REPORTABLE

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

Judgment Reserved on: 04.11.2026

Judgment delivered on: 18.11.2026

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D.B. Civil Reference No. 2/2025
CNR: RJHC020601852025 | URN: CREF / 5U / 2025

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

----Petitioner

Versus

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

----Respondents

For Petitioner(s) : Mr. Sandeep Pathak, Adv.,
Mr. Tanveer Ahamad with
Mr. Iliyas Khan and
Mr. Tanay Jareda
Mr. Shiv Charan Singh, Adv. with
Mr. Harsh Saraswat
Mr. Chain Singh Rathore, Adv.
Mr. Vikash Meena, Adv.
Mr. Akshit Gupta,
Ms. Pragya Seth,
Mr. Nakul Bansal,
Mr. Shreyansh Dhariwal
Mr. Pallav Pancholi
Mr. Kapil Gupta, Adv.
Mr. Ajay Gadhwal, Adv.
Mr. R.S.Sinsinwar, Adv.
Mr. Dharemndra Kumar Bairwa, Adv.
Ms. Anisha Yadav, Adv.
Mr. Chitransh Saxena, Adv.
Mr. Abhay Singh Rathore, Adv.
Mr. Tanay Choudhary, Adv.
Mr. Ayal Yadav, Adv.
Mr. Sushil Yadav,
Mr. Akshay Singh
Mr. Ranvijay Singh

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RAJASTHAN HIGH COURT

Ms. Vedika Yadav
Mr. Akshay Singh
Mr. Bhawani Shankar
Mr. Ashish Mittal
Mr. Aditya Raj
Mr. Punit Singhvi
Mr. Ayush Singh
Mr. Ajay Singh Rathore
Mr. Ishan Verma
Mr. Naman Dadhich
Mr. Lakshya Sharma
Mr. Prem Chand Dewanda
Mr. Kapil Choudhary
Ms. Riya Choudhary
Mr. Himanshu Dholia
Mr. Abhishek Singh Devanda
Ms. Muskaan Jalu
Mr. Avin Chhangani with
Ms. Priyanka Bishnoi (through VC from Jodhpur)
Mr. Tribhuvan Narayan Singh

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For Respondent(s) : Mr. Virendra Lodha, Sr. Adv. assisted by Mr. Jai Lodha, Adv.
Mr. Ankit Rathore, Adv.,
Ms. Saral Sharma, Adv. and
Ms. Katyani Singh, Adv.
Mr. Ashish Saksena
Mr. S.S.Naruka, AAG with
Ms. Ritika Naruka, AAAG,
Mr. Sachin Rathore, AAAG
Mr. Manish Sharma, Adv.,
Mr. Ritik Dahiya, Adv. and
Mr. Abhishek Singh, Adv.
Mr. Sandeep Jain, Adv.,
Mr. Shobit Tiwari, Adv. with
Mr. Pushpendra Singh Tanwar, Adv. and Mr. Rohit Tiwari, Adv.
Mr. M.F.Baig, Adv.
Mr. Naman Maheshwari
Mr. Vishwas Fatehpuria
Mr. Priyansh Gupta, Adv.
Mr. Raghu Nandan Sharma, Adv.
With Ms. Manasvita Sharma, Adv.
Dr. Saugath Roy

Full Bench

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE SAMEER JAIN
HON'BLE MR. JUS PRAMIL KUMAR MATHUR

C.A.V Judgment

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Sanjay K. Agrawal, CJ

For the sake of exposition, the judgment is divided in the following parts:

Rajasthan High Court सत्यमेव जयते Web Copy - Not Official

Part	Particulars	Page Nos.
I.	Reference Order	3
II.	Facts leading to the reference	4
III.	Relevant legal provisions	5
IV.	Last date of submission of the application form is sacrosanct	8
V.	The divorcee is a legal status that must exist	14
VI.	A customary divorce must be pleaded and proved before a Court and recruitment body cannot decide it	15
VII	Conclusion and answer to question of law	18

Part-I: Reference Order

1. Anoop Kumar Dhand, J. a finding conflict with the Division Bench judgment rendered in the matter of **Rajasthan Public Service Commission Vs. Sunita Meena & Ors.**[1]**,** and another Division Bench decision rendered in the matter of **The Secretary, Rajasthan Public Service Commission Vs. Sangeeta Varhat and others**[2]**,** referred the following question of law for determination and adjudication to Hon'ble The Chief Justice:

> "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?"

