
(2004) 07 DEL CK 0039

In the Delhi High Court

Case No : Writ Petition (C) . No"s. 1085 and 6168 of 2003

Sh. Chander Vijay

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-07-2004

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (2004) 112 DLT 437 : (2004) 75 DRJ 451

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Sudhir Chandra and S.K. Makkar, for the Appellant; Rekha Palli, for Respondent Nos.1 and 5, V.K. Tandon, for Respondent Nos.2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner appeared and qualified for the Central Civil Service Examination 2002, conducted by the Union Public Service Commission (UPSC). Petitioner being a 'Jat' by caste and a resident of Rajasthan had applied for issuance of the Other Backward Class Certificate (OBC) Category. This certificate had been denied. Petitioner qualified even in the general category with a rank of 127. Petitioner's case is that he is entitled to the OBC Certificate and upon the same being granted, his ranking would go up and he would get a better posting.

2. Petitioner by this writ petition seeks a writ of certiorari, quashing notification dated 8.9.1993, 28.9.1993 and Circular dated 2.2.2001, based on which the petitioner is sought to be excluded from the benefit of the OBC category as part of the "Creamy layer". Petitioner also seeks a mandamus, directing the respondents to issue forthwith a OBC certificate for the year 2002 for the Civil Services Examination, conducted by UPSC.

3. By writ petition bearing No.6168/2003, apart from seeking quashing of the

notifications dated 8.9.1993, 28.9.1993 and Circular dated 2.2.2001, as sought in W.P.(C).No.1085/2003, seeks quashing of the communication dated 25.3.2003, by which the Department of Personnel and Training, Government of India, on a complaint received cancelled the candidature of the petitioner even for the Civil Services Examination 2001, as an OBC candidate, following the cancellation of the OBC Certificate by the District Collector and Magistrate, Alwar. As a result of the cancellation of the OBC Certificate for the year 2001, petitioner does not qualify as a general candidate and is not entitled to get any service on the basis of the said Civil Service Examination. Vide interim order passed on 19.5.2003, it was noted that the posting of the petitioner would be subject to final decision in the writ petition.

4. Before adverting to the factual matrix and the relevant text of the notifications in question, it may be noticed that notification dated 8.9.1993 bearing No.36012/22/93-Estt. (SCT) is issued by the Department of Personnel and Training, Government of India, while notification dated 28.9.1993 has been issued by the Department of Personnel, Government of Rajasthan and Circular dated 2.2.2001 has been issued by the Department of Personnel, Government of Rajasthan, clarifying persons to whom rule of exclusion shall apply or not apply, as given in the notification dated 28.9.1993.

5. The crux of the controversy is the exclusion of the petitioner under the notification, issued by the Central Government and the State Government, insofar as they relate to the service category on the ground that the father of the petitioner had retired as a Class I Officer. Petitioner thus formed part of the "Creamy Layer" and was not entitled to the benefit of the OBC. The text of notifications dated 8.9.1993, 28.9.1993 as well as the clarification, insofar as they are relevant for the present case is reproduced for facility of reference:-

"Notification dated 8.9.1993

Subject:- Reservation for Other Backward Classes in Civil Posts and Services under the Government of India-Regarding.

The undersigned is directed to refer to this Department's O.M.No.36012/31/90.Estt.(SCT), dated the 13th August, 1990 and 25th September, 1991 regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgment in the Indira Sawhney and others Vs. Union of India and others case (Writ Petition (Civil) No.930 of 1990) the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the socially advanced persons/sections from the benefits of reservations for Other Backward Classes in Civil posts and services under the Government of India.

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 per cent) of the vacancies in civil posts and services under the Government of India, to be filled through 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.

(b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.

(c) (i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this office memorandum.

"II Service Category"

A. Group A/Class I 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 officers;

(b) Parents, either of whom is a Class I officer;

(c) Parents, both of whom are Class I Officers, but one of them dies or suffers permanent incapacitation;

(d) parents, either of whom is a Class I officer and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International Organisation like UN, IMF, World Bank etc., for a period of not less than 5 years;

(e) parents, both of whom are class I officers die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank etc., for a period of not less than 5 years.

Provided that the rule of exclusion shall not apply in the following cases:

(a) Sons and daughters of parents either of whom or both of whom are Class-I Officers and such parent(s) dies/die or suffer permanent incapacitation.

(b) A lady belonging to OBC Category has got married to a Class-I officer, and may herself like to apply for a job."

Notification dated 28.9.1993

G.S.R. 35:- The Governor of Rajasthan is hereby pleased to order that 21% (Twenty one per cent) of the vacancies in posts and services under the State Government, to be filled through direct recruitment, shall be reserved for the castes and classes included in the list of Backward Classes as notified vide Social Welfare Department Notification No. F.11(125)R&P/SWD/46631, dated 27th August, 1993, published in Rajasthan Gazette, Extra-ordinary dated 1st

September, 1993.

