2026 INSC 230

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2827 – 2829 of 2018

UNION OF INDIA AND OTHERS … APPELLANT(S)

VERSUS

ROHITH NATHAN AND ANOTHER, ETC. … RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 3130 – 3141 of 2024

UNION OF INDIA … APPELLANT(S)

VERSUS

KETAN AND OTHERS, ETC. … RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). OF 2026
[Arising out of SLP (C) NO. 17651 of 2022

UNION OF INDIA & ANOTHER … APPELLANT(S)

VERSUS

DR. IBSON SHAH. I. AND ANOTHER … RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

Leave granted in SLP (C) No. 17651 of 2022.

2. This judgment deals with three matters arising out of separate orders passed by different High Courts. Since the questions of law involved in all the cases are substantially identical and common, they were heard together and are being decided by this common judgment.

FACTUAL BACKGROUND

3. The facts giving rise to the respective appeals are set out below.

C.A. No(s). 2827 – 2829 of 2018 [Union of India & Ors. v. Rohith Nathan and Anr. Etc.]

4. The present Civil Appeals have been filed against the common judgment dated 31.08.2017 passed by the High Court of Judicature at Madras in W.P. Nos. 6387, 6388 and 6389 of 2017, whereby the High Court dismissed the writ petitions filed by the appellants and affirmed the common order dated 12.01.2017 passed by the Central Administrative Tribunal[1], Chennai Bench in O.A. Nos. 1133, 1132 and 1375 of 2014.

4.1. Respondent No. 1 in CA. Nos. 2827 and 2828 of 2018, Rohith Nathan, secured All India Rank 174 in the Civil Services Examination, 2012 under the OBC category. His father was employed in a private organisation namely M/s.

[1] For short, "CAT"

HCL Technologies Ltd., and was drawing a salary exceeding the prescribed creamy layer limit under the extant guidelines. On that basis, he was treated as falling within the creamy layer. Though he was recommended by the UPSC as a General Merit candidate and allocated to the Indian Police Service against an unreserved vacancy, Respondent No. 1 sought benefit of OBC reservation and allocation to the Indian Foreign Service against the vacancy reserved for OBC candidates by treating him as OBC (Non-Creamy Layer) candidate. He accordingly filed O.A. No. 1132 of 2014 before the CAT, Chennai seeking a direction for allotment to the Indian Foreign Service as per his OBC rank in the Civil Services Examination, 2012. He also filed O.A. No. 1133 of 2014 seeking to quash the portion relating to Category II(C) in the Schedule to the Office Memorandum dated 08.09.1993 (O.M. No. 36012/22/93-Estt (SCT)).

4.2. Respondent No. 1 in C.A. No. 2829 of 2018, G. Babu, appeared in the Civil Services Examination, 2013 under the OBC category and secured Rank 629. His father was employed in a Public Sector Undertaking namely Neyveli Lignite Corporation, as a Senior Executive Engineer. As his father's salary income exceeded the prescribed limit, he was also treated as falling within the creamy layer under the applicable guidelines. To claim the benefit of OBC reservation for allocation to a service against a vacancy reserved for OBC candidates, Respondent No. 1 filed O.A. No. 1375 of 2014 before the CAT, Chennai Bench seeking reallocation to the Indian Police Service or any other service as per his OBC rank.

4.3. The CAT, having heard the parties, held that under the Office Memorandum dated 08.09.1993, income from salary and agricultural income stood excluded from the Income / Wealth Test for determination of creamy layer status. It further held that paragraph 9 of the clarificatory letter dated 14.10.2004, insofar as it directed inclusion of salary income of PSU and private sector employees under Category II(C), resulted in hostile discrimination between the wards of Government servants and those of PSU/private sector employees. By its common order dated 12.01.2017, the CAT allowed all three Original Applications and directed as follows:

> *"We direct the DoPT to withdraw the clarification in para 9 of the OM dated 14.10.2004 to the extent it is made applicable to II-C and reformulate it appropriately in the light of the observations made herein within a period of three months. The respondents are also directed to reallocate the service of the two applicants on the basis of their OBC status within a period of three months from the date of receipt of a copy of this order."*

4.4. Aggrieved, the Union of India and others filed W.P. (C) Nos. 6387, 6388 and 6389 of 2017 before the High Court of Madras. By common judgment dated 31.08.2017, the High Court dismissed all three writ petitions primarily on two grounds:

(i) The failure of the Union of India to formulate an equivalence / comparability test resulted in placing the sons and daughters of PSU employees at a disadvantage compared to similarly placed Government servants; and

(ii) When salary income of parents serving in State/Central Government in Group C and D posts, or those entering Group B and A posts, after attaining the age of 40 years, was not considered for creamy layer determination, inclusion of salary income of PSU employees under Category II-C introduced an element of hostile discrimination.

4.5. Challenging the aforesaid common judgment, the appellants have preferred the present Civil Appeals.

C.A. No(s). 3130 – 3141 of 2024 [Union of India v. Ketan and others etc.]

5. The present batch of Civil Appeals has been preferred against the common judgment dated 22.03.2018 passed by the High Court of Delhi at New Delhi in W.P. Nos. 3073 – 3084 of 2017. By the said judgment, the High Court disposed of the writ petitions, set aside Letter No. 36033/5/2004- Estt. (Res.) dated 14.10.2004, and directed the appellants to verify the creamy layer status of the respondent candidates (except Sagar Chourasia, who had already been selected) strictly in terms of Office Memorandum dated 08.09.1993.

5.1. According to the appellants, the respondents had appeared in the Civil Services Examination, 2015 claiming reservation under the OBC (non-creamy layer) category. The parents of all respondent candidates were PSU employees, bank employees or otherwise fell under Category II(C) of the Schedule to the Office Memorandum dated 08.09.1993[2]. The candidates were recommended by

[2] For short, "1993 OM"

the UPSC for service allocation. While forwarding their dossiers, UPSC requested verification of their creamy layer status.

5.2. Upon verification, it was found that equivalence of their parents' posts *qua* Government posts had not been established. Accordingly, applying the 1993 OM read with the clarificatory letter dated 14.10.2004, the department applied the "income / wealth test" under Category VI and computed the parents' salary income for the preceding three years. Since the income exceeded the prescribed ceiling, the respondents were treated as falling within the creamy layer. Consequently, by publication dated 22.06.2016, the respondents were denied allocation under the OBC category.

5.3. Challenging the same, the respondent candidates filed W.P. Nos. 3073 – 3084 of 2017 before the Delhi High Court *inter alia* seeking quashment of the clarificatory letter dated 14.10.2004 and issuance of a direction for allocation of services treating them as OBC (Non-Creamy Layer) candidates.

5.4. During the pendency of the matter, the Union of India issued Office Memorandum No. DPE-GM-/0020/2014-GM-FTS-1740 dated 25.10.2017, clarifying gradation and creamy layer criteria in Central Public Sectors Enterprises, indicating that Board level and Managerial-level posts (below Board level) subject to the proviso that executives whose annual income as per 1993 OM was less than Rs. 8 lakhs, would not fall under the creamy layer.

5.5. By the impugned judgment dated 22.03.2018, the Delhi High Court disposed of the writ petitions, by holding that the 1993 OM contemplated

consideration only of income from "other sources" for applying the Income / Wealth Test where equivalence had not been established. It further held that the clarificatory letter dated 14.10.2004 impermissibly introduced salary income as a determinative factor and lacked rational basis. Consequently, the High Court set aside the letter dated 14.10.2004 and directed re-verification strictly in accordance with the 1993 OM.

5.6. Pursuant thereto, the appellants issued a speaking order dated 22.05.2018 reconsidering the matter under the 1993 OM, but again rejected the claim of Non-Creamy Layer status by taking into account parental salary. Certain respondents thereafter filed Contempt Petition (C) Nos. 684/2018, 972/2018 and 973/2018 before the Delhi High Court, in which notices were issued.

5.7. Apprehending coercive proceedings, the appellants have preferred the present appeals.

Civil Appeal @ SLP (C) No. 17651 of 2022 [Union of India & Anr. v. DR. Ibson Shah. I. and Anr.]

6. This Civil Appeal challenges the final judgment dated 25.02.2022 passed by the High Court of Kerala at Ernakulam in OP (CAT) No. 94 of 2021, whereby the High Court declined to interfere with the order dated 13.10.2020 passed by the Central Administrative Tribunal, Ernakulam Bench in O.A. No. 718 of 2018.

6.1. The UPSC had issued notification for the Civil Services Examination, 2016 and the Department of Personnel and Training[3] notified the detailed rules *vide* Gazette Notification dated 27.04.2016. Rule 24 required candidates to possess requisite certificates in the prescribed format for OBC reservation. Rule 25 stipulated that OBC status, including creamy layer determination would be reckoned as on the closing date of applications.

6.2. Respondent No. 1 appeared in the Civil Services Examination, 2016 and the Civil Services Examination, 2017 under the OBC category and secured Rank 540 (2016) and Rank 620 (2017). His father had been directly recruited as a Lower Division Clerk (Group C) in the Legal Metrology Department, Government of Kerala, and died in 2012. His mother was directly recruited as Junior Assistant (Group C clerical cadre) in Kerala State Financial Enterprises (KSFE), a State PSU.

6.3. Upon verification, DoPT found that the mother, being employed in a PSU under Category II(C), earned salary exceeding Rs. 6 lakhs per annum for three consecutive years (as revised by the Office Memorandum dated 27.05.2013). Accordingly, Respondent No. 1 was treated as falling within the creamy layer. In CSE-2017 he was denied allocation; in CSE-2016 he was treated as a General Merit candidate and allocated Indian Defence Accounts Service (IDAS) *vide* letter dated 21.08.2017.