1 D.B. Special Appeal Writ No. 829/2017
2 2023 (1) RLW 240 (Raj.)

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RAJASTHAN HIGH COURT सत्यमेव जयते

Part-II: Facts Leading To The Reference

2. In the **Sunita Meena** (supra), a Scheduled Tribe candidate relied on a customary dissolution of marriage dated 11.05.2008 and a dissolution certificate issued by her community, which is said to have occurred before the cut-off date prescribed with the recruitment. It is stated that Family Court and the civil court both have refused to entertain her suit for declaration. The Single Judge vide its order dated 17.01.2017 kept a post vacant for six months and gave a liberty to obtain a decree from the Family Court a declaration from the family court that her marriage stood dissolved on 11.05.2008. A writ-appeal being preferred by the Rajasthan Public Service Commission, the Division Bench declined to interfere with the order of the Single Bench. In fact the Division Bench order lays down no general proposition of law.

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3. In the **Sangeeta Varhat** (supra), the another Division Bench held that decree of divorce of the competent court existing on the last date of application is *sine qua non* for the divorce category and a custom cannot be allowed to supersede the terms and conditions governing the recruitment process and further held that customary practice cannot displace the prescribed requirement and treated the **Sunita Meena's** case (supra) as *per incuriam* and held as under:

> "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

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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."

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Part-III: Relevant Legal Provisions

4. The concept of reservation for women came to be introduced in the State of Rajasthan vide Notification dated 24.01.2011 is by Department of Personnel (A-Gr-II) whereby amendment was made in all the Service Rules invoking Article 309 of the Constitution of India which reads as under: -

> *"**Reservation of vacancies for women** - Reservation of vacancies for women candidates shall be 30% category wise in direct recruitment out of which 8% shall be for widows and 2% for divorced women candidates. In the event of non-availability of eligible and suitable widows and divorced women candidates in a particular year, the vacancies so reserved for widow and divorced women candidates shall be filled by other women candidates and in the event of non-availability of eligible and suitable women candidates, the vacancies so reserved for them shall be filled up by male candidates and such vacancies shall not be carried forward to the subsequent year and the reservation shall be treated as horizontal reservation I.e. the reservation of women candidates shall be adjusted proportionately in the respective category to which the women candidates belong.*
>
> ***Explanation:-** In the case of widow, she will have to furnish a certificate of death of her husband from the competent Authority **and in case of divorcee she will have to furnish the proof of divorce."***

5. Article 13 of the Constitution of India reads as under:

> **Article 13 - Laws inconsistent with or in derogation of the fundamental rights.-**
>
> (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
>
> (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any

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RAJASTHAN HIGH COURT
सत्यमेव जयते

law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,-

(a)**"law" includes** any Ordinance, order, bye-law, rule, regulation, notification,**custom or usage** having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

Rajasthan High Court
सत्यमेव जयते
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6. Sections 2 and 3 of the Hindu Marriage Act, 1955, read as under:

Section 2 (2) - Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

Section 3- Definitions.- In this Act, unless the context otherwise requires,-

(a) the expressions **"custom" and "usage"** signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

7. Section 7 of the Family Courts Act, 1984, reads as under:

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Section 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;

8. WHAT THE RULES REQUIRE AS "PROOF OF DIVORCE"

The Governing Rule. By the Rajasthan Various Service (Amendment) Rules, 2011 (Notification No. F.7(2)DOP/A-11/88/Pt.1, made under the proviso to Article 309), the women-reservation rule in 106 service rules was substituted. The Schedule includes the Rajasthan Educational Subordinate Service Rules, 1971 (Rule 7B). The substituted rule reserves 30% of posts for women, of which 8% are for widows and 2% for divorced women. Its Explanation reads:

"Explanation:- In the case of widow, she will have to furnish a certificate of death of her husband from the competent Authority and **in case of divorcee she will have to furnish the proof of divorce."**

The same Explanation appears in the RPSC (Ministerial and Subordinate Services) Rules and Regulations, 1999 (Rule 9, as substituted in 2011), and in the Explanation to Rule 265 (age)

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of the Rajasthan Panchayati Raj Rules, 1996, which governs Teacher Grade III.

