

SURINDER SINGH  
v.  
PUNJAB STATE ELECTRICITY BOARD, PATIALA AND  
ORS.  
(Civil Appeal No. 6957 of 2009)

SEPTEMBER 25, 2014

[JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.]

*Service Law – Appointment – “Backward class” category – Determination of “backwardness” – Identification of “creamy layer” – Policy instructions issued by the State Government – Appointment of appellant from amongst “backward class” candidates – Challenged – High Court took into consideration the income of the appellant himself, to declare that he belonged to the “creamy layer”, and as such, was dis-entitled to be considered as a “backward class” candidate – Validity – Held: Plain reading of the office memorandum dated 8.9.1993 made it clear that it was not the income of the individual concerned, but that of his parents, that determined whether he fell within the creamy layer or not – High Court erred in reading down the office memorandum dated 8.9.1993 and to include therein the income of the individual concern while determining whether or not he fell within the “creamy layer” – Appointment of appellant restored.*

**Allowing the appeal, the Court**

**HELD:1.1. On the plain reading of the office memorandum dated 8.9.1993, it is clear that it was not the income of the individual concerned, but that of his parents, that would determine whether he would fall within the creamy layer or not. The High Court erred in reading down the office memorandum dated 8.9.1993 and to include therein the income of the individual concern while determining whether or not he fall within the**

A “creamy layer”. [Paras 7, 9] [539-A, B; 541-A, B]

1.2. It is only the parents income, which has to be taken into consideration. The individual's income was not required to be clubbed with the income of his parents, while determining whether or not he was eligible to be granted a backward class certificate. The determination to the contrary by the High Court is liable to be set aside. The appointment of the appellant is restored. [Paras 11, 12 and 13] [543-A, D-E]

C *Indra Sawhney vs. Union of India* 1992 Supp. (3) SCC 217; 1992 (2) Suppl. SCR 454 *Ashok Kumar Thakur vs. State of Bihar* (1995) 5 SCC 403; 1995 (3) Suppl. SCR 269; *Ashok Kumar Thakur vs. Union of India* (2008) 6 SCC 1 – relied on.

D Case Law Reference:

1992 (2) Suppl. SCR 454 relied on Para 8

1995 (3) Suppl. SCR 269 relied on Para 8

E (2008) 6 SCC 1 relied on Para 9

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F From the Judgment & Order dated 02.03.2009 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 7660 of 2004.

WITH

G SLP(C) No. 17161 of 2009.

Neeraj Kr. Jain, R.K. Kapoòr, Shiwani Mahipal, Rekha Giri (for Anis Ahmed Khan), Jayshree Anand (for Anurag Pandey), Pratham Kant, Sanjay Singh, (for Ugra Shankar Prasad) for the appearing parties.

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The Judgment of the Court was delivered by

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**J.S. KHEHAR, J.** 1. On 16.07.2002, the Punjab State Electricity Board (hereinafter referred to as the 'Board') took a decision to fill up 21 posts of Accounts Officer. The above posts were to be filled up by way of direct recruitment. The appellant earned 164 marks in the process of selection. He made the grade, by way of merit, from amongst "backward class" candidates. It is therefore, that he came to be appointed as Accounts Officer, by direct recruitment.

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2. Respondent No.4-Anil Kumar Uppal, had also applied for appointment by way of direct recruitment, in response to the same advertisement (in furtherance whereof, the appellant was selected and appointed). His candidature was, however, not accepted. It is therefore, that respondent no.4 approached the Punjab and Haryana High Court at Chandigarh (hereinafter referred to as the 'High Court') seeking an appropriate direction to the Board, requiring it to allow him (respondent no.4) to participate in the process of selection. By an interim order passed by the High Court, respondent no.4 was allowed to participate in the process of selection.

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3. On considering the candidature of respondent no.4, the Selection Committee awarded him 146 marks. It is therefore apparent, that in terms of merit, respondent no.4 could not march over the superior claim of the appellant. This was so because, whilst the appellant had been awarded 164 marks in the process of selection, respondent no.4 had been awarded only 146 marks.

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4. Respondent no.4, in order to claim appointment, chose to assail the claim of the appellant by asserting, that the appellant did not factually belong to the "backward class", and as such, his merit could not be determined with reference to the posts reserved for "backward class" candidates. If he could succeed in establishing the aforesaid position, he would fall in

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- A the zone of selection, being possessed of the next highest marks (after the appellant) from the category of backward class candidates. Insofar as the instant aspect of the matter is concerned, the pointed contention of respondent no.4 was, that the appellant belonged to the “creamy layer”, and as such, he
- B was dis-entitled for being considered from amongst “backward class” candidates.

5. The High Court, while disposing of Writ Petition No. 7660 of 2004, vide the impugned order dated 2.3.2009, arrived at the conclusion, that the appellant actually belonged to the
- C “creamy layer”, and as such, was dis-entitled to be considered as a “backward class” candidate. In arriving at the aforesaid conclusion, the High Court took into consideration the income of the appellant himself, to declare that he belonged to the
- D “creamy layer”. The aforesaid determination was rendered by reading down the policy instructions issued by the State Government, on the basis whereof, the backwardness of a candidate had to be adjudged. The aforesaid policy instructions were read down, to include the income of the person
- E concerned, along with the income of the parents of the person, contemplated by the policy instructions.