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[3] For short, "DoPT"

6.4. Aggrieved, Respondent No. 1 filed O.A. No. 718/2018 before the CAT, Ernakulam, which ruled in his favour on 13.10.2020. The High Court of Kerala affirmed the same and dismissed OP(CAT) No. 94/2021 filed by the appellants, on 25.02.2022, *inter alia* holding that:

- The respondent possessed a valid OBC-NCL certificate before the cut-off date;
- Both parents were Group C entrants (clerical cadre) below Group A and B;
- Under Category II of the 1993 OM, mere parental service in a PSU could not lead to creamy layer exclusion;
- The comparability exercise under Category II(C) was transitional;
- The Government's failure to determine equivalence could not prejudice candidates; and
- Denial of OBC-NCL status to wards of PSU employees, while granting it to similarly placed Government servants, would constitute hostile discrimination.

Therefore, the appellant, Union of India, is before this Court with the present appeal.

SUBMISSIONS OF THE PARTIES

7. The learned Additional Solicitor General of India appearing for the appellant in CA Nos. 2827 – 2829 of 2018 / Union of India submitted that the impugned judgment dated 31.08.2017 passed by the High Court of Madras in W.P. Nos. 6387, 6388 and 6389 of 2017 is *ex facie* unsustainable in law and

deserves to be set aside. It was urged that the exclusion of persons falling within the Creamy Layer is aimed at ensuring that reservation benefits are not extended to those who are no longer backward. Any legislative or executive action to remove such persons, individually or collectively, cannot be constitutionally invalid but is in consonance with the principle laid down by this Court in ***Indra Sawhney v. Union of India and others***[4]**.** This Court in ***Indra Sawhney v. Union of India and others***[5]*,* explained the rationale underlying the rule of exclusion of the Creamy Layer, holding that non-exclusion thereof would amount to discrimination and violation of Articles 14 and 16, inasmuch as unequals cannot be treated as equals. It was further submitted that the Union of India was fully competent and empowered to issue the clarificatory letter dated 14.10.2004 in order to ensure that the intended benefits of reservation reach the truly deserving candidates among the backward classes. To sustain the spirit of the constitutional provisions of equality, it is obligatory on the State to identify the most deserving candidates, as the State is obliged to remove inequalities and backwardness from society. If non-deserving candidates are given the benefit of reservation, it would breach the spirit of the constitutional provision. Reliance was also placed on the decision in ***Ashok Kumar Thakur v. Union of India***[6], wherein this Court held that the Government should not proceed on the basis

[4] 1992 Supp (3) SCC 217
[5] (2000) 1 SCC 168
[6] (2008) 6 SCC 1

that once a class is considered backward, it should continue to be backward for all times, as such an approach would defeat the very purpose of reservation.

7.1. The learned counsel further submitted that the respondents have reached a comparatively higher level of social advancement and economic status, and therefore, as a matter of law, the declaration of such persons as being non-entitled to be treated as backward is sustainable. The Department has rightly considered the respondents as falling under the Creamy Layer, and vacancies reserved for OBC candidates are earmarked and allocated to other non-Creamy Layer candidates who are eligible and entitled.

7.2. It was contended that the High Court erred in dismissing the writ petitions solely on the ground of alleged discrimination between wards of PSU employees and wards of Government employees, without examining the merits of the individual cases decided by the Tribunal. The income from the salary of the parents of the respondents was not considered by the High Court while deciding the case. The delay in determination of equivalence between PSU employees and Government employees should not result in providing an undue advantage to the respondent candidates who belong to a comparatively higher strata of the OBC category by virtue of their parents' salary income as this would deny the benefit of reservation to deserving candidates.

7.3. It was further contended that the 1993 OM has been upheld by this Court in ***Ashok Kumar Thakur (supra)***, and the High Court erred in holding that the 1993 OM and the clarificatory letter dated 14.10.2004 bring about hostile

discrimination. Clause II-C of the Schedule to the 1993 OM clearly states that employees in PSUs, banks, insurance organisations, universities etc. are to be treated on the same footing as Government employees, and pending evaluation of equivalence, the criteria specified in Category VI would apply. All candidates producing certificates for claiming the benefit of reservation under the OBC Non-Creamy Layer category must undergo all six tests given in the Schedule to the 1993 OM to determine their Creamy Layer status. The service status of the parents of persons employed in PSUs or private enterprises, in which equivalence has not been established vis-à-vis Government services is determined by the quantum of salary that they receive.

7.4. It was submitted that the clarificatory letter dated 14.10.2004 was issued only to clarify the procedure to be adopted for applying the income / wealth test in the case of sons and daughters of parents employed in PSUs, etc., where equivalence has not been established. The High Court erred in holding that para 9 of the letter was not in consonance with the 1993 OM. The timely rise in the income of Government servants through successive Pay Commissions has not erased the importance of the social status criteria to be adopted in their case. For determining Creamy Layer status, the sons and daughters of Government servants undergo both social and economic tests, whereas those of PSU and private employees undergo only the economic test.

7.5. The learned counsel further contended that an appointment given to a non-eligible candidate deprives an eligible Non-Creamy Layer OBC candidate

of appointment. The judgment of the High Court is contrary to the established policy of the Government. This Court has held that it is not within the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise or acceptable, or whether a better policy could be evolved. Such a policy decision would normally not be interfered with unless it is capricious, arbitrary, or offends Article 14.

7.6. It was thus submitted that the 1993 OM and the letter dated 14.10.2004 form part of a consistent and constitutionally sound framework for the identification of the creamy layer, and that the inclusion of salary in gross annual income aligns with the principle of substantive equality and prevents distortion of the reservation system. Further, it was contended that the exclusion of salary would subvert the constitutional goal of social justice, lead to reverse discrimination, and create administrative chaos, thereby undermining the rights of genuinely backward OBC candidates.

7.7. On these grounds, the learned counsel prays that the impugned judgment of the High Court dated 31.08.2017 deserves to be quashed and that the respondents be declared as falling within the Creamy Layer and not entitled to reservation benefits under the OBC category.

8. The learned senior counsel appearing for Respondent No.1 (Rohith Nathan) submitted that the 1993 OM carries the authority of law, having been issued pursuant to the directions in ***Indra Sawhney and others v. Union of***

India and others[7] after due deliberation by an Expert Committee, parliamentary scrutiny, and inter-ministerial consultation. He pointed out that the Expert Committee had evolved criteria for the exclusion of socially advanced persons from the benefit of reservation for OBCs, with emphasis on social status and high income from business, profession, or other sources, while expressly excluding income derived from salary and agricultural land. The report of the Committee was laid before both Houses of Parliament and formally accepted by the Government, and the 1993 OM was issued after vetting by the Law Ministry and consultation with the Ministry of Social Justice & Empowerment.

8.1. In contrast, the learned senior counsel submitted that the clarificatory letter dated 14.10.2004[8] was issued without consultation, deliberation, or any traceable administrative record, and by the DoPT, which was not the competent authority under the Allocation of Business Rules, 1961. He referred to RTI responses confirming that no consultation with the Ministry of Social Justice & Empowerment preceded the issuance of the 2004 letter, and that the file notings were not traceable. He therefore contended that the 2004 Letter is *non est* in law and cannot override or dilute the binding effect of the 1993 OM.

8.2. The learned senior counsel further submitted that the implementation of the 1993 OM itself demonstrates that salary and agricultural income are excluded from the income/wealth test. He referred to the DoPT's Office

[7] 1992 Supp (3) SCC 217
[8] For short, "2004 Letter"

Memorandum dated 15.11.1993 annexing a model application form which expressly excluded salary and agricultural income, and pointed out that various State Governments such as Andhra Pradesh, Telangana, and Tamil Nadu, as well as statutory bodies including the National Commission for Backward Classes and the Ministry of Social Justice & Empowerment, have consistently followed this principle.

8.3. The learned senior counsel contended that it is incorrect for the Government to submit that OBCs belonging to Category IIC of the 1993 OM are to suffer exclusion until the equivalence of posts is conducted. The Expert Committee had expressly recommended that, pending evaluation of equivalence of posts in PSUs and other bodies, persons falling under Category IIC would still be entitled to reservation, subject only to exclusion under Category VI by application of the income/wealth test.

8.4. The learned senior counsel also submitted that the Government's interpretation of Explanation (i) to the income/wealth test is erroneous. The Government has contended that either income from salary or income from agricultural land is to be considered, but not both excluded, in determining whether the monetary limit has been exceeded. He argued that this interpretation is unsupported by reasoning, contrary to the consistent implementation of the 1993 OM, and inconsistent with the Union's own stand in ***Neil Aurelio Nunes***

v. Union of India[9]. In that case, the Union distinguished OBC and EWS criteria by clarifying that for OBCs, salary income is excluded, whereas for EWS, salary income is included. Acceptance of the Government's present stand would obliterate this distinction, leading to arbitrariness and inconsistency.

8.5. Thus, the learned senior counsel urged that the 1993 OM, having statutory force and having been consistently implemented, must prevail, and that the 2004 Letter, lacking authority, cannot dilute or override the settled criteria.

9. The learned counsel appearing for Respondent No. 1 (G. Babu) submitted that the DoPT cannot question the validity of an OBC certificate once it has been duly issued by the competent authority. He contended that DoPT is not the authority empowered to issue or scrutinize OBC certificates. Under the DoPT Office Memorandum dated 15.11.1993, the competent authorities for issuance and verification of OBC certificates are District Magistrates, Collectors, Deputy Commissioners, Sub-Divisional Magistrates, Tehsildars and other designated revenue officers. These authorities are specially entrusted with determining whether an applicant belongs to the OBC category and whether he or she falls within the Creamy Layer, strictly in accordance with the criteria prescribed in the Schedule to the 1993 OM.

9.1. The learned counsel emphasised that the model application form appended to the 1993 OM mandates disclosure of detailed particulars regarding

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[9] (2022) 4 SCC 64

parental qualifications, employment, income, assets and wealth, which are verified by the issuing authority. Further, the revised OBC certificate format introduced by the DoPT's Office Memorandum dated 30.05.2014 expressly requires the certifying authority to declare that the candidate does not belong to the Creamy Layer. The certificate is thus issued after comprehensive scrutiny of contemporary data, including parental income for the preceding three financial years. He contended that such certificates cannot be lightly disregarded or questioned in a cavalier manner. Reliance was placed on ***Madhuri Patil v. Commissioner, Tribal Development***[10], wherein this Court held that a social status certificate remains valid unless it is found to be false or fraudulently obtained pursuant to investigation by a duly constituted Scrutiny Committee.

