

(2025) 04 RAJ CK 0609

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 5209 Of 2019

SAMINA BANO @ SALMA

APPELLANT

Vs

DIRECTOR, ELEMENTARY EDUCATION

RESPONDENT

Date of Decision : 03-04-2025

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 131, 131(1), 131(2), 242, 257

Citation : (2025) 04 RAJ CK 0609

Hon'ble Judges : Yogendra Kumar Purohit, J

Bench : Single Bench

Advocate : Papu Sangwa

Final Decision : Rejected

Judgement

Arun Monga, J

1. Samina Bano, asserting that she is a divorcee by virtue of talaq-e-biddat (triple talaq), is before this Court seeking benefit of being considered in the special category created for divorcees for appointment on the post of School Teacher. In her petition herein she seeks following relief :-

“(a) the rejection order of the petitioner’s candidature vide order dated 11.03.2019 (Annex-10) passed by respondent No.3 and denying appointment to the petitioner on the post of School Teacher pursuant to the Rajasthan Primary & Upper Primary School Teacher Direct Recruitment, 2018 Non TSP Area Level-II may be ordered to be quashed and set aside and;

(b) the respondents may be directed to consider the decree of divorce of petitioner dated 27.02.2019 (Annex-2) coupled with her Talaqnama dated 25.12.2014 (Annex-1) on the basis of which the court has passed the decree and the actual date of divorce of the petitioner may be taken as date of her Talaknama dated 15.12.2014 (Annex-1) which is prior to the last date of the advertisement dated 25.08.2018 and accordingly respondents may be directed to grant appointment to the petitioner as School Teacher in district Bhilwara under

the category of Divorcee, pursuant to the Rajasthan Primary and Upper Primary School Teacher Direct Recruitment, 2018 Non TSP Area Level-II."

2. Brief facts of the case as pleaded are that the marriage (Nikah) of petitioner was solemnized with one Shri Abid Hussein on 16.04.2014 as per Muslim Personal Law. Later, petitioner was divorced by her husband by pronouncing triple Talaq on 25.12.2014 in presence of two witnesses, which is permissible mode of divorce in the Muslim Personal Law. The petitioner accepted Talaq and has also received her Mahr. The said Talaq

reduced in writing by way of Talaqnama dated 25.12.2014 duly signed by both husband and wife, as also by two witnesses.

2.1 Thus it is asserted that w.e.f. 25.12.2014, on the basis of Talaqnama, petitioner is a Divorcee and legally entitled for remarriage. The Talaqnama dated 25.12.2014 is lawful and valid proof of her divorce, acceptable under the Muslim Personal Law. The respondents advertised vacancies for School Teacher (Level-II) in Primary & Upper Primary School vide advertisement No 3/2018 dated 31.07.2018 under the Rajasthan Panchayat Raj Act, 1994 and Rajasthan Panchayati Raj Rules, 1996 with cut off date to apply as 25.08.2018. Nonetheless, on the basis of said Talaqnama dated 25.12.2014, petitioner filed a civil suit for declaration on 16.08.2018 before the Civil Court, Malpura. In the civil suit, Talaqnama dated 25.12.2014 was adduced as evidence, which was not opposed by the ex-husband and was also verified by the petitioner and her father. The Civil Court, accepted the Talaq of the petitioner lawful and passed declaration on 27.02.2019 in favour of the petitioner declaring the Talaqnama as legal and valid.

2.2. The petitioner has a B.Ed. degree from Rajasthan University coupled with degree of Master of Arts. The petitioner appeared and she also successfully qualified the Rajasthan Eligibility Examination for Teacher (REET) 2017.

2.3. The petitioner being qualified applied pursuant to the advertisement for appointment as School Teacher (Level-II). She was short listed to be considered for appointment as per merit list dated 05.03.2019.

