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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1016 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 457 of 2014

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Ashish Kumar, son of Sri Ramashish Chaudhary, resident of Mohalla-Kathalbari, Police Station L.N.M. University, District Darbhanga

.... Appellant/s

Versus

1. The Chairman Cum Managing Director, State Bank of India, Mumbai.
2. The General Manager, State Bank of India, Mumbai.
3. The Assistant General Manager, State Bank of India, Mumbai.
4. The Assistant General Manager (H.R.), S.B.I., Local Head Office - C.6 Synergy, G. Block, Bandra Kurla Complex, Bandra (E) Mumbai - 800051.
5. The Assistant General Manager (H.R.) S.B.I. Local Head Office, Judges Court Road, Gandhi Maidan, Patna, Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. R.K.Ranjan, Advocate Mr. Amit Prakash, Advocate.
For the Respondent/s	:	Mr. Kaushlendra Kumar Singh, Advocate. Mr. Sunil Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 28-10-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 7th April, 2014 whereby the claim of the appellant for appointment under the category of Other Backward Classes (hereinafter referred to as the ‘OBC’) was not accepted.

2. The respondent-State Bank of India (hereinafter referred to as ‘the Bank’) published an advertisement on 30th January, 2013 inviting applications for recruitment of Probationary Officers in the

Bank. Clause -11(i) of the Advertisement contemplated a declaration by a candidate seeking reservation under the category of OBC that he/she does not belong to creamy layer as on 23rd February, 2013. Clause- 3 and 11(i) of the Advertisement reads as under:-

> "3. Candidates belonging to OBC categorically but coming in the "CREAMY LAYER" are not entitled to OBC reservation and age relaxation. They should indicate their category as 'GEN' or 'GEN (OH)' or 'GEN (VH)' (as applicable).
>
> 11(i) A declaration to be submitted in prescribed format by candidates seeking reservation under OBC category that he/she does not belong to the creamy layer as on 23.02.2013.
> The OBC certificate containing the 'Non-Creamy Layer' clause issued during the period 01.04.2012 to 31.03.2013 should be submitted by such candidates, if called for interview."

3. The appellant submitted a certificate dated 13th August, 2012 to the effect that the appellant does not belong to creamy layer, but at the foot of the said certificate, it was mentioned that annual income from salary is Rs. 7,03,000/-.

4. From the Income Tax Return of the father of the appellant, the income of his father of the last three consecutive years was found as under:-

2010-11	- Rs. 8,80,376.81
2011-12	- Rs. 8,50,94.16

2012-13 - Rs. 7,77,030.61

5. It is on the said account, the appellant was not offered appointment against OBC category, as he belongs to creamy layer in view of the policy adopted by the public sector banks dated 08.09.1993. The relevant extracts from the policy reads as under:-

APPENDIX 'I'

PERSONS/SECTIONS EXCLUDED FROM RESERVATIOIN [Schedule to G.I., Deptt. Of Per.& Trg., O.M. No. 36012/22/93-Estt.(SCT), dated 8-9-1993]

Description of category	To whom rule of exclusion will apply
VI. INCOME/WEALTH TEST	Son(s) and daughter(s) of- (a) persons having gross annual income of Rs. 4.5 lakhs or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years. (b) persons in Categories I,II,III and V A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above. Explanation: (i) Income from salaries or agricultural land shall not be clubbed. (ii) The income criteria in terms of rupee will be modified taking into account the change in its value over three years. If the situation, however so demands, the interregnum may be less. Explanation: Whether the expression permanent

	incapacitation" occurs in this schedule, it shall mean incapacitation which results in putting an officer out of service.

6. The learned Single Bench, on the aforesaid facts, returned a finding that the appellant is not entitled to seek appointment under the category of OBC, as he stands excluded from said category in view of income of his father of more than Rs. 6 lakhs per annum, as enhanced on 16th May 2013.

7. Learned counsel for the appellant vehemently argued that income from salary or income from agricultural land cannot be taken into consideration for determining gross annual income of Rs. 6 lakhs as mentioned in Clause-A of the 3rd column of the Circular. It is contended that the entire income of Rs. 7 lakhs is from salary, so the said amount cannot be taken into consideration for determining creamy layer status of the appellant. He relies upon a Supreme Court judgment reported as Surinder Singh v. Punjab State Electricity Board, Patiala; (2014) 15 SCC 767.

8. We have heard learned counsel for the parties and find no merit in this appeal. The explanation, as reproduced above, is to the effect that income from salary or income from agricultural land shall not be clubbed. Meaning thereby, the income from salary and agricultural land cannot be clubbed for determining the gross annual income of Rs. 6 lakhs in terms of Clause A of the said Circular.