These reservations will be subject to the following conditions:-

(a) Candidates belonging to Backward Classes recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 21%. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.

(b) (i) The aforesaid reservation shall not apply to persons/sections mentioned in Column 3 of the schedule annexed to this notification.

(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations and callings. A list of such occupations and callings will be issued separately.

"II Service Category"

A. Group A/Class I 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 officers;

(b) Parents, either of whom is a Class I officer;

(c) Parents, both of whom are Class I Officers, but one of them dies or suffers permanent incapacitation;

(d) parents, either of whom is a Class I officer and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International Organisation like UN, IMF, World Bank etc., for a period of not less than 5 years;

(e) parents, both of whom are class I officers die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank etc., for a period of not less than 5 years.

Provided that the rule of exclusion shall not apply in the following cases:

(a) Sons and daughters of parents either of whom or both of whom are Class-I Officers and such parent(s) dies/die or suffer permanent incapacitation.

(b) A lady belonging to OBC Category has got married to a Class-I officer, and may herself like to apply for a job."

Circular dated 2.2.2001

Subject: Reservation for other Backward Classes in posts and services under the State Government - clarification regarding application of Rule of Exclusion in

certain situations.

In the Schedule annexed with this Department's Notification No.F9(8)DOP/A-V/90 dated 28.9.1993 such persons/Categories of persons have been specifically mentioned who will not be entitled (excluded) for the benefit of reservation of Other Backward Classes. With respect to "ConstitutionAL POSTS" it has been prescribed that the Rule of Exclusion will apply to persons holding Constitutional positions like President of India, Vice-President of India, Judges of the Supreme Court and of the High Courts. Chairman & Members of U.P.S.C. And of the State Public Service Commission, Chief Election Commissioner, Comptroller and Auditor General of India and "persons holding Constitutional positions of like nature". In this regard clarification has been sought as to whether Ministers in the State Government would fall under the category of "Persons holding Constitutional positions of like nature" and the Rule of Exclusion will apply to their sons and daughters. The matter has been examined in consultation with the Law Department and the position is clarified as under:-

Ministers of the State Government are Constitutional functionaries but their tenure being temporary and often transitory they are not supposed to have shed backwardness in such short periods. Therefore, the Rule of Exclusion will not apply to the sons and daughters of Ministers and they will be entitled for other Backward Classes reservation provided their parents do not fall in Category of the Schedule.

Clarification has also been sought whether the Rule of Exclusion will apply in the case of sons and daughters of the Offices enumerated in the "SERVICE CATEGORY" even after they retire on superannuation. In this context, it is hereby clarified that retirement on superannuation has no effect on be Rule of Exclusion. Therefore, retirement on superannuation of the specified category of Officers has no effect on their offsprings, who are once defined as "Creamy Layer."

These clarification may be brought to the notice of all concerned and they may be directed to take action accordingly.

(Ashok Sampatram)

Secretary to Government."

6.The main plank of the submission of the learned senior counsel for the petitioner is that the notifications in question provide for exclusion, If either or both parents of the applicant is or are class one officer. This, the learned counsel submits is sought to be misinterpreted by reading the same as "was or has been a class one officer". I shall advert to the submissions and the authorities cited by the learned senior counsel for the petitioner in this regard later in the judgment.

7.The second limb of the submission of the learned counsel for the petitioner is that the Circular dated 2.2.2001, which has been issued by the State Government of Rajasthan cannot purport to alter or modify notification dated 8.9.1993, issued by the Central Government, which would govern the Central

Service Examination. This, he submits is specially so, when the Central Government has not issued any notification/Circular in respect of its notification.

8. For a proper appreciation of the purpose and intent for issuance of notifications in question, it would be appropriate to recapitulate briefly the facts, culminating in their issuance. The Supreme Court in its majority judgment in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, had directed that within four months from the date of the judgment, the Government of India shall specify the basis applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections (Creamy Layer) from other backward classes (OBC). Further that the implementation of the impugned OM dated 13.8.1990 would be subject to exclusion of such socially advanced persons (Creamy Layer). Pursuant to the aforesaid direction, an expert committee, comprising Justice Rama Nandan Prasad (Retired Judge, Patna High Court) as the Chairman and other members, was set up to make recommendations to the Government of India in regard to the socio-economic criteria. The Expert Committee deliberated and considered the matter and after receiving various inputs made recommendations for the criteria for excluding the persons, who were socially advanced in the SEBC category. The notifications embodied the recommendations made by the Committee. The Committee noted the observations and guidelines as given in *Indra Sawhney's* case and observed as under:-