9. For the sake of convenience, the question of Law as so referred is divided in following two parts:

> "1.Whether the last date of submission of the application form is sacrosanct for furnishing last date of decree of dissolution of marriage/proof of dissolution of marriage are it can be diluted?
>
> 2.What is the proof of divorce that rule requires from Scheduled Tribes/ST women is a record of divorce issued by the customary Authority of her community is really deny of law?"

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Part-IV: Last date of submission of the application form is sacrosanct

10. It is well settled that the suitability and eligibility have to be considered with reference to the last date for receiving the applications. The Supreme Court in the matter of **Dr. M.V. Nair V. Union of India and Others**[3], has held that the suitability and eligibility have to be considered with reference to the last date for receiving the application and observed as under:

> **"9.** In the above situation, it was necessary for the Tribunal to have recorded a finding on the correctness or otherwise of the above submission of the Union of India and Dr Nair. Without doing so, the Tribunal could not have set aside the appointment of Dr Nair to the said post. The Tribunal was also not justified in holding that Dr Bhatnagar was also equally qualified and eligible for the said post like Dr Nair when Dr Bhatnagar had himself come forward with the plea that he was not eligible and asked for grant of relaxation to make him eligible. The Tribunal, in our opinion, was also not justified in stating, in the direction granted by it, that inasmuch as Dr Bhatnagar "has by now become eligible in all respects under the recruitment rules, his suitability should be considered along with other eligible candidates and if he is found suitable for the appointment he should be appointed to the said post". It is well settled that suitability and eligibility have to be considered with reference to the last date

3 (1993) 2 SCC 429

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for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."

11. In **Ashok Kumar Sonkar V. Union of India and Others**[4], eligibility is to be judged as on the prescribed date. A candidate cannot acquire the qualification after the back date and claim retrospective eligibility and observed in paras 11, 15, 16 and 20 as under:

> **11.** The question as to what should be the cut-off date in absence of any date specified in this behalf either in the advertisement or in the reference is no longer res integra. It would be last date for filing application as would appear from the discussions made hereinafter.
>
> **12** to **14.** xxxxxxx
>
> **15.** It was held: (SCC pp. 21-22, para 6)
> "So far as the first issue referred to in our order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr. T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for, prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in Rekha Chaturvedi v. University of Rajasthan. The reasoning in the majority opinion that

4 (2007) 4 SCC 54

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> by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview."

The said decision is, therefore, an authority for the proposition that in absence of any cut-off date specified in the advertisement or in the rules, the last date for filing of an application shall be considered as such.

16. Indisputably, the appellant herein did not hold the requisite qualification as on the said cut-off date. He was, therefore, not eligible therefor.

17 to **19.** xxxxxx

20. 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.

12. In the matter of **Shankar K. Mandal and Others Vs. State of Bihar and Others**[5]**,** held that the cut-off is fixed by the Rules first among filling them by the advertisement and if neither specifies ordinarily by the last date for receipt of application and observed in paragraph 5 as under:

> 5. Pursuant to the directions contained in the earlier judgment of the High Court as affirmed by this Court, a fresh exercise was undertaken. Since the present appellants were not selected, writ petitions were filed before the High Court. In the writ petition which was filed by fifty-five persons and disposed of by the Division Bench the conclusions were essentially as follows: *(1)* Some of the writ petitioners (Writ Petitioners 5, 18, 23, 28, 41 and 53) were overage at the time of their initial appointment and their cases

