

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ: ಇಡಿ 296 ಡಿಸಿಇ 2022 (ಇ-ಕಡತ)

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,
ಬಹುಮಹಡಿ ಕಟ್ಟಡ
ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 19.01.2023.

ಇಂದ:

ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ,
ಉನ್ನತ ಶಿಕ್ಷಣ ಇಲಾಖೆ,
ಬೆಂಗಳೂರು.

"ತುರ್ತು"

ಇವರಿಗೆ:

ಕಾರ್ಯನಿರ್ವಾಹಕ ನಿರ್ದೇಶಕರು,
ಕರ್ನಾಟಕ ಪರೀಕ್ಷಾ ಪ್ರಾಧಿಕಾರ,
18ನೇ ಅಡ್ಡರಸ್ತೆ, ಸಂಪಿಗೆ ರಸ್ತೆ,
ಮಲ್ಲೇಶ್ವರಂ,
ಬೆಂಗಳೂರು-560012.

ಮಾನ್ಯರೆ,

ವಿಷಯ: ವಿವಾಹಿತ ಅಭ್ಯರ್ಥಿಗಳು ಮೂಲ ದಾಖಲೆಗಳ ಪರಿಶೀಲನೆ ಸಮಯದಲ್ಲಿ ಜಾತಿ ಮತ್ತು ಆದಾಯ ಪ್ರಮಾಣ ಪತ್ರ ಸಲ್ಲಿಸುವಾಗ ಅವರ ಪತಿಯ ಹೆಸರಿನಲ್ಲಿ ಸಲ್ಲಿಸುವ ಬದಲು ಅವರ ತಂದೆಯ ಹೆಸರಿನಲ್ಲಿ ಪಡೆದ ಜಾತಿ ಮತ್ತು ಆದಾಯ ಪ್ರಮಾಣ ಪತ್ರಗಳನ್ನು ಸಲ್ಲಿಸುತ್ತಿರುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: ತಮ್ಮ ಪತ್ರ ಸಂಖ್ಯೆ: ಇಡಿ/ಕೆ.ಇ.ಎ/ಆಡಳಿತ/ಸಿಆರ್-19/2022, ದಿನಾಂಕ: 11.11.2022.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಉಲ್ಲೇಖಿತ ಪ್ರಸ್ತಾವನೆಯನ್ನು ಪರಿಶೀಲಿಸಿದೆ. ಸಹಾಯಕ ಪ್ರಾಧ್ಯಾಪಕರ ನೇಮಕಾತಿಯಲ್ಲಿ ಮದುವೆಯಾದ ಮಹಿಳಾ ಅಭ್ಯರ್ಥಿಗಳು ಅವರ ಪತಿಯ ಹೆಸರಿನಲ್ಲಿ ಜಾತಿ ಮತ್ತು ಆದಾಯ ಪ್ರಮಾಣ ಪತ್ರಗಳನ್ನು ಪಡೆದು ಸಲ್ಲಿಸದೆ, ಅವರ ತಂದೆಯ ಹೆಸರಿನಲ್ಲಿ ಪಡೆದು ಸಲ್ಲಿಸಿರುವುದು ಕಂಡುಬಂದಿರುವುದರಿಂದ, ಮದುವೆಯಾದ ಮಹಿಳಾ ಅಭ್ಯರ್ಥಿಗಳು ಅವರ ತಂದೆಯ ಹೆಸರಿನಲ್ಲಿ ಪಡೆದ ಜಾತಿ ಮತ್ತು ಆದಾಯ ಪ್ರಮಾಣ ಪತ್ರಗಳನ್ನು ಪರಿಗಣಿಸುವ ಬಗ್ಗೆ ಕಾನೂನು ಇಲಾಖೆಯು ಈ ಕೆಳಕಂಡಂತೆ ಅಭಿಪ್ರಾಯ ನೀಡಿರುತ್ತದೆ:

The administrative department has raised the above query in the light of the Government Orders which is discussed here in after. As per the Government Order No DPAR 21 SBC 85. Bengaluru. dated: 19.09.1985 issued by the Department of Personnel and Administrative Reforms which pertains to reservations of vacancies for Backward Classes, the term "Family Income" in respect of in service candidates belonging to Backward Classes is redefined. So far as the query raised by administrative department is concerned clause II(b) & (c) of the above Government Order is relevant and it is reproduced as here under:-

"(b) In the case of married lady candidate, the income of the parents should not be added to the income of the candidate. In such cases, the income of the candidate along with the income of her husband should be taken into consideration if they are living separately as an independent family. If they are living in a joint family, the income of the candidate along with the income of the joint family should be taken into consideration for calculation of family income:

(C) in the case of candidate who is widow, her income alone should be taken into account irrespective of whether or not she lives independently."

