



1

WP-14027-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 14027 of 2023*KU. RAGINI RATHORE**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

Appearance:

Shri Aditya Sanghi - Senior Advocate with Ms. Vedika - Advocate
and Ms. Pratibha- Advocate for the petitioner.

Ms. Monica Mishra - Govt. Advocate for the respondent/State.

Reserved on : 17.09.2026

Pronounced on :29.09.2026

ORDER

The present petition has been filed by the petitioner challenging the order dated 29.11.2022 passed by the Upper Collector, District Ashoknagar in Appeal No.79/2022-23, whereby the appeal preferred by the petitioner came to be rejected and the order dated 23.10.2020 passed by the Sub-Divisional Officer (Revenue), Isagarh in Case No.1338/B-121/2020-21 was affirmed. The petitioner has also sought a direction for issuance of OBC caste certificate by holding that he does not fall within the creamy layer.

Learned counsel for the petitioner submits that the impugned orders have been passed by mechanically taking into consideration the gross salary income of the petitioner's father for the preceding three years, which was stated to be Rs.16,99,282/-, without examining the nature of the employment held by the petitioner's father, the applicable service-category criteria and the



relevant Government instructions governing determination of creamy layer status. It is submitted that the petitioner's father was initially appointed as Civil Judge Class-II and was promoted to the post of Civil Judge Class-I only on 16.06.2008, after attaining the age of 40 years. It is further submitted that the petitioner's father has no income from any source other than salary and the petitioner is unemployed and dependent upon her parents. The petitioner, therefore, contends that the mere fact that the salary income of his father exceeded the monetary ceiling could not, by itself, have been made the sole basis for denying him the OBC status. The petitioner has relied upon the Government instructions dated 07.02.2014, the subsequent instructions dated 02.11.2017 and the clarification issued by the Government of India dated 13.09.2017.

Learned counsel for the petitioner has placed particular reliance upon the judgment of the Hon'ble Supreme Court in **Union of India & Others v. Rohith Nathan & Others**, Civil Appeal Nos.2827-2829 of 2018 etc., decided on 11.03.2026, 2026 INSC 230. It is submitted that in the said judgment the Hon'ble Supreme Court examined the scheme governing exclusion of creamy layer under the Office Memorandum dated 08.09.1993 and the subsequent clarification dated 14.10.2004. The Hon'ble Supreme Court has held that the creamy layer status cannot be determined merely by mechanically applying an income ceiling, and the status and category of the post held by the parents are relevant considerations. The Court has further held that the income from salary and agricultural land is not to be clubbed with income from other sources for the purpose of applying the



Income/Wealth Test and that salary income alone cannot be treated as the sole criterion for determining creamy layer status.

Learned counsel has also relied upon the judgment of this Court in **Smt. Sunita Yadav v. State of Madhya Pradesh and Others, W.P. No.8426 of 2021, decided on 02.04.2026**, wherein, after examining the applicable circulars issued by the General Administration Department and the judgments of the Hon'ble Supreme Court, this Court held that for determination of creamy layer status, the income of the parents is required to be considered in accordance with the applicable service-category criteria; the self-income of the candidate is not relevant and the income of the spouse is also not relevant except in the circumstances specifically contemplated by the governing circulars. The judgment further notices the principle laid down by the Hon'ble Supreme Court in **Siddarth Saini v. State of Haryana, (2001) 10 SCC 625** and **Surinder Singh v. Punjab SEB, (2014) 15 SCC 767**, particularly that salary income cannot be mechanically treated as the determinative factor where the applicable guidelines exclude such income from the Income/Wealth Test.

Learned counsel for the petitioner submits that the ratio of the aforesaid judgments has a direct bearing upon the controversy involved in the present case. It is argued that the authorities have not undertaken the exercise required under the applicable guidelines and have simply proceeded on the basis that the petitioner's father's gross salary income exceeded Rs.8 lakhs. According to learned counsel, such an approach overlooks the distinction between status-based exclusion and the Income/Wealth Test and



also fails to consider the fact that the petitioner's father was promoted from Class-II to Class-I after attaining the age of 40 years. It is, therefore, submitted that the impugned orders, having been passed without proper consideration of the relevant statutory provisions, circulars and the material placed by the petitioner, cannot be sustained. The petitioner has accordingly prayed for quashing of both the impugned orders and for appropriate consequential directions.

