



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4569 OF 2025

Prasad Subhash Shekade.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
2. Divisional Non Creamy Layer
Certificate Scrutiny Committee.

...RESPONDENTS

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Shri V.D. Sapkal, Senior Advocate i/by Shri R.N. Patil and Shri
S.R. Sapkal, Advocates for the Petitioner.

Shri M.K. Goyanka, AGP for Respondent Nos.1 and 2/State.

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CORAM : MANGESH S. PATIL

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PRAFULLA S. KHUBALKAR, JJ.

DATE : 08 APRIL 2025

PER COURT (Per Prafulla S. Khubalkar, J.) :-

1. Heard learned Senior Advocate Shri V.D. Sapkal for
the petitioner and learned AGP Shri Goyanka for the
respondents/ State.

2. The petitioner has challenged order dated

24.03.2024 passed by respondent No.2 Committee invalidating his Non-Creamy Layer Certificate No.42081320048 dated 12.10.2021. By the impugned order, respondent No.2 has inferred that income of the petitioner's father for the financial years 2018-2019, 2019-2020 and 2020-2021 from his salary is above the limit of Rs.8 lac and hence, the petitioner does not fall in Non-Creamy Layer category. Respondent No.2 Committee has specifically observed that the judgments relied upon by the petitioner in Writ Petition No.513/2013 decided by this bench in the matter of ***Aishwarya d/o Prakash Banmeru vs. State of Maharashtra and others***, dated 18.07.2013 and Writ Petition No.614/2022 decided by the Nagpur Bench in the matter of ***Hrushikesh Anant Buradkar vs. The State of Maharashtra and others***, dated 14.12.2022, are restricted to the cases of the petitioners therein and cannot be applied to the case of the present petitioner.

3. Learned Senior Advocate Shri Sapkal for the petitioner vehemently submits that the impugned order is grossly illegal as respondent No.2 has failed to consider the provisions of the Government Resolution dated 25.03.2013, particularly clause

C(a) of category serial No.I and clause (b)(i) of category serial No.VI of Schedule-A, which provide for exclusion of income from salary and agriculture while considering the income for the purpose of granting non creamy layer certificate. He submits that the petitioner's father Subhash Shekade was working in Babuji Aavhad Mahavidyalaya, Pathardi, which is non government aided college affiliated to Savitribai Phule Pune University and his income from salary was liable to be excluded. He also submits that the controversy involved in this matter is covered by the law laid down in the matters of ***Aishwarya d/o Prakash Banmeru (supra)*** and ***Hrushikesh Anant Buradkar (supra)*** and although these judgments were cited before respondent No.2, same are ignored by absolutely erroneous reason that these judgments are applicable only to the petitioners in those cases.

4. Learned AGP Shri Goyanka for respondent Nos.1 and 2 opposes the petition and supports the impugned order. He submits that income of the petitioner's father being above the limit of Rs.8 lac, respondent No.2 Committee has rightly passed the impugned order. He submits that the petitioner does not fall in the category of non-creamy layer and the non-creamy layer

certificate is rightly invalidated.

5. We have considered the rival submissions and perused the papers.

6. Government Resolution dated 25.03.2013, particularly clauses C(a) of category serial No.I and clause (b)(i) of category serial No.VI of Schedule-A provide that while calculating the income of a candidate for the purpose of granting a non-creamy layer certificate, the income from salary and agricultural income has to be excluded. Although no rationale is demonstrated for excluding the income from the salary, however, since the exclusion of income from salary is reflected repeatedly in the policy of the government, the same will have to be given due consideration. Although the very concept of creamy layer should encompass consideration of income from all the sources, however, the policy of the government is consistent to exclude the income from the salary.

7. In this regard, it is also pointed out that even the Department of Personnel and Training vide Office Memorandum dated 14.10.2004 has stated that while applying the income/wealth test to determine the creamy layer status of any

candidate, income from salary and income from agricultural land shall not be taken into consideration. As such, the policy of the government as it stands today, as reflected in Government Resolution dated 25.03.2013 excludes the income of the parents of the candidate from salary.

8. Be that as it may, a consistent view is taken by the co-ordinate benches of this Court in the matters of **Aishwarya d/o Prakash Banmeru** (supra), **Hrushikesh Anant Buradkar** (supra) and further in the matter of **Mrugakshi Prakashrao Kanthale Vs. The State of Maharashtra and others** (Writ Petition No.6238/2020, dated 28.10.2020), holding thereby that considering the provisions of Government Resolution dated 25.03.2013, the salary income of the candidate's father has to be excluded. We find no reason at this stage to deviate and take a different view. Considering the facts of this case, we are of the view that the controversy is covered by these judgments and for the reasons recorded therein, the instant petition needs to be allowed. Hence, we pass the following order :-

(a) The Writ Petition is allowed.

(b) The impugned order dated 24.03.2024 passed by

respondent No.2 is quashed and set aside.

(c) Non-Creamy Layer Certificate No.42081320048 dated 12.10.2021 granted in favour of the petitioner by the Sub Divisional Officer, Pathardi, stands restored.

(d) No order as to cost.

kps

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)