IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25-06-2025
PRONOUNCED ON : 29.07.2025

CORAM

THE HONOURABLE MRS JUSTICE J. NISHA BANU
AND
THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

WP No. 6489 of 2025
and W.M.P.No.7138 of 2025

Rupak Roshan
Represented by his father R.Bashyam,
No.63, 3rd Cross, Kurunji Nagar Extension,
Lawspet Post, Puducherry-605 008.

Petitioner(s)

Vs

1.The Sub-Collector (Revenue)
North Puducherry, No.505, Kamaraj Salai,
New Saram, Puducherry-605 013.

2.The Tahsildar
Oulgarpet Taluk, East Coast Road,
Pakkumudayanpet, Puducherry-8.

Respondent(s)

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the first respondent made in No.6588/SC(R)N/A2/2020/241 dated 29.01.2025 and that of the consequential order of the second respondent made in order No.833345/TOO/TAH/2024/OBC dated 16.11.2024 to quash the same and to consequently direct the respondents to forthwith issue a certificate that the petitioner belongs to the OBC-NCL category.

For Petitioner(s): Mr.K.Vishal

For Respondent(s): Mr.V.Vasanthakumar
Additional Government Pleader
(Puducherry)

ORDER
(Made by M.Jothiraman J.)

The rejection order dated 29.01.2025 passed by the first respondent and the order dated 16.11.2024 passed by the second respondent are under challenge in the present writ petition.

2. The petitioner *viz*. Rupak Roshan, son of Bashyam, aggrieved by the decision of the first and second respondents in refusing to issue OBC-Non-Creamy Layer (NCL) certificate to him, has preferred the present petition.

3. The case of the petitioner is that he had applied for OBC-NCL

certificate for his son through online. He belongs to the caste "Cavara Naidu" and he is eligible for reservation under OBC-NCL category. The Tahsildar, Oulgarpet Taluk, rejected his application *vide* order dated 16.11.2024 on the sole basis that his income from salary for the past three years has exceeded Rs.8,00,000/- per annum. He had preferred an appeal before the appellate authority and the appellate authority rejected his appeal by confirming the order of the Tahsildar. He is employed in service sector of a private sector establishment and would fall within the scope of Category II(C) of the scheduled mentioned in the Office Memorandum dated 08.09.1993. The designation "Senior Manager" is not in the type of the hierarchy of the company. The designation of "Senior Manager" would not be an equivalent or comparable to that a Grade-B/Class-II officer of the All India Central and State services. The decision of this Court made in W.P.Nos.6387 to 6389 of 2017 *vide* order dated 31.08.2017 is applicable to him. He ought to have been held to be falling under Category II(C), should have been treated on par with that of people in Category II(C) and (B). Treating people falling in Category II(C) differently and not on par with their counterparts in Group II A & B (State and Central Services) brings in element of hostile discrimination. The income from salary of petitioner's father ought not have been included, while applying Income/Wealth Test.

4. The learned counsel appearing for the petitioner would submit that the order impugned passed by the first and second respondents is against the Office Memorandum No.36012/22/93-Estt.(SCT) dated 08.09.1993 and Office Memorandum No.36033/5/2004-Estt(Res) dated 14.10.2004. The order impugned has been passed on the wrong premise and arbitrarily held that the petitioner's father would fall under Category IV of the Office Memorandum dated 08.09.1993. The petitioner would fall under the ambit of Category II(C) of the Schedule mentioned in Office Memorandum dated 08.09.1993.

5. *Per contra*, the learned Additional Government Pleader (Puducherry) would submit that the income limit for determination of creamy layer amongst OBC has been raised to Rs.8,00,000/- with effect from 01.09.2017. The petitioner's father Bashyam's gross annual income exceeds the prescribed limit of Rs.8,00,000/- per annum as per the income-tax returns of last three consecutive assessment years *i.e.* 2021-22, 2022-23

and 2023-24 filed by the petitioner himself. The second respondent has rejected the claim of the petitioner based on paragraph nos.(3), (9) and (10) of the Office Memorandum dated 08.09.1993 issued by the Department of Personnel & Training (DoPT), Government of India (GOI). The certificate issuing authorities are issuing certificates relying upon the clarifications/instructions of the DoPT, GOI. The petitioner, who is earning a gross annual income of Rs.18,00,000/- per annum and holding the post of 'Senior Manager' in a private company would fall under Category IV of the Office Memorandum dated 08.09.1993.

6. We have considered the submissions made on either side and perused the records.

7. It is to be noted that the DoPT, GOI, *vide* Office Memorandum No.36012/22/93-ESTT(SCT) dated 08.09.1993 issued guidelines for issuance of OBC certificate. It is also to be noted that the income limit for determination of cream layer amongst OBC have been raised to Rs.8,00,000/- with effect from 01.09.2017 *vide* Office Memorandum

No.36033/1/2013-ESTT(Res) dated 13.09.2017. The order impugned came to be passed on the strength of paragraph nos.(3), (9) & (10) of Office Memorandum No.63012/22/93-ESTT(SC) dated 08.09.1993.

8. Originally, the second respondent had rejected the claim of the petitioner on the ground that the petitioner's father is working as Senior Manager in a private company and drawing Rs.18,00,000/- per annum, as informed by the petitioner, the second respondent, relying upon the income-tax return filed by the petitioner for three consecutive assessment years. While rejecting the claim of the petitioner *vide* order dated 16.11.2024, the second respondent has stated that the petitioner's case will fall under Category IV of annexure to the Office Memorandum dated 08.09.1993, whereas, as per DoPT, GOI, under Schedule (IV)(I) – description of category for persons engaged in profession as a Computer Specialist criteria VI *i.e.* Income/Wealth Test will apply. Further, the creamy layer status of the sons and daughters of employees of organizations where evaluation of the posts on equivalent or comparable basis has not been made is determined on the basis of 'Income/Wealth' Test as stated at the clarifications of paragraph

(3), (9) & (10) of the Office Memorandum dated 08.09.1993.

