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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6613 OF 2016

Rajkumar N. Kadadas ... Petitioner
Vs.
The State of Maharashtra and ors. ... Respondents

Mr. Milind R. Deshpande for the Petitioner.
Mr. V.B. Thadani, AGP for the State.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

DATE : JULY 08, 2016.

P. C.

1] By this petition, the petitioner has applied for the following substantive reliefs:

“(b) This Honourable Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order holding that the Petitioner is entitled to get the Non Creamy Layer Certificate by excluding his agricultural and salary income from the computation of annual income, as provided under the Government of India Office Memorandum dated 14th October, 2008 category No. VI Service category) (Category No.II Service category (C) (a) read with category-VI(b)(i) Explanation, and also as per clause – (b) of the Government Notification dated 22nd January, 2013 and 25th March, 2013 and 24th June 2013 of the State of Maharashtra.

(c) The Order passed by the Respondent Nos.2 and 3 be set aside and quashed and Non Creamy Layer Certificate be granted to the Petitioner.”

2] Upon perusal of the Office Memorandum (O.M.) upon which reliance has been placed by Mr. Milind Deshpande, learned counsel appearing for the petitioner, we are not persuaded to hold that the income from salary or agricultural land is not to be taken into consideration under any circumstances, for the purposes of determining whether the petitioner is included within “*creamy layer*”. Clause VI of the Schedule to O.M. Dated 14 October 2008, *inter alia*, provides that persons in categories I,II, III and VA who are not dis-entitled to the benefit of reservation, but have income from other source of wealth which will bring them within the income /wealth criteria mentioned in sub-clause (a) of Clause VI shall be included in the creamy layer category, on the basis of income/wealth criteria mentioned in sub-clause (a). However, for this purpose, the income from salary or agricultural land shall not be clubbed.

3] In the facts and circumstances of the present case, the petitioner stands dis-entitled under Clause II to the Schedule appended to the O.M. This is because, both the petitioner and his wife are employees, whose income exceeds the limit prescribed for exclusion from the creamy layer. In such circumstances, there is no question of the very applicability of sub-clause (b) of Clause VI as aforesaid. If

sub-clause (b) is inapplicable, obviously, the explanation appended to this sub-clause will also not apply. It is impermissible for the petitioner to place reliance upon Clause-VI, without, in the first place, demonstrating as to how the petitioner stands included in the category referred to in Clause-VI. The O.M. has to be read in its entirety. Thus read, it is not possible to accept the contention raised by the learned counsel for the petitioner.

4] In view of the aforesaid, the present petition is dismissed. There shall, however, be no order as to costs.

[M. S. SONAK, J.]

[V. M. KANADE, J.]