9.2. The learned counsel further submitted that the 1993 OM issued pursuant to the recommendations of the Mandal Commission, the directions of this Court in ***Indra Sawhney and others v. Union of India and others***[11], and the report of the Expert Committee of the Ministry of Social Justice, comprehensively delineates the categories falling within the Creamy Layer exclusion. He argued that the Union of India seeks to rely upon the 2004 Letter; however, such a letter cannot override or qualify the binding provisions of the 1993 OM. It was submitted that while the 1993 OM excluded salary and agricultural income from the income / wealth test, the 2004 Letter sought to include salary income in the

[10] (1994) 6 SCC 241
[11] 1992 Supp (3) SCC 217

case of PSU employees, thereby introducing an artificial and hostile discrimination between children of government servants and those of PSU employees.

9.3. It was further submitted that it is settled law that a mere executive letter cannot override or amend a subsisting Office Memorandum. In support, reliance was placed upon ***R.P. Bhardwaj v. Union of India***[12], wherein this Court held that an operative Office Memorandum cannot be modified or curtailed through a mere circulation of a letter. Reference was also made to ***K. Sampath v. State of Tamil Nadu***[13] reiterating the same principle. Accordingly, the 2004 Letter was contended to be devoid of statutory authority and incapable of diluting the binding effect of the 1993 OM.

10. The learned counsel appearing for the Intervenors submitted that the Intervenors adopt the oral and written submissions advanced on behalf of the respondents. He urged that no separate or novel relief is required to be crafted. The present Civil Appeals were instituted by the Union of India against judgments of various High Courts, seeking direction to the DoPT to reallocate services to the concerned applicants. In the event of dismissal of the appeals, the said directions would revive, and the DoPT would be obligated to proceed with reallocation and verification of OBC status in accordance with law.

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[12] (2005) 10 SCC 244

[13] MANU/TN/9958/2006

10.1. The learned counsel submitted that the Union of India has been aware of these directions since 2017, 2018 and 2022, and had in certain matters obtained interim orders of stay. The Union was thus fully conscious that, if unsuccessful, it would be required to implement the High Court directions. It cannot now plead administrative inconvenience. He drew attention to the 21st Report of the Parliamentary Committee on Welfare of Other Backward Classes (2018–19), wherein representatives of the DoPT had informed the Committee that supernumerary posts would be created to implement the decision of the Delhi High Court dated 22.03.2018. It was argued that having undertaken to create such posts, the Union cannot resile from its stated position upon dismissal of the appeals.

10.2. The learned counsel further submitted that this Court in W.P.(C) No. 914/2016, by order dated 20.03.2017, had directed that candidates selected through the Civil Services Examination, 2016 be notified that their selection and seniority would remain subject to the outcome of litigation initiated by OBC candidates. The DoPT complied with this direction by issuing an Office Memorandum dated 20.12.2016. It was contended that delays in disposal of the present batch were attributable to repeated adjournments sought by the Union of India. In such circumstances, the Union cannot invoke equitable considerations to avoid compliance with binding directions.

10.3. It was submitted that this Court possesses ample powers under Article 142 of the Constitution to direct creation of supernumerary posts where

candidates have been wrongfully denied appointment or promotion. In this regard, reliance was placed upon decisions including ***Sushma Gosain v. Union of India***[14], ***Dr. PPC Rawani v. Union of India***[15], ***Union of India v. Vijay Kumari***[16], ***Dr. D.K. Reddy v. Union of India***[17], ***Delhi Administration v. Nand Lal Pant***[18] **and** ***Union of India v. Parul Debnath***[19], wherein directions for creation of supernumerary posts were issued in exceptional circumstances. While acknowledging that cadre management ordinarily falls within the executive domain, it was contended that in special situations, this Court may exercise its plenary power to do complete justice.

10.4. Finally, it was urged that upon dismissal of the Civil Appeals and application of the doctrine of merger, subordinate fora would be bound to apply the ratio of this Court in the present batch, namely, that Creamy Layer status must be assessed without reference to the 2004 Letter. Relegation would only result in multiplicity of proceedings, delay and administrative uncertainty. Many Intervenors have been litigating the issue for more than five years. It was therefore submitted that this is a fit case for exercise of power under Article 142 to render complete justice by extending the benefit of the present decision to the Intervenors, thereby conserving judicial and administrative resources and minimizing disturbance to existing cadres and seniority positions.

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[14] (1989) 4 SCC 468
[15] (1992) 1 SCC 331
[16] 1994 Supp (1) SCC 94
[17] (1996) 10 SCC 177
[18] (1997) 11 SCC 488
[19] (2009) 14 SCC 173

11. The learned Additional Solicitor General of India for the appellant in CA. Nos. 3130 - 3141 of 2024 / Union of India submitted that the Delhi High Court fundamentally erred in construing Column 3 of the Schedule to the 1993 OM as being confined merely to an "officer class" criterion.

11.1. It was further submitted that the High Court erred in holding that Category VI of the 1993 OM excludes the component of “salary” entirely from the expression “gross annual income”. According to the learned counsel, there are three distinct components of income – income from salary, income from other sources, and income from agriculture – and Explanation (a) to Category VI merely prohibits the clubbing of salary and agricultural income with income from other sources; it does not mandate exclusion of salary *per se*. The income from each source, it was contended, must be assessed separately. If either the income from salary or the income from other sources exceeds the prescribed threshold for three consecutive years, the candidate would fall within the creamy layer.

11.2. With respect to Category II-C of the 1993 OM, which pertains to employees of PSUs, banks and similar institutions where equivalence with Government posts has not been established, it was submitted that the 1993 OM itself provides that pending evaluation of equivalence, the criteria specified under Category VI, namely, the Income / Wealth Test, shall apply. In such circumstances, Clause VI operates as the primary test for determination of

creamy layer, and exclusion of salary from consideration would render the test otiose. The 2004 Letter, it was argued, merely harmonizes Paras 9 and 10 of the 1993 OM and does not override or amend the 1993 OM; rather, it clarifies that in the absence of established equivalence, income from salary is relevant for applying the income test.

11.3. It was further contended that a purposive interpretation must be given to the expression "gross annual income". Exclusion of salary of PSU or private employees from consideration would lead to anomalous and absurd consequences, whereby children of highly placed PSU executives drawing substantial salaries could continue to claim non-creamy layer status merely because their income from other sources falls below the threshold. Such an interpretation, it was submitted, would defeat the constitutional principle of qualitative exclusion recognized in ***Ashok Kumar Thakur (supra)*** and reaffirmed subsequently, and would run contrary to the object underlying the creamy layer doctrine.

11.4. The learned counsel contended that exclusion of the creamy layer is a constitutional imperative and that the State possesses policy latitude in identifying reasonable parameters for such exclusion. In the absence of established equivalence between Government posts and PSU posts, there exists, according to the Union, an intelligible differentia which justifies a distinct method of applying the income test to Category II-C employees. The delay in determining equivalence, it was submitted, cannot operate to confer an

unintended benefit upon comparatively advanced sections within the OBCs. It was further argued that the High Court failed to consider the broader policy framework and instead proceeded on an erroneous assumption of discrimination, without appreciating that the income test under Category VI would be rendered redundant if salary were excluded in cases where equivalence had not been determined. Consequently, the impugned judgment, which has the effect of nullifying the 2004 Letter and reopening settled selections, was stated to be unsustainable in law and contrary to the constitutional scheme governing OBC reservations.

12. The learned senior counsel for Respondent(s) in CA. Nos. 3130 – 3141 of 2024 submitted that the Constitution Bench in ***Indra Sawhney v. Union of India*** (supra) directed the Union of India to specify appropriate socio-economic criteria for excluding the socially advanced sections – commonly referred to as the Creamy Layer – from the ambit of Other Backward Classes. Pursuant thereto, the Government constituted the Ram Nandan Prasad Committee, whose report was laid before both Houses of Parliament. The recommendations of the Committee were accepted in toto and culminated in the issuance of the 1993 OM.

12.1. It was submitted that under the 1993 OM, the sons and daughters of Government officers directly recruited to Class I posts, and those promoted from Class II to Class I before the age of 40, were to be treated as falling within

the creamy layer. Children of employees in autonomous bodies, public sector undertakings, banks, insurance organisations, universities and private enterprises were to be considered creamy layer where their parents held posts equivalent or comparable to those specified for Government servants. Further, the income / wealth test prescribed that persons whose gross family income for the preceding three years exceeded the notified threshold (Rs. 6,00,000 at the relevant time; presently Rs. 8,00,000) would fall within the creamy layer. Crucially, income from salaries and agricultural land was expressly excluded from such computation.

12.2. Learned counsel emphasised that DoPT itself interpreted the 1993 OM as excluding salary income, as reflected in its Office Memorandum dated 15.11.1993 and the Model Form appended thereto. The Model Form specifically required disclosure of income excluding salary income. This form, it was submitted, continues to be uniformly adopted by all certificate-issuing authorities across the country without modification.

12.3. Reference was then made to the 2004 Letter. Paragraph 3 thereof acknowledged that the criteria prescribed for Government servants were to apply *mutatis mutandis* to similarly placed employees of PSUs, banks and other organisations. Paragraph 10 reiterated that income from salaries and agricultural land shall not be taken into account while applying the income / Wealth Test. However, paragraph 9 of the same 2004 Letter, it was contended, introduced a contradictory position by providing that where equivalence of posts had not

been determined, income from salaries and other sources was to be assessed separately, and if either exceeded the prescribed limit, the candidate would be treated as creamy layer. Agricultural income alone was excluded.

12.4. According to the learned counsel, paragraph 9 effectively introduced a discriminatory regime whereby salary income would be counted in the case of PSU employees and others falling within Category IIC, but not for Government servants, armed forces personnel, or constitutional functionaries. The failure of the Government to determine equivalence of posts could not justify imposing dual income thresholds for Category IIC. Such an interpretation, it was argued, runs contrary to the spirit of the Expert Committee's report and the 1993 OM, and may lead to anomalous results – disqualifying even the wards of lower-level employees such as peons, drivers or typists solely on account of salary progression.

