

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4945 OF 2023

- 1] Anand S/o Govindrao Injegaonkar,
Age – 49 years, Occu. Service as
Professor, R/o Injegaon,
Tq. Kinwat, Dist. Nanded
- 2] Ashwaghosh S/o Anand Injegaonkar,
Minor, Student, through his natural
Guardian – Father – Petitioner no. 1 .. Petitioners

Versus

- 1] The State of Maharashtra,
Through : The District Collector,
Nanded, Dist. Nanded
- 2] The Sub-Divisional Officer, Kinwat,
Dist. Nanded .. Respondents

...
Advocate for petitioner : Mr. M.P. Tripathi
AGP for the respondent – State : Mr. P.K. Lakhotiya
...

**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

DATE : 15 JUNE 2023

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard the learned advocate for the petitioners and the
learned AGP.

2. The petitioner no. 1 is aggrieved by the dismissal of his
application seeking a non-creamy layer certificate and also dismissal of
the appeal preferred by him.

3. As can be seen from the basic order by the original authority, it has considered the petitioner's case, by applying the income test / wealth test, obviously under clause (C)(a) read with explanation (i) of the government resolution dated 25-03-2023. It has pointed out the petitioner's income from the income tax return for the three years as under :-

Sr. No.	Year	Income (Rs.)
1	2019-20	21,04,355/-
2	2020-21	23,71,810/-
3	2021-22	29,15,092/-

The income tax returns clearly show that the returns were filed in respect of only the salaried income.

4. Learned advocate for the petitioners submits that salaried income is not to be considered in view of the explanation (i) as interpreted by this Court in several matters beginning with ***Aishwarya d/o Prakash Banmeru Vs. State of Maharashtra and others*** (writ petition no. 513 of 2013) decided by this Court on dated 18 July 2013 which is subsequently followed in ***Ganesh Kanhaiylal Dhandu Through father Kanhaiyalal Ramlal Dhandu Vs. The State of Maharashtra and others*** (writ petition no. 595 of 2020 with connected writ petition) decided on 24 February 2020 and in ***Mrugakshi Prakashrao Kanthale Vs. The State of Maharashtra and others*** (writ petition no. 6238 of 2020) decided on 28 October 2020.

5. The learned advocate also points out that to put at rest any further ambiguity as to whether the salaried income is to be excluded, the explanation given by the government to various departments vide its Circular dated 22-01-2013 expressly mentions that salaried income is not to be considered.

6. The learned AGP makes an attempt to take us through the actual provision contained in clause (C)(a) and submits that the correct interpretation of the explanation would demonstrate that the salaried income is not to be excluded but should be taken into consideration while ascertaining the fact whether a person belongs to non-creamy layer or otherwise.

7. We would have appreciated and even considered the submission of the learned AGP on its own merits independently but for the subsequent explanation issued by the State government vide communication / circular dated 22-01-2013. The submission of the learned AGP would not be tenable in the light of this explanation.

8. The writ petition is allowed partly.

9. The impugned orders are quashed and set aside.

10. The matter is relegated back to the respondent no. 2 for a fresh decision on the petitioner's application, however, it shall not be rejected by taking into account the salaried income of the petitioner.

The decision shall be taken as expeditiously as possible and in any event within one week.

11. Parties to act on an authenticated copy of this order.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/