

GAHC010184972021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5970/2021

RIMLEE SAIKIA
D/O SASANKA KUMAR SAIKIA, R/O GOHAIN GAON, WARD NO. 5,
MORIGAON, P.O. MORIGAON, ASSAM, PIN 782105

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, DEPTT. OF WELFARE OF PLAIN TRIBES AND BACKWARD
CLASSES, DISPUR, ASSAM, PIN 781006

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

DEPTT. OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
DISPUR
ASSAM
PIN 781006

3:THE UNION OF INDIA

DEPTT. OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS GOVT. OF INDIA NORTH BLOCK
NEW DELHI 110001
REPRESENTED BY THE DIRECTOR.

4:THE DEPUTY COMMISSIONER

DIST. MORIGAON
ASSAM
PIN 782105

5:THE ASSTT. COMMISSIONER

OFFICE OF THE DEPUTY COMMISSIONER
DIST. MORIGAON
ASSAM
PIN 782105

6:THE CIRCLE OFFICER

MORIGAON REVENUE CIRCLE
MORIGAON
ASSAM
PIN 78210

Advocate for the Petitioner : MR. A K BARUAH

Advocate for the Respondent : SC, WPT AND BC

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 26/05/2023

Heard Mr. A.K Baruah, the learned counsel appearing on behalf of the Petitioner. Mr. R. Dhar, the learned counsel appears for the Respondent Nos. 1& 2, Mr. K. Gogoi, the learned counsel appears for the Respondent No. 3 and Mr. N. Goswami, the learned counsel appears for the Respondent Nos. 4, 5 & 6.

2. The instant writ petition is taken up for disposal at the motion stage in view of the fact that the Central Government i.e. the Respondent No. 3 have already filed their affidavit explaining the Office Memorandum dated 8th of September,1993.

3. It is the case of the petitioner herein that the Petitioner belongs to the Other Backward Classes(non-creamy layer). The Petitioner had passed her Master of Science in the year 2018 and as on the date of filing of the writ petition was working as a Research Scholar in the Department of Physics, Gauhati University. The Petitioner's

father is an Assistant Teacher at Charaibahi Higher Secondary School, Morigaon and the Petitioner's mother is a Subject Teacher in the same school. In the year 2019-20, the Petitioner applied for the Other Backward Classes (OBC Non-Creamy Layer) Certificate before the concerned authorities. The authorities concerned issued the OBC (OBC Non-Creamy Layer) Certificate bearing No. 03042019-001-01902027 on 3/4/2019.

4. The Petitioner applied for the State Level Eligibility Test under the Other Backward Class (OBC) (Non-Creamy Layer Category). The Petitioner successfully cleared the examination and the results were published on 5/8/2021.

5. In the meantime, prior to the result being published, the validity of the certificate dated 3/4/2019 expired on 2/4/2020. However, on account of the COVID pandemic and the lockdowns as declared by the Revenue and Disaster Management Department, the petitioner could not apply for renewal of the OBC (NCL) Certificate at that relevant point of time. However, on 2/8/2021 prior to the result being published, the petitioner applied for the renewal of the OBC (NCL) Certificate. Thereupon on 3/9/2021, the Assistant Commissioner, Morigaon issued a certificate to the petitioner certifying that she belongs to the OBC (Creamy Layer). The said certificate was issued bearing No. 03092021-001-03716269. However, when the petitioner visited the Office of the Deputy Commissioner, Morigaon for the purpose of attestation of the said certificate, the petitioner was informed that the Other Backward Class(OBC Non Creamy Layer) Certificate dated 3/9/2021 was reverted back. The Petitioner thereupon on 1/10/2021 checked her application status in the relevant website of www.edistrict.assam.gov.in and the status as regards the petitioner's certificate was shown as reverted back and reasons assigned therein is that her family income was above Rs. 8 lakhs per annum. Thereupon the petitioner on 11/10/2021 submitted a representation before the concerned authorities highlighting her grievances. However, there was no positive action taken for which the petitioner approached this Court by filing the present writ petition on 2/11/2021.

6. It appears on record that on 15/11/2021, this Court after recording the entire case of the petitioner directed the matter to be listed again on 30/11/2021 so that the Respondent Nos. 1, 2, 3 & 4 could clarify the matter. It further reveals from the records that on 20/12/2021 in view of the stand taken by the Respondent Nos. 1 and 2 as well as the Central Government there was a direction upon the Central Government to file an affidavit in the matter regarding their stand taken with regard to the OBC (Creamy Layer) Certificate of the petitioner. The writ petition was thereupon directed to be listed on 1/2/2022. However, on 1/2/2022 there was no consequential order passed.

7. Be that as it may, on 25/1/2022, the respondent No. 3 had duly filed an affidavit-in-opposition. Thereafter the matter has been listed today before this Court.