Annual income under Clause A would include the income from salary or income from agricultural land, but income from salary and agricultural land cannot be clubbed together for determining the overall limit of Rs. 6 lakhs. The clubbing is prohibited of income from salary and income from agriculture land and not the exclusion of income from salary for determining the gross annual income of Rs. 6 lakhs.

9. In the judgment referred to by the learned counsel for the appellant, while considering the Circular dated 8th September, 1993, the Court found that income of a candidate cannot be taken into consideration, as there is no clause in the said Circular to include the income of the candidate as income of the parents alone would be relevant to determine the creamy layer status of the candidate. The relevant extract reads as under:

> "7………………Having minutely examined category VI, as also the description contained in the schedule, to whom the same would apply, there is really no room for any doubt, that in clauses (a) and (b) thereof, it is the income/wealth of the parents of the individual concerned, which is of relevance. The description is clearly silent about the individual's own income. It is not possible for us to accept, that the individual's own income could have been taken into consideration. The above determination of ours, is with reference to categories IV and VI. Therefore, even with reference to category IV, which includes professional's, the income of the professional, has not been included. Thus viewed, we

> are satisfied, that on the plain reading of category VI of the office memorandum dated 8.9.1993, that it was not the income of the individual concerned, but that of his parents, that would determine whether he would fall within the creamy layer or not."

10. The said judgment does not deal with the question of clubbing of income from agriculture land with income from salary. In the present case, the income from salary of the father of the appellant is more than Rs. 6 lakhs, thus the appellant has been rightly included in the category of creamy layer.

11. Learned counsel for the appellant then relies upon the Circular dated 14th October, 2004 issued to the Chief Secretary of all the States/Union Territories in respect of clarifications regarding creamy layer amongst OBCs. The appellant refers to the question nos. (v) and (ix) of para-4 of the said Circular, which reads as under:

> 4.(v) Will the sons and daughters of parents of whom husband is directly recruited Class III/Group C or Class IV/Group D employee and he gets into Class 1/Group A at the age of 40 or earlier be treated to be falling in creamy layer?
>
> (ix) How will be the Income/Wealth Test apply in case of Sons and daughters of parent(s) employed in PSUs etc. in which equivalence or comparability of posts has not been established vis-à-vis posts in the Government."

12. The answer to the questions, as contained in para-7 and 9 of the Circular, reads as under:

> "7. In regard to clause (v) of para 4, it is clarified that the

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sons and daughters of parents of whom only the husband is a directly recruited Class II/Group B officer who gets into Class I/Group A at the age of 40 or earlier are treated to be in creamy layer. If the father is directly recruited Class III/Group C or Class IV/Group D employee and he gets into Class I/Group A at the age of 40 or earlier, his sons and daughters shall not be treated to be falling in creamy layer.

9. In regard to clause (ix) of para 4, it is clarified that the creamy layer status of sons and daughters of persons employed in organizations where equivalence or comparability of posts vis-à-vis posts in Government has not been evaluated is determined as follows:

Income of the parents from the salaries and from the other Sources [other than salaries and agricultural land] is determined separately. If either the income of the parents from the salaries or the income of the parents from other sources [other than salaries and agricultural land] exceeds the limit of Rs. 2.5 lakh per annum for a period of three consecutive years, the sons and daughters of such persons shall be treated to fall in creamy layer. But the sons and daughters of parents whose income from other sources is also less than Rs. 2.5 lakh per annum and income from other sources is also less than Rs. 2.5 lakh per annum will not be treated as falling in creamy layer even if sum of the income from salaries and the income from the other sources is more than Rs. 2.5 lakh per annum for period of three consecutive years. It may be noted that income from agricultural land is not taken into account while applying the Test."

13 In view of the answer to question No. (ix), contained in para-9, it is clear that the income of the parents from salary and from other sources, is required to be determined separately. In fact, the

answer supports the view, we have taken earlier.

14. In view thereof, we find that as the income of the father of the appellant from salary is above the limit fixed in the Circular dated 08.09.1993, therefore, the appellant falls within the creamy layer and is, thus, not entitled to appointment under the category of OBC.

15. In view thereof, we do not find any error in the order passed by the learned Single Bench, which may warrant interference in the present intra court appeal. The appeal, accordingly, stands dismissed.

16. The request of the appellant for certificate to appeal under Article 134A of the Constitution of India is declined.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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