"It is not necessary to bear in mind that Court has accepted the principle of reservation on the reasoning that the SEBCs on account of their Social and Educationally Backwardness are truly in need of reservation. In other words, the dominant consideration for upholding the reservation is the social and educational backwardness and not the income test, although actual life it mostly happens that economic backwardness is a natural consequence of the social and education backwardness. It logically follows, Therefore, that for determining who from amongst the SEBCs shall be denied the benefit of reservation, the basis again would be the social and education factors and only when the advancement in this regard is such as to put that person at par with the forward classes that he may be placed in the excluded category. In the majority judgment, it has been observed that only when a person's social and education advancement is such that it totally snaps the connecting link of backwardness between him and other members of his community, he can then be said to be a misfit in his own class and so ought to be taken out from there and placed in the "Creamy Layer" category."

9. The Committee also noted observations of Justice Sawant in the judgment which may be usefully reproduced:

"The correct criterion for judging the forwardness of the forwards among the Backward Classes is to measure their capacity not in terms of the capacity of others in their class, but in terms of the capacity of the members of the Forward Classes, as stated earlier. If they cross the Rubicon of backwardness, they should

be taken out from the Backward Classes and should be made disentitled to the provisions meant for the said classes." The Committee went on to further observe, " When a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade profession of high status, as categorised by us below he at that stage is normally no longer in need of reservation for himself. For example, if a person gets appointed as a Class I Officer either on open competition basis or reservation basis, the question of excluding him on the ground that he forms part of the "Creamy Layer" does not at all arise. But since he himself has come into the socially advanced category he will be in a position to provide the means the equipment and the opportunities which are necessary for the uplift of his offspring from the level of social and educational backwardness. As such the question of applying the Rule of Exclusion will arise only in the case of his offspring."

The Committee noticing the break up of the joint family system regarded the family to constitute husband, wife and children for the purpose of applying the exclusion criteria.

10. It is in the aforesaid background of purpose and context that the notifications, provisions regarding the petitioner's exclusion need to be examined. Leaving aside for the moment, the argument on interpretation of the expression, "is" it would be seen that the petitioner's father retired as a Class I Officer. Accordingly, in terms of the notifications, as reproduced earlier, petitioner being his son, falls in the category, who is to be excluded. It is the case of respondent Nos. 2 to 4 in their counter affidavit that petitioner and his father both own considerable property. It is stated that petitioner owns 59 bighas of irrigated land in Chattar Garh, Bikaner, Rajasthan. Petitioner's father owns 31 bighas of irrigated land at Chattar Garh, Bikaner, Rajasthan. The facility of irrigation is available from the siphon system attached to the land through the Indira Gandhi Canal. It is stated that the petitioner and his family own orchards near the National Highway By Pass No. 8. There is a big house and a tube well and a swimming pool. The nature, extent of land and the factum of irrigation facility is disputed. Petitioner's brother, Sh. Sukhbir Singh and sister-in-law are stated to be members of IAS, as stated by the petitioner's father in the application for ration card.

11. From the foregoing, it would be seen that petitioner is the offspring of a Class I Officer for considerable period. This factor alone, even if the acquisition and possession of immovable properties was not to be reckoned, shows that petitioner has shed of the disadvantage of social backwardness. Petitioner has not been deprived of the opportunities and means as others in the socially backward classes. The submission of the learned senior counsel for the petitioner that petitioner's father had undergone compulsory retirement and the notification is not intended to cover within their ambit offspring of retired first class officers militates against the very intent and purpose of the criteria laid

down in Indra Sawhney's case and as enumerated by the Expert Committee as noted above. The mere fact that a Class I Officer upon retirement would get only a pension and have a fall in income or fall in status, in comparison to while in office, can hardly be a ground to bring back the said person or his offspring from Creamy Layer into the backward category.

12. Let us now consider the legal submission made by learned senior counsel, who urged that it was not permissible to read the words, "is or are" used in the notifications as "was or were". Learned counsel contended that it was not permissible to add or amend and by construction and make up the lacunae which are left out.

13. The submission of the counsel that by use of the word "is or are" intention was to exclude only those, whose parents were presently employed in Government Class I service and not those whose services had either been terminated or those who had superannuated, is devoid of merit and deserves to be rejected.

14. Reliance is placed by petitioner on Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur, to urge that while it is the duty of the Court to harmonise the various provisions of the Act as enacted by the legislature but it certainly was not the duty of the Court to stretch the words used by the legislature to fill in gaps or omissions in the provisions of the Act. In Smt.Hira Devi and others Vs.District Board, Shahjhanpur (Supra) , when these observations were made, the court was dealing with the facts, which are entirely distinguishable. Under the UP District Board Act, the statute had specific provisions governing and subscribing the power of suspension. These were codified in Sections 71 and 90, the Supreme Court disapproved the High Court's action in reading the power of suspension into the words, " orders of any authority whose sanction is necessary." It was in these circumstances that the above observations were made. The said authority does not advance petitioner's case.

