

(2017) 09 RAJ CK 0005
In the Rajasthan High Court
Case No : 10876 of 2017

Suman D/o Shri Sukhram Singh

APPELLANT

Vs

Secretary, Rural Development and Panchayati Raj

RESPONDENT

Date of Decision : 04-09-2017

Acts Referred:

[Hindu Marriage Act, 1956](#), Section 13-B(2)

Citation : (2017) 09 RAJ CK 0005

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : Kailash Choudhary

Final Decision : Dismissed

Judgement

1. Pursuant to an Advertisement dated 06.07.2016, the petitioner applied for the post of Teacher Grade-III. The last date for submitting the application form was 01.08.2016 and the petitioner had submitted her form before the due date. However, showing her category as "Divorcee".
2. It is an admitted fact that on the date of submitting the application form, the petitioner had not been granted a decree of divorce and the same was issued on 31.01.2017.
3. This Court in S.B. Civil Writ Petition No.9649/2017 titled as "Suman Choudhary Vs. State of Rajasthan & Ors." has rejected identical arguments advanced on behalf of the said petitioner.
4. It will not be out of place to reproduce the relevant part of

the judgment dated 10.08.2017, which reads thus:-

"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 to 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 thinks 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."

5. 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.

6. 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.

7. 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.

8. 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.

9. 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."

10. 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.

11. 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.

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

13. Following the above Judgment, present writ petition is also dismissed.