



2024:DHC:8218-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 14557/2024 and CAV 517/2024, CM APPL. 61071-72/2024

UNION OF INDIA THROUGH ITS
UNDER SECRETARY

.....Petitioner

Through: Mr. Apoorv Kurup, CGSC with
Mr. Arnav Mittal, GP, Mr. Shaurya
Agarwal, Ms. Nidhi Mittal, Advocates

versus

SARTHAK SINGH & ANR.

....Respondents

Through: Mr. Vikram Hegde and Mr.
Abhinav Hansaraman, Advocate

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN****JUDGMENT (ORAL)**

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21.10.2024**C. HARI SHANKAR, J.**

1. Respondent 1 was the applicant before the learned Central Administrative Tribunal¹ in OA 2554/2023². He applied for appearing in the Central Civil Services (Preliminary) Examination 2022³, for which he declared himself to be a candidate belonging to the Other Backward Classes⁴ belonging to the Non-Creamy Layer⁵. He also attached with the application form, a certificate certifying that he was

¹ "the Tribunal", hereinafter

² "Sarathak Singh v UOI & Ors"

³ "the CSE 2022" hereinafter

⁴ OBC

⁵ "NCL", hereinafter



2024:DHC:8218-DB



an OBC (NCL) candidate. He cleared the Preliminary Examination and applied for appearing in the Central Civil Services (Main) Examination 2022, in which he was ranked 584th. His name was recommended by the Union Public Service Commission⁶ for appointment as an OBC category candidate.

2. Despite this, as no service was allocated to Respondent 1, he addressed an email to the petitioner on 23 July 2023 querying as to why he had not been allotted any service, but no response was received to the representation till the date Respondent 1 approached the learned Tribunal. The petitioner thereafter rejected the representation of the Respondent 1 by a communication dated 23 October 2023. The communication, however, did not provide any reasons for rejection.

3. In these circumstances, Respondent 1 approached the learned Tribunal by way of OA 2554/2023, seeking a direction to the petitioner to consider him as an OBC (NCL) category candidate in respect of the CSE 2022 and to allocate him an appropriate service.

4. The learned Tribunal has, by the impugned order dated 19 March 2024, allowed the OA. Aggrieved thereby, the Union of India has approached this Court by means of the present writ petition.

5. The learned Tribunal has held the issue to be covered against the petitioner by the judgment of a Division Bench of this Court in

⁶ “UPSC”, hereinafter



2024:DHC:8218-DB



UOI v Divyanshu Patel⁷.

6. Though, in the synopsis filed with the writ petition, a somewhat surprising stand has been adopted by the petitioner that the judgment in ***Divyanshu Patel*** is to be treated as having been rendered *in personam*, such a stand, thankfully, has not been raised before this Court by Mr. Kurup, learned counsel for the petitioner, obviously owing to his experience at the Bar. Suffice it to state, however, in order to avoid any such submission in other cases, that it is not open to any executive authority to *suo motu* treat a judgment of a Court as having been rendered *in personam* unless the judgment itself say so. Rather the Supreme Court has in ***State of UP v Arvind Kumar Srivastava***⁸, ***Inderpal Yadav v UOI***⁹, repeatedly held that the executive should ensure that the benefit of judgments which are rendered by the Court is extended to other persons similarly situated without requiring every such person to approach the Court.

7. A limited exception has been carved out in ***Arvind Kumar Srivastava***'s case only in the case of fence sitters who come to Court after years of delay, awaiting the outcome of other proceedings.

8. Having perused the facts of the present case *vis-à-vis* the facts in ***Divyanshu Patel***, we are entirely in agreement with the learned Tribunal that the issue in controversy is fully covered on facts and law by the decision in ***Divyanshu Patel***. Apparently, ***Divyanshu Patel*** was

⁷ 2018 SCC Online Del 13288

⁸ (2015) 1 SCC 347

⁹ (1985) 2 SCC 648



never carried in appeal and has attained finality.