15. Reliance is also placed on number of judgments to submit that the Court could not add or amend or by construction make up the failings. Further, that when the words used are plain and unambiguous, the Court is bound to construe them in their ordinary sense. Reliance is also placed on Mohan Kumar Singhania and others Vs.Union of India and others reported at : AIR1992SC1 to submit that while interpreting a statute, the consideration of inconvenience and hardship should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules, as the case may be, so far as possible to make a consistent enactment of the whole statute or series of statutes/Rules/Regulation relating to the subject matter. Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits

consistent with the established rule of interpretation."

16. There is no quarrel with the principles of interpretation as stated in Mohan Kumar Singhania and others Vs. Union of India and others (Supra) or that if the meaning of the words are clear the Court is not to add, amend or delete the same.

17. The situation in the instant case is, however, different. A perusal of the notification shows that the word "is and are" have been used not in the present sense alone. The use of the said expression in various clauses of the notification is indicative of happening in the past and/or in future. This is evident from sub-clauses c, d and e, where the provision is made for the eventuality of demise or suffering a permanent incapacitation which would be indicative of a future event. Again in sub-clause d, eventuality of demise and permanent incapacitation an event in future is considered with reference to denial of benefit with a past event that is beneficial employment in any international organisation like, U.N. I.M.F., World Bank etc., of not less than 5 years. It would thus be seen that the words "is and are" have been used to cover the past as well as future.

18. Reference may usefully be made to the definition of the expression "is" in Black's Law Dictionary. "This word although normally referring to the present, often has a future meaning, but is not synonymous with "shall have been". It may, however, have a past signification as in the sense of has been."

19. Reference may also be usefully made to the judgment of the Supreme Court in F. S. Gandhi (Dead) by LRs. Vs. Commissioner of Wealth tax, Allahabad, . The Supreme Court had the occasion to consider interpretation of the words, "where the interest is available to an assessed for a period not exceeding six years from the date of interest vests in the assessed contained in Section 2(e) 2(iii) of the Wealth Tax Act. The Court quoted with approval the above definition of "is" in the Black's Law Dictionary, observing, "the word available is preceded by the word "is" and is followed by the words, "for a period not exceeding six years." The words, "is" although normally referring to the present often, often has a future meaning, but is not synonymous with "shall have been". It may, however, have a past significance as in the sense of has been." We are of the view that in view of the words, "for a period not exceeding six years" which follow the word "available" the word "is" must be construed as referring to the present and future. In that sense it would mean that the interest is presently available and is to be available for a future for a period not exceeding six years. Besides, the aforesaid interpretation of the word "is" in the notifications as referring to "has been and in future" is in consonance with the purpose and intent of the notifications and in accordance with the well settled principles of interpretation, commending interpretation of provisions in the context in which they were used and the purpose which they achieve. Reference may be made to S.R. Chaudhuri Vs. State of Punjab and Others, . It is also in consonance with the principle of harmoniously interpreting to make the notification/statute workable and giving a meaning to all the provisions of the notification without making any one of them

redundant. Reference may also be made to the decision of the Division Bench of the High Court of Judicature at Madras in Union of India Vs.D.Anil and others (Writ Petition No.12289/2001), where the Court while interpreting the same central notification held that, "the use of "is" in the entries relating to item No.2 in the Schedule to OM is, Therefore, to be regarded as referring to persons, who have held the post mentioned therein and it is not to be understood as referring only to persons, who are actually holding those post at the time the claim for a reserved position is made. I am in full agreement with the reasoning and judgment of the Division Bench, which dealt with a similar case and the same notification. It is held that the petitioner squarely falls within the ambit of exclusion of the benefit of OBC under the notifications.

20. It is held that the words "is" and "are" in the Notification dated 8.9.1993 and 29.9.1993 are not to be interpreted as being confined to only those persons who were presently holding the posts and are also to include persons who have held such posts mentioned therein. As discussed in paras 17, 18 and 19 above, the petitioner is not entitled to the relief sought in the writ petitions. No ground is made out to assail the validity of the impugned Notifications. Considering the interpretation given to the words "is" and "are" in the Notifications, resort to the circular dated 2.2.2001 was not even necessary. In any case the clarification given in the circular is also in consonance with the interpretation given to the words used in the Notification by this Court. Hence challenge to the validity of the circular dated 2.2.2001 also fails.

21. In view of the foregoing discussion on merits, it is not necessary to consider the objections of the respondents, as to lack of jurisdiction and/or laches in approaching the Court and challenging the notifications belatedly.

The writ petitions have no merit and are dismissed.