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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 540/2022**

SACHIN. K

.....Petitioner

Through: Adv. (Appearance not given)

versus

SHRI SANJAY KUMAR SINGH UNDER SECRETARY

.....Respondent

Through: Ms. Nidhi Raman (CGSC) along with
Mr. Arnav Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

23.02.2026

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1. The present petition has been filed by the petitioner alleging wilful disobedience/ non-compliance of the directions contained in the order dated 02.09.2019 passed in W.P.(C) 8564/2019. The said order reads as under:-

By the instant petition, the petitioner seeks issuance of Writ of Mandamus to the effect that the respondent should consider her candidature as OBC-NCL candidate. Without prejudice to the rights and contentions as regards the maintainability of the writ petition, ld. counsel for respondent submits that in WP(C) 6099/2019 'Swarn Prabhat vs. Union of India', the ld. Single Judge of this Court had directed the respondent to decide the representation made by the said petitioner to consider her candidature as OBC-NCL candidate and that, at par with the directions given, the respondent shall consider the instant writ petition as a representation of the petitioner and decide within two weeks from today. It shall be so done.

Petition stands disposed off accordingly.

2. Ms. Nidhi Raman learned counsel appearing for the Union of India draws attention to the compliance affidavit filed on behalf of the respondent and in particular to Annexure-R2 thereto, in terms of which, the representation of the petitioner has been disposed of. The same reads as



under:-

No. 22012/52/2019-AIS.I
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated the 27th June, 2022

ORDER

1. **Whereas** Shri Sachin K. (Roll No. 0478191) appeared in Civil Services Examination-2017. In the Detailed Application Form (DAF) of the examination, he had claimed the benefits of the reservation for OBCs in the services under the Government of India.
2. **And whereas** Shri Sachin K. had secured 652nd rank in the list of candidates recommended by the UPSC for the appointment on the basis of the Civil Services Examination, 2017. Further, UPSC had not recommended him under the 'General Merit' but recommended only under OBC category i.e. he had availed the benefits of OBC category during the course of examination process.
3. **And whereas** while forwarding the dossiers of the successful candidates of the Civil Services Examination, 2017, the Union Public Service Commission(UPSC) had stated that:-

"the claims of the candidates for belonging to Scheduled Castes/Scheduled Tribes/OBC candidates have been accepted on the basis of the original certificates brought by them. As cases have occurred in the past where candidates obtained Scheduled Caste/Scheduled Tribe/OBC certificate even though they did not actually belong to these categories, government may, if considered necessary, further verify the veracity of these documents before making offer of appointment.

...There may be some cases though the OBC certificates have been issued to the candidates, the 'creamy layer' status may be doubtful keeping in view the income/status of the parents of the candidates as per the declaration of the candidates vide columns 13(K) and (I) in the Detailed Application Form. It is, therefore, requested that the Government may, in such cases, like to ensure that such candidates do not attract "creamy layer" provision and offers of appointment to these candidates may be made after the Government satisfy themselves in this respect also.



...Based on the information supplied by the candidates the Government may satisfy themselves about the genuineness of their OBC claim. These candidates have been provisionally treated as OBC candidates subject to the Government satisfying themselves about the genuineness of their OBC claims."

4. **And whereas** a candidate who claims benefit of reservation available to OBC is required to provide complete details regarding occupation, income of his parents, wealth, land (irrigated and unirrigated) and other reservation details in support of his claim for OBC (Non-Creamy Layer) reservation in proforma given. Shri Sachin K. had informed that his father was recruited to the post of Physical Education Instructor in Sahyadri Science College, Shivmogga. The details provided by Shri Sachin K. is as under:

Sr. No	Name of the Petitioner	Income of applicant's father	Income of applicant's mother
1	SACHIN K.	Candidate's father was recruited to the post of PHYSICAL EDUCATION INSTRUCTOR in Sahyadri Science College, Shivmogga] and working at the post of Selection Grade Promotion-Gr. A. The above college is an autonomous body under Government of Karnataka. Income Details of father Shri Sachin K: Income From Salary[In Rs.]:- 2016-17:- 2061130 2015-16:- 1616556 2014-15:- 1438549	NIL

5. **And whereas** the creamy layer status of the candidates claiming benefit of the reservation as OBC is determined as per guidelines contained in the schedule to the DoPT's OM No. 36012/22/93-Estt.(SCT) dated 08.09.1993. As per para 2 (c) (i) of the O.M. dated 08.09.1993, the reservation shall not



apply to persons/sections mentioned in column 3 of the Schedule of the O.M. Hence, the creamy layer status of every candidate claiming the benefit of reservation as OBC is examined as per six criteria laid down for different categories given in above O.M. If a candidate is found to be identified by Column 3 of relevant category of the criteria, he is to be excluded from reservation treating him as falling in creamy layer and thus not entitled to the benefit of reservation as per para 2 (c) (i) of the O.M. dated 08.09.1993.

6. **And whereas** Creamy Layer status of sons and daughters of persons in service is determined by the posts to which they are directly recruited. In the case of sons or daughters of employees of the PSUs, Banks, Insurance Organisations, Universities etc. and also to equivalent or comparable posts and positions under private employment, their creamy layer status is also determined by the same principle if the posts in the said organisation are comparable with the posts under the Government. In case of the employees of the said organisations, where the equivalence or comparability of the posts has not been decided vis-à-vis the posts in the Government, the creamy layer status of their children/wards has to be determined by the criteria specified in category VI to Schedule of OM dated 08.09.1993, in accordance with the provision given under category II C of said OM i.e. 08.09.1993.

7. **And Whereas** category IIC of the schedule to DOPT's OM No. 36012/22/93-Estt.(SCT) dated 08.09.1993 provides that

The criteria enumerated in A&B above in this category will apply mutatis mutandis 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 post on equivalent and comparable basis in these institutions, the criteria specified in category VI will apply to officers in these institutions.

8. **And Whereas** category VI to the schedule to DOPT's OM No. 36012/22/93-Estt.(SCT) dated 08.09.1993 provides that

Son(s) and daughter(s) of

(a) Persons having gross annual income of Rs. 1 lakh* or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

* Income Limit was Rs. 6 Lakh at the time of CSE-2017.



(b) persons in Categories I, II, III and V A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.

Explanation:

- (i) Income from salaries or agricultural land shall not be clubbed;
- (ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.

9. **And whereas** the comparability of service under the employer of the parent of Shri Sachin K. had not been determined till CSE-2017 in which he appeared. Therefore, the status of the Petitioner is to be determined on the basis of criteria specified in category VI to the schedule of OM dated 08.09.1993.
10. **And Whereas** in the absence of equivalence or comparability in the Autonomous Bodies vis-à-vis Government Service, this Department applied the Income/Wealth test as prescribed under the extant instructions[category IIC and VI(a) of the schedule to DoP&T's O.M. No. 36012/22/93-Estt.(SCT)] dated 08.09.1993 and did not find Shri Sachin K. as belonging to OBC (Non-Creamy Layer).
11. **And whereas** in respect of Shri Sachin K., the income of his father from the salary alone in three consecutive Financial Years (FY) was more than Rs 6 Lakh. Thus the status of the father of Shri Sachin K. brings him in Column 3 of Category VI which stipulates that persons having gross annual income of Rs. 6 Lakh (as revised) are to be excluded from reservation. Hence Sh. Sachin K. will have to be treated as falling in creamy layer by applying the test given in category IIC read with test given in Category VI to Schedule of the OM dated 08.09.1993.
12. **And whereas** Shri Sachin K. had filed W.P. No. 8564/2019 before the Hon'ble High Court of Delhi seeking declaration that he belongs to OBC(Non Creamy Layer) and is entitled to be considered for allocation of service against OBC vacancy on the basis of CSE- 2017.
13. **And whereas** the Hon'ble High Court, Delhi has disposed of the above mentioned W.P. through its order dated 02.09.2019, the operative part of which is reproduced below:



"By the instant petition, the petitioner seeks issuance of Writ of Mandamus to the effect that the respondent should consider her candidature as OBC-NCL candidate. Without prejudice to the rights and contentions as regards the maintainability of the writ petition, Id. Counsel for respondent submits that in WP(C) 6099/2019 'Swarn Prabhat vs. Union of India', the Id. Single Judge of this Court had directed the respondent to decide representation made by the said petitioner to consider her candidature as OBC-NCL candidate and that, at par with the direction given, the respondent shall consider the instant writ petition as a representation of the petitioner and decide within two weeks from today. It shall be so done.

Petition stands disposed off accordingly."

- 14. And whereas** Shri Sachin K. has claimed in his representation dated 22.08.2018 that the salary of his father should not be taken into account for calculating the gross annual income for the purposes of determining OBC Creamy Layer as his father was directly recruited at a post equivalent to group 'C' post of Government of Karnataka.
- 15. And whereas** it is submitted that the equivalence or comparability in the Autonomous Bodies vis-à-vis Government Service has not been established till date. In absence of equivalence in the Autonomous Bodies vis-à-vis Government Service, instructions dated 08.09.1993 provides that the creamy layer status of their children/wards has to be determined by the criteria specified in category VI to Schedule of OM dated 08.09.1993.
- 16. And Whereas** it is submitted that the instructions of 08.09.1993 were issued based on the recommendations of an Expert Committee constituted in 1993 under the Chairmanship of Justice Ram Nandan Prasad(Retd.), High Court, Patna. In para 27 of their report, the Expert Committee had observed the following:

"In addition to the above, we have to say that the income/wealth test governs categories IV, VB and VC as stated earlier. For the remaining categories, namely I, II, III and VA, specific criteria have been laid down; however, if in these categories, any person, who is not disentitled to benefit of reservation, has income from other sources or wealth, which will bring him within the criterion under Item No. VI, then he shall be disentitled to reservation, in case his income-without clubbing his income from salaries or



agricultural land – or his wealth is in excess or cut-off points prescribed under the income/wealth criteria.”

Therefore the explanation given below to Category VI of instructions dated 08.09.1993 that income from salaries or agricultural land shall not be clubbed would be applicable only in respect of category VI(b) only, as brought out in para 27 of the Expert Committee Report.

17. And Whereas in accordance with the instructions dated 08.09.1993 and as per report of the expert committee, the income from salary of the father of the candidate shall be required to be taken into account for determining his Creamy Layer status. Accordingly, after applying the income test, the matter has been duly re-examined and it is found that he falls into Creamy Layer by applying the test given in category II(C) and VI to the schedule to the OM dated 08.09.1993.

18. And whereas in W.P. No. 3073/2017 filed by Shri Ketan, tagged with 10 other W.P.s filed by candidates of Civil Services Examination-2015 who were treated as falling under 'Creamy Layer', which is referred to by the petitioner in his Writ Petition, the Hon'ble High Court of Delhi passed a common order dated 22.03.2018, the operative part of which is as under:

“12. Upon hearing and on perusal of impugned Communication of 14th October, 2004 of first respondent, on basis of which OBC Certificates of petitioners were scrutinized, the material on record and the decision cited, I find that O.M. of September, 1993 deals with Officers Class alone and that the equivalence or comparability of posts in PSUs viz-a-viz posts in government has not been carried out. First respondent in its counter affidavit maintains that impugned Communication of 14th October, 2004 has been brought about to clarify the aforesaid O.M. of September, 1993. The Communication of 14th October, 2004 takes into account salary of parents of OBC candidates whereas as per O.M. of September, 1993, the income from other sources is the basis to determine the Creamy Layer Status of OBCs in case of PSUs, where equivalence has not been established. Undisputedly, equivalence has not been established in case of PSUs viz-a-viz the posts in Government. In such a situation, I find that no rationale or justification is spelt out in the impugned Communication of 14th October, 2004 or in the counter affidavit filed by first respondent, to make the salary of OBC employees in PSUs as the basis to determine their Creamy Layer Status.



