she has acquired the B.Ed. degree.

3. Petitioner after acquiring the degree of B.Ed., got remarried to one Shri Manoj Kumar on 23.1.2011. After almost three years of acquiring the B.Ed. degree, the District Education Officer, Elementary Education, Ajmer issued an order on 20.12.2012 appointing petitioner as Teacher Gr.III on probation. As per the stipulation in that order, petitioner submitted her joining at Block Primary Elementary Education on 7.1.2013 so as to enable her to further join at Government Upper Primary School Muhami, Shrinagar, Ajmer. However, the Block Elementary Education Officer vide his order dated 9.1.2013 did not arbitrarily permit her to join on the premise that her affidavit is faulty. It was indicated in the affidavit that she did not remarry until 8.7.2008, the date on which petitioner firstly joined as trainee teacher pursuant to the advertisement dated 28.11.2006. The affidavit was held to be not in conformity with the requirement as there was no specific assertion on oath that she did not re-marry even upto the time when he rejoined after acquiring the B.Ed. Degree. The Block Elementary Education Officer vide his order dated 7.1.2013 again reiterated his stand on that aspect.

4. Petitioner has approached this Court inter alia on the ground that she stood appointed way back on 30.5.2008 after her selection by the respondents pursuant to the advertisement dated 28.11.2006. The appointment order contained a condition that the petitioner would be required to procure degree of STC or B.Ed. within three years. Petitioner acquired the degree of B.Ed. on 22.2.2010 when her result was declared. It was therefore by way of a formality that she was reappointed on probation as Teacher Gr.III by order dated 20.12.2012. There was no requirement of filing a fresh affidavit to the effect that she was a divorcee and such affidavit was already submitted when the petitioner

submitted joining on 9.7.2008. The fact is that petitioner remarried in between on 23.1.2011 and therefore second time when she was required to submit affidavit, she could not make a false declaration that she has not remarried although she submitted an affidavit that she did not marry at the time when she joined at the first instance on 9.7.2008. The condition of submission of affidavit after the petitioner acquired the B.Ed. degree stating on oath that she has not remarried is wholly arbitrary and violative of Articles 14 and 16 of the Constitution of India.

5. Shri Suresh Chand Sharma, District Education Officer is present in Court for the respondents. He submits that very basis on which the petitioner was appointed was her status as divorcee and that if the condition of submitting of affidavit to that effect is done away with, it is very likely that the candidates may abuse the provisions by seeking collusive decrees of mutual divorce and thereafter remarry. Similar condition exists even in regard to candidates, who are appointed by virtue of the fact that she is a widow. Their appointment was made under the policy of the State as an exception to the general rule and a separate quota is earmarked for them. They are not required to compete with open market candidates, although they have to compete within their own category i.e. divorcees/widows. They are given relaxation in the matter of basic training qualification of STC or B.Ed. upto a period of three years within which they have to acquire such qualification and it is only thereafter that they are granted regular appointment. The action of the respondents in not allowing joining to the petitioner is therefore perfectly just and legal.

6. On consideration of the submissions and perusing the material on record, I find that the fact that the petitioner was initially married to one Lalit Kumar Morodia is not disputed and also is not disputed the fact that Shri Lalit Kumar Morodia initially filed an application under Section 13 of the Hindu Marriage Act seeking decree of divorce from her, which proceeding was subsequently converted into one under Section 13B for a decree of divorce by mutual consent. The Family Court No. 1, Jaipur by judgment dated 18.10.2005 annulled their marriage by decree of divorce and made a declaration to that effect. This would thus show that the date on which the petitioner applied for appointment on the post of Teacher Gr.III in response to the advertisement dated 28.11.2006, her status as divorcee is not in dispute. Then when she again gave her joining on 9.7.2008 pursuant to the appointment order dated 30.5.2008 in the office of Block Elementary Education, Pisangan, she submitted all the documents including the required affidavit giving affirmation on oath that she had not remarried till that date. The question arises whether the fact of her remarriage with Manoj Kumar on 23.1.2011 after she acquired the degree of B.Ed., would divest her to retain the appointment. This question arises not only in the context of divorcees, but also for widows because a similar restriction is said to exist even in their case too. In other words, what the respondents are insisting is that even after four years of appointment of the petitioner in the first instance on 30.5.2008, she should continue to be a divorcee or for that matter, a candidate

who has secured appointment in the quota of divorcees/widows, should continue to be single and should not remarry. Such a condition is wholly arbitrary and discriminatory and is in fact an insult to the womanhood. Although, it is a laudable policy of the State to give preference to the divorcees and widows in the matter of appointment and earmarked a separate quota for them and this policy is intended to make them independent in the society, but the simultaneous condition of their not re-marrying even after the period of more than three years has to be declared ultra vires to the Constitution of India. In this case when four years have elapsed from the date of initial appointment, condition put by the respondents cannot be appreciated. The fact that petitioner has remarried has not disproved her status, a divorcee when she was initially appointed. Contention that candidate may misuse such provision by obtaining collusive decree of divorce and thereafter secure appointment in this quota and then re-marry, cannot be accepted a valid justification for such a restriction. In the first place, if a candidate has secured decree of divorce from her first husband, she may not possibly remarry the same person again. Secondly, such a misuse can be prevented by the respondent-State by putting other conditions but not in the manner it has been done in the present case. Moreover, such a condition in relation to widows, is likely to frustrate the very purpose of making them self reliant. Remarriage cannot be said to violate any law and if there is any such provision, such provision has to be held to be ultra vires to Article 14 of the Constitution of India. Remarriage of widows is something which should receive appreciation and promotion from the State and its agencies. In the result, the writ petition succeeds. The impugned orders dated 9.1.2013 and 17.1.2013 are quashed and set aside and the respondents are directed to allow the petitioner to re-join within two weeks. Petitioner shall be entitled to all the consequential benefits throughout with interest @ 9% per annum.