12.5. It was further submitted that paragraph 9 of the 2004 Letter was not operationalized until the Civil Services Examination 2015 and even thereafter its implementation remained confined to the UPSC Civil Services Examination, without adoption by other recruiting bodies. The interpretation is thus peculiar to DoPT and lacks uniform application.

12.6. On the aspect of estoppel and legitimate expectation, learned counsel contended that the Union of India is precluded from assailing the impugned judgment of the Delhi High Court dated 22.03.2018, having complied with it by issuing a Compliance Order dated 22.05.2018. Having accepted and acted upon

the judgment, the Union of India cannot now resile therefrom without first recalling or withdrawing its compliance.

12.7. It was also urged that the Government cannot adopt a stand before this Court diametrically opposed to its representations before Parliament, the National Commission for Backward Classes [20] and this Court in other proceedings. Reliance was placed on:

1. Legal Opinion of the Law Secretary dated 06.02.2019 opining that pending determination of equivalence, salary cannot be used as a criterion for Category IIC and that such cases must fall for consideration under Clause VI(b).

2. The observations of the Parliamentary Committee recommending withdrawal of the Union's affidavit founded upon paragraph 9 of the 2004 Letter, as being contrary to the Law Ministry's advice and the NCBC's stance.

3. The Tenure Report (2019-2022) of the NCBC holds that salary ought not to be included in computing gross total income for creamy layer determination.

4. The affidavit filed by the Union in ***Neil Aurelio Nunes v. Union of India,*** WP(C) No. 961 of 2021 (EWS matter), wherein it was specifically distinguished that the Rs. 8 lakh thresholds for EWS includes salary income, whereas the threshold for OBC creamy layer excludes salary income.

5. The inconsistency between the stand taken in the EWS matter and the position now advanced in Union of India v. Ketan (Civil Appeal No. 3130 of 2024).

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[20] For short, "NCBC"

12.8. On the strength of these representations, it was argued that a legitimate expectation has arisen that the Government would maintain consistency in its stand. Any deviation would not only defeat such expectation but also undermine parliamentary accountability and the constitutional principle of collective responsibility.

12.9. Lastly, learned counsel submitted that this Court by order dated 28.11.2016 in WP(C) No. 914 of 2016 and connected matters, directed that all subsequent selections would be subject to the final outcome of the pending petitions. The matters were transferred to the Delhi High Court, which rendered its judgment on 28.03.2018. The same was complied with on 22.05.2018. The present appeals were filed after a delay of more than 600 days, without withdrawal of the compliance order. In these circumstances, the concurrent findings of the CAT, Madras Bench; the Delhi High Court; the Madras High Court; and the Kerala High Court warrant affirmation along with consequential relief.

13. Adding further, it was submitted on behalf of the appellant in SLP (C) No. 17651 of 2022 that the 1993 OM expressly employs the expression "gross annual income" and therefore, the Kerala High Court erred in inferring that only "income from other sources" forms the basis for determination of creamy layer status in the case of PSU employees where equivalence has not been established. According to the learned counsel, such an interpretation is contrary

to the spirit and consistent understanding of the 1993 OM, as clarified on multiple occasions by the Reservation Division, and amounts to reading into the 1993 OM, a restriction which it does not contemplate.

13.1. It was further submitted that equivalence of posts in State PSUs vis-à-vis Central or State Government posts has not yet been comprehensively undertaken, as the exercise involves complex comparative assessment of a multitude of posts across States and Union Territories, differing pay structures, service conditions, and attendant perks and privileges. It was contended that precisely to address such contingencies, the 1993 OM provides under Category VI for application of the Income / Wealth Test pending evaluation of equivalence, and that this mechanism ensures continued implementation of the creamy layer principle even in the absence of formal equivalence.

13.2. The learned counsel also assailed the Government Order dated 31.05.2018 issued by the State of Kerala purporting to determine equivalence in respect of posts in the Kerala State Financial Enterprises, contending that the said order was passed on the basis of an individual representation and not as a policy decision founded upon objective and quantifiable data. It was urged that such an exercise is not in consonance with the principles laid down in ***Indra Sawhney and others v. Union of India of others***[21]**,** which require identification of socially and educationally backward classes based on objective criteria and quantifiable data before extending reservation benefits.

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[21] 1992 Supp (3) SCC 217

13.3. It was further submitted that in any event, even assuming the validity of the Government Order dated 31.05.2018, the said equivalence determination came into existence subsequent to the relevant selection process and was not in force at the time of consideration of the respondent's candidature. Reliance was placed on Rule 10 of the Civil Services Examination Rules, 2017, to contend that candidates seeking reservation benefits must be in possession of requisite and valid certificates in support of their claim as on the closing date of the application, i.e. 17.03.2017. Since the equivalence, even if assumed valid, was not operative on the relevant date, the respondent could not claim its benefit retrospectively.

13.4. On these grounds, learned counsel prayed for setting aside the impugned judgment and allowing the appeal.

14. The learned counsel for Respondent No. 1 in SLP (C) No. 17651 of 2022 submitted that by the impugned judgment dated 25.02.2022 passed by the Kerala High Court, the respondent was directed to be considered as an OBC-NCL candidate in the merit list for the Civil Services Examination, 2017. This was on the ground that the sole surviving parent (mother) of the respondent was appointed as a Group C employee in a Public Sector Undertaking owned by the Government of Kerala, and that the PSU was governed by a subsisting order of equivalence with corresponding posts in the Government of Kerala. The said equivalence order had been produced before the DoPT by the candidate.

14.1. It was further contended that the High Court in its judgment, examined the validity of the equivalence order and held that such an order could only have been issued by the Government of Kerala. The High Court substantively validated the equivalence order after examining the comparability methodology adopted therein. In paragraph 27 of the judgment, it was categorically held that the post to which the candidate's mother was appointed was equivalent to a Group C post in the public services of the Government of Kerala. In paragraph 30, the High Court declared that the DoPT had erred in denying OBC-NCL allocation to the candidate. It was submitted that the DoPT had adopted a mutually contradictory position first demanding an equivalence order and thereafter disregarding it when duly furnished.

14.2. It was submitted that the High Court highlighted the arbitrary conduct of the DoPT in paragraphs 20 and 25 of the judgment. The DoPT had altered the procedure for verification of Creamy Layer status of candidates whose parents were appointed to State Public Sector Enterprises, both during the Civil Services Examination, 2016 and midway through the CSE-2017 process, without any public notice or notification, thereby violating settled procedures and principles of natural justice. In 2016, the procedure adopted was to seek clarification from the concerned State Government regarding comparability of posts. However, in 2017 midway through the examination process, the DoPT began insisting upon formal equivalence orders issued by the State Governments.

14.3. Reference was also made to paragraph 31 of the judgment, wherein the High Court observed that there was no justification for the DoPT to reject the equivalence order issued by the State Government. It clarified that the equivalence order to be submitted could only be an order of the State Government, and in the present case, one issued by the Government of Kerala. It was contended that "State Public Services" and "State Public Service Commissions" fall within the exclusive domain of the State List under the Seventh Schedule to the Constitution. Consequently, the jurisdiction to declare comparability or equivalence between posts in the public services of the State of Kerala and Public Sector Enterprises owned by it lies exclusively within the State Government. It was urged that this constitutional demarcation had been disregarded by the DoPT in filing the present appeal.

14.4. It was further submitted that the DoPT had not disputed the status of the post held by the candidate's deceased father (who passed away in 2012) which had been accepted as a Group C post in the Government of Kerala based on orders issued by the same State Government. However, the DoPT was disputing the equivalence order issued by that very Government in relation to the candidate's mother, who was appointed to a Group C post in a State PSU. This differential treatment, it was contended, amounted to discrimination against the candidate's mother alone and reflected arbitrariness in administrative decision-making. The High Court had noted such arbitrariness in paragraph 33 of its judgment and dismissed the petition filed by the DoPT.

14.5. It was also contended that the action of the DoPT in treating the salary of an employee of a State PSU, irrespective of the post held, as income for determining Non-Creamy Layer status was discriminatory, particularly when, in the case of employees of the Central Government, State Governments, or Central PSUs, salary income was exempted from such computation. This aspect had been extensively dealt with by the High Court.

14.6. Finally, it was submitted that the DoPT lacked *locus standi* to raise disputes on behalf of the Union Government against orders issued by State Governments regarding equivalence of posts within the State. The DoPT's powers are circumscribed by the Allocation of Business Rules, 1961, and the subject matter of challenging equivalence determinations of State Governments does not fall within its assigned business. It was contended that the DoPT neither possesses authority to reject orders issued by the appropriate State Government nor to issue directions or requisitions to State Governments in that regard. Consequently, the challenge to the equivalence order issued by the Government of Kerala was said to be contrary to the Allocation of Business Rules, 1961, and violative of Article 77(3) of the Constitution of India.

14.7. It was emphasized that procedural violations were writ large in the actions of the DoPT in altering verification norms during the conduct of the Civil Servies Examinations and in adopting inconsistent verification practices from year to year. Until 2016, the DoPT had sought clarification from State Governments regarding the nature of posts held by parents serving in State

PSUs. In 2017, however, it insisted upon formal equivalence orders midway through the examination process, without amending the governing rules or issuing any notification, and thereafter rejected or ignored such orders when produced. According to the learned counsel, this arbitrary shift in procedure appeared designed to deny OBC claims of candidates whose parents were employees of State Public Sector Enterprises. It was further submitted that State Governments have consistently exercised their constitutional authority under the Seventh Schedule to issue equivalence orders whenever officers of State Public Services are posted to State PSUs. By disputing such actions of the "appropriate Government" within the exclusive domain of the State, the DoPT was alleged to have engaged in unconstitutional overreach in filing the present appeal.