13. During the course of hearing, it was sought to be urged by learned counsel for first respondent that the rationale to rely upon the salary of OBC employees of PSUs is that they draw lot of perks in comparison to the OBC employees in Government service. To say the least, above said oral explanation does not appeal to reason. Since the aforesaid stand is not taken in the counter affidavit filed by first respondent, therefore, in the considered opinion of this Court, there is no basis to rely upon impugned clarification of October, 2004. Thus, impugned Communication is set at naught and first respondent is directed to verify the Creamy Layer Status of petitioners while solely relying upon the O.M. of September, 1993. Since petitioners (except Sagar Chourasia) have been already selected for the post in question, therefore, it is directed that the verification of Creamy Layer Status of petitioners be carried out within a period of eight weeks from the date of receipt of this judgment and petitioners be intimated about it within a week thereafter."

19. And whereas in compliance of Delhi High Court's order dated 22.03.2018, this Department had issued a speaking order dated 22.05.2018 to 11 candidates of CSE-2015 treating those candidates as falling under 'creamy layer' on the basis of income from salary in respect of their parents, who were working in PSUs, Autonomous Bodies, Govt. Aided School, Banks etc. where equivalence vis-à-vis Government Service was not established.

20. And whereas the Hon'ble High Court of Delhi in its order dated 22.03.2018 had drawn inference of the Communication of 14th October, 2004 that it takes into account salary of parents of OBC candidates, whereas as per O.M. of September, 1993, the income from other sources only is the basis to determine the Creamy Layer Status of OBCs in case of PSUs etc where equivalence has not been established. This Department challenged the order dated 22.03.2018 of the High Court of Delhi before the Hon'ble Supreme Court of India by filing SLP No. 006723-006734/2020 [UoI vs Ketan & Ors (12 Respondents)] and the same has been tagged with the SLP No. 25622-24/2017 [UoI vs Rohith Nathan] vide order dated 19.05.2020 of Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide order dated 19.05.2020 stayed the operation of the impugned order dated 22.03.2018 passed by the Hon'ble High Court of Delhi in WP Nos 3073-3084 of 2017. The matter is sub-judice till date.



21. Now, therefore, in compliance of the Hon'ble Delhi High Court's order dated 02.09.2019 *ibid*, the request for treating Shri Sachin K. as OBC (Non Creamy Layer) on the basis of CSE-2017 has been duly re-examined and in view of the facts and circumstances as brought out in the foregoing paragraphs, Shri Sachin K. cannot be treated as a candidate who belongs to OBC(NCL) and therefore is not entitled to be considered for allocation of service against OBC vacancy on the basis of CSE-2017.

(Anshuman Mishra)
Under Secretary to the Government of India
Tele: 23092695

Copy to:

1. Shri Sachin K., 131, Devishree, 1st Cross Vidyanagar, Shivamogga, Shimoga, Karnataka - 577203.
2. Ms Nidhi Raman, Central Government Standing Counsel, Delhi High Court - with a request to submit a copy of this order before the Hon'ble High Court of Delhi.

(Anshuman Mishra)
Under Secretary to the Government of India
Tele: 23092695

3. In view thereof, no further orders are required to be passed in the present petition. The same is accordingly disposed of.

4. Needless to say, if the petitioner is aggrieved with the view taken by the respondent while disposing of the petitioner's representation, it shall be at liberty to avail appropriate remedies under law.

SACHIN DATTA, J

FEBRUARY 23, 2026/uk