
(2003) 03 JH CK 0087

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4532 of 2002

Uma Shankar Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 JCR 502

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S.D. Sanjay and S.K. Chaturvedi, for the Appellant; Shamim Akhtar, SC II and A.K. Mehta, JC to SC II, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This application has been, preferred by the petitioner for direction on the Respondent Deputy Commissioner, Bokaro to consider his case for issuance of Other Backward Category (OBC) Certificate in the format prescribed by the Central Government, he being below the creamy layer.

Further prayer has been made to direct the Respondents to take into consideration the Circular No. 329 dated 4th July, 2001 issued by the Personnel and Administrative Reforms Department of the Government of Bihar for issuance of such certificate. Aforesaid prayer has been made so that the petitioner may produce Creamy Layer Certificate on demand by the Union Public Service Commission, he having qualified in the Civil Services Preliminary Examination and appeared in the Mains examination.

2. According to the petitioner, he belongs to OBC in terms of the Central and Slate List being "BANIA" (MODI) by Caste. He was granted Caste Certificate and Residence Certificate by the Circle Officer, Nawadih. He also applied for Income Certificate of his father by submitting salary certificate, as also the Income Tax Return and accordingly, Income Certificate regarding the total income of his

father was issued on 31st January, 2002.

3. Further case of the petitioner is that his father has only one income as apparent from the salary Certificate.

He applied for issuance of OBC Certificate in prescribed form prescribed by the Department of Personnel, Government of India, which is issued only to those who do not fall within "Creamy layer".

The Circle Officer enquired into the matter, processed at his level and forwarded it to the Deputy Commissioner, Bokaro. Thereafter, the Deputy Commissioner, Bokaro asked him to meet the District Welfare Officer. He met the Sub divisional Officer and brought to the notice of the said authority the income of his father.

The father of petitioner is a Head Master in a secondary school. It is a Class II Gazetted post.

The Certificate Officer in his note mentioned that since the income of petitioner's father is more than Rupees One lakh per annum, the petitioner can not be granted OBC Certificate under "Non- creamy Layer Category".

4. In the writ petition, the petitioner took plea that his father has no other source of income. However, at the time of argument, impression was given that the father of the petitioner has other income such as income from agriculture.

5. The counsel for the petitioner submitted that the mother of petitioner being a house wife, his father being a Class-II Officer and as his father was not granted promotion at the age of 40 years or earlier, the petitioner does not fall within the category "Creamy layer" as per Clause 2 (B) (b) of Appendix I to Government of India, Department of Personnel and Training O.M. No. 36012/22/93-ESTT (SCT) dated 8th May, 1993.

6. According to Respondents, the petitioner's father Balmukund Prasad Buranwal is a Head Master of Secondary school and his annual income is Rs. 2,63,786/- from his salary alone.

The Government of Jharkhand by its resolution contained in Memo No. 3482 dated 10th June, 2002 have adopted the criteria laid down in Government of India's Resolution dated 8th September, 1993, as referred to above. As the income of the petitioner's father is much higher than the prescribed limit of Rupees one lakh, as per clause VI (a) of the guidelines, the claim of the petitioner has been rejected.

7. A Division Bench of Patna High Court in the case of Jawaharlal Prabhakar Vs. State of Bihar and Others, while noticed the Government of India's circular for exclusion of Creamy layer, taking into consideration the income of the father of the said writ petitioner, above Rupees one lakh per annum, held the petitioner of the said case excluded from consideration as OBC. The writ petition was dismissed.

8. After reorganization of the State, the State of Bihar's circular contained in letter No. 329 dated 4th July, 2001 is not applicable to those who are resident of Jharkhand. The Government of India's Circular dated 8th May, 1993 having adopted, it is applicable in the present case. The income of petitioner's being more than Rupees one lakh per annum; he being a Gazetted Class-II Officer, the petitioner would also stand excluded from consideration as OBC. Therefore, no relief can be granted.

9. There being no merit, the writ petition is dismissed.