

ಸಂಖ್ಯೆ:ಸಕಇ 176 ದಿನಾ 2003

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,
ಬಹುಮಾನಗಳ ಕಟ್ಟಡ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ:1-3-05.

ANNX-'A'

ಇವರಿಂದ:
ಸರ್ಕಾರದ ಪ್ರಭಾಸ ಕಾರ್ಯಾಚರಣೆ,
ಸಮಾಜ ಕಲ್ಯಾಣ ಇಲಾಖೆ,
ಬೆಂಗಳೂರು.

ಇವರಿಗೆ:
ಆಯುಕ್ತರು,
ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಇಲಾಖೆ,
ಸಿಎಫ್‌ಸಿ ಕಟ್ಟಡ, ಸ್ವತಂತ್ರಂಗನಾ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರ,

ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಕಛೇರಿ,
ಬಹುಮಾನಗಳ ಕಟ್ಟಡ,
ಬೆಂಗಳೂರು.
ಕ್ರಮ ಸಂಖ್ಯೆ: ISF-1
8 ಮೈಸೂರು
(ಕೆ.ಎ.ಎ.ಎ.)

ವಿಷಯ:- ಗ್ರಾ.ಪೆ.ಸಿ ನೌಕರರಿಗೆ ವಿನಾಸಲಾತಿ ಕುರಿತು
ಸ್ಪಷ್ಟೀಕರಣ ನೀಡುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ:-ಪತ್ರ ಸಂ:ಹಿಂನಿ:ಮಾಜು-2:ನೀಡ-23:03-04
ದಿನಾಂಕ: 23-10-2003.

ಹೊರತುಂಟಾದ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಉಲ್ಲೇಖಿತ ಪತ್ರದಲ್ಲೂ ಈ ಕೆಳಕಂಡ ಅಂಶಗಳಿಗೆ
ಸ್ಪಷ್ಟೀಕರಣ ಕೋರಿರುವುದು ಸರಿಯಲ್ಲ.

ಸರ್ಕಾರದ ಅಧೀನ ಸಂಖ್ಯೆ ಎನ್‌ಎಂ.ಎಂ.ಎಂ.ಎಂ. 150 ದಿನಾ 94, ದಿನಾಂಕ: 17-9-1994
ರೂ.ಸ ಅಂಶಗಳಿಗೆ (ವಿನಾಸಲಾತಿ ಕನಿಷ್ಠ ಅಂಶಗಳು) ಸಂಬಂಧ ಗ್ರಾ.ಪೆ.ಸಿ ನೌಕರರು ಪತಿ,
ಪತ್ನಿಯರು ಇಬ್ಬರೂ ನೇಮಕರಿಸಿದಾಗ, ಅದೇನು ಮಿತ ಎಷ್ಟೇ ಇರಲಿ ಗ್ರಾ.ಪೆ.ಸಿ
ಅಧಿಕಾರಿಗಳು ಆಗದಿದ್ದರೂ ಅವರಿಗೂ ಸಹ ವಿನಾಸಲಾತಿ ಕಲ್ಪಿಸಬಹುದೆಂದು ಸರ್ಕಾರದ ಪತ್ರ ಸಂಖ್ಯೆ
ಸಕಇ 186 ದಿನಾ 2000, ದಿನಾಂಕ: 23-6-2001ರೂ. ಸ್ಪಷ್ಟೀಕರಣ ನೀಡಿದೆ.

ಸದರಿ ಸ್ಪಷ್ಟೀಕರಣ ಪ್ರಸ್ತಾಪಿಸಿರುವ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಮಾನ
ಗಳಂತೆ ದಾರಿ ಜಾರಿಯಲ್ಲಿರುವ ಸರ್ಕಾರಿ ಅಧೀನ ಸಂಖ್ಯೆ ಸಕಇ 225 ದಿನಾ 2000,
ದಿನಾಂಕ: 30-3-2002ರೂ.ಯೂ ಗ್ರಾ.ಪೆ.ಸಿ ನೌಕರರು ಪತಿ ಪತ್ನಿಯರಿಬ್ಬರೂ ನೇಮ
ಕರಿಸಿದಾಗ, ವಾರ್ಷಿಕ ಆದಾಯ ಮಿತಿಯು ರೂ.2.00 ಲಕ್ಷಗಳು ಮೀರಿದಾಗ ಸಹ ವಿನಾಸಲಾತಿ
ನೌಕರರು ಕಲ್ಪಿಸಬಹುದೆಂದು ಎಂಬ ಬಗ್ಗೆ ಸ್ಪಷ್ಟೀಕರಣ ಕೋರಿದಾಗ, ಸದರಿ ಅಂಶಗಳನ್ನು
ಪರಿಶೀಲಿಸಿ ಕೆಳಕಂಡಂತೆ ಸ್ಪಷ್ಟೀಕರಣ ನೀಡಲಾಗಿದೆ.