9. Adverting, now, to the facts of the case before us, Respondent 1 is the son of Rajbir Singh Yadav, who was appointed as Lecturer (Non-Gazetted) Class III in the Haryana Education Service. On 30 March 2009, at the age of 43 years, Rajbir Singh Yadav was appointed as Principal against an OBC vacancy in the Government Senior Secondary School under the Directorate of Education, Govt of NCT of Delhi on temporary basis. The post of the Principal is admittedly a Class I post. Rajbir Singh Yadav was promoted as Deputy Director of Education on 1 August 2022 at the age of 56 years.

10. The principles regarding identification of creamy layer candidates among OBCs are generally contained in the Notification dated 8 September 1993 followed by a clarification dated 14 October 2004 issued by the Department of Personnel and Training¹⁰. The Division Bench of this Court has examined these two instructions in considerable detail in its decision in *Divyanshu Patel*, paras 7 to 11, 19 to 24 and 27 to 29 of which may be reproduced thus:

“7. Relevant extract of the notification dated 08.09.1993 reads as follows:

“2. Consequent to the consideration of the Expert Committee's recommendations this Department's Office Memorandum No. 36012/31/90-Estt. (SCT), dated 13.8.90 referred to in para (1) above is hereby modified to provide as follows:

(a) 27% (twenty seven percent) of the vacancies in civil posts and services under the

¹⁰ “DOPT”, hereinafter



Government of India, to be filed through direct recruitment, shall be reserved for the Other Backward Classes. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.....

“(c)(i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this office memorandum. (See: The Schedule, in so far as it is relevant reads as follows)”

“II. SERVICE CATEGORY

A. Group A/Class 1 officers of the All India Central and State Services (Direct Recruits)

Son(s) and daughter(s) of

- (a) parents, both of whom are Class I officer;
- (b) parents, either of whom is a Class I officer;.....”

B. Group B/Class II officers of the Central And State Services (Direct Recruits)

Son(s) and daughter(s) of

- (a) parents, both of whom are class II officers
- (b) parents of whom only the husband is a class II officer and he gets into Class I at the age of 40 or earlier.”

8. Relevant extract from the Clarification dated 14.10.2004 reads as follows:

“Following questions have been raised from time to time about the application of the above provisions to determine creamy layer:”

“(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 I/Group A at the age of 40 or earlier be treated to be falling in creamy layer?”



.....

“In regard to clause (v) of para 4, it is clarified that the 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 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. The relevant facts for examination of the said aspect may now be noticed. The respondent's father was appointed as a Post Office Clerk in Central Government at the age of 23 years and, subsequently, he was directly recruited as a Lecturer, which is a Group “A” post in Maharani Lal Kunwari Post Graduate College, Balrampur under State Government of Uttar Pradesh at the age of 43 years.

10. The petitioner claimed that the case of the respondent fell under Entry II of the Schedule to the O.M. dated 08.09.1993, and in particular under Clause (A) thereof as extracted above.

11. On the other hand, the respondent claimed that he was not covered by the “Creamy Layer”, since his father was a Group ‘C’ Government servant, and only at the age of 43 years, he got into Group ‘A’/Class I service. The respondent sought to place reliance on the Entry II (B), which relates to Group ‘B’/Class II Officers of the Central and State Services (Direct Recruitment) and in particular Entry (b) thereof as extracted above.

19. The only question which arises for determination is if the respondent falls under the “Creamy Layer” of OBC. Thus, the issue that arises is whether the case of the respondent is covered by sub-category “A” of the “II Service Category”, or sub-category “B” of the “II Service Category”. The argument of Mr. Mishra is very simplistic. The submission is that one has to only see whether, on the relevant date, a parent of the candidate is a Direct Recruit Class I Officer. If the parent is a Direct Recruit Class I Officer, the son or daughter would fall within the “Creamy Layer” by reference to clause (b) of sub-category “A”.