6. In the present appeal, the appellant seeks to assail the aforesaid determination rendered by the High Court. It was the vehement contention of the learned counsel for the appellant,
- F that the judgment referred to by the High Court, for arriving at the conclusion, that the personal income of the concerned individual had to be taken into consideration, was a misreading of the judgment rendered by this Court. It was in the aforesaid background, that we shall endeavour to examine the policy
- G instructions regulating the determination of backwardness of candidates, and the judgments relied upon by the High Court.

7. First and foremost, reference needs to be made to the office memorandum dated 8.9.1993 issued by the Government
- H of India, Ministry of Personnel, Public Grievances & Pension

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(Department of Personnel & Training). It is not a matter of dispute between the rival parties, that the aforesaid office memorandum is applicable to the present controversy. Under the office memorandum dated 8.9.1993, the claim of the appellant for grant of a backward class certificate was determinable under category IV thereof, since it is not a matter of dispute that the appellant is a qualified Chartered Accountant. However, in column 3 to the schedule relating to category IV, it is mentioned that the criteria specified against category VI would be applicable to those who fall under category IV. In the above view of the matter, our interpretation on the eligibility of the appellant for being declared as belonging to the backward class, would be determinable on the basis of the description relatable to category VI. Category VI and the depiction to whom the same would be applicable, are being extracted hereunder:

Sl.No.	Description of category	To whom rule of exclusion will apply
1	2	3
VI	Income/Wealth Test	<p><u>Son(s) and daughter(s) of</u></p> <p>(a) persons having gross annual income of Rs.1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years;</p> <p>(b) persons in Categories I, II, III and V-A who are not disentitled to the benefit of reservation but have income from other sources of wealth</p>

A		which will bring them within the income/wealth criteria mentioned in (a) above.
B		Explanation:
C		(i) income from salaries or agricultural land shall not be clubbed;
D		(ii) the income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.
E		<b>Explanation: wherever the expression 'permanent incapacitation' occurs in this Schedule, it shall mean incapacitation which results in putting an officer out of service.</b>

(emphasis is ours)

F Having minutely examined category VI, as also the description contained in the schedule, to whom the same would apply, there is really no room for any doubt, that in clauses (a) and (b) thereof, it is the income/wealth of the parents of the individual concerned, which is of relevance. The description is clearly

G silent about the individual's own income. It is not possible for us to accept, that the individual's own income could have been taken into consideration. The above determination of ours, is with reference to categories IV and VI. Therefore, even with

H reference to category IV, which includes professional's, the

income of the professional, has not been included. Thus viewed, we are satisfied, that on the plain reading of category VI of the office memorandum dated 8.9.1993, that it was not the income of the individual concerned, but that of his parents, that would determine whether he would fall within the creamy layer or not.

8. The question which still arises is, whether it was open to the High Court, to include the individual's income in determining his eligibility for being declared as backward class, by reading down the policy instructions on the subject. Insofar as the instant aspect of the matter is concerned, there can be no doubt, that the issue is determinable with reference to the decision rendered by this Court in *Indra Sawhney vs. Union of India* 1992 Supp. (3) SCC 217. But for the determination of the present controversy, we need not travel to the decision in *Indra Sawhney's case* (supra). It will be sufficient to make a reference to the decision rendered by this Court in *Ashok Kumar Thakur vs. State of Bihar* (1995) 5 SCC 403, wherein this Court, having examined the Office Memorandum dated 8.9.1993, approved the same by observing as under:

**"10. We have carefully examined the criteria for identifying the "creamy layer" laid down by the Government of India in the Schedule, quoted above, and we are of the view that the same is in conformity with the law laid down by this Court in Mandal case (Indra Sawhney v. Union of India 1992 Suppl. (3) SCC 217). We have no hesitation in approving the rule of exclusion framed by the Government of India in para 2(c) read with the Schedule of the office memorandum quoted above. Learned counsel for the petitioners have also vehemently commended that the State Governments should follow the Government of India and lay down similar criteria for identifying the "creamy layer".**

(emphasis is ours)

- A It is apparent from the observations recorded by this Court, as have been extracted hereinabove, that the Office Memorandum dated 8.9.1993 had been examined by this Court, specifically with reference to the decision rendered in Indra Sawhney's case (supra). Having done so, this Court expressly approved and confirmed the Schedule to the Office Memorandum dated 8.9.1993.

