
(2000) 09 SC CK 0128

In the Supreme Court Of India

Case No : Civil Appeal No: 7631 of 1999

Siddarth Saini

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-09-2000

Acts Referred:

Constitution Of India Art 16, Art 14

Citation : (2003) 1 ARBLR 170 : (2001) 4 JT 102 : (2001) 10 SCC 593

Hon'ble Judges : A. S. Anand, C.J;Shivaraj V. Patil, J;N. Santosh Hedge, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. The appellant is a resident of Haryana and belongs to the reserved category of Other Backward Classes (OBC), as declared by the State Government. He appeared for the Common Engineering Entrance Test (CEET), 1999-2000, conducted by the Regional Engineering College, Kurukshetra, for admission to various Engineering Colleges in the State of Haryana. He sought admission against the seat reserved for OBC candidate. Father of the appellant, who admittedly is a Class-II Officer with the State Government, applied to respondent no. 3 - Deputy Commissioner, Yamuna Nagar, Haryana, for issuance of an OBC certificate. That certificate was denied to the appellant vide order of the Deputy Commissioner, Yamuna Nagar, dated 24th June, 1999 on the ground that "the income for the last three years of the father of the applicant is more than 3 lakh". The said order of the Deputy Commissioner was put in issue by the appellant through his father by a writ petition in the High Court. The Division Bench of the High Court opined that father of the appellant had been rightly included in the creamy layer" because his gross annual income was more than Rs. 1,00,000/- for a period of three consecutive years. This appeal, by special leave, calls in question the said order of the High Court, dated 9th July, 1999.

2. We have heard learned Counsel for the parties.

3. Pursuant to the judgment of this Court in *Indra Sawhney v. Union of India* [JT 1992 (6) SC 273 = 1992 Supp. (3) SCC 217], Haryana Government vide notification, dated 12.10.1993 had set up the Haryana Second Backward Classes Commission. The terms of reference of the Commission were to entertain, examine and recommend, upon requests, for inclusion and complaints of over-inclusion and under-inclusion in the list of Backward Classes. Vide notification, dated 26.5.1994, the Commission was also assigned the function of specifying the basis, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections (creamy layer) from Backward Classes. A perusal of the criteria, referred to above, shows persons falling in certain categories as belonging to creamy layer. In this case, we are not concerned with any other category, except the category of Government Servant Class-II post. Father of the appellant was directly recruited as Assistant Engineer (SDO) on Class-II post, in the Irrigation Department of Haryana. Father of the appellant still continues to be a member of Class-II service only. According to the affidavit filed by father of the appellant, his source of income is only salary and he derives income from no other source. The Government of Haryana issued a clarification order no. 22/36/2000-3G.S.III, dated 9th August, 2000 for issuance of certificate to OBCs in Haryana on 9th August, 2000. In the said order, it has been clarified that income from salary is not required to be taken into account for the purpose of income/wealth tax in respect of service category and while calculating income or wealth tax of Government employee of Backward Classes, who is not covered under Annexure-A description of category nos. I, II (a, b, c, d) and III & IV, he would become entitled for the benefit of reservation under Backward Classes Category, his salary shall not be included but his other sources of income/wealth, be included for income/wealth tax.

4. In the present case, it is the admitted case of the appellant that the only source of income of father of the appellant is his salary. It is also not disputed that father of the appellant is a Class-II Officer and that mother of the appellant is not a Class-II Officer. The amount of gross salary, received by the father of the appellant, for the purpose of grant of benefit to the OBCs is irrelevant. This being the position, which has been clarified by the Government of Haryana itself, by Government Order, dated 9th August, 2000, it is obvious that the appellant should not have been refused the OBC certificate by taking the salary of father of the appellant into account. The order of the Deputy Commissioner, dated 24.6.1999, refusing grant of OBC certificate, is clearly erroneous. The judgment of the High Court, impugned before us, which upholds the order of the Deputy Commissioner is, in view of what we have said above, not sustainable.

5. We, therefore, allow this appeal, set aside judgment of the High Court as also order of the Deputy Commissioner, dated 24th June, 1999 and hold that the appellant is entitled to the grant of OBC certificate, since no other facts concerning his such entitlement are disputed.

6. The requisite certificate shall be issued to the appellant within one week from

the date of presentation of the copy of this order before the Deputy Commissioner,

7. The appeal is accordingly allowed in the above terms but with no order as to costs.