20. In conjunction with this submission, Mr. Mishra has submitted that clause (b) of sub-category “B” of the “II Service



Category” of the Schedule, relates to those cases where the Class II Officer gets into Class I Service at the age of 40 years, or earlier, through promotion or by any other mode, except by Direct Recruitment. Thus, the submission is that once the parent of the concerned candidate gets into Class I/Group A Service of All India Central or State Services by Direct Recruitment, it does not matter whether he has got into the said service under the age of 40 years or above the age of 40 years and, in either case, his sons and daughters would not be entitled to reservation since they would be covered by “Creamy Layer”.

21. Mr. Mishra has laid much emphasis on the use of the words “(Direct Recruits)” in sub-category “A” of the “II Service Category” of the Schedule. According to him, the sub-category “A” would not be attracted in respect of wards of Group A/Class I Officers who reached the said position through promotion, or any other mode, other than Direct Recruitment.

22. On the other hand, the submission of the respondent is that clause (b) of sub-category “B” under the “II Service Category” of the Schedule shows that the ward of a Class I Officer, who gets into Class I Service after the age of 40 years, would not fall within the “Creamy Layer”. Reliance is placed on the observations made by the tribunal, which sets out the rational for excluding the wards of such officers from the “Creamy Layer”.

23. Clause(b) of the sub-category “B” uses the expression “Parents of whom only the husband is a Class II Officer and he gets into Class I at the age of 40 or earlier”. The use of the expression “gets into Class I”, in our view, is very general and cannot be restricted to cover cases only of promotion, or to exclude cases of Direct Recruitment. A Class II Officer could get into a Class I Service either through promotion, or through absorption on deputation, or through transfer on deputation, or even through Direct Recruitment. The spirit behind prescription of the age limit of 40 years, or earlier, in clause (b) of sub-category B of “Category II Service Category” of the Schedule, is what the tribunal has taken note of and we entirely agree with it. The ward of an officer who gets into Class I Service, from a Class II Service at the age of 40 years or earlier, would enjoy the status, pay and environment (both social and academic) of a Class I Officer from a relatively young age, since, by the time an officer is 40 years, the children of such an officer would still be fairly young and of impressionable age. The backwardness attached to the caste to which the family of the officer/his wards belong, would be overcome on account of the parent of such a child enjoying the status and pay of a Class I/Group A Officer when the ward was relatively small. However, the situation would be different if such Class II/Group B Officer



were to get into Group A/Class I Service after the age of 40 years since, by then, his or her children would, normally, have grown up a little more beyond the impressionable age, without the parent of the child enjoying the status and pay attached to a Class I/Group A post.

24. The well settled rule of interpretation is that if there are two or more entries which may cover a situation, they have to be harmoniously construed and the one which is most appropriate - keeping in view the object, with which the entries are framed, should be preferred.

27. Viewed in the aforesaid light, we find that sub-category "A" under "II Service Category" is a general sub-category of Group A/Class I Officers of All India Central and State Services (Direct Recruits), whereas the category of officers covered by clause (b) of sub-category "B" of the "II Services Category" is a more specific category in respect of those Class I Officers, who were earlier Class II Officers and got into Class I service after the age of 40 years. Thus, even if the respondent's father was a Class II Officer before getting into Class I service, he would be covered by clause (b) of sub-category B of the Services Category of the Schedule, and not by sub-category A of the Services Category. In the present case, the Respondent's father was not even a Class II Officer. He was a Class III Officer and, thus, in any event, even Clause (b) of Sub-Category 'B' is not strictly attracted.

28. The position stands clarified by para 7 of the clarification dated 14.10.2004 and leaves no room for doubt. It specifically deals with a situation like the present - where the father of the candidate is directly recruited Class III or Group 'C' employee, and he gets into Class I/Group A at the age of 40 years or earlier, even then his sons and daughters are not to be treated as falling in the "Creamy Layer".

