

(2020) 03 RAJ CK 0114
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2332 Of 2020

Sumitra Rani

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

Citation : (2020) 03 RAJ CK 0114

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Ajay Vyas, Shreyansh Mehta, K.S. Rajpurohit

Final Decision : Dismissed

Judgement

1. By way of the present writ petition, the petitioner has challenged rejection of her candidature as Divorcee.
2. Precisely stated facts of the case are that the petitioner submitted her application form as Divorcee candidate pursuant to advertisement dated 18.06.2018, issued for the purpose of filling up 4965 posts of Female Health Worker.
3. The last date of submission of application was 23.07.2018.
4. When the petitioner submitted her online application form on 22.07.2018, she had claimed her status as Divorcee', considering the fact that she had already filed a petition seeking divorce on 25.04.2018 before the competent Family Court.
5. Concededly, the decree of divorce was granted to the petitioner on 30.10.2018.
6. The respondents have rejected petitioner's candidature as on the last date of furnishing application form i.e. 23.07.2018, she did not have a decree of divorce in her favour.
7. Mr. Ajay Vyas, learned counsel for the petitioner, challenging rejection of candidature of the petitioner, contended that on the date of document verification

i.e. 09.06.2019, the petitioner had with her, a decree of divorce and the respondent ought to have considered the same at the time of document verification.

8. Mr. Shreyansh Mehta, learned counsel for the respondents, opposing petitioner's contention, submitted that not only as per the terms of advertisement even, on the basis of principles laid down by this Court, candidature of the petitioner is required to be reckoned on the cut-off date or on the last date of furnishing application form.

9. He argued that on the date of furnishing application form, the petitioner did not have a decree of divorce, therefore, she cannot be considered as a divorcee'.

10. Concededly, at the time of filling up the application form, the petitioner did not have a decree of divorce in her favour.

11. Hence, the petitioner cannot be treated to be a divorcee' and claim reservation meant for such category.

12. It is settled position of law that the candidature of a person is to be reckoned on the date of furnishing application form and/or the cut-off date given in the advertisement.

13. A gainful reference of the judgment dated 10.08.2017 rendered in the case of Suman Chuodhary Vs. State of Raj. & Ors. (S.B. Civil Writ Petition No.9649/2017) would be worthwhile and the same is being reproduced hereinfra:

"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."

14. In view of what has been noticed herein before and following the judgment in

case of Suman Choudhary (supra), the writ petition is dismissed.

15. Stay petition also stands dismissed accordingly.