5 (2003) 9 SCC 519

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were, therefore, wholly covered by the directions given by the High Court, and they were not entitled to relaxation of age; *(2)* So far as Writ Petitioners 6, 26, 30 and 55 are concerned, the stand was that they had not crossed the age-limit at the time of making the applications for appointment and, therefore, were within the age-limit at the time of initial appointment and were, therefore, entitled to relaxation of age in terms of the judgment passed by the High Court earlier and affirmed by this Court. This plea was turned down on the ground that what was relevant for consideration related to the age at the time of initial appointment and not making of the application; *(3)* As regards Writ Petitioner 24, he was underage at the time of appointment. He was permitted to file a representation before the Director of Primary Education and the High Court ordered that his case would be considered afresh; *(4)* In respect of Writ Petitioners 9 and 17, it was noted that they were refused absorption on the ground that they had not made any application in d response to advertisement issued pursuant to the order passed by this Court. Since no material was placed to substantiate this stand and no reasons had been communicated for non-absorption, direction was given to consider representations if made by them within one month from the date of judgment. The said judgment is under challenge in CA No. 916 of 1999. The appellants have taken the stand that in terms of this Court's judgment, a person who was not overage on the date of initial appointment was to be considered. Though it was conceded before the High Court that they were overage at the time of initial appointment, much would turn as to what is the date of initial appointment. The High Court had not considered as to what was the applicable rule so far as the eligibility regarding age is concerned. Learned counsel appearing for the respondent State however submitted that having made a concession before the High Court that they were overage on the date of appointment, it is not open to the appellants to take a different stand. The crucial question is whether appellants were overage on the date of their initial appointment. It is true that there was concession before the High Court that they were overage on the date of initial appointment. But there was no concession that they were overage at the time of making the application. There was no definite material before the High Court as to what was the eligibility criteria so far as age is concerned. No definite material was placed before the High Court and also before this Court to give a definite finding on that aspect. What happens when a cut-off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment and the effect of any non-prescription has been considered by this Court in several cases. The principles culled out from the decisions of this Court (*see Ashok Kumar Sharma*

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v. Chander Shekhar, Bhupinderpal Singh v. State of Punjab and Jasbir Rani v. State of Punjab) are as follows:

> *(1)* The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.
>
> *(2)* If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.
>
> *(3)* If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.

13. In the matter of **Dolly Chandra V. Chairman,JEE and Others**[6]: their Lordship of the Supreme Court distinguishes possessing the substantive eligibility by the cut-off from producing proof of it. It is further held that a deficiency in proof may, depending on the governing conditions, be curable; the eligibility can neither be relaxed nor acquired later and observed in paragraph 7 and 8 as under:

> "**7.** The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

6 (2005) 9 SCC 779

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8. This principle was explained and applied in Charles K. Skaria v. Dr. C. Mathew. The controversy here related to admission to a postgraduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or subspecialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to postgraduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below: (SCC pp. 762 & 763)

"*20.* There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, *yet before the date of actual selection.* The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor.... Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is

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unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

* * *

24. It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from overemphasis on the external rather than the essential. We think the Government and the Selection Committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like marklists from universities, why, even bail orders from courts and government orders from public offices."

14. As such the eligibility is to be judged on the last date of receiving application, unless the advertisement or rules provides otherwise. (See **Rekha Chaturvedi Vs. University of Rajasthan[7]; Bhupinderpal Singh Vs. State of Punjab[8]; Ashok Kumar Sonkar Vs. Union of India (Supra); Rakesh Kumar Sharma Vs. State (NCT of Delhi)[9].**

Part-V: The divorcee is a legal status that must exist

15. The divorcee category is the horizontal reservation within a category. A candidate who claims and asserts that he/she is no

7 1993 Supp. (3) SCC 168
8 (2000) 5 SCC 262
9 (2013) 11 SCC (58)

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longer married. These are the legal status and the claim must be true and verifiable on the last date.

16. Section 2(2) of the Hindu Marriage Act, 1955 saves tribal custom. However, it does not relieve a candidate of the terms of a public recruitment. Custom must be pleaded and proved including its content, antiquity and the manner of dissolution. A recruiting body verifying thousands of documents cannot adjudicate the existence of a custom, its application to the individual and the date of dissolution. A decree of a court of competent jurisdiction is the uniform and verifiable proof. Family Courts have jurisdiction over declarations of marriage and matrimonial status under Section 7(1), Explanation (b) of the Family Courts Act, 1984.

Part-VI: A customary divorce must be pleaded and proved before a Court and recruitment body cannot decide it

17. The Scheduled Tribe candidates are not precluded from obtaining such a declaration. The requirement burdens no one unequally. It asks the candidate to establish her status in the ordinary forum before she claims a benefit that depends on it.

