



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Special Appeal (Writ) No.72/2022

1. The Secretary, Rajasthan Public Service Commission, Ajmer.
2. The Deputy Secretary, Rajasthan Public Service Commission, Ajmer.

----Appellants

Versus

1. Sangeeta Varhat D/o Rooplal Ji Varhat, Aged About 35 Years, Ward No. 9, Sadiya Fala, Post Sanchiya, District Dungarpur, Rajasthan.
2. State Of Rajasthan, Through Secretary Department Of Education, Government Of Rajasthan, Jaipur Rajasthan.
3. Director, Department Secondary Education, Bikaner Rajasthan.

----Respondents

Connected With

D.B. Spl. Appl. Writ No. 97/2021

1. The State Of Rajasthan, Through The Secretary, Department Of Education, Government Of Rajasthan, Jaipur, Rajasthan.
2. Director, Department Of Secondary Education, Bikaner, Rajasthan.

----Appellants

Versus

1. Lalita Charpota D/o Meeru Charpota, R/o Rujiya, Post Chidiyawas, District Banswara, Rajasthan.
2. Secretary, Rajasthan Public Service Commission, Ajmer.

----Respondents

For Petitioner(s)	:	Mr. Pankaj Sharma, AAG Mr. Rishi Soni Mr. Dhairyaditya Rathore Mr. Khet Singh, for RPSC
For Respondent(s)	:	Mr. Rituraj Singh



**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE KULDEEP MATHUR**

J U D G M E N T

PRONOUNCED ON : : : 10/11/2022
RESERVED ON : : : 11/10/2022
table
BY THE COURT: (PER HON'BLE KULDEEP MATHUR,J.)

The instant intra court appeals involve common question of law and hence, the same are heard and decided together by this order.

The question to be adjudicated upon is whether an applicant who has taken customary divorce is entitled to apply in the category of 'Divorcee Female', without presenting decree of divorce granted by competent civil court before the cutoff date, as stipulated in the terms and conditions governing the recruitment process.

It is pleaded that respondent Nos.1 in the appeals belong to Scheduled Tribe/Tribal Sub Plan Area and had applied against advertised posts indicating their categories as 'Divorcee'. The respondents however, at the time of document verification were disqualified on the count that they did not possess a decree of divorce as on the last date of filing application forms. Being aggrieved by the non-inclusion of the names in the final select list, the respondents approached the learned Single Bench seeking a direction upon the appellants for appointment under 'Divorcee' category.

Learned Single Bench allowed the writ petitions holding that the respondents belong to Scheduled Tribe community and



therefore, the provisions of Hindu Marriage Act, 1955 are not applicable upon them in light of Section 2(2) of Hindu Marriage Act, 1955 thus, the condition of submitting divorce decree, issued by a competent court cannot be fastened upon them. The appellant-respondents were directed to include the name of the respondents in the select list on the basis of customary dissolution of marriage and provide them appointment from the date candidates lower in merit were granted appointment, if they are otherwise eligible.

Learned counsel for the appellants submitted that a candidate who applies for a particular post under 'Divorcee' category must be possessed of a decree of divorce on the last date of submission of application form so as to make the candidate eligible for consideration against the post reserved for candidate belonging to said category. Learned counsel submitted that the customary practices for divorce may be prevalent in tribal communities but that would be confined to social purposes only. However, in order to claim appointment under questioned selection process, a candidate would be governed by the terms and conditions set out for the selection process. Learned counsel further submitted that the general instructions issued to the candidates clearly stipulate a condition that a decree of divorce is essential for consideration of candidature for appointment against quota of divorcees. To fortify the aforesaid contention, reliance was placed on the judgment rendered by co-ordinate Bench of this Court in the case of *Rajasthan State Public Service Commission & Anr. vs. Reetu Kalasua & Anr.: D.B. S.A.W. No.1193/2014 decided on 22.01.2016.*