" Government Servants are covered by clause-2 of Annexure-II
to the Government order dated:30-3-2002, it applies only to
Group - A and Group-B Officers clause-3 applies to a candidate,
if his father's, mother's/Guardian's gross annual income exceeds
its, 2.00 lakhs. This clause applies only to candidates, where
whose father, mother/guardian are not covered by clause-2.
When the parents of a candidate or his guardian do not come
within clause-2 through they happen to be Government Servants,
they cannot be brought under the restriction of clause-3 on
the ground that through they happened to be group-C employees
in the Government their gross income exceeds Rs.2.00 lakhs.

ಮೇಲ್ಕರಿಸಿರುವ ಸ್ಪಷ್ಟೀಕರಣವನ್ನು ನನ್ನವು ಪಾಠ್ಯಕಾರಿಗಳು, ಅಗತ್ಯ ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಕೋರಿದೆ. ಹಾಗೂ ಸಂಬಂಧಪಟ್ಟ ಎಲ್ಲಾ ಜಿಲ್ಲಾಧಿಕಾರಿ : ತಹಶೀಲ್ದಾರ್ ರವರ ಗಮನಕ್ಕೆ ತರುವಂತೆ ತಿಳಿಸಲು ನಾನು ನಿರ್ದೇಶಿಸಲ್ಪಟ್ಟಿರುವೆ.

(ಈ ಪತ್ರವನ್ನು ಕಾನೂನು ಇಲಾಖೆಯು ನೀಡಿರುವ ಅಧಿಪತ್ಯ ಯುರ ಮೇಲೆಗೆ ಹೊರಡಿಸಲಾಗಿದೆ)

ನಿಮ್ಮ ನಂಬುಗೆಯ,


ನಹಿ,

(ಎಂ.ಎಸ್.ಮರುಳನಿಧಿಯಯ್ಯ)
ಸಹಾಯಕ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ,
ಸಮಾಜ ಕಲ್ಯಾಣ ಇಲಾಖೆ.

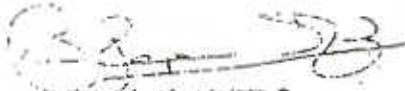
ಪ್ರತಿ:

- 1) ಎಲ್ಲಾ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು,
- 2) ನಿರ್ದೇಶಕರು ನಿ ಆಲ್ಟ ನಿಯಾಕತರ ಇಲಾಖೆ, ಬೆಂಗಳೂರು
- 3) ಎಲ್ಲಾ ಜಿಲ್ಲಾ ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಮತ್ತು ಆಲ್ಟ ನಿಯಾಕತರ ಅಧಿಕಾರಿಗಳು.

ಸಂ: ಹಿಂವನಿ: ಮಾತಾ-2: ಸಿಆರ್-23: 03-04


ಅಯ್ಯಕ್ಕರ ಕಛೇರಿ
ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
ದಿನಾಂಕ: 13-5-2005.

ಯಥಾಪ್ರತಿಗಳನ್ನು ರಾಜ್ಯದ ಎಲ್ಲಾ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಹಾಗೂ ಜಿಲ್ಲಾ ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಅಧಿಕಾರಿಗಳು ಇವರಿಗೆ ಸೂಕ್ತ ಮಾಹಿತಿಗಾಗಿ ಹಾಗೂ ಮುಂದಿನ ಸೂಕ್ತ ಕ್ರಮಕ್ಕೆ ರವಾನಿಸಿದೆ.


ಅರಸೀಕೆರೆ ಪರವಾಗಿ,
ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಇಲಾಖೆ,
ಬೆಂಗಳೂರು.

29/05.09

4749/09

N.K.Ramesh

Regarding income limit

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5th DAY OF FEBRUARY 2009 ✓

BEFORE

THE HON'BLE Mr. JUSTICE AJIT J GUNJAL

WRIT PETITION No. 19469 OF 2005(EDN-CET) ✓

BETWEEN:

Dhanya Balakrishna,
D/o Balakrishna D.P,
Aged 18 years,
Doddadka House,
K.Peraje Village and Post,
Madikeri Taluk,
Kodagu District.

...PETITIONER

(Sri Vinayaka, Adv. for Ashok Haranahalli, Adv.)

AND:

1. Common Entrance Test Cell,
Rep. by its Special Officer,
Malleswaram,
Bangalore.

2. The State of Karnataka,
Rep. by its Secretary,
Department of Social Welfare,
M.S.Building, Bangalore.

...RESPONDENTS

(Sri N.K.Ramesh, Adv. for R1; Sri B.Manohar, AGA for R2)

This W.P is filed under Articles 226 and 227 of the Constitution of India praying to quash the communication dated 01.03.2005 bearing vide Annexure-A and direct the R1 to redraw the ranking list by excluding those candidates who have been given the



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and Court: For the purpose of Rs. 33/-

11/2009
33/-
Recorded & Contd.

benefits to the Group 3A on the basis of the Circular dated 01.03.2005.

