

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: March 22, 2018

- 1) + W.P.(C) 3073/2017
- 2) + W.P.(C) 3074/2017
- 3) + W.P.(C) 3075/2017
- 4) + W.P.(C) 3076/2017
- 5) + W.P.(C) 3077/2017
- 6) + W.P.(C) 3078/2017
- 7) + W.P.(C) 3079/2017 & C.M. 14964/2017
- 8) + W.P.(C) 3080/2017
- 9) + W.P.(C) 3081/2017
- 10) + W.P.(C) 3082/2017
- 11) + W.P.(C) 3083/2017
- 12) + W.P.(C) 3084/2017

KETAN
JOGINDER G.
SANJEEV VINAY CHETULE
GIRI SANKAR
S. CHITHARANJAN
MADDIKUNTA SIDDHARTHA
SHASHANK RATNOO
NARENDRA KUMAR SHAH
SHREERANJANI K
SAGAR CHOURASIA & ANR
RAHUL KUMAR
GAGAN B G

..... Petitioners

Through: Mr. Rajeshwar Rao, Mr. Vikram
Hegde, Mr. Prateek Chadha & Mr. Chaitanya
Puri, Advocates

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Nikhil Bhardwaj, Advocate for
Mr. Arun Bhardwaj, CGSC

Mr. Naresh Kaushik and Mr. Devik Singh,
Advocates for respondent-UPSC

Mr. R. Sathish and Mr. Rajesh Kumar,
Advocates for respondent-NCBC

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. In the above-captioned twelve petitions, quashing of Communication of 14th October, 2004 is sought. A mandamus is sought by petitioners (*except petitioner- Sagar Chourasia in W.P.(C) 3082/2017*) to first respondent to allocate appropriate service by considering them to be *Non-Creamy Layer OBC Candidates*.

2. Petitioners claim that they had taken Civil Service Examination in the year 2015 as *Non-Creamy Layer OBC Candidates* and they were recommended for allocation of service in May, 2016 after due verification by *Department of Personnel and Training (hereinafter referred to as 'DoPT')*. According to petitioners, the necessary information sought for, was duly provided to first respondent in May/June, 2016. It is the case of petitioners that list of service allocation of selected candidates was issued on 22nd June, 2016, in which names of

petitioners did not find mention, which necessitated filing of these writ petitions.

3. With the consent of learned counsel for the parties, these petitions have been heard together and vide this common judgment, these petitions are being decided.

4. Communication of 14th October, 2004 sub-classifies the Creamy Layer of OBCs and thereby, purportedly discriminates petitioners. This Communication clarifies the status of employees of PSUs etc. vis-à-vis Government employees where equivalence or comparability of posts has not been determined. It is relevant to note that the impugned Communication is in continuation of Office Memorandum (herein O.M.) of 8th September, 1993 which dealt with the criteria to determine creamy layer amongst the OBCs but the O.M. of September, 1993 was confined to the officers whereas the impugned Communication of October, 2004 deals with OBC employees of all categories. As per O.M. of September, 1993, the criteria provided in Category II (A & B) of the Schedule thereto, applied to officers of the public sector undertakings etc. and the income/wealth test as provided in Category VI applied to employees of Category I, II, III and V-A with a rider that the income from salaries or agricultural land shall not be clubbed.

5. Learned counsel for petitioners submits that as per the O.M. of September, 1993, the income from salary or agricultural land was not to be clubbed with the income from other sources, whereas in the impugned Communication of October, 2004 the income from salary has been taken to be a valid consideration to determine the Creamy Layer and impugned Communication has been applied to employees of PSUs etc., who are not

from Officer Class, and the social status, which is an important criteria, has been discarded.

6. Attention of this Court is drawn by learned counsel for petitioners to RTI Reply of 7th September, 2016 to point out 70 candidates as referred to in this RTI Information have been found to be Non-Creamy Layer OBC Candidates, although the income of Government employees at serial No.1, 9 and 33 of the aforesaid Reply, is more than ₹6 lakhs per annum. It is submitted on behalf of petitioners that the parents of petitioners are not officers but are employees, whose annual income is just about ₹6 lakhs and they have been treated to be creamy layer OBC, which is grossly unjust. Reliance is placed upon Supreme Court decision in *Siddharth Saini Vs. State of Haryana* (2001) 10 SCC 625 to submit that Salary is not to be included but income from other sources is to be considered while determining the creamy layer status of OBC candidates.