15. The learned counsel appearing for the Union Public Service Commission (UPSC) submitted that the role of the said respondent is strictly confined to conducting the Civil Services Examination in accordance with the Rules and Regulations framed by the DoPT. The UPSC conducts the examination, processes the results, and makes recommendations for appointment to the various services based on the vacancies requisitioned by the respective Cadre Controlling Authorities. It was contended that the UPSC neither frames policy nor possesses the authority to adjudicate upon issues relating to reservation status or the application of the Creamy Layer criteria.

15.1. It was further submitted that the determination of eligibility for reservation benefits, including verification of OBC Non-Creamy Layer status, falls exclusively within the domain of the DoPT, which is the appellant herein and the nodal authority for such matters. Therefore, the issues raised in the present proceedings, as well as the reliefs sought by the appellants pertain solely to the DoPT, and no substantive relief has been claimed or could be claimed against the UPSC.

DISCUSSION & FINDINGS

16. We have heard learned counsel appearing for the parties at length and perused the materials available on record.

17. The present batch of Civil Appeals arises from judgments of the Madras High Court, Kerala High Court and Delhi High Court. By the impugned judgments, the respective High Courts adjudicated upon the eligibility of certain candidates claiming the benefit of OBC (Non-Creamy Layer) reservation in the Civil Services Examination conducted in different years.

18. It is not in dispute that the respondent candidates were successful in the Civil Services Examination. However, as the equivalence of posts in Public Sector Undertakings, banks and other organisations vis-à-vis Government posts had not been formally determined, the DoPT applied the Income /Wealth Test under Category VI of the 1993 OM read with 2004 Letter. Upon assessing the

parental income of the respective candidates for the preceding three financial years, the DoPT classified them as falling within the Creamy Layer of the Other Backward Classes, thereby rendering them ineligible for OBC (Non-Creamy Layer) reservation benefits. Consequently, their cases were not considered for service allocation under the reserved category. Aggrieved thereby, the respondent candidates approached the CAT and obtained orders in their favour. The writ petitions filed by the appellants challenging the said orders were dismissed by the High Courts of Madras, Delhi and Kerala. It is in these circumstances that the present Civil Appeals filed by the appellants have been placed before us for consideration.

19. The issues involved are allied and overlapping, though they require distinct treatment for the purpose of analysis. The first issue is whether the clarificatory letter dated 14.10.2004 can have any overriding or superseding effect over the Office Memorandum dated 08.09.1993, which expressly lays down the criteria for exclusion from the benefit of reservation for OBCs by identifying the creamy layer namely, the socially advanced persons of sections among the Socially and Educationally Backward Classes. The second issue is whether there can be hostile discrimination between employees of the Government and those working in Public or Private Sector Undertakings, when both occupy posts of the same grade or class.

20. Since the issues raised are broader in nature and concern the constitutional architecture governing identification of the creamy layer, the validity and interpretation of executive instructions, and the equality mandate under Article 14, it is neither necessary nor appropriate for this Court to enter into the granular factual matrix of each individual case. Moreover, the judgments impugned before us record largely concurrent findings on the material aspects. The controversy, therefore, turns essentially on questions of law of general public importance, warranting authoritative determination by this Court.

21. Before proceeding further, it is apposite to examine the constitutional and statutory background of reservation in India.

21.1. India's reservation framework for Other Backward Classes (OBCs)/ Socially and Educationally Backward Classes (SEBCs) has evolved through a sustained dialogue between constitutional text, legislative intervention, and judicial doctrine. The objective has consistently been to reconcile the mandate of substantive equality with the imperatives of administrative efficiency.

Constitutional framework

21.2. The Constitution embedded the principle of advancement of weaker sections through:

- Article 46 (Directive Principles of State Policy), which mandates the State to promote with special care the educational and economic interests of the weaker sections, particularly, Scheduled Castes and Scheduled Tribes;
- Article 15(4) (inserted by the First Constitutional Amendment, 1951), enabling the State to make special provision for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes;
- Article 16(4) empowering the State to make provisions for reservation in appointments or posts in public services for any backward classes inadequately represented;
- Article 15(5), later inserted, enabling reservation in admissions to educational institutions, including private educational institutions whether aided or unaided by the State, other than the minority educational institutions.

For ease of reference, the above provisions read as under:

> ***"46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections***.—
>
> *The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."*
>
> *"**15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth-***

> ***(4)*** *Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."*
>
> ***(5)*** *Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."*
>
> ***"16. Equality of opportunity in matters of public employment-***
> ***(4)*** *Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."*

From its inception, Article 16(4) was conceived not as an exception to equality, but as an instrument to achieve it.

<u>Early Judicial Evolution</u>

21.3. In ***M.R. Balaji and others v. State of Mysore***[22]**,** this Court held that caste may be a relevant factor in identifying backwardness, but it cannot be the sole or dominant test. Social backwardness, the Court observed, is on the ultimate analysis closely linked with poverty, and excessive reservation under the guise of special provisions would subvert the constitutional scheme. The Court broadly indicated that reservation should ordinarily remain below 50%, recognising the need to balance advancement of weaker sections with societal interests at large. The following paragraphs are pertinent:

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[22] AIR 1963 SC 649

*"**23.** Besides, if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of Indian society which do not recognise castes in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are socially backward or not? The test of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups in toto from the operation of Article 15(4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward. That is why we think that though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf.* ***Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens****.*

...

34. *..... If admission to professional and technical colleges is unduly liberalised, it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make.* ***Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the present prevailing circumstances in each case."***

Similarly, in ***State of Andhra Pradesh and another v. P. Sagar***[23], this Court reiterated that classification for the purposes of Article 15(4) cannot rest solely upon caste; the objective remains the advancement of socially and educationally backward classes.

Socio-Economic Refinement and Means Test

21.4. By 1985, the doctrine had matured further in ***K.C. Vasanth Kumar and another v. State of Karnataka***[24]**,** where a Seven-Judge Bench emphasised that reservation policy cannot remain static but must be subjected to periodic review to ensure that the truly backward continue to receive its benefits. *Justice D.A.Desai* in his concurring opinion, stressed that economic criteria must increasingly inform the identification of beneficiaries and cautioned that reservation cannot be allowed to crystallise into a vested or hereditary entitlement. The Court endorsed the "caste-cum-means" test, drawing support from ***K.S. Jayasree v. State of Kerala***[25], where the imposition of an income ceiling within backward classes was upheld as constitutionally valid. Likewise, in ***R. Chitralekha v. State of Mysore***[26]**,** the Court recognised income and occupation as permissible indicators of backwardness. These decisions marked a decisive shift towards economic refinement within socially backward classes, a principle that ultimately took firm doctrinal shape in ***Indra Sawhney v. Union***

[23] 1968 SCR (3) 595
[24] 1985 SCC OnLine SC 339
[25] (1976) 3 SCC 730
[26] (1964) 6 SCR 368 : AIR 1964 SC 1823

of India (supra), where the exclusion of the 'creamy layer' was constitutionally crystallised. The relevant paragraphs from the judgment in *K.C. Vasanth Kumar* read as under:

> ***"26**. Therefore, **a time has come to review the criterion for identifying socially and educationally backward classes ignoring the caste label. The only criterion which can be realistically devised is the one of economic backwardness.** To this may be added some relevant criteria such as the secular character of the group, its opportunity for earning livelihood etc. but by and large economic backwardness must be the loadstar. Why I say this?*
>
> *...*
>
> ***30.** Let me conclude. **If economic criterion for compensatory discrimination or affirmative action is accepted, it would strike at the root cause of social and educational backwardness, and simultaneously take a vital step in the direction of destruction of caste structure which in turn would advance the secular character of the Nation.** This approach seeks to translate into reality the twin constitutional goals: one, to strike at the perpetuation of the caste stratification of the Indian Society so as to arrest regressive movement and to take a firm step towards establishing a casteless society; and two, to progressively eliminate poverty by giving an opportunity to the disadvantaged sections of the society to raise their position and be part of the mainstream of life which means eradication of poverty.*
>
> ***31.** Let me make abundantly clear that this approach does not deal with reservation in favour of Scheduled Castes and Scheduled Tribes. Thousands of years of discrimination and exploitation cannot be wiped out in one generation. But even here economic criterion is worth applying by refusing preferred treatment to those amongst them who have already benefited by it and improved their position. And finally reservation must have a time span otherwise concessions tend to become vested interests. This is not a judgment in a lis in an adversary system. When the arguments concluded, a statement was made that the Government of State of Karnataka would appoint a Commission to determine constitutionally sound and nationally acceptable criteria for identifying socially and educationally backward classes of citizens for whose benefit the State action would be taken. This does not purport to be an exhaustive essay on guide lines but may point to some extent, the direction in which the proposed Commission should move."*

125…… *While caste or community is a relevant factor in determining the social and educational backwardness, it cannot be said that all members of a caste need be treated as backward and entitled to reservation under Article 15(4) or Article 16(4). Caste-cum-means test would be a rational test in identifying persons who are entitled to the benefit of those provisions. This principle has received acceptance at the hands of this Court in* ***K.S. Jayasree v. State of Kerala*** *[(1976) 3 SCC 730]. In that case a Commission appointed by the Government of the State of Kerala to enquire into the social and economic conditions of the people of that State and to recommend as to what sections of the people should be extended the benefits under Article 15(4) of the Constitution found that only the rich amongst certain castes or communities were enjoying the benefit of reservations made earlier. It, therefore, recommended adoption of a means-cum-caste/community test for determining the sections of the people who should be given the benefit under the relevant constitutional provisions. The State Government accordingly stipulated that applicants who were members of certain castes or communities and whose family income was less than Rs 10000 per year were only entitled to reservation under Article 15(4). The petitioner in the above case who belonged to one such community but whose family income was above Rs 10,000 per year questioned the order before the Kerala High Court on the ground that the imposition of the ceiling of family income was unconstitutional. The learned Single Judge who heard the petition allowed it. The Division Bench of the Kerala High Court, however, reversed the decision of the learned Single Judge and dismissed the petition. On appeal, this Court while affirming the decision of the Division Bench in the above case on the question of social backwardness observed at pp. 199-200 thus: (SCC p. 735, para 21)*

……

143. *Since economic condition is also a relevant criterion, it would be appropriate to incorporate a "means test" as one of the tests in determining the backwardness as was done by the Kerala Government in Jayasree case63. These two tests namely, that the conditions of caste or group or community should be more or less similar to the conditions in which the Scheduled Castes or Scheduled Tribes are situated and that the income of the family to which the candidate belongs does not exceed the specified limit would serve as useful criteria in determining beneficiaries of any reservation to be made under Article 15(4). For the purpose of Article 16(4) however, it should also be shown that the backward class in question is in the opinion of the Government not adequately represented in the Government services.*

144. *There is one other basis on which a classification made for purposes of Article 15(4) or Article 16(4) of the Constitution has received the approval of this Court in* ***Chitralekha case****. In that case the Court was concerned with a list*

of backward classes prepared on the basis of economic condition and occupation. According to that Government Order, persons whose family income was Rs 1200 per annum or less and who were engaged in occupations such as agriculture, petty business, inferior services, crafts or other occupations involving manual labour were treated as belonging to backward classes. The petitioner who had filed the petition in the High Court did not challenge the validity of the said classification. But on a submission made on behalf of the State Government, the Court expressed its general approval to the method of classification…."