This W.P coming on for hearing this day, the Court made the following:

ORDER

The writ petition is filed questioning the clarification issued by the second respondent dated 01.03.2005, a copy of which is produced at Annexure-A. Pursuant to the said notification, the Government has clarified that the parents who are classified as Group-C employees are eligible for the benefit of reservation under Category-3A notwithstanding the fact that their income is more than Rs.2,00,000/- per annum.

2. The case of the petitioner is that she has completed Pre University Course and obtained 90.33% in PCB subjects. The petitioner appeared for the Common Entrance Test and her ranking was 3437. The petitioner's father is an agriculturist and also a Coffee Planter whose income is less than Rs.2,00,000/-. The income certificate is produced at Annexure-C. According to the petitioner, her claim ought to have



been considered under Category-3A. But however, the respondents have allotted seats to other candidates under this category even though their income is more than Rs.2,00,000/- per annum. In view of the notification at Annexure-A, the petitioner is deprived of a seat in MBBS course, inasmuch as, if the said notification at Annexure-A had not come into force, the petitioner would have stood a better chance of getting admission to the MBBS course.

3. The learned counsel appearing for the petitioner solely relies on a ruling of the Apex Court in the case of NAIR SERVICE SOCIETY VS. STATE OF KERALA reported in 2007 AIR SCW 5276. He submits that no reasons are assigned as to why the subsequent notification is issued substituting clause (3) of the earlier notification, a copy of which is produced at Annexure-D and Gazetted on 11.04.2002.

4. Mr.Manohar, learned Government Advocate submits that this amendment to clause (3) of Annexure-



AB

D was brought about having regard to the decision rendered by this Court in the case of MISS HAJIRA TARANNUM AND OTHERS Vs. COMMON ENTRANCE TEST CELL, GOVERNMENT OF KARNATAKA AND OTHERS reported in 1996(5) KLJ 585. He further submits that the said view is affirmed by the Division Bench. He further submits that Annexure-E would also given enough reasons as to why this amendment was required.

5. I have perused Annexures-A, D as well as the clarificatory note at Annexure-E. Apparently, the concession and the benefit of reservation was extended to certain persons who are classified as Category-3A. The Government notification at Annexure-D would exclude certain persons from reservation whose parents' gross income is more than Rs.2,00,000/-. Indeed, there are several personalities who are classified in Clause (1) and also Clause (2). We are concerned only with Clause (3). Indeed, this Court while dealing with a similar, if not identical, situation, was of the opinion that if Clause



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(3) are also excluded it would amount to “taking away with one hand what is given by the other” and such a construction will lead to anomalous situation and will be destructive of the very object of providing reservations to the truly identified Backward Classes. In this background, this Court was of the opinion that such classification, inasmuch as, the parents’ who are Group-C employees and whose income exceeds Rs.2,00,000/- are also excluded from the creamy layer.

6. Indeed, a perusal of Annexure-E would indicate that such a classification was modified solely on the basis of the judgment rendered by this Court in the aforesaid case. But however, what is required to be seen is much water has flown under the bridge since the said decision was rendered. The Apex Court in the Nair Service Society’s case while dealing with the locus standi has observed that the petitioner society has raised a question about identification of creamy layer again and again and had been taking part in the proceedings before Commission appointed, by State



Government for fixing the criteria. More over, when the question of such grave importance has been brought to the notice of Supreme Court, having regard to the principle underlying the purport and object for which the 'creamy layer' was sought to be excluded, Courts certainly cannot shut its eye and refuse to determine the question. Apparently, on the question of locus standi in the case on hand, it is to be noticed that the petitioner certainly was an aggrieved party at one particular point of time. It is no doubt true that the petitioner has pursued her study in a different discipline, inasmuch as, she had taken up Dental Surgery, but that by itself it cannot be said that this Court cannot examine the said question. Apparently, the endeavour of the State is to evolve a criterion in tune with the underlying constitutional scheme that the protection is required to be given only to those who remain socially and educationally backward and not to those who have ceased to be. Those who are no longer members of the socially and educationally backward class are not to be permitted to obtain the benefit of the