- C 9. Based on the aforesaid declaration of law, we are of the view that it was not open to the High Court to evaluate the office memorandum dated 8.9.1993 from any other parameters. It also needs to be noticed, that the issue which came up for determination in Ashok Kumar Thakur's case (supra) came to be re-examined before a Constitution Bench of this Court in Ashok Kumar Thakur vs. Union of India (2008) 6 SCC 1, wherein on the subject of identification of the "creamy layer", the Constitution Bench observed as under:

"1-B. IDENTIFICATION OF CREAMY LAYER

- E 415. Income as the criterion for creamy layer exclusion is insufficient and runs afoul of Sawhney (I). (See p.724 at para 792). Identification of the creamy layer has been and should be left to the Government, subject to judicial direction. For a valid method of creamy layer exclusion, the Government may use its post-Sawhney (I) criteria as a template. (See OM of 8.9.1993, Para 2(c)/Column 3), approved by this Court in Ashoka Kumar Thakur vs. State of Bihar (1995) 5 SCC 403, para 10. This schedule is a comprehensive attempt to exclude the creamy layer in which income, government posts, occupation and landholdings are taken into account."

(emphasis is ours)

- H Here again, this Court expressly approved the office memorandum dated 8.9.1993. In view of the decisions



rendered by this Court in both Ashok Kumar Thakur's cases (supra), we are of the view that the High Court clearly erred in reading down the office memorandum dated 8.9.1993 and to include therein the income of the individual concerned while determining whether or not he fall within the "creamy layer".

10. Despite the declaration of law in the judgments, referred to hereinabove, it is also necessary to take into consideration the clarification issued by the Government of India, Ministry of Personnel, P.G. and Pensions (Department of Personnel and Training) dated 21.11.2002. The aforesaid clarification was with reference to the office memorandum dated 8.9.1993. Relevant extract of the clarificatory letter dated 21.11.2002 is being reproduced below:

**"I am directed to refer to your letter No.2/25/2001 RC-1/670 dated 17-10-2002 on the above noted subject and say that determination of creamy layer for an OBC candidate is done with reference to the income of parents as per instructions contained in DOPT's O.M. No.36012/22/93-Estt(res) dated 8.9.93."**

**(emphasis is ours)**

Based on the aforesaid conclusion, there is really no room for any doubt, that the exposition with reference to category VI in the office memorandum dated 8.9.1993 related only to the income of the parents of the individual concerned. And that, the income of the individual concerned was not to be taken into consideration.

11. The above issue came to be examined yet again by the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training) through its memorandum dated 14.10.2004. In the above memorandum, a large number of queries were clarified. Queries at serial nos.(vi) and (vii) of paragraph 4 are relevant

A to the present controversy, and are accordingly reproduced hereunder:

B “4. Following questions have been raised from time to time about the application of the above provisions to determine creamy layer.

C (vi) Will a candidate who himself is a directly recruited Class I/Group A Officer or a directly recruited Class II/Group B officer who got into Class I/Group A at the age of 40 or earlier be treated to be falling in creamy layer on the basis of his service status?

D (vii) will a candidate who has gross annual income of Rs.2.5 lakh or above or possesses wealth above the Exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years be treated to fall in creamy layer?”

The aforesaid queries came to be answered in paragraph 8 by observing as under:

E “8. In regard to clauses (vi), (vii) and (viii) of para 4, it is clarified that the creamy layer status of a candidate is determined on the basis of the status of his parents and not on the basis of his own status or income or on the basis of status or income of his/her spouse.

F Therefore, while determining the creamy layer status of a person the status or the income of the candidate himself or of his/her spouse shall not be taken into account.”

G (emphasis is ours)

H In view of the above, there is no room for any further consideration, whether or not the individual's income is to be taken into consideration, while computing the total income relevant to determine whether an individual belongs to the

“creamy layer”. The above clarification reveals, that it is only the parents income, which has to be taken into consideration.

12. While referring to the Clarification/Circular dated 14.10.2007 and 14.10.2004 respectively, we have extracted hereinabove the clear view of the Government of India. It would also be necessary for us to notice, that the above determination of the Government of India, was adopted by the State of Punjab, as is apparent from the letter issued by the Government of Punjab, Welfare Department (Reservation Cell) dated 14.10.2007, whereby the letter dated 17.08.2005 and the memorandum dated 14.10.2004 were circulated by the State Government to all its Deputy Commissioners. It is also not a matter of dispute, that the aforesaid circulars were expressly adopted by the Punjab State Electricity Board. Thus viewed, we are satisfied that the individual's income was not required to be clubbed with the income of his parents, while determining whether or not he was eligible to be granted a backward class certificate. The determination to the contrary by the High Court is liable to be set aside. The same is accordingly hereby set aside.

13. The instant appeal is accordingly allowed. While allowing the instant appeal, we restore the appointment of the appellant Surinder Singh to the post of Accounts Officer.

Special Leave Petition(C) No.17161 of 2009

The controversy in the instant special leave petition is identical to the one adjudicated upon by this Court in the case of Surinder Singh vs. Punjab State Electricity Board, Patiala and others (Civil Appeal No. 6957 of 2009, decided on 25.09.2014).

In the above view of the matter, the instant special leave petition is also disposed of in terms of the order passed by this Court in Surinder Singh's case(supra).