
(2008) 02 RAJ CK 0075
In the Rajasthan High Court

Shahanaj Khan (Smt.)	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:

Citation : (2008) 3 RLW 2390

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—By filing this petition, the petitioner has prayed that the respondents may be directed to consider the case of the petitioner in the category of divorced women on the basis of "talaknama" executed by her husband and on that basis, the application form submitted by the petitioner for being appointed on the post of Teacher Grade-III in Primary Education may be taken into consideration on merit in the category of divorced women.

2. For the purpose of recruitment to the post of Teacher Grade-III an advertisement was issued by the respondents. As per the said advertisement, which is at Annex.-1 (page 10), 645 posts were reserved for the category of divorced women. As per the clause in the aforesaid advertisement, a lady who is applying for the said post in the category of divorced women is to furnish a decree of divorce granted by the competent Court for her claim to be considered for appointment in the category of divorced women. It is the aforesaid clause in the advertisement which is attacked by the petitioner on the ground that the petitioner being a muslim woman is subject to Muslim Personal Law and having been given talak by her husband as per the Shariat law, she is not required to go to the Court of law by filing petition for the purpose of declaration that a valid divorce is given to her by her husband.

3. Learned Counsel for the petitioner submitted that as per the Muslim law the husband can give divorce to his wife by way of "talak" as envisaged under the

Shariat law and, therefore, the proof of such talaknama should be treated as a conclusive proof and for Muslim woman it is not necessary to produce decree of divorce and the insistence of the department that even Muslim woman should also produce decree of divorce, is arbitrary and uncalled for. It is submitted that the clause in the advertisement, therefore, should not be made applicable to Muslim divorced woman. It is submitted that accordingly, in the instant case, the petitioner is subjected to talaknama dated 21.5.2004 executed by her husband. The said talaknama bears signatures of two witnesses. On the aforesaid premises, it is contended by learned Counsel for the petitioner that the insistence of the department to produce decree of divorce is not at all justified.

4. Learned Counsel for the petitioner also relied upon the decision of the learned Single Judge of this Court in the case of State of Rajasthan v. Mst. Shamim Akhtar, delivered in S.B. Civil Revision Petition No. 718/1997 dated 27.11.1997 : 1998(1) RLW 111, wherein the learned Single Judge of this Court has held that when a muslim lady submitted an affidavit that she got talak orally and fails to produce decree for divorce, her case cannot be taken out of consideration for the purpose of appointment in the category of divorced women.

5. Learned Counsel Mr. Agrawal, on the other hand, submitted that there is a possibility that there may not be a genuine talak, but only in order to secure appointment, such talaknama may be created, therefore, in order to see that there is a genuine talak, it is necessary that a decree of divorce of a competent court should be produced.

6 On behalf of the respondents, reply affidavit has also been filed by respondents No. 1 to 3. In para 3 of the reply, it is averred that the copy of decree of divorce was required to be produced according to the directions of the State Level Committee. In para 4 of the reply, it is stated that the contents of para 4 of the writ petition are not disputed regarding the document of talaknama, produced by the petitioner alongwith her writ petition. In para 5 of the reply, it is stated that the said talaknama is not disputed but the petitioner was required to submit decree of divorce.

7. I have heard both the learned Advocates and have gone through the writ petition and the reply affidavit.

8. The principle question which requires consideration is whether in case of a Muslim lady, the insistence that she must produce the decree of divorce is Justified especially when a Muslim woman is governed by Muslim Personal Law and under the Shariat, a husband can give talak by executing the talaknama as per the procedure prescribed under the Muslim Personal Law. When as per the personal law applicable to a candidate, divorce can be given in a particular Manner, there is no reason why such type of divorce is not recognized for the purpose of employment. If such talak is to be recognized in other fields, there is no reason why the same should not be treated as a valid document, provided there is a genuine talaknama, for the purpose of considering the claim of a

candidate in the category of divorced woman.

9. It is altogether a different thing whether the document is genuine or not and is secured only for the purpose of getting employment. It may be possible that in a given case only in order to get appointment, perhaps, a false document might be produced wherein the husband may also be a party for the same. But, on that basis, it cannot be generalized that in all such cases such talaknama cannot be accepted as correct one. When as per the requirement of Muslim Personal Law, a muslim husband can give talak to his wife by executing talaknama which bears signatures of two witnesses it cannot be presumed that the talaknama is executed only for the purpose of securing employment. However, in a given case, it may be possible to infer the said aspect.

10. In every such case, if a muslim woman is required to go to Court of law by filing suit for declaration it may unnecessarily cause great hardship. In my view, therefore, the insistence of the department that even in all cases, decree from competent Court is must and the same must be annexed with the application in the category of divorced women is not justified so far as divorced muslim lady is concerned. It may not be proper to doubt all such talaknamas, especially when a marriage can be dissolved as per the Muslim Personal Law by way of executing such talaknama also.

11. Considering the said aspect, the respondents should consider the application of the petitioner in the category of divorced woman without insiting that the petitioner must produce the decree of divorce granted by competent Court. It is, however, clarified that in a given case it is always open for the department to ask a candidate to produce better particulars if there is a reasonable doubt that such talaknama is executed only with a view to secure appointment, but the insistence of the department that in every case, decree of divorce must be annexed with the application, is not proper. The authority can always insist upon such candidate to produce better material in case of doubt or in case the department is of the view that such talaknama is fraudulent or bogus and it may refuse to act upon such document. However, it cannot be presumed that in every case, all such talaknamas are fraudulent and bogus and are produced only with a view to secure appointment.

12. Even otherwise, there is a decision of the learned Single Judge of this Court where it is held that such insistence in the case of a Muslim lady is not proper and since this Court is bound by the said decision of the learned Single Judge, this petition is accordingly allowed even on that basis also.

13. Considering the aforesaid aspect, the respondents are directed to consider the claim of the petitioner on its own merits and find out whether the talaknama produced by her is a genuine one and to process the application of the petitioner on merits. When it is not in dispute that the petitioner is a Muslim lady and when she has produced talaknama which is also produced on record, and when under the Muslim Law marriage can be dissolved by executing such talaknama, the

insistence of the department that the petitioner must produce the decree of divorce is not justified. However, it is for the department to make verification of the records as deemed fit and to find out whether the document in question is genuine or not.

Subject to what is stated above, the petition is allowed. No order as to costs.