18. Section 29(2) of the Hindu marriage Act saves a right to dissolve the marriage by custom but the custom must be specifically pleaded and specifically proved by the party relying on it as held by their Lordship in Supreme Court in **Yamanaji H. Jadhav V. Nirmala[10],** and observed in para 7 as under:

> **"7.**In the view that we are inclined to take in this appeal, we do not think it is necessary for us to go into the contentions advanced by the learned counsel for the parties in this case, because we find that the courts below have erroneously proceeded on the basis that the divorce deed relied upon by the parties

10 (2002) 2 SCC, 637

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in question was a document which is acceptable in law. It is to be noted that the deed in question is purported to be a document which is claimed to be in conformity with the customs applicable for divorce in the community to which the parties to this litigation belong to. As per the Hindu law administered by courts in India divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, with only exception where it is recognised by custom. Public policy, good morals and the interests of society were considered to require and ensure that, if at all, severance should be allowed only in the manner and for the reason or cause specified in law. Thus such a custom being an exception to the general law of divorce ought to have been specially pleaded and established by the party propounding such custom since the said custom of divorce is contrary to the law of the land and which, if not proved, will be a practice opposed to public policy. Therefore, there was an obligation on the trial court to have framed an issue whether there was proper pleadings by the party contending the existence of a customary divorce in the community to which the parties belonged and whether such customary divorce and compliance with the manner or formalities attendant thereto was in fact established in the case on hand to the satisfaction of the court. In the instant case, we have perused the pleadings of the parties before the trial court and we do not find any material to show that prevalence of any such customary divorce in the community, based on which the document of divorce was brought into existence was ever pleaded by the defendant as required by law or any evidence was led in this case to substantiate the same. It is true that in the courts below the parties did not specifically join issue in regard to this question and the lawyers appearing for the parties did orally agree that the document in question was in fact in accordance with the customary divorce prevailing in the community to which the parties belonged but this consensus on the part of the counsel or lack of sufficient pleading in the plaint or in the written statement would not, in our opinion, permit the court to countenance the plea of customary divorce unless and until such customary divorce is properly established in a court of law. In our opinion, even though the plaintiff might not have questioned the validity of the customary divorce, the court ought to have appreciated the consequences of there not being a customary divorce based on which the document of divorce has come into existence bearing in mind that a divorce by consent is also not recognisable by a court unless specifically permitted by law. Therefore, we are of the opinion to do complete justice in this case it is necessary that the trial court be directed to frame a specific issue in regard to customary divorce based on which the divorce deed dated 26-6-1982 has come into

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> existence and which is the subject-matter of the suit in question. In this regard, we permit the parties to amend the pleadings, if they so desire and also to lead evidence to the limited extent of proving the existence of a provision for customary divorce (otherwise through the process of or outside court) in their community and then test the validity of the divorce deed dated 26-6-1982 based on the finding arrived at in deciding the new issue."

19. The Supreme Court in the matter of **Sanjana Kumari V. Vijay Kumar- Criminal Appeal No.2905/2023 decided on 18.09.2023,** held that parties can have a valid divorce through a customary divorce deed only if they prove that it was established custom, whether the parties are governed by such custom is a question of fact which cannot deliberately adjudicated only by a Civil Court and until it is proved there is presumption of subsisting marriage and observed in para 10 and 11 as under:

> "10. There can be thus no doubt that the party who places reliance on customary divorce deed is obligated to establish that such custom is allowed by a practice that has been uniformly observed for a long time and such custom is not unreasonable or opposed to public policy and thus the validity of such customary divorce is duly protected by the exception carved out in Section 29(2) of the 1955 Act.
>
> 11. The issue whether the parties are governed by the custom under which a divorce can be obtained without recourse to Sections 11 and 13 of the 1955 Act, is essentially a question of fact which is required to be specifically pleaded and proved by way of cogent evidence. Such question can ordinarily be adjudicated only by a civil court. May be in the peculiar facts and circumstances of a case, the validity of a customary divorce deed can be examined even by a court other than the Civil Court in some collateral proceedings. But that is not the question which falls for our consideration in these proceedings."