29. The decision in *Tanu Kashyap*¹¹ is also attracted in the facts of the present case. We reject the submission of the petitioner that all cases of Direct Recruitment into Class I/Group 'A' service are covered by sub-category 'A' of the "II Services Category". On a harmonious reading of sub-categories 'A' & 'B' of the "Services Category", what emerges is that if the direct recruitment in Class I/Group A Services has taken place before the age of 40 years, the case would fall under sub-category 'A', else under sub-category 'B'."

¹¹ *Tanu Kashyap v DOPT*, 2006 SCC OnLine CAT 293



2024:DHC:8218-DB



11. The learned Tribunal has held that the above findings apply *mutatis mutandis* to the case at hand in as much as this Court has held in *Divyanshu Patel*, applying the *generalis specialibus non derogant*¹² principle that Category B in the Notification dated 8 September 1993 must be treated as a special category, as opposed to Category A, which is a General Category. As such, if the candidate or her parents fall within Category B, Category A would not apply. In other words, if one of the parents of the candidate (reading the Notification in a gender neutral fashion) is a Class II officer, who enters Class I at or before the age of 40, the child of such candidate would not be entitled to be treated as OBC (NCL) Category candidate whereas if the parent enters Class I after the age of 40, the child would be entitled to OBC (NCL) benefits.

12. Applying this principle, the Division Bench has held that, as, in the case before it – as in the present case before this Court – the father of the candidate, Divyanshu Patel, had been appointed as a Post Office clerk at the age of 23 years and was directly recruited as a Lecturer, which was a Group A post at the age of 43 years, he would be entitled to be treated as a OBC (NCL) category candidate. This Court has rejected the contention of the UOI that Category A in the Notification dated 8 September 1993 would apply. In arriving at this conclusion, the Court has relied on the subsequent clarification of the DOPT dated 14 October 2004.

13. These facts apply *mutatis mutandis* to the case at hand. In the

¹² Things general do not derogate from things special



present case, too, the father of the respondent, Rajbir Singh Yadav, was earlier in Group C and entered Group A, at the age of 43 years when he was made the Principal. As such, the petitioner qualifies as a son of the parents of whom one of them was a Class III officer who entered into Class I above the age of 40 years. He, therefore, is entitled to be treated as an OBC (NCL) category candidate.

14. Mr. Apoorv Kurup, learned Counsel for the petitioner, has made a valiant attempt to distinguish the decision in *Divyanshu Patel*. He emphasizes, in this context, the reasoning of the Division Bench, as contained in para 23 of the judgment extracted *supra*.

15. He submits that, unlike the situation which obtained in *Divyanshu Patel*, where the respondent Divyanshu Patel had completed the majority of his education when his father was yet not a Class I officer, nearly the entire education of the present Respondent 1 has been completed after his father became a Class I officer. As such, Mr. Kurup's submission is that, while Divyanshu Patel did not reap any benefit of the Class I status of his father, the present petitioner has actually reaped the benefit of the Class I status which his father, Rajbir Singh Yadav, held.

16. Applying the philosophy which guides the decision in *Divyanshu Patel*, Mr. Kurup's contention is that Respondent 1 cannot be treated at par with *Divyanshu Patel*.

17. We are unable to accept this argument for the simple reason



2024:DHC:8218-DB



that, if we would, we would be reading into the notification dated 8 September 1993, an exception which would depend on whether the child undergoes the majority of his education after the parent has entered Class I or before the parent has entered Class I. This is a consideration which finds no place in the notification dated 8 September 1993. Indeed, it has figured for the first time in the arguments raised by Mr. Kurup at the Bar today and is not even the ground on which the Respondent 1's entitlement to be treated as an OBC (NCL) candidate was contested by the petitioner before the learned Tribunal.

18. For the aforesaid reasons, we are of the opinion that learned Tribunal has correctly held the facts of the present case to be fully covered by the decision of the Division Bench of this Court in *Divyanshu Patel*. We see no reason to take a different view.

19. Accordingly, this writ petition is dismissed in *limine*.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 21, 2024/yg

Click here to check corrigendum, if any