8. I have heard the learned counsels appearing on behalf of the parties.

9. The grievances of the petitioner herein is that the Respondent Nos. 4 and 5 while reverting the certificate dated 3/9/2021 did not take into consideration the Office Memorandum dated 8/9/1993 which holds the field.

10. The learned counsel for the Petitioner drawing the attention of this Court to the Office Memorandum dated 8/9/1993 submitted that the petitioner's mother would come within the ambit of Class-II Officer (Post Graduate Teacher) (Subject Teacher) whereas the Petitioner's father would come within the ambit of Class-III Officer being Graduate Teacher (Assistant Teacher) as could be seen from Sub-Rule 3(1) (b) & (c) of the Assam Secondary Education (Provincialised School) Service Rules, 2018. It is therefore the case of the Petitioner that the Petitioner would not come within the ambit of the Schedule to the Office Memorandum dated 8/9/1993. Accordingly, the action of the respondent authorities to revert the OBC (NCL) Certificate of the Petitioner dated 3/9/2021 was contrary to the Office Memorandum dated 8/9/1993 which was holding the field.

11. The submission so made by the learned counsel for the Petitioner finds support

with the explanation so given to the Office Memorandum dated 8/9/1993 by the respondent No.3 in its affidavit-in-opposition. In paragraph No. 3 of the said affidavit-in-opposition, it was mentioned that Category-II (Service Category) of the Schedule attached to the O.M. dated 8/9/1993 provides the criteria for determining Creamy Layer Status of sons and daughters of persons belonging to the OBC category and working in the Central and State Government or in organizations where the equivalence of post vis-à-vis posts in Central/State Government has not been established. In the said paragraph, it has been mentioned as to when the sons and daughters of Group A/Class-I Officers of All India Central and State Services (Direct Recruits) are considered falling in creamy layer.

12. It has further been explained as to when the sons and daughters of Group B/Class II Officers of Central and State Services (Direct Recruits) are considered as falling in creamy layer. Relevant to take note of that in the case of Group B/Class II Officers of Central and the State Services to be not entitled to the creamy layer. Such cases are --

- (a) Both the parents have to be Class-II Officers;
- (b) In case of parents of which only the husband is a Class II Officer and he gets into the Class –I at the age of 40 or earlier ;
- (c) Parents both of whom are Class –II Officers and one of them dies or suffers permanent incapacitation and either one of them have had benefit of employment in any international organization like UN, IMF, World Bank etc for a period of not less than 5 years before such death or permanent incapacitation ;
- (d) Parents of whom one is a Class I Officers (Direct Recruit or pre-40 promoted) and other is a Class –II Officer and such parent (who is a Class-II Officer) dies or suffers permanent incapacitation.

13. It was also further mentioned that in case of sons and daughters whose parents both of whom are Class-II Officers and one of them dies or suffers permanent

incapacitation; or parents both of whom are Class-II Officers and both of them died or suffered permanent incapacitation even though either of them have had the benefit of employment in any international organization like UN, IMF, World Bank etc for a period of not less than 5 years before their death or permanent incapacitation would not come within the ambit of the creamy layer. It has been further mentioned that in respect to category-VI which pertains to the income/wealth criteria, the gross annual income of Rs.8 lakhs or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years would not be entitled to the creamy layer but in that case the income from salaries or agricultural land shall not be clubbed. In such cases, the income has to be taken from other sources of wealth which would bring them within the purview of income/Wealth Test.

14. In view of the above stand of the Central Government and taking into account that the petitioner's mother is a Class-II Officer and the petitioner's father is a Class – III Officer as per the Assam Secondary Education (Provincialised School) Service Rules, 2018, it was stated in the affidavit of the respondent No. 3 at paragraph No. 6 that the petitioner being a daughter of a Class-II Officer and Class-III Officer would not come within the ambit of the OBC (Creamy Layer).

15. The learned counsel appearing on behalf of the respondent Nos. 4 and 5 against whose impugned actions the present writ petition was filed, duly submits that the said authorities ought to have taken into account the Office Memorandum dated 8/9/1993 in the perspective as has been explained in the affidavit-in-opposition by the Respondent no. 3.

16. Mr. R. Dhar, the learned counsel appearing for the Respondent Nos. 1 and 2 also supports the stand of the Respondent No. 3.

17. Under the above circumstances, this Court therefore disposes off the present writ petition observing that the petitioner would not come within the ambit of OBC(Creamy Layer) on the ground that the petitioner's mother is a Class-II Officer and petitioner's

father is a Class-III Officer. Accordingly, this Court therefore directs the respondent No.4 to forthwith, upon receipt of a certified copy of the instant order, issue a OBC (Non-Creamy Layer) Certificate to the petitioner and not later than 15 days therefrom.

18. With the above observations and directions, the petition stands disposed off.

JUDGE

Comparing Assistant