7. Attention of this Court is drawn by learned counsel for petitioners to Rules for Competitive examination/ Civil Service Examination, to be held by UPSC in 2015 to submit that as per Gazette Notification of 23rd May, 2015, the decision of UPSC to the eligibility or otherwise of a candidate for appointment to an examination is final. It is pointed out that respondent- UPSC has accepted the OBC status of petitioners and has recommended petitioners for appointment as OBC candidates in May, 2016. Thus, it is submitted on behalf of petitioners that respondent- *DoPT* has no jurisdiction to reopen the matter regarding OBC status of petitioners by pointing out deficiencies in its communication of 20th May, 2016 (*Annexure P-7*) in W.P. (C) 3074/2017 with regard to absence of Grade/ Group/ Class of service for designation and further promotion of

petitioner's father in service issued by employer. Learned counsel for petitioners submits that the aforesaid details sought vide Communication of 20th May, 2016 (*Annexure P-7*) in W.P. (C) 3074/2017 were already there with the respondent but still response to aforesaid Communication of 20th May, 2016 (*Annexure P-7*) in W.P. (C) 3074/2017 was responded to by the petitioners.

8. It is further submitted by counsel for petitioners that respondent-DoPT had not sought any query and had come out with the Service Select List on 22nd June, 2016 in respect of examination in question and in the said list, names of petitioners were missing. Learned counsel for petitioners submits that RTI applications were promptly filed and reply thereto, was received on 7th September, 2016. It is pointed out that as per RTI Reply in W.P.(C) 3074/2017 received on 7th September, 2016, the details as regards lands owned by family members of petitioners is still pending.

9. In the case of petitioner- *Shashank Ratnoo [in W.P.(C) 3079/2017]* and in the case of remaining petitioners, information received is that their status is of creamy layer, as income of their father exceeds rupees six lacs per annum. However, in the case of petitioner – *C. Chitharanjan [W.P.(C) 3077/2017]*, it is stated that he belongs to creamy layer status of professional class in terms of Category –IV of Schedule II of DoPT O.M. of 8th September, 1993 and hence, the income criteria will apply. In case of petitioner- *Ketan [W.P.(C) 3073/2017]* RTI Reply received discloses that since equivalence has not been determined, therefore, income criteria will apply and it has been said so while referring to O.M. 8th September, 1993.

10. The precise submission of learned counsel for petitioners is that there is no logic or rationale to issue Communication of 14th October, 2004 to clarify the Creamy Layer Status amongst the OBCs in reference to Public Sector Undertakings as the O.M. of September, 1993 was issued after due deliberation and upon approval from the Parliament, whereas the Communication of 14th October, 2004 discriminates the employees of PSUs viz-a-viz the government employees and so, impugned Communication ought to be quashed and as per O.M. of September, 1993 petitioners are not the creamy layer OBCs.

11. On the other hand, the submission advanced on behalf of respondents is that the Communication of 14th October, 2004 clarifies the Creamy Layer Status amongst the OBCs and it does not create any discrimination between the government employees and the employees of the PSUs. It is submitted that the ambiguity regarding the application of income/wealth test in case of children of PSU employees has been clarified as the equivalence or comparability of the post of PSUs viz-a-viz post in government have not been carried out. Attention of this Court is drawn to paragraph No.9 of the Communication of 14th October, 2004. It is further submitted that the Communication of 14th October, 2004 nowhere contradicts the O.M. of September, 1993 and it rather explains it. So, it is submitted that the scrutiny of the dossiers/OBC Certificates of petitioners to verify the Creamy Layer Status has been rightly done and thus, these petitions deserve dismissal.

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.

14. First respondent be apprised of this judgment forthwith to ensure its compliance.

15. With aforesaid directions, these petitions and the pending application are disposed of.

Copy of this judgment be given *dasti* to learned counsel for the parties.

(SUNIL GAUR)
JUDGE

MARCH 22, 2018

s/r

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