9. It is relevant to cite the clarifications issued by DoPT, GOI, under Serial Nos.4(ix)(x) and 9, which read as follows:

> *"4. Following questions have been raised from time to time about the application of the above provisions to determine creamy layer:*
>
> *(ix)How will be the Income/wealth Test apply in case of sons and daughters of parent(s) employed in PSUs etc. in which equivalence or comparability of posts has not been established viz-a-vis posts in the Government?*
>
> *(x)What is the scope of the explanation, 'Income from salaries or agricultural land shall not be clubbed', given below the Income/Wealth Test?*
>
> *9. In regard to clause (ix) of para 4, it is clarified that the creamy layer status of sons and daughters of persons employed in organizations where equivalence or comparability of posts vis-à-vis posts in Government has not been evaluated is determined as follows:*
>
> *Income of the parents from the salaries and from the other sources [other than salaries and agricultural land) is determined separately. If either the income of the parents from the salaries or the income of the parents from other sources [other than salaries and agricultural land] exceeds the limit of Rs.2.5 lakh per annum for a*

period of three consecutive years, the sons and daughters of such persons shall be treated to fall in creamy layer. But the sons and daughters of parents whose income from salaries is less than Rs. 2.5 lakh per annum and income from other sources is also less than Rs.2.5 lakh per annum will not be treated as falling in creamy layer even if the sum of the income from salaries and the income from the other sources is more than Rs.2.5 lakh per annum for a period of three consecutive years. It may be noted that income from agricultural land is not taken into account while applying the Test."

10. It is to be noted that as per DoPT, GOI, prescribes that the Income/Wealth Test the sons and daughters of persons having gross annual income of Rs.8,00,000/- or above possessing wealth above the exemption limit as prescribed in the Wealth-Tax Act, 1957, for a period of three consecutive years would fall under creamy layer.

11. According to the petitioner, the *ratio decidendi* by the Hon'ble Division Bench of this Court in W.P.Nos.6387 to 6389 of 2017 dated 31.08.2017 is applicable to the present writ petition and contended that the

revised clarification has not been issued by the DoPT, GOI. At this juncture, it is relevant to refer the relevant paragraphs of the order dated 31.08.2017 passed in W.P.Nos.6387 to 6389 of 2017, which are extracted hereunder:

> *"27. As of now, sons and daughters of State and Central Government employees hailing from OBC category are treated as Non Creamy Layer irrespective of their parents salary, if their parents do not fall under the category I or if they do not fall under Group A/Class I, Group B/Class II, direct recruited or entered before 40 years.*
>
> *28. According to the learned Additional Solicitor General of India, as per the interpretation of DoPT to the Official Memorandum's, the case of Public Sector Undertakings/pending evaluation, the criteria stated in category VI-A shall apply and not category VI (a) shall apply and not category VI (b). If his submission is correct, then under category VI(b) while specifying certain service category persons, the Official Memorandum could have specifically stated as category IIA and B and excluded category IIC, as it has excluded VB and VC, but included VA.*
>
> *29. If in true sense DoPT wants to exclude Creamy Layer among OBC, there should not be any discrimination among the similarly placed two sets of service category namely, Government Employees, vis-a-vis Private Sector employees. More particularly, when II C read what applies to Government shall apply to Public*

Sector Undertakings "Mutatis Mutandi"."

12. According to the petitioner, he is employed as a Computer Specialist and thus, would fall under the ambit of Category-IV of the Office Memorandum dated 08.09.1993 and would fall under the scope of Category-II C of the Schedule mentioned in Office Memorandum dated 08.09.1993.

13. At this point, it is relevant to extract Category-II C of the Schedule mentioned in Office Memorandum dated 08.09.1993:

"C. Employees in Public Sector Undertakings etc.

The criteria enumerated in A & B above in this Category will apply mutatis mutandi to officers holding equivalent or comparable posts in PSUs, banks, Insurance Organizations, Universities, etc. and also to equivalent or comparable posts and positions under private employment, pending the evaluation of the posts on equivalent or comparable posts in these institutions, the criteria specified in Category VI below will apply to the officers in these institutions."

14. The contention of the petitioner cannot be taken into consideration for the reason that the category of Government Employees, who are all excluded from the benefits of reservation has been listed under Category II of Office Memorandum dated 08.09.1993 of DoPT, GOI. In this regard, DoPT, GOI, has not issued any revised clarifications, revising the criteria for determination of creamy layer/non-creamy layer status superseding its previous instructions/clarifications dated 14.10.2004. The certificate issuing authorities are issuing certificates relying upon the said instructions of DoPT, GOI. The petitioner, who is earning a gross annual income of Rs.18,00,000/- per annum and holding the post of 'Senior Manager' in a private company will fall under the creamy layer as per the instructions issued by DoPT, GOI *vide* Serial No.9 of its instructions dated 14.10.2004.

15. We are of the view that the very purpose of excluding the economically affluent class from the benefits of reservation is that the actual benefits should reach the deserving class of people, who are economically

weaker within the OBC. As such, the petitioner, who is having the annual income of Rs.18,00,000/- is well above the prescribed income limit of Rs.8,00,000/- and therefore, he is not eligible for the benefit of reservation under “Non-Creamy Layer”.

16. In view of the foregoing discussions, there is no reason to interfere with the order impugned and the writ petition lacks merit and the same is liable to be dismissed.

In the result, this writ petition is dismissed. No costs. Connected C.M.P. is closed.

(J.N.B., J.)(M.J.R., J.)
29 -07-2025

nsd
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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