Per contra, learned Government Advocate appearing for the State has opposed the petition and supported the orders passed by the authorities. It is submitted that the application for issuance of the OBC certificate was considered on the basis of the documents furnished by the petitioner and that the income of the petitioner's father for the relevant period was found to be Rs.16,99,282/-. According to the learned Government Advocate, the Government of India Memorandum dated 13.09.2017 prescribes the income criterion and a person whose gross annual income exceeds the prescribed ceiling for three consecutive years falls within the creamy layer. It is, therefore, contended that respondent No.3 rightly rejected the application on 23.10.2020 and respondent No.2 rightly affirmed the said order on 29.11.2022. It is further submitted that no interference is warranted in exercise of writ jurisdiction.

Heard counsel for the parties and perused the record.

The controversy involved in the present case cannot be concluded merely by referring to the quantum of salary received by the petitioner's father. The record indicates that the application of the petitioner was rejected



primarily on the ground that the income of his father was Rs.16,99,282/- and, therefore, exceeded the prescribed monetary ceiling. The appellate authority also appears to have affirmed the said conclusion substantially on the same basis.

The subsequent pronouncement of the Hon'ble Supreme Court in **Union of India & Others v. Rohith Nathan & Others**, decided on 11.03.2026, assumes significance in the matter. The Hon'ble Supreme Court, while considering the scheme of creamy layer exclusion, has reiterated that the determination cannot be made solely on the basis of income. The Court has specifically noticed that the framework under the Office Memorandum dated 08.09.1993 is status-based in respect of specified categories of Government service and that the Income/Wealth Test operates in its own field. It has further held that income from salary and agricultural land cannot be mechanically clubbed with income from other sources and that the status and category of the post held by the parent are material considerations.

The said principle has also been considered by this Court in **Smt. Sunita Yadav v. State of Madhya Pradesh and Others**, wherein, after examining the relevant Madhya Pradesh Government circulars, this Court observed that the creamy layer status is essentially to be examined with reference to the status of the parents and the applicable categories, and that the monetary aspect cannot be considered in isolation contrary to the governing guidelines. The Court also relied upon the law laid down by the Hon'ble Supreme Court that salary income, where excluded by the applicable Income/Wealth Test, cannot be made the sole basis for denying OBC status.



In the present case, the petitioner has specifically asserted that his father was initially appointed as Civil Judge Class-II and was promoted as Civil Judge Class-I only after attaining the age of 40 years and that his father has no income other than salary. These aspects were required to be examined with reference to the applicable Government circulars and the principles governing determination of creamy layer status. The respondents, however, have proceeded principally on the basis of the gross salary figure. The rejoinder filed by the petitioner also specifically asserts that the distinction between the service-category criteria and the Income/Wealth Test was not appreciated by the authorities and that salary income was treated as determinative without examining the other relevant parameters.

This Court is not inclined to undertake the factual determination in the first instance, particularly when such determination is required to be made by the competent authority upon consideration of the relevant service particulars of the petitioner's parents, the applicable Government circulars and the documents produced by the petitioner. At the same time, the impugned orders cannot be permitted to stand when the material considerations relevant for determining the creamy layer status have not been examined in the light of the subsequent authoritative pronouncements referred to hereinabove.

Consequently, the writ petition is **allowed**. The order dated 23.10.2020 passed by respondent No.3 in Case No.1338/B-121/2020-21 and the appellate order dated 29.11.2022 passed by respondent No.2 in Appeal No.79/Appeal/2022-23 are hereby **set aside**. The matter is remanded to respondent No.3/competent authority for reconsideration of the petitioner's



application for issuance of OBC caste certificate afresh, after taking into consideration the applicable Government circulars and instructions, the service status and date of promotion of the petitioner's father, the nature of his income and all other relevant materials placed on record, as also the law laid down by the Hon'ble Supreme Court as well as this Court in the aforesaid judgments. The competent authority shall afford due opportunity of hearing to the petitioner and shall pass a reasoned and speaking order, strictly in accordance with law, preferably within a period of **six weeks** from the date of receipt of a certified copy of this order.

It is clarified that this Court has not expressed any final opinion on the petitioner's entitlement to issuance of the OBC caste certificate, and the competent authority shall take an independent decision on the basis of the applicable rules, circulars, judgments and material available on record.

With the aforesaid directions, the writ petition stands **allowed and disposed of**.

(MILIND RAMESH PHADKE)
JUDGE

ojha