Further the Government vide its order No. DPAR 28 SBC 1986, dated: 12.12.1986 has issued clarification regarding the family income and clause (D) reads as follow:

" (ಅ) ವಿವಾಹಿತ ಮಹಿಳಾ ಅರ್ಜಿದಾರಳ ಉತ್ಪನ್ನಕ್ಕೆ ಅವಳ ತಂದೆ ತಾಯಿಗಳ ಉತ್ಪನ್ನ ಸೇರಿಸಬಾರದು. ಅಂಥ ಪ್ರಕರಣಗಳಲ್ಲಿ ಪತಿ ಪತ್ನಿಯರು ಒಂದು ಸ್ವಾಯತ್ತ ಕುಟುಂಬದಂತೆ ಪ್ರತ್ಯೇಕವಾಗಿ ವಾಸಿಸುತ್ತಿದ್ದಲ್ಲಿ ಅರ್ಜಿದಾರಳ ಉತ್ಪನ್ನಕ್ಕೆ ಅವಳ ಹಳೆಯ ಉತ್ಪನ್ನವನ್ನೂ ಸೇರಿಸಬೇಕು. ಅವರು ಅವಿಭಕ್ತ ಕುಟುಂಬದ ಅಂಗವಾಗಿ ವಾಸಿಸುತ್ತಿದ್ದರೆ, ಅರ್ಜಿದಾರಳ ಉತ್ಪನ್ನ ಮತ್ತು ಅವಿಭಕ್ತ ಕುಟುಂಬದ ಉತ್ಪನ್ನವನ್ನು ಒಟ್ಟಿಗೆ ಸೇರಿಸಿ ಕುಟುಂಬದ ಉತ್ಪನ್ನವನ್ನು ಕಂಡು ಹಿಡಿಯಬೇಕು.

Before answering the query of the administrative department based on the above mentioned Government Orders. It is found necessary to take note of the Office Memorandum issued by the Government of India. Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training bearing No. 36012/22/93-(SCT), dated: 08.09.1993 and the Judgment of Hon'ble Apex Court in case of Ashok Kumar Thakur v/s State of Bihar reported in (1995) 5 SCC 403 & Surinder Singh v/s Punjab State Electricity Board. Patiala and Other reported in AIR 2015 SC 537 and Judgment of our Hon'ble High Court in WP No. 24115/2018 c/w W.P.3390/2018(GM-CC).

The Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training through its memorandum dated: 14.10.2004 has given clarification regarding the office memorandum No. 36012/93-(SCT) dated: 08.09.1993 which contains the criteria to determine creamy layer amongst OBCs. Query at Sl. No. viii of paragraph No. 4 is relevant to the present controversy and it is reproduced as here under:

"(viii) The instructions provide that a lady belonging to OBC category who has got married to a directly recruited Class I / Group A officer shall not be treated as falling in creamy layer on the basis of her marriage. Will a man belonging to OBC category who is married to a directly recruited Class I/Group 'A' officer be treated as falling in creamy layer on the basis of his marriage?"

With reference to clause viii, clarification is given in para No. 8 of the Hon'ble Supreme Court Judgment referred above in between Surinder Singh Vs. Punjab City Electricity Board which reads as follows:

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

This Office Memorandum is approved by Hon'ble Apex Court in case of Ashok Kumar Thakur Vs State of Bihar reported in (1995) 5 SCC 403 and the observation made is as follows:

"We have carefully examined the criteria for identifying the creamy layer laid down by the Government of India in the Schedule, quoted above, and we are of the view that the same is in conformity with the law laid down by this Court in Mandal case (Indira Sawhney vs Union of India 1992 Suppl. (3) SCC 217). We have no hesitation in approving the rule of exclusion framed by the Government of India in para 2(c) read with the Schedule of the office memorandum quoted above."

Further the same issue which was determined in aforesaid Judgment was re-examined by the Constitution Bench of Hon'ble Apex Court in case of Ashok Thakur v/s State of Bihar reported in (2008) 6 SCC 1 wherein on of subject of identification of creamy layer, it is observed as under:

"Identification of the creamy layer has been and should be left to the Government, subject to judicial direction. For a valid method of creamy layer exclusion, the Government may use its post- Sawhney (1) criteria as a template. (See OM of 8,9,1993, Para 2(c)/Column 3), approved by this Court in Ashoka Kumar Thakur vs. State of Bihar (1995) 5 SCC 403. para 10. This schedule is a comprehensive attempt to exclude the creamy layer in which income, government posts, occupation and landholdings are taken into account."

Now the question is whether circular dated 14-10-2007 and 14-10-2004 of the Government of India and principles laid down by the their lordships in the above referred Sunder Singh case are applicable to the present question is to be seen.

In para no. 12 of the said judgment the Supreme Court in clear terms observed that

"while referring to the clarification / circular dated 14-10-2007 and 14-10-2004 respectively, we have extracted herein above the clear view of the Government of India. It would also be necessary for us to notice, that the above determination of the Government of India, was adopted by the State of Punjab. as is apparent from the letter issued by the Government of Punjab, Welfare Department (Reservation Cell) dated 14-10-2007, whereby the letter dated 17-8-2005 and the memorandum dated 14-10-2004 were circulated by the State Government to all its Deputy Commissioners. It is also not a matter of dispute, that the aforesaid circulars were expressly adopted by the Punjab State Electricity Board."

From this observation, it is clear that the Hon'ble Apex Court has interpreted that circular issued by the Government of India referred above, which was expressly adopted by Punjab State. Circular issued by the Government of India with reference to the family income was not adopted by State of Karnataka.

As per Article 16(4) of the Constitution and as per the aforesaid decisions of Hon