2.4. The petitioner claims that she falls under the category of divorcee female on the basis of her Talaqnama dated 25.12.2014. However, the respondents did not accept the date of divorce of petitioner vide Talaqnama dated 25.12.2014 but only considered the date of decree for divorcee dated 27.02.2019. Accordingly, they rejected the candidature of the petitioner vide impugned order dated 11.03.2019 on the ground that her court decree dated 27.02.2019 is subsequent to the last date of submission of the application form i.e. 25.08.2018. Hence, this petition.

3. The stand taken by the respondents in their reply is that the condition as given in the advertisement regarding entitlement of benefit in the Divorcee Women category is very clear and the same requires a decree of divorce from a

competent court having been passed prior to last date of filling up of the online application form pursuant to the advertisement for the post concerned. The petitioner approached the learned court for getting a decree of divorce after issuance of the advertisement. It is an admitted position on the record that the decree of divorce in instant case was passed on 27.02.2019 i.e. after the last date of filling up the online application form. The decree dated 27.02.2019 cannot be with effect from the alleged Talaknama dated 25.12.2014.

4. In the aforesaid backdrop, I have heard learned counsel for the parties and perused the case file.

5. Learned counsel for the petitioner contends that the petitioner, being eligible and having valid proof of her divorce under Muslim Personal Law by the Talaqnama dated 25.12.2014, prior to the last date for submitting the application form i.e. 25.08.2018, is entitled to an appointment for the post of School Teacher (Level-II). He argues that the rejection of the petitioner's candidature by the respondents is unjust and should be quashed.

5.1. Counsel further asserts that the lawful proof of divorce i.e. the Talaqnama dated 25.12.2014, was accepted by the competent court and thus the decree was issued on 27.02.2019. Since the decree relates back to the date of the Talaqnama, the date of Talaqnama (25.12.2014) should be treated as the relevant date, rather than the decree date of 27.02.2019. Thus, petitioner should be granted the appointment being a divorcee with valid proof of divorce prior to the application deadline.

5.2. The petitioner's counsel relies on the Division Bench judgment in State of Rajasthan & Anr. vs Madina Bano 2020 0 Supreme (Raj) 187, decided on 07.01.2020, where this Court upheld that a Talaknama (divorce document) is valid even without a formal decree from a competent court. He argues that it was held that mere suspicion on Talaknama is insufficient to reject a person's candidature; any doubts must be properly investigated and concluded.

6. Per contra, learned counsel for the respondents relies on a later Division Bench judgment rendered in Secretary, Rajasthan Public Service Commission, Ajmer vs Sangeeta Varhat 2022 0 Supreme (Raj) 771. Relevant part of which is reproduced below:-

"14. We are of the considered opinion that the requirement of a decree of divorce for a female candidate to claim reservation against the reserved quota for divorcee women on the cut off date/on the last date of submitting application form is sine qua non and the candidature cannot be considered against said category in the absence of decree of divorce issued by the competent court. A custom cannot be allowed to supersede the terms and conditions governing the recruitment process. The terms and conditions of recruitment are framed to adhere to the mandate enshrined under Articles 14 and 16 of the Constitution of India which guarantee equal opportunities to all citizens for their advancement in the matter of employment.

15. Candidates belonging to Scheduled Tribe/Tribal Sub Plan are not precluded from obtaining decree of divorce from the competent court having jurisdiction to decide the matrimonial disputes. Exemption from presenting decree of divorce, issued by competent court cannot be sought on the ground of customs prevalent in their communities. The customs/practices prevailing in a particular community cannot be allowed to supplement the terms and conditions of a recruitment process involving large number of candidates belonging to various caste, religion, faith and communities.”

7. Having had the benefit of the assistance of the learned counsels, I shall now proceed to deal with the merits and demerits thereof and render my opinion based on the discussion and reasoning contained hereafter.

8. Argument of learned counsel for the petitioner is essentially two fold i.e. (i) that as on the date of Talaqnama of the petitioner i.e. on 25.12.2014, Triple Talaq was legally permissible mode of divorce in her community as per Muslim Personal Law; (ii) that the advertisement clause, seeking decree of divorce from the competent court, is not applicable to the case of the petitioner, since she belongs to the special community, where decree of divorce is not required under the Muslim Law.