Per contra, learned counsel for the respondents submitted that the respondent-writ petitioners belong to Scheduled Tribe/Tribal Sub Plan Area where customary divorce is prevalent since time immemorial which is accepted as a valid process of marriage dissolution in Hindu Laws. Learned counsel further submitted that Section 2(2) of Hindu Marriage Act, 1955 makes it evident that the said Act does not apply to Scheduled Tribes who are governed by the customs prevalent in their respective communities. Therefore, once it is established that divorce has been obtained as per customs, the denial of appointment for want of decree of divorce by a competent court is not sustainable in the eyes of law. Reliance was placed on the judgments rendered by this Court in the cases of *Sunita Meena vs. State of Rajasthan & Ors: S.B. C.W. No.3991/2015* and *Rajasthan Public Service Commission vs. Sunita Meena & Ors.: D.B. S.A.W. No.829/2017*.

Heard submissions advanced at Bar and perused the material available on record.

Hon'ble the Supreme Court of India in the case of **Ashok Kumar Sonkar vs. Union of India**, reported in **(2007) 4 SCC 54**, held as under:

“Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.”



Hon'ble the Supreme Court of India in case of **Dr. M.V. Nair vs. Union of India & Ors.** reported in **(1993) 2 SCC 429**, observed as under:

"It is well settled that suitability and eligibility has to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."

A co-ordinate Bench of this Court in the case of **Rajasthan State Public Service Commission & Anr. vs. Reetu Kalasua & Anr.: D.B. S.A.W. No.1193/2014** while dealing with a similar controversy held that a female candidate without having a decree of divorce cannot represent herself as divorced woman. No presumption could be drawn about grant of decree of divorce and a candidate cannot be treated as divorced without there being a declaration of dissolution of marriage by the competent court. Similar view has been reiterated by co-ordinate Bench in the case of **State of Rajasthan & Ors. vs. Jagdish Prased & Anr: D.B. S.A.W. No.611/2016** and **Parul Khurana vs. High Court of Judicature for Rajasthan at Jodhpur: D.B. C.W. No.1004/2022.**

A co-ordinate Bench of this Court in the case of **Rajasthan Public Service Commission vs. Sunita Meena & Ors.: D.B. S.A.W. No.829/2017** keeping in view the peculiar facts and circumstances of that case upheld the direction passed by learned Single Judge in favour of the candidate-petitioner belonging to Meena community (Scheduled Tribe) directing the recruiting agency to consider the candidate a 'Divorcee' as per the customary laws while affording the petitioner-candidate an



opportunity to obtain a declaration of dissolution of marriage from competent court.

It would be apposite to note here that Family Courts established under the Family Court Act, 1984 by virtue of Section 7 of the said Act have exclusive jurisdiction to deal with all issues of marriage and divorce without exception irrespective of the community, the parties belong to.

“7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.”

Emphasis supplied



Admittedly, the respondents submitted application seeking appointment on advertised posts against the seats reserved for divorcee candidates. The decree of divorce issued by competent court was not possessed by the petitioners on the cut off date. The appointment in the divorcee category has been claimed on the ground of having obtained customary divorce and non application of Hindu Marriage Act, 1955 upon marriages and divorce amongst the members of Scheduled Tribe/Tribal Sub Plan communities.

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.

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.

In view of aforesaid discussion, the judgment passed in the case of **Sunita Meena (*supra*)** is held per incuriam since, the judgment was rendered in ignorance of previous decisions of Hon'ble the Apex Court and co-ordinate Bench of this Court on the controversy dealing with the cut off date by reference to which eligibility requirements must be satisfied by a candidate seeking public employment.

In the result, the intra court appeals succeed and are hereby allowed. The order/judgment dated 12.09.2019 and 30.03.2021 under present appeals are set aside.

No order as to costs.

(KULDEEP MATHUR),J

(SANDEEP MEHTA),J

KshamaD/-