B

reservation. In the case on hand, it is to be noticed the parents of the ward who are clause (3) employees of the Government and whose combined income exceeds Rs.2,00,000/- were excluded and they were classified as Creamy Layer. There must be some rationale in bringing the said Group-C employees whose annual income is more than Rs.2,00,000/- within the ambit of non-creamy layer. Apparently, the basis for the said notification is the decision rendered by this Court. But however, the State was required to be more vigilant and should have explored the concept of what is meant by creamy layer and who can be construed as economically backward who are not in a position to afford the expensive education which are in the nature of Engineering, Dental or Medical. A perusal of the said notification does not show that such an exercise has been done. Indeed, the State is required to take into consideration the level of literacy, the village income, the rise of living index and other relevant factors. Apparently, such an exercise has not been done. The cost of index of living is also an essential ingredient or a



part to classify as to who can be termed as coming under the creamy layer. Indeed, the State Government has not taken into consideration the cost of living but has straightaway combined the income of both the parents who are working in Group-C and whose income level exceeds Rs.2,00,000/-. Nevertheless, they shall not be considered under the creamy layer. In fact, there is no rationale behind why such an amendment is brought substituting clause (3) of the earlier notification. Indeed, if an example is required, if the income of both the parents in Group-C exceeds Rs.2,00,000/- and the optimum is not prescribed, it would lead to absurdity, inasmuch as, in clause (2) of the notification at Annexure-D, if the income exceeds the amount specified in clause (2), it cannot be termed as a creamy layer, but is excluded. Indeed, clause (2) would refer to Class-II Officers who are working in the Government Establishments and there is no reason as to why there must be such a classification between Group A, B and C. If the income of the parents of the Ward who are working as Group-C employees exceeds Rs.2,00,000/-



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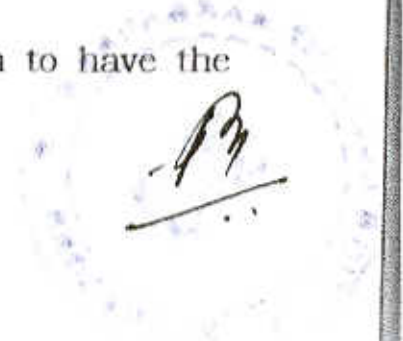
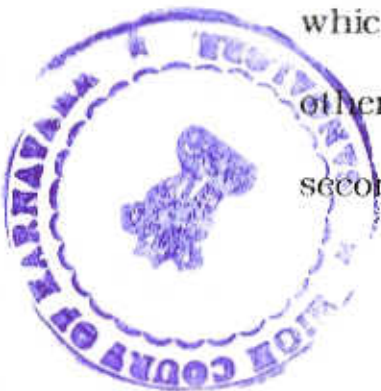
without any upper limit, they would almost stand on par with the income of Group-B employees. There is no reason as to why even Group-B should be included in the creamy layer. Indeed, there must be some rationale while fixing the income in respect of the creamy layer. In fact, no reasons are assigned by the State to justify its stand as to on what basis, notwithstanding the income of Group C employees exceeding Rs.2,00,000/-, they are to be excluded. The Apex Court while considering this question has observed thus:

“The findings of a Commission in respect of a matter of such grave significance and importance should have been based on scientific data as also evidence of experts. If Government tends to consider without adequate data and inquiry, a stage would come when the whole system of reservation will become farcical and negation of constitutional provisions. Hence, before arriving at the final conclusion, it should have noticed the rate of inflation and other relevant factors. Economic growth of a country, as a result of the



village income of citizens of India, keep on changing, although while determining an issue as to whether persons who have attained economic sufficiency so as not to furthermore describe them as economically backward is required to be taken into consideration.”

7. This takes us to the additional prayer of the petitioner. Indeed, the petitioner wants to unsettle what is settled way back in the year 2005, inasmuch as, she wants the re-ranking to be done. It is trite that the petitioner is seeking such a relief, inasmuch as, we are in the year 2009. Most of the students, if not all, have completed their course and most have passed out of the college. In the circumstances, putting the clock back and directing the respondents to admit her to any of the courses on the basis of quashing of Annexure-A would not arise. In fact, this would be a multitude exercise which cannot be taken at this point of time. Even otherwise, the petitioner is not very keen to have the second relief granted to her.



Consequently, I am of the view that the petitioner succeeds in part. Consequently, the following order is passed:

- (1) Petition is allowed in part. Annexure-A stands quashed.
- (2) The prayer of the petitioner to redraw the rank list cannot be granted. The same stands rejected.

Rule is made absolute to the extent indicated above.

Sd/-
Judge



At/_____ on _____ which the application was filed
 (a) The date on which charges and additional charges if any are called for _____ 6/2/09
 (b) The date on which charges and additional charges, if any are deposited/paid _____ 12/3/09
 (c) The date on which the copy is ready _____ 17/3/09
 (d) The date of notifying that the copy is ready for delivery _____ 20/3/09
 (e) The date on which the applicant is required to appear on or before _____ 20/3/09
 (f) The date on which copy is delivered to the applicant _____ 21/3/09
 (g) Examined by _____ Sanjay RP

TRUE COPY
 Shagadan
 20/3/09
 Section Officer
 High Court of Karnataka
 Bangalore-560 001.