9. Adverting now to the merits thereof, first and foremost, let us see whether the Talaqnama dated 25.12.2014 was a valid document as on the cut off date as per the advertisement so as to seek the benefit of the second argument canvased on behalf of petitioner.

9.1. The latest position on triple talaq is governed by the Muslim Women (Protection of Rights on Marriage) Act, 2019, which came into effect on 01.08.2019. This law was enacted following the

Supreme Court’s judgment (2017) 9 SCC 1- dated August 22, 2017 in the Shayara Bano v. Union of India case, where a five-judge Constitution Bench, by a 3:2 majority, declared the practice of instant triple talaq (talaq-e-biddat) unconstitutional, null, and void. Provisions of the 2019 Act in fact Criminalize Instant Triple Talaq. The Act declares talaq-e-biddat (instant triple talaq), whether pronounced in spoken, written, or electronic form (e.g., via email, SMS, or WhatsApp), as void and illegal. Any Muslim man who pronounces instant triple talaq faces imprisonment for up to three years and a fine. The 2019 Act thus specifically targets instant triple talaq (talaq-e-biddat), where talaq is pronounced three times in one sitting. Other forms of divorce under Islamic law, such as Talaq-e-Ahsan (a single pronouncement followed by a waiting period) and Talaq-e-Hasan (three pronouncements over three months), are not criminalized and remain valid.

10. Therefore, controversy of Triple Talaq, which, prior to Supreme Court judgment rendered in Shayra Bano Vs. U.O.I., was a nation-wise debate, where one set of experts on Muslim Law would canvas that Triple Talaq is not permissible while the others would argue to the contrary, has already been put to

rest. Post Shayra Bano, talaqnama based on triple talaq is not a legally enforcement document and only other forms of valid Islamic divorce based based on personal law practice are Talaq-e-Ahsan and Talaq-e-Hasan.

11. Be that as it may, even if, Talaqnama was to be considered as a valid document, being prior to Supreme Court judgment, I am unable to accept the second claim of the argument that as per the advertisement clause petitioner was not required to seek any court decree. Pertinently, the advertisement clause is not under challenge and perusal of the said clause clearly reveals that there is no distinction carved out between two sets of categories i.e. those who are governed by customary or personal law belonging to special community or the others, who are governed by the general law in India viz. Hindu Marriage Act or Special Marriage Act etc.

12. Let us see the relevant advertisement clause in question, translation of which, reads as under:-

"11.1

v. There will be no age limit for widows and divorced women until they reach the age of superannuation.

Explanation: In the case of widowhood, the competent authority must provide a certificate of the husband's death, and in the case of divorce, proof of divorce according to the rules must be provided.

11.2 Reservation Criteria :-

i. - vii xxxx xxxx xxxx

viii. The certificate for widow/divorced woman, persons with disabilities, and outstanding athletes must be issued before the final submission date of the online application; otherwise, candidates with certificates issued after the final date will not be eligible for the category-specific benefits for the advertised positions, and no petition in this regard will be considered.

ix. Benefits under the category of divorced women shall be admissible only if an order has been passed to this effect by a competent court as per the law . A widow must submit the husband's death certificate and a certificate linking the husband's name. Additionally, candidates from the widow/divorced category must submit an affidavit stating that they have not remarried."

(Emphasis supplied)

13. The clause is very unequivocal, stating that those who are seeking benefit of being a divorcee must have an order/decreed from a competent court, regardless of belonging to whichever community. There is no caveat therein that those who claim benefit of any customary law are exempted to produce the decree.

14. In light thereof, I am of the view that the real dispute herein is not whether Triple Talaq, a prevalent practice in the community of petitioner, is to be treated

as divorcee, but whether decree as per advertisement clause is mandatorily required? The answer to the question is clearly in the negative in view of my discussion and reasoning recorded in the succeeding part read with Division Bench judgment of this court in the case of Sangeeta Varhat, supra.

15. Resultantly, the petition is devoid of any merit and is accordingly dismissed.

16. Pending applications, if any, stand disposed of.