

(2017) 08 KAR CK 0004
In the Karnataka High Court
Case No : 4766 of 2015 (GM-CC)

SMT.ARUNA KUMARI N.N. W/O.SATEESHA R	APPELLANT
Vs	
THE COMMISSIONER BACKWARD CLASSES WELFARE DEPARTMENT, & ORS.	RESPONDENT

Date of Decision : 01-08-2017

Acts Referred:

Citation : (2017) 08 KAR CK 0004

Hon'ble Judges : Subhro Kamal Mukherjee, P S Dinesh Kumar

Bench : DIVISION BENCH

Advocate : D.N.NANJUNDA REDDY, P.VIJAYA SIMHA REDDY, V.SREENIDHI,
REUBEN JACOB

Final Decision : Dismissed

Judgement

1. This appeal is by the unsuccessful writ petitioner- appellant, challenging the order dated October 7, 2015, passed by the Hon"ble Single Judge in Writ Petition No.4939 of 2013.
2. Incontrovertible facts of this case are, petitioner while working as an Assistant Teacher Grade-II, applied for the post of Gazetted Probationers" Group-A and B Officers. She claims to be belonging to the Backward Class Category-3B. The question for consideration in this appeal is, whether the appellant"s salary is to be excluded from the income while considering the family income for the purpose of issuance of Caste and Income certificate.
3. Shri D.N.Nanjunda Reddy, learned senior advocate, arguing in support of this appeal, contended that as per Circular dated February 14, 2000 (Annexure "N") and the subsequent Government Order dated March 30, 2002, (Annexure "R"), issued by the Government of Karnataka, the salary of the candidate must be excluded.
4. Both Shri D.N.Nanjunda Reddy, learned senior advocate and Shri V.Sreenidhi, learned additional government advocate, placed reliance on Note -1 contained in

Annexure-II to the subsequent Government Order dated March 30, 2002, upon which the Hon"ble Single Judge has placed reliance to decline the relief to the writ petitioner. According to Shri Nanjunda Reddy, the Note -1 contained in the said Government Order inures to the benefit of the appellant, whereas, Shri Sreenidhi, refutes the said contention. Hence, this appeal hinges upon the interpretation of the Government Order dated March 30, 2002, which reads as follows:-

"Government Order No.SWD 225 BCA 2000, Dated: 30th March 2002

After careful consideration of the above proposal the Government are pleased to make the following orders:

1. The quantum of Reservation Specified in G.O. Dated:17- 09-1994 and 31-01-1995 read at Sl.No.(1) & (2) respectively is continued for admission to Educational Institutions and Employment.
2. The revised list of Backward Classes enclosed to this order as at Annexure-I, incorporating recommendations of the BC Commission, is brought into force with immediate effect.
3. A new comprehensive Creamy Layer Policy as detailed in Annexure-II to this Government order is brought into force with immediate effect. This Creamy Layer Policy does not apply to SCs/STs and Category-I of the Backward Classes. Candidates belonging to Category-II(A), II(B), III(A), and III(B) shall be entitled to reservation in the manner specified in the new comprehensive Creamy Layer Policy.

By Order and in the name of Governor of Karnataka

D.M. AGA

Deputy Secretary to the Government,
Social Welfare Department".

(emphasis is by us)

5. The column 3 of Annexure-II to the said Government Order is relevant in the instant case and it reads as under:-

"The candidate and his/her father"s mother"s/Guardian/Gross Annual income exceeds Rs.2.00 lakhs."

6. Note - 1 contained in the Annexure-II to the Government Order, reads as follows:-

"This rule will not apply to direct recruitments to posts which insist on a prescribed period of service in a lower post or experience in a post, profession or occupation as a qualification or eligibility."

7. A careful reading of the above Government Order, conveys an unambiguous

meaning that the said Order was brought into force with immediate effect making Creamy Layer Policy applicable, in cases, where the gross annual income of the candidate and the parents/guardian exceeded Rs.2 lakhs.

8. Relaxation from the vigor of notification shall be applicable only to the candidates applying for direct recruitment posts, wherein, "service in lower posts" or "experience" is prescribed. Admittedly, for the posts of Gazetted Probationers" Group-A and B Officers neither "service in lower posts" nor "experience" is a condition precedent. Therefore, in our considered view, the appellant shall not be entitled for the benefit of Note -1 contained in the said Notification and therefore, Creamy Layer Policy shall be applicable. Hence, there is no error in the order passed by the Hon"ble Single Judge.

9. Resultantly, this appeal must fail and is accordingly dismissed.

10. In view of dismissal of the appeal, the pending interlocutory applications do not survive for consideration and are, also, accordingly dismissed.

11. We make no order as to costs.