20. Section 7(1) Explanation (b) Family Court confers jurisdiction over a suit or proceedings for declaration as to the validity of a marriage or as to the matrimonial status of any person and a tribal man, who claims a customary divorce can seek exactly such

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a declaration from family court and it cannot be done by the recruiting body. In fact **Sunita Meena's** (supra) is confined to the facts of the case and does not hold the customary divorce is enough as **Sunita Meena** (supra) did not hold that community divorce is sufficient. The Division Bench affirmed the order of Single Bench who kept the selection results for six months with liberty to her to obtain a declaration from the Family court that her marriage was dissolved on 11.05.2008 and directed consideration only if she fulfilled the conditions stipulated in the Single Judge order. So even there, a Family Court declaration was required. He dealt with candidate whose declaratory suit has been refused by two Courts below.

Part-VI: Conclusion and Answer to question of law

21. In view of the above, the question so referred is answered as under:-

(1) A female candidate of Scheduled Tribes category is not entitled to appointment under the Divorcee category on the strength of a customary divorce without a decree of dissolution of marriage by jurisdictional court establishing her status as divorcee on or before the last date of submission of the application form.

(2) Section 2(2) of the Hindu Marriage Act, 1955 does not relief such a candidate of requirement of proof; a customary divorce must be pleaded and proved before a competent court and cannot be adjudicated by the recruiting body.

(3) **The Secretary, Rajasthan Public Service Commission Vs. Sangeeta Varhat** (supra), lays down the law correctly on this point and **Rajasthan Public Service Commission Vs. Sunita Meena** (supra) is confined to its own facts.

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22. The reference is accordingly disposed off.

23. Let the matter be placed before the appropriate Bench having the roster for considering the appeal on its own merits.

24. We place on record our appreciation for the assistance rendered by Mr. Sandeep Pathak, Mr. Tribhuvan Narayan Singh, Mr. Tanveer Ahamad with Mr. Iliyas Khan and Mr. Tanay Jareda, Mr. Shiv Charan Singh, with Mr. Harsh Saraswat, Mr. Chain Singh Rathore, Mr. Vikash Meena, Mr. Akshit Gupta, Ms. Pragya Seth, Mr. Nakul Bansal, Mr. Shreyansh Dhariwal, Mr. Pallav Pancholi, Mr. Kapil Gupta, Mr. Ajay Gadhwal, Mr. R.S. Sinsinwar, Mr. Dharemndra Kumar Bairwa, Ms. Anisha Yadav, Mr. Chitransh Saxena, Mr. Abhay Singh Rathore, Mr. Tanay Choudhary, Mr. Ayal Yadav, Mr. Sushil Yadav, Mr. Akshay Singh, Mr. Ranvijay Singh, Ms. Vedika Yadav, Mr. Akshay Singh, Mr. Bhawani Shankar, Mr. Ashish Mittal, Mr. Aditya Raj, Mr. Punit Singhvi, Mr. Ayush Singh, Mr. Ajay Singh Rathore, Mr. Ishan Verma, Mr. Naman Dadhich, Mr. Lakshya Sharma, Mr. Prem Chand Dewanda, Mr. Kapil Choudhary, Ms. Riya Choudhary, Mr. Himanshu Dholia, Mr. Abhishek Singh Devanda, Ms. Muskaan Jalu, Mr. Avin Chhangani with Ms. Priyanka Bishnoi, Mr. Virendra Lodha, Sr. Adv. assisted by Mr. Jai Lodha, Mr. Ankit Rathore, Ms. Saral Sharma, and Ms. Katyani Singh, Mr. S.S.Naruka, AAG with Ms. Ritika Naruka, Mr. Sachin Rathore, Mr. Manish Sharma, Mr. Ritik Dahiya, and Mr. Abhishek Singh, Mr. Sandeep Jain, Mr.Shobit Tiwari, with Mr. Pushpendra Singh Tanwar, and Mr. Rohit Tiwari, Mr. Ashish Saksena, Mr.M.F. Baig, Mr. Naman Maheshwari, Mr. Vishwas Fatehpuria, Mr.Priyansh Gupta, Mr. Raghu Nandan Sharma, with Ms. Manasvita Sharma, Dr. Saugath Roy,

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learned counsels who appeared and made submissions in arriving at the aforesaid conclusion.

(PRAMIL KUMAR MATHUR, J.) (SAMEER JAIN, J) (SANJAY K. AGRAWAL, CJ)

Naval Gandhi(Reserved)

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