21.5. Thus, the above decisions collectively established three guiding propositions:

1. Caste may serve as an initial identifying marker but cannot be the exclusive determinant.
2. Economic condition is a relevant and rational refining criterion.
3. Reservation policy must balance social justice with broader societal interests.

Mandal Commission and OBC Reservation

21.6. The Mandal Commission, formally known as the Socially and Educationally Backward Classes Commission (SEBC) was constituted in 1979 under the chairmanship of B.P. Mandal with the mandate to identify the socially and educationally backward classes in India. In its 1980 report, drawing upon data from the 1931 Census (the last caste-based census) along with contemporaneous sample studies, the Commission estimated that Other Backward Classes (OBCs) constituted approximately 52% of the population. It

recommended 27% reservation in civil posts and services under the Government of India and Public Sector Undertakings, as well as in higher educational institutions, thereby bringing the total reservations for SCs, STs and OBCs to 49.5%.

21.7. Acting upon the said report, the Government of India issued an Office Memorandum dated 13.08.1990 providing for 27% reservation in civil posts and services for Socially and Educationally Backward Classes (SEdBCs). The said O.M. was amended on 25.09.1991 to provide that preference within the 27% reservation would be given to candidates belonging to the poorer sections among the SEdBCs. The implementation of the Mandal recommendations led to widespread public debate and social unrest, ultimately resulting in a constitutional challenge before this Court.

21.8. The validity of the above mentioned 1990 O.M. was considered by nine-Judge Bench in ***Indra Sawhney and others v. Union of India and others***[27]. This Court upheld the constitutional validity of 27% reservation for OBCs under Article 16(4), but imposed crucial limitations. It held that total reservations ordinarily should not exceed 50%, save in extraordinary circumstances, and most significantly, it mandated the exclusion of the "creamy layer" from among the OBCs. The Court emphasised that backwardness under Article 16(4) is

[27] 1992 Supp (3) SCC 217

primarily social and that reservation cannot be sustained purely on economic criteria.

21.9. *Justice Sahai*, while concurring with the majority, underscored that backwardness is not static and that individuals within a backward class who have achieved higher social or economic status must be excluded to prevent monopolisation of benefits. He observed that while a collectivity may be backward, individuals from that group who have achieved advancement in status, service, or affluence must be disentitled from claiming reservation. The exclusion of the creamy layer was thus articulated as a constitutional necessity to preserve substantive equality. The following passage from the decision in *Indra Sawhney* is relevant:

> ***"629.*** *More backward and backward is an illusion. No constitutional exercise is called for it. What is required is practical approach to the problem. The collectivity or the group may be backward class but the individuals from that class may have achieved the social status or economic affluence. Disentitle them from claiming reservation. Therefore, while reserving posts for backward classes, the departments should make a condition precedent that every candidate must disclose the annual income of the parents beyond which one could not be considered to be backward. What should be that limit can be determined by the appropriate State. Income apart, provision should be made that wards of those backward classes of persons who have achieved a particular status in society either political or social or economic or if their parents are in higher services then such individuals should be precluded to avoid monopolisation of the services reserved for backward classes by a few. Creamy layer, thus, shall stand eliminated. And once a group or collectivity itself is found to have achieved the constitutional objective then it should be excluded from the list of backward class. Therefore,*
>
> *(1) No reservation can be made on economic criteria.*

(2) It may be under Article 16(4) if such class satisfies the test of inadequate representation.

(3) Exclusion of creamy layer is a social purpose. Any legislative or executive action to remove such persons individually or collectively cannot be constitutionally invalid."

21.10. The Court further directed the Government of India to specify, within four months, the socio-economic criteria for excluding socially advanced persons or sections from the OBC category and made implementation of the 1990 O.M. subject to such exclusion. It is in furtherance of these directions that the Ministry of Social Justice appointed an Expert Committee to evolve criteria for exclusion of the socially advanced sections, the term "creamy layer" being only a shorthand expression for this constitutional principle. The Expert Committee, keeping in view the directions in ***Indra Sawhney***, evolved criteria centred primarily on social status arising from positions and placements in life, rather than on income alone. The guiding principle was to identify positions whose occupants could reasonably be deemed to have ceased to be socially backward and to have attained social advancement. Accordingly, the Committee framed exclusion criteria under various categories, including the Service Category.

21.11. Under the Service Category, the Committee recommended that the criteria applicable to officers directly recruited in Central and State Government services should apply mutatis mutandis to officers in equivalent or comparable

posts in Public Sector Undertakings, Banks, Insurance Corporations, Universities, Autonomous Bodies, Local Self-Government Bodies and other similar institutions. Importantly, to avoid delay in implementation pending equivalence evaluation, the Committee recommended that during the interim period, the Income / Wealth Test (Category VI) would apply to such persons.

21.12. The Expert Committee made it explicit that even during this interim phase, persons falling within such PSU and analogous categories would continue to be entitled to reservation, and exclusion, if any, could only be on the basis of the prescribed Income / Wealth criteria. The intent was clear: status-based exclusion would operate once equivalence is determined; until then, economic filtering under structured criteria alone could apply.

Evolution of Non-Creamy Layer

21.13. The doctrine of exclusion of the "creamy layer", crystallised by this Court in ***Indra Sawhney and others v. Union of India and others***[28]**,** forms the constitutional foundation of the 1993 OM. The subsequent executive framework must therefore be understood as an operational mechanism to give effect to that binding constitutional mandate.

[28] 1992 Supp (3) SCC 217

1993 OM

21.14. Pursuant to the said constitutional mandate and the recommendations of the Expert Committee, the Government of India issued the 1993 OM, which codified the above structural framework. For better appreciation, the OM is reproduced below:

"No.36012/22/93-Estt. (SCT)
Government of India
Ministry of Personnel, Public
Grievances & Pensions (Department of
Personnel & Training)

New Delhi, the 8th
September, 1993
OFFICE MEMORANDUM

Subject:- Reservation for Other Backward Classes in Civil Posts and Services under the Government of India - Regarding.

The undersigned is directed to refer to this Department's O.M. No. 36012/31/90-Estt. (SCT), dated the 13th August, 1990 and 25'" September, 1991 regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgment in the Indra Sawhney and others Vs. Union of India and others case [Writ Petition (Civil) No. 930 of 1990] the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the socially advanced persons/sections from the benefits of reservations for Other Backward Classes in civil posts and services under the Government of India.

2. Consequent to the consideration of the Expert Committee's recommendations this Department's Office Memorandum No. 36012/31/90-Estt. (SCT), dated 13.08.90 referred to in Para(1) above is hereby modified to provide as follows:

(a) 27% (twenty seven percent) of the vacancies in civil posts and services under the Government of India, to be filled through direct recruitment, shall be reserved for the Other Backward Classes. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.

(b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.
(c)(i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this office memorandum.
(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations, callings. A list of such occupations, callings will be issued separately by the Ministry of Welfare.
(d) The OBCs for the purpose of the aforesaid reservation would comprise, in the first phase, the castes and communities which are common to both the report of the Mandal Commission and the State Government's Lists.
A list of such castes and communities is being issued separately by the Ministry of Welfare.
(e) The aforesaid reservation shall take immediate effect. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of this order.

3. Similar instructions in respect of public sector undertaking and financial institutions including public sector banks will be issued by the Department of Public Enterprises and by the Ministry of Finance respectively effective from the date of this Office Memorandum.

Sd/-
(Smt. Sarita Prasad)
Joint Secretary to the
Government of India

To

All Ministries/Department of Government of India."

The Schedule appended to the above 1993 OM enumerated specific categories for exclusion and operationalised the status-based criteria, while providing a residual Income / Wealth Test under Category VI.

Under Category II (Service Category), the Schedule classified Government servants into sub-categories II A and II B, referring respectively to officers directly recruited to Class I (Group A) and Class II (Group B) services. These

provisions unmistakably pertain to higher echelons of service and do not concern lower-level employees. Category II C extends the same principle to employees of Public Sector Undertakings, Banks, Insurance Organisations, Universities and similar bodies, by stipulating that the criteria in sub-categories II A and II B shall apply mutatis mutandis to officers holding equivalent or comparable posts in such organisations.

Income / Wealth Test

21.15. However, the 1993 OM expressly provides that pending evaluation of equivalence or comparability of posts vis-à-vis Government services, the Income / Wealth Test under Category VI alone would apply. This is significant. The specific criteria for disentitlement under II C, namely direct recruitment to a post equivalent to Class I / Group A, or promotion to such post before the age of 40, remain inoperative until equivalence is determined. Thus, in the absence of such evaluation, the entire category II C cannot be automatically deprived of reservation; exclusion, if any, can only be under Category VI.

Category VI, which embodies the Income / Wealth Test operates as a residual filter. Explanation (i) under this category specifically provides that income from salaries and income from agricultural land shall not be clubbed with income from other sources for the purpose of computing gross annual income. Explanation (ii) pertains to the periodic revision of the prescribed income limit.

The plain language of these explanations makes it clear that salary income and agricultural income are consciously kept outside the common pool while determining exclusion under the Income / Wealth Test.

2004 - Letter of Clarification

21.16. In 2004, a letter of clarification was issued to address practical issues that had arisen in implementation. The clarification recognizes that where equivalence of posts in PSUs and similar organisations has not been evaluated, creamy layer status must be determined on the basis of the Income / Wealth Test. It reiterates that income from salaries and income from agricultural land shall not be taken into account while applying the test. The clarification further explains that income from salaries and income from other sources (excluding salaries and agricultural land) are to be assessed separately, and exclusion would follow only if either component exceeds the prescribed limit for three consecutive years.

21.17. Thus, the evolution of the non-creamy layer principle demonstrates that the 1993 OM read with the 2004 Letter, preserves the primacy of status-based exclusion and confines economic exclusion to the structured parameters of Category VI. Salary income cannot be mechanically aggregated in a manner that defeats the constitutional objective articulated in *Indra Sawhney*. The interpretation of the 1993 OM and its implementation in the present case must

therefore be tested against this constitutional architecture. In this backdrop, we now proceed to examine the issues involved herein.

Issue No. 1

Whether the clarificatory letter dated 14.10.2004 can have any overriding or superseding effect over the Office Memorandum dated 08.09.1993, which expressly lays down the criteria for exclusion from the benefit of reservation for OBCs by identifying the creamy layer namely, the socially advanced persons of sections among the Socially and Educationally Backward Classes?

22. A bare perusal of the 1993 OM makes it abundantly clear that certain categories of persons, namely, the sons or daughters of those holding Class I/Group A or Class II/Group B posts in the Civil Services of the Central and State Governments, have been excluded. The income/wealth test has also been stipulated in the office memorandum, which prescribes an Income / Wealth Test as an additional criterion of exclusion. Significantly, the 1993 OM provides that these criteria shall apply *mutatis mutandis* for exclusion from reservation in respect of the children of those working in Public Sector Undertakings, Banks, Insurance organisations, Universities and other similar institutions, as well as those holding equivalent or comparable positions in private employment.

23. The question of ***"equivalence of posts"*** as contemplated both in the 1993 OM and in the subsequent 2004 Letter, is fundamentally a matter of policy.

Such equivalence must be determined by the Government on the basis of a detailed analysis of data by experts in the field. Until such equivalence is formally evaluated and notified by the Government, the entitlement of candidates whose parent(s) work in organisations other than in Class I or II of the Central or State Civil Services, shall be decided by the Income/ Wealth Test. The core question therefore is whether paragraph 9 of the 2004 Letter merely explains the scheme of the 1993 OM or impermissibly alters its substantive structure of exclusion.

24. Before adverting to the 2004 Letter, it is essential to reiterate the well-established principle that a mere government letter cannot have the effect of overriding, overruling or superseding any proceeding in the nature of an executive instruction or an Office Memorandum issued in exercise of executive power under Article 162 of the Constitution. The clarificatory letter must, therefore, be construed strictly as one explaining or supplementing the foundational guidelines laid down in the 1993 OM, which was issued after due deliberation and following the requisite procedure and not as altering its substantive framework. It is settled law that a clarificatory instruction cannot introduce a substantive condition that does not exist in the parent policy. If it travels beyond explanation and alters rights or liabilities, it ceases to be clarificatory and assumes the character of an amendment.

25. In order to understand the impact of the clarificatory letter dated 14.10.2004, it is apposite to extract Paragraphs 7-10 thereof as follows:

> *"7. In regard to clause (v) of para 4, it is clarified that the sons and daughters of parents of whom only the husband is a directly recruited Class II/Group B officer who gets into Class I/Group A at the age of 40 or earlier are treated to be in creamy layer. If the father is directly recruited Class III/Group C or Class IV/Group D employee and he gets into Class I/Group A at the age of 40 or earlier, his sons and daughters shall not be treated to be falling in creamy layer.*
>
> *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 or on the basis of status or income of his/her spouse. 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.*
>
> *9. In regard to clause (ix) of para 4, it is clarified that the creamy layer status of sons and daughters of persons employed in organizations where equivalence or comparability of posts vis-à-vis posts in Government has not been evaluated is determined as follows:*
>
> *Income of the parents from the salaries and from the other Sources [other than salaries and agricultural land] is determined separately. If either the income of the parents from the salaries or the income of the parents from other sources [other than salaries and agricultural land] exceeds the limit of Rs.2.5 lakh per annum for a period of three consecutive years, the sons and daughters of such persons shall be treated to fall in creamy layer. But the sons and daughters of parents whose income from other sources is less than Rs.2.5 lakh per annum and income from other sources is also less than Rs.2.5 lakh per annum will not be treated as falling in creamy layer even if the sum of the income from salaries and the income from the other sources is more than Rs.2.5 lakh per annum for a period of three consecutive years. It may be noted that income from agricultural land is not taken into account while applying the Test.*
>
> *10. In regard to clause (x) of para 4, it is clarified that while applying the Income/Wealth Test to determine creamy layer status of any candidate as given in Category VI of the Schedule to the OM, income from the salaries and income from the agricultural land shall not be taken into account. It means that if income from salaries of the parents of any candidate is more than Rs.2.5 lakh per annum, income from agricultural land is more than Rs.2.5 lakh per annum, but income from other sources is less than Rs.2.5 lakh per annum, the candidate*

shall not be treated to be falling in creamy layer on the basis of Income/Wealth Test provided his parent(s) do not possess wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years."

26. The above extract makes it clear that income from salaries, agriculture or other sources cannot be clubbed for the purpose of applying the income/wealth test to determine the creamy layer status of a candidate. It is also evident from a comprehensive reading of the 1993 OM along with the clarificatory letter dated 14.10.2004 that income from salaries alone cannot be the sole criterion to decide whether a candidate falls within the creamy layer. The status as well as the category of post to which a candidate's parent or parents belong is essential. The exclusion under Categories I to III of the Schedule is status-based rather than purely income-based, reflecting the policy understanding that advancement within the governmental service hierarchy denotes social progression independent of fluctuating salary levels. Mere determination of the status of a candidate as to whether he/she falls within the creamy layer or the non-creamy layer of the OBCs cannot be decided solely on the basis of the income.

27. In fact, paragraph 7 of the 2004 Letter makes it amply clear that a mechanical application of income thresholds may in certain situations, produce inequitable outcomes. To that limited extent, the 2004 Letter may be understood as reinforcing the scheme of the 1993 OM provided it is construed as explanatory and not as altering the substantive framework.

28. In this context, a perusal of the ***21st Report of the Parliamentary Committee on Welfare of Other Backward Classes (2018–19)*** elucidates the evolution of the guidelines governing exclusion from reservation by identification of the creamy layer. It is also necessary to point out that the 21st report records that the 2004 Letter has done more to confuse the position than to clarify it, which was its intended purpose.

29. The observations of the Parliamentary Committee lend institutional support to the view that paragraph 9 has generated interpretative ambiguity and may have been applied beyond its intended contours. The Report records that the 2004 Letter did not emanate from the DoPT Secretariat and that its origin could not be traced in terms of the initial note file. It further observes that determining exclusion from reservation solely on the basis of income from salaries, as indicated in the 2004 Letter, would not be consistent with the original framework. The entire architecture of paragraph 9 of the 2004 Letter is premised on a prior determination of equivalence. Income is intended to operate only as a surrogate measure in the absence of such equivalence; it cannot supplant the primary status-based framework embodied in the 1993 OM.

30. In light of the foregoing, any attempt to read paragraph 9 of the 2004 Letter in isolation, so as to dilute or override the substantive scheme of the 1993 OM would be legally untenable. Overemphasis on the 2004 Letter to the extent of making income alone determinative without regard to parental status or

category of service would defeat the structural framework of exclusion envisaged under the 1993 OM.

31. Thus, determination of creamy layer status solely on the basis of income brackets, without reference to the categories of posts and status parameters enunciated in the 1993 OM is clearly unsustainable in law.

Issue No. 2

Whether there can be hostile discrimination between employees of the Government and those working in Public or Private Sector Undertakings, when both occupy posts of the same grade or class?

32. The second issue that needs to be decided here is whether caste, as a determining factor for entitlement to reservation, can be diluted or distorted by introducing invidious discrimination between similarly placed categories of persons.

33. At the outset, it must be noted that while caste may be an indicator of historical disadvantage, it cannot be treated as the sole determinant of backwardness. The exclusion of the creamy layer among the backward classes is not a matter of mere policy preference but a constitutional imperative intended to ensure that the benefits of reservation reach those who are socially and educationally backward in the true sense of the phrase. The principle seeks to prevent relatively advanced segments within the backward classes from

siphoning off the advantages of affirmative action, so that the objective and purpose of the constitutional scheme of affirmative action, of which reservation is a reflection, are adhered to.

34. It is in this context that the Tribunal as well as the High Courts have held that Group C and Group D employees who, by virtue of promotion and efflux of time, surpass the income levels as stated in the excluded categories of persons in the Schedule to the Office Memorandum, which applies to Group A and Group B Government employees (direct recruits), and who by virtue of such income from salary alone do not stand excluded from reservation, cannot be treated differently from those employees of PSUs and private undertakings who also belong to or are equivalent to such Group C and Group D categories of posts. Treating them differently, or in other words, treating the children of those employed in PSUs or private employment, etc., as being excluded from the benefit of reservation only on the basis of their income derived from salaries, and without reference to their posts (whether Group A or B, or Group C or D) would certainly lead to hostile discrimination between parties who are similarly placed and would amount to equals being treated unequally, thereby attracting the rigour of the equality doctrine under Articles 14, 15 and 16, of which reservation is a facet.

35. It is well settled that a classification, to withstand scrutiny under Article 14, must satisfy the twin requirements of (i) intelligible differentia

distinguishing persons grouped together from others left out, and (ii) a rational nexus with the object sought to be achieved. If similarly situated persons are subjected to differential treatment without a constitutionally sustainable basis, such action would fall foul of Article 14.

36. The object of excluding the creamy layer is to ensure that socially advanced sections within the OBCs do not appropriate benefits meant for the genuinely backward; it is not to create artificial distinctions between equally placed members of the same social class.

37. The principle laid down in ***Indra Sawhney and others v. Union of India and others***[29] that *"To continue to confer upon such advanced sections special benefits would amount to treating equals unequally; to rank them with the rest of the backward classes would amount to treating the unequals equally"* would stand attracted equally to a case where proper identification of a section or class of persons or a person belonging to OBC as being either socially advanced or backward is not carried out by the Government. In fact, it would not be an overstatement to say that if this exercise is not undertaken in a manner that is rational, non-arbitrary, reasonable and equal, it would lead to the illegal exclusion of genuine claimants and deserving persons within the OBC category from the benefit of reservation, which, being a facet of equality, is a right protected by the Constitution, as made amply clear by the judgments in ***State of***

[29] 1992 Supp (3) SCC 217

Kerala and Others v. N.M. Thomas and Others[30] as well as ***Indra Sawhney v. Union of India***. To state it in other words, Article 16(4) is a structural reflection and a conceptualized representation of the principle of substantive equality embodied and envisaged under Article 16(1) of the Constitution. Therefore, any interpretation of the 1993 OM or the 2004 Letter that results in unequal treatment of similarly placed OBC candidates would not only be legally erroneous but constitutionally impermissible.

38. Relevant portion of the judgment in ***State of Kerala v. N.M. Thomas*** (supra) is extracted for reference:

> *"44. Our Constitution aims at equality of status and opportunity for all citizens including those who are socially, economically and educationally backward. The claims of members of backward classes require adequate representation in legislative and executive bodies. If members of Scheduled Castes and Tribes, who are said by this Court to be backward classes, can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to enforce equality and to eliminate inequality. Articles 15(4) and 16(4) bring out the position of backward classes to merit equality. Special provisions are made for the advancement of backward classes and reservations of appointments and posts for them to secure adequate representation. These provisions will bring out the content of equality guaranteed by Articles 14, 15(1) and 16(1). The basic concept of equality is equality of opportunity for appointment. Preferential treatment for members of backward classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the Constitutionally permissible object. Preferential representation for the backward classes in services with due regard to administrative efficiency is permissible object and backward classes are a*

[30] MANU/SC/0479/1975 : 19.09.1975 - SC

rational classification recognised by our Constitution. Therefore, differential treatment in standards of selection are within the concept of equality.

45. A rule in favour of an under-represented backward community specifying the basic needs of efficiency of administration will not contravene Articles 14, 16(1) and 16(2). The rule in the present case does not impair the test of efficiency in administration inasmuch as members of Scheduled Castes and Tribes who are promoted have to acquire the qualification of passing the test. The only relaxation which is done in their case is that they are granted two years more time than others to acquire the qualification. Scheduled Castes and Tribes are descriptive of backwardness. It is the aim of our Constitution to bring them up from handicapped position to improvement. If classification is permissible under Article 14. it is equally permissible under Article 16, because both the Articles lay down equality. The quality and concept of equality is that if persons are dissimilarly placed they cannot be made equal by having the same treatment. Promotion of members of Scheduled Castes and Tribes under the impeached rules and orders is based on the classification with the object of securing representation to members of Scheduled Castes and Tribes. Efficiency has been kept to view and not sacrificed.

46. All legitimate methods are available for equality of opportunity in services under Article 16(1). Article 16(1) is affirmative whereas Article 14 is negative in language. Article 16(4) indicates one of the methods of achieving equality embodied in Article 16(1). Article 16(1) using the expression "equality" makes it relatable to all matters of employment from appointment through promotion and termination to payment of pension and gratuity. Article 16(1) permits classification on the basis of object and purpose of law or State action except classification involving discrimination prohibited by Article 16(2). Equal protection of laws necessarily involves classification. The validity of the classification must be adjudged with reference to the purpose of law. The classification in the present case is justified because the purpose of classification is to enable members of Scheduled Castes and Tribes to find representation by promotion to a limited extent. From the point of view of time a differential treatment is given to members of Scheduled Castes and Tribes for the purpose of giving them equality consistent with efficiency."

39. Approving the decision in ***N.M. Thomas,*** this Court held in ***Indra Sawhney and Others v. Union of India and Others***[31] as follows:

[31] 1992 Supp (3) SCC 217

"741. In Balaji it was held - "there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2)". It was observed that Article 15(4) was inserted by the First Amendment in the light of the decision in Champakam, with a view to remove the defect pointed out by this Court namely, the absence of a provision in Article 15 corresponding to Clause (4) of Article 16. Following Balaji it was held by another Constitution Bench (by majority) in Devadasan - "further this Court has already held that Clause (4) of Article 16 is by way of a proviso or an exception to Clause (1)". Subbarao, J., however, opined in his dissenting opinion that Article 16(4) is not an exception to Article 16(1) but that it is only an emphatic way of stating the principle inherent in the main provision itself. Be that as it may, since the decision in Devadasan, it was assumed by this Court that Article 16(4) is an exception to Article 16(1). This view, however, received a severe set-back from the majority decision in State of Kerala and Ors. v. N.M. Thomas MANU/SC/0479/1975 : (1976) I LLJ 376 SC. Though the minority (H.R. Khanna and A.C. Gupta, JJ.) stuck to the view that Article 16(4) is an exception, the majority (Ray, C.J., Mathew, Krishna Iyer and Fazal Ali, JJ.) held that Article 16(4) is not an exception to Article 16(1) but that it was merely an emphatic way of stating a principle implicit in Article 16(1). (Beg. J. took a slightly different view which it is not necessary to mention here). The said four learned Judges - whose views have been referred to in para 41 - held that Article 16(1) being a facet of the doctrine of equality enshrined in Article 14 permits reasonable classification just as Article 14 does. In our respectful opinion, the view taken by the majority in Thomas is the correct one. We too believe that Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it. For assuring equality of opportunity, it may well be necessary in certain situations to treat unequally situated persons unequally. Not doing so, would perpetuate and accentuate inequality. Article 16(4) is an instance of such classification, put in to place the matter beyond controversy. The "backward class of citizens" are classified as a separate category deserving a special treatment in the nature of reservation of appointments/posts in the services of the State. Accordingly, we hold that Clause (4) of Article 16 is not exception to Clause (1) of Article 16. It is an instance of classification implicit in and permitted by Clause (1). The speech of Dr. Ambedkar during the debate on draft Article 10(3) [corresponding to Article 16(4)] in the Constituent Assembly - referred to in para 28 - shows that a substantial number of members of the Constituent Assembly insisted upon a "provision (being) made for the entry of certain communities which have so far been outside the administration", and that draft Clause (3) was put in recognition and acceptance of the said demand. It is a provision which must be read along with and in harmony with Clause (1). Indeed, even without Clause (4), it would have been permissible for the State to have evolved such a classification and made a provision for reservation of appointments/posts in their favour. Clause (4) merely puts the matter beyond any doubt in specific terms.

> *742. Regarding the view expressed in Balaji and Devadasan, it must be remembered that at that time it was not yet recognised by this Court that Article 16(1) being a facet of Article 14 does implicitly permit classification. Once this feature was recognised the theory of Clause (4) being an exception to Clause (1) became untenable. It had to be accepted that Clause (4) is an instance of classification inherent in Clause (1). Now, just as Article 16(1) is a facet or an elaboration of the principle underlying Article 14, Clause (2) of Article 16 is also an elaboration of a facet of Clause (1). If Clause (4) is an exception to Clause (1) then it is equally an exception to Clause (2). Question then arises, in what respect is Clause (4) an exception to Clause (2), if 'class' does not means 'caste'. Neither Clause (1) nor Clause (2) speak of class. Does the contention mean that Clause (1) does not permit classification and therefore Clause (4) is an exception to it. Thus, from any point of view, the contention of the petitioners has no merit".*

40. Adopting an interpretation that disadvantages one segment of the same backward class without rational justification would amount to treating equals as unequals and would thus become the antithesis of equality, the corner stone of our Republic. Having regard to the peculiar facts of the present cases, the reasoning adopted by the High Court that treating similarly placed employees of private entities and PSUs differently from Government employees and their wards, while deciding their entitlement to reservation, would amount to hostile discrimination, is certainly one that inspires the confidence of this Court.

41. Thus, we find no infirmity in the judgments impugned before us. The civil appeals accordingly fail.

42. As regards the intervention applications, we find that several candidates who were successful in the Civil Services Examination of different years sought

permission to intervene the present proceedings to advance their respective contentions. They submit, in substance, contentions similar to those urged by the respondent candidates in the civil appeals, asserting that they belong to the Non-Creamy Layer of the Other Backward Classes. It is their case that their applications, representations, or proceedings are presently pending consideration before the Department of Personnel and Training (DoPT), the High Courts or the Central Administrative Tribunal, and that any decision rendered in the present batch of matters would have a direct bearing upon their entitlement. Accordingly, they seek appropriate orders in the present proceedings.

43. At this juncture, it is to be noted that supernumerary posts have already been assured by the DoPT and this position stands recorded in the 21st Report of the Parliamentary Committee on the Welfare of Other Backward Classes. In view thereof, we find no difficulty in directing the appellants to create such supernumerary posts, as required, to accommodate the candidates who satisfy the non-creamy layer criteria as clarified in the present judgment, subject to their otherwise fulfilling eligibility conditions.

CONCLUSION

44. To sum up

(i) All the Civil Appeals are dismissed.

(ii) The appellants are directed to consider the claims of the respondent candidates and intervenors in accordance with the principles laid down in this judgment, and to implement the same within a period of six months from the date of this judgment.

(iii) There shall be no order as to costs.

(iv) Pending application(s) including Intervention Applications, stand disposed of accordingly.

……...……J.
[PAMIDIGHANTAM SRI NARASIMHA]

……J.
[R. MAHADEVAN]

NEW DELHI;
MARCH 11, 2026.