HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 393/2020

Mamta Kanwar D/o Shri Narendra Singh, Aged About 31 Years, By Caste Rajput Resident Of H.No. 422 Sector No. 3 Hanumangarh Town District Hanumangarh (Raj.).

----Appellant

Versus

1. The State Of Rajasthan, Through Secretary, Department Of Personal, Rajasthan Staff Selection Board, Govt. Of Rajasthan, Secretariat, Jaipur.
2. Rajasthan Staff Selection Board, Through Secretary, State Institute Of Agriculture Management Premises, Durgapura, Jaipur.

----Respondents

For Appellant(s) : Mr. Vijay Jain
For Respondent(s) : -------

HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE RAMESHWAR VYAS

Judgment

09/12/2020

1. This intra-court appeal is directed against the order dated 3.3.2020 passed by the learned Single Judge of this Court, whereby, the writ petition preferred by the appellant questioning the legality of the select list published by the respondents for recruitment to the post of Clerk Gr.II/Junior Assistant, has been dismissed.

2. The relevant facts are that pursuant to the advertisement issued by the Rajasthan Staff Selection Board, the appellant made an application for appointment to the post of Clerk Gr.II/ Junior Assistant on 13.5.18. The appellant applied in 'General' category

showing her status as 'Married'. However, during the pendency of the selection process, the appellant's marriage was dissolved by a decree of divorce passed by the Family Court, Hanumangarh vide decree dated 23.1.19. The appellant applied for correction in online application form, which was acceded to and her marital status was permitted to be changed from 'Married' to 'Divorcee'. Precisely, the case of the appellant is that since her marital status was permitted to be changed from 'Married' to 'Divorcee', she should have been offered appointment inasmuch as she had secured more marks than the cut off marks notified for 'Divorcee' category. Since, the name of the appellant was not included in the select list, she questioned the legality thereof by way of writ petition before this Court, which stands dismissed by the learned Single Judge vide the order impugned. Hence this appeal.

3. Learned Single Judge has dismissed the petition taking into consideration the settled proposition of law that the candidature of a candidate is required to be reckoned as on the cut off date or the last date for submission of the application form notified. In this regard, learned Single Judge relied upon earlier decision of this Court in Suman Choudhary Vs. State of Rajasthan & Ors.: S.B.Civil Writ Petition No.9649/2017, decided on 10.8.17.

4. Learned counsel appearing for the appellant contended that admittedly, the appellant's marital status was permitted to be changed by the respondents from 'Married' to 'Divorcee' keeping in view the decree of divorce passed by the Court of competent jurisdiction and thus, the respondents were under an obligation to consider the candidature of the appellant for appointment to the post of Clerk Gr.II/ Junior Assistant in the said category. Learned counsel submitted that the appellant has secured 200.7578

marks, whereas, cut off marks for general divorcee category was 149.9432 and thus, the denial of appointment to the appellant was ex-facie illegal and arbitrary. In this regard, learned counsel relied upon a Bench decision of this Court in State of Rajasthan Vs. Jamna Rajpurohit reported in 2013 (4) CDR 2275.

5. We have considered the submissions of the learned counsel and perused the material on record.

6. As observed by the learned Single Judge, it is well settled that the eligibility of the candidate for recruitment to any post has to be reckoned as on the cut off date specified in the advertisement or the last date for submission of the application form. Obviously, the candidate applying for a specific category must possess the requisite eligibility for that category as on the date of submission of the application form. The candidature of the candidate cannot be considered in the category other than the category specified while submitting the application form on the basis of his/her acquiring the eligibility subsequently during the selection process.

7. The learned Single Judge has dismissed the writ petition relying upon a decision of the Coordinate Bench in the case of Suman Choudhary (supra). It is noticed that the decision of the learned Single Judge in Suman Choudhary's case has already been upheld by a Bench of this Court in D.B.Special Appeal (Writ) No.952/17 "Suman Choudhary Vs. State & Ors." and the connected appeal, vide decision dated 19.11.18. The Court held :

> "In view of this factual admitted situation, the learned Single Judge was perfectly justify in dismissing the writ petitions by the impugned judgments holding that the petitioners were not entitled to be considered for appointment as divorcees unless and until, the decree of

> divorce was passed by the competent court. Such decree of divorce should have been in existence on the date of submission of the application form or latest by the last date of receiving such application forms in absence thereof, the petitioners had no right to be considered in the 'divorcee' category. Resultantly, we are of the firm view that the writ petitions filed by the petitioners were rightly dismissed by the learned Single Judge vide impugned judgments dated 10.08.2017 and 15.11.2017 which do not suffer from any illegality, infirmity or error apparent on the face of record warranting interference in the appellate jurisdiction of this Court."

8. It is noticed that the Bench decision in Jamna Rajpurohit's case was duly considered by the learned Single Judge in Suman Choudhary's case and while distinguishing the said decision, it was specifically observed that the decision in Jamna Rajpurohit's case has been held that per incurium by another Division Bench of this Court in its judgment dated 9.9.16 rendered in D.B.Civil Special Appeal (Writ) No.611/16 in the matter of State of Rajasthan & Ors. Vs. Jagdish Prasad & Ors. The relevant portion of the judgment reads as under:

> "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 petition 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 D.B.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."

9. Thus, the Bench decision in Jamna Purohit's case does not help the appellant in any manner.

10. In view of position of law settled by the Bench decision of this Court in Suman Choudhary's case (supra), nothing survives for further consideration by this Court in the present intra-court appeal.

11. Accordingly, the special appeal is dismissed in limine.

(RAMESHWAR VYAS),J **(SANGEET LODHA),J**

RP-9-/-

RAJASTHAN HIGH COURT
सत्यमेव जयते