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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 03.04.2019

+ W.P.(C) 3372/2019

VIKAS KUMAR

..... Petitioner

Through Mr.Vikram Hegde, Adv.

versus

UNION OF INDIA

..... Respondent

Through Mr.Arun Bhardwaj, CGSC with
Mr.Nikhil Bhardwaj & Mr.Prateek
Rai, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby directing the respondent to consider the petitioner as a OBC-NCL candidate. Consequently, to allocate the petitioner to an appropriate service by considering him an OBC-NCL candidate.

2. The case of the petitioner is that he is an OBC candidate and appeared in the Civil Services Examination conducted by the Union Public Services Commission. He qualified in the said examination and obtained the rank of

829, however, could normally have been allocated a post in the Indian Revenue Service if considered as an OBC candidate. He is being denied an allotment of service simply because his father is a BSNL employee. This has been held to place the petitioner in the “*Creamy layer*” of OBC candidates.

3. Pursuant to the judgment of a Constitution Bench of the Hon’ble Supreme Court in ***Indira Sawhney vs. Union of India: AIR 1993 SC 477***, an expert committee was appointed to recommend criteria for identification of what is known as the *creamy layer*. The expert committee took into account the fact that reservations in public employment are based on perceptions of social status rather than income alone and the *creamy layer* concept when applied to OBC should also be placed on social status and not solely economic criteria.

4. Accordingly, the expert committee identified several categories, under which persons could be excluded from reservation, one of them being the service category, which was applicable to children of persons directly recruited as Class I and II officers of State Government, Central Government and equivalent posts in PSUs etc. to ensure that implementation of the scheme was not delayed. The expert committee provided that till

such equivalence is determined, the income criterion be applied. The income criterion provided for the exclusion of persons, whose gross family income without including income from salary and agricultural income was above a prescribed limit i.e. currently ₹8 lacs but in the case of the petitioner, it is ₹6 lacs. The expert committee took care to note that the rule of caution was to be inherent in this exercise and that persons falling under a “grey zone” would not be excluded from the benefit of reservation.

5. Thereafter, the DoPT, vide an office memorandum dated 08.09.1993 provided for implementation of the scheme of reservation for OBC in Central Services and regarding the exclusion of *creamy layer*, adopted the report of the expert committee. Thus the said office memorandum of 1993 also provided for exclusion from reservation of children of persons who were directly recruited as Class I and Class II officers in State and Central Government, subject to the definitions and conditions therein and the rule would apply *mutatis mutandis* to PSUs etc. In cases where equivalence could not be found, income criterion under Category VI was to be applied and income from salary and agricultural income was not to be included.

6. The DoPT together with UPSC selected/recruited candidates under the OBC quota in various examinations by applying the above rule of not

counting salaries and agricultural income towards gross annual income. However, on 14.10.2004, DoPT issued an office memorandum ostensibly clarified the 1993 OM wherein though acknowledging that salaries are not to be counted towards gross annual income for all other purposes, the OM without providing any reason singled out children of persons employed in PSUs etc. stating that where equivalence had not been evaluated, a person would fall under the *creamy layer* if the income of his parents from either salary alone or other sources alone exceeded ₹2.5 lacs (as the limit then stood). The said OM of 2004 thus substantially modified the scheme of 1993 OM insofar as children of employees of PSUs etc. without any reasoning and without following the necessary procedure under law.

7. The similar issue came before this Court in W.P.(C) 3073/2017 and batch matters. This Court allowed the said petitions vide judgment dated 22.03.2018. Thus, the issue raised is no more *res integra*.

8. Accordingly, I hereby dispose of the present petition directing the respondent to verify all antecedents of the petitioner keeping in view the decision taken by this Court in W.P.(C) 3073/2011 and batch matters vide judgment dated 22.03.2018 within four weeks from the date of receipt of this order and issue appointment letter, if he is otherwise eligible.

9. Order *dasti* to both the parties.

(SURESH KUMAR KAIT)
JUDGE

APRIL 03, 2019
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