



RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No.24193/2018

Manju Bai Meena D/o Kailash Chand Meena, Aged About 27 Years, R/o Village Ishwana, Post Babeli, Tehsil Rani, District Alwar (Raj.)

----Petitioner

Versus

1. The State of Rajasthan, through its Principal Secretary, Department of Panchayati Raj, Govt. Secretariat, Jaipur (Raj.)
2. The Director, Elementary Education, Directorate, Bikaner
3. The Chief Executive Officer, Zila Parishad, Sriganganagar.

----Respondents

Connected With

S.B. Civil Writ Petition No.18542/2012

Mamta Meena D/o Shri Mojiram Meena, aged about 25 years, R/o House No.5, Namrata Aawas, Bajrang Nagar, Post Nayapura, Tehsil Ladpura, District Kota (Rajasthan)

----Petitioner

Versus

1. The Rajasthan Public Service Commission, Ajmer (Rajasthan) through its Secretary.
2. State of Rajasthan through its Principle Secretary Department of Education Govt. of Rajsthan Secretariat, Jaipur

----Respondents

For Petitioner(s)	:	Mr. Akshit Gupta Mr. S. N. Meena
For Respondent(s)	:	Mr. Gopal Krishan Sharma-Addl.GC Ms. Namita Parihar-Dy.GC Mr. Uttam Jhanjhariya

JUSTICE ANOOP KUMAR DHAND

Order

20/09/2024

Reportable



1. Since both the writ petitions involve common facts and question of law, hence, at the request of the counsel for the parties, the arguments have been heard together.

2. For the sake of convenience, the facts pleaded and the prayer mentioned in S.B. Civil Writ Petition No.24193/2018 has been taken into consideration.

3. The instant writ petition has been filed by the petitioner with the following prayer:-

“In these circumstances, it is, therefore, prayed that this Hon’ble Court may be pleased to accept this writ petition and

i) the impugned action of the respondents in verbally rejecting the candidature of humble petitioner on the post of Teacher Gr.III (Level-II) (Hindi) under ST (Divorce) category may kindly be declared illegal and arbitrary and therefore, same may kindly be quashed and set aside.

ii) by issuing the writ of mandamus, order or direction in the nature thereof respondents may kindly be directed to consider humble petitioner under ST (Divorce) category and to give appointment to humble petitioner on the post of Teacher Grade-III (Level-II) (Hindi) with all consequential benefits.

iii) Any other appropriate order or direction which the Hon'ble Court deems just and proper in the facts and circumstances of this case may kindly also be passed”

4. By way of filing of this writ petition, a prayer has been made for issuing direction to the respondents to consider the case of the petitioner for appointment on the post of Teacher Grade-III (Level-II) (Hindi) under the Scheduled Tribe (Divorcee) category.

5. Learned counsel for the petitioners submits that pursuant to the advertisement dated 31.07.2018, the petitioner participated in the selection process for appointment on the post of Teacher Grade-III (Level-II) (Hindi). Counsel submits that at the time of participation in the process for selection, divorce of the petitioner



has taken place and a suit for declaration in this regard was pending before the competent Court, but the decree was passed after the cut-off date fixed in the advertisement. Counsel submits that in ST Community, there is a custom of taking social divorce and no separate decree is required to be taken. Counsel submits that under these circumstances, the respondents were duty bound to consider the case of the petitioner under the ST (Divorcee) Category.

6. Learned counsel for the petitioners, in support of his contention, placed reliance upon the order passed by the Division Bench of this Court in the case of **Rajasthan Public Service Commission Vs. Sunita Meena & Ors.: (D.B. Speical Appeal Writ No.829/2017)** decided on 14.07.2017, wherein the issue was identical and the writ petition filed by the similarly situated person Sunita Meena was allowed by the Co-ordinate Bench of this Court vide order dated 17.01.2017 and directions were issued to the Rajasthan Public Service Commission (for short, "the RPSC") to consider her case for appointment on the advertised post by treating her under ST (Divorcee) Category. The order passed by the Co-ordinate Bench of this Court dated 17.07.2017 was assailed by the RPSC by way of filing **D.B. Speical Appeal Writ No.829/2017 (RPSC Vs. Sunita Meena)** (supra), however, the same was rejected by the Division Bench of this Court on 14.07.2017 and the order passed by the Co-ordinate Bench of this Court was upheld. Counsel submits that under these circumstances, the present petitioners are also entitled to the same relief, as granted by the Division Bench of this Court, in the case of **Sunita Meena** (supra).



7. *Per contra*, the learned counsel for the State-respondent as well as the learned counsel for the RPSC jointly opposed the arguments raised by the counsel for the petitioners and submitted that the category of a candidate is required to be seen at the time of last date of submission of the application form and at the time of submission of the application form, the present petitioners were not having any decree of dissolution of their marriage issued from the competent Court of law, hence, under these circumstances, the petitioners are not entitled to get appointment under the category of ST (Divorcee Female). Counsel submits that the judgment passed by the Division Bench of this Court in the case of **Sunita Meena** (supra) has been distinguished by the Division Bench of this Court at Principal Seat at Jodhpur in the case of **The Secretary, RPSC Vs. Sangeeta Varhat** while deciding **D.B. Special Appeal (Writ) No.72/2022** vide order dated 11.10.2022. Counsel submits that the judgment passed by the Division Bench of this Court in the case of **Sunita Meena** (supra) has been held to be *per incuriam* and the Special Appeal filed by the RPSC was allowed and the judgment dated 30.03.2021 passed by the **Co-ordinate Bench** of this Court at Principal Seat at Jodhpur in the case of **Sangeeta Varhat Vs. RPSC (S.B. Civil Writ Petition No.7281/2019)** was set aside. Counsel submits that under these circumstances, interference of this Court is not warranted.

8. Heard and considered the submissions made at Bar and perused the material available on record.

9. Perusal of both judgments passed by two different Division Benches of this Court indicates that conflicting view has been



taken by both the Benches of equal strength. The Judicial decorum and legal propriety demand that where any Single Bench or Division Bench does not agree with the decision of the Bench of Co-ordinate jurisdiction, the matter shall be referred to the Larger Bench. This view has been taken by the Hon'ble Apex Court in the case of **Sundaradas Kanyalal Bhatija & Ors vs. The Collector, Thane, Maharashtra**, reported in **AIR 1990 SC 261**. Similarly, in **Ayyaswami Gounder V. Munuswamy Gounder**, reported in **AIR 1984 SC 1789**, the Hon'ble Apex Court has held that a Single Bench of a High Court, not agreeing with earlier decision of Single Judge of the same High Court, should refer the matter to a Larger Bench and judicial propriety and decorum do not warrant him to take a contrary view.

10. In the case of **S. Kasi Vs. State Through the Inspector of Police Samaynallur Police Station Madurai District**, reported in **(2021) 12 SCC 1**, the Hon'ble Apex Court has held that:

"It is well settled that a coordinate Bench cannot take a contrary view and in event there was any doubt, a coordinate Bench only can refer the matter for consideration by a Larger Bench. The judicial discipline ordains so. This Court in *State of Punjab and another versus Devans Modern Breweries Ltd. and another*, (2004) 11 SCC 26, in paragraph 339 laid down following:-

"339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a Larger Bench. (See *Pradip Chandra Parija v. Pramod Chandra Patnaik*, (2002) 1 SCC 1 followed in *Union of India Vs. Hansoli*



Devi, (2002) 7 SCC 273. But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. Kalyani Stores (supra) and K.K. Narula (supra) both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority.”



11. The Gauhati High Court in the case of **Shri Jagadish Deka Vs. The State of Assam** reported in **AIR 2014 Gauhati 143** has held that:

“Similarly in the case reported in State of Bihar vs Kalika Kuer, reported in 2003 (5) SCC 448, the Supreme Court examined the circumstances in which a decision can be rendered “per incuriam”.

Quoting the passage from Halsbury’s Laws of England, it was held in para 5 thus:

5. At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In Halsbury’s Laws of England (4th Edn.) Vol. 26: Judgment and Orders: Judicial Decisions as Authorities (pp.297-98, para 578) we find it observed about per incuriam as follows:

“A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. A decision



should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had not the benefit of the best argument, and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake.”

Lord Godard, C.J. in Huddersfield Police Authorities case observed that where a case or statute had not been brought to the court’s attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.”

Like wise, the question arose before the Supreme Court in the case reported in Official Liquidator vs Dayanand [(2008) 10 SCC 1] as to what is the effect of the decision when it is rendered in ignorance of earlier decisions rendered by other co-ordinate bench.

It is apposite to quote the following observations of the Supreme Court:

“78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline





which is sine qua non for sustaining the system. In *Mahadeolal Kanodia v. Administrator General of W.B.* this Court observed: (AIR p. 941, para 19)

“19. ... If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another’s decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.”

Their Lordships then placed reliance on the earlier decision of the Supreme Court **Lala Shri Bhagwan vs Ram Chand** reported in **AIR 1965 SC 1767** in which the Hon’ble Apex Court ruled as under:

“18. ... It is hardly necessary to emphasis that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered,





he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself.”

12. Ordinarily, this Court would not go into the merits of the case once the position of law has been settled with regard to controversy involved on a particular issue. But the difficulty before this Court is to follow view, more particularly, when there are two conflicting views on the same issue by two Division Benches of this Court of equal strength. The Hon'ble Apex Court in the case of **Central Board of Dawoodi Bohra Community & Ors. Vs. State of Maharashtra & Ors.:** reported in **(2005) 2 SCC 673;** has held in relevant Para 12 as under:-

“12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all



that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions: (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghbir Singh and Ors. and Hansoli Devi and Ors. (supra)."





13. In the situation like the present one, where two conflicting views have been taken by two different Division Benches, this Court has no option except to refer the matter to a Special/Larger Bench, so that the controversy is put to rest, in accordance with law.

14. This Court, accordingly, refer this case to the Special/Larger Bench to answer the following question:-

“Whether a female candidate of Scheduled Tribe Category is entitled to get appointment under the Divorcee Category without having a decree of dissolution of marriage by the Competent Court of law before the last date of submission of the application form?”

15. Let the matter be now placed before Hon’ble the Chief Justice on the administrative side for constitution of a Special/Larger Bench to answer the aforesaid question, referred by this Court to the Special/Larger Bench.

(ANOOP KUMAR DHAND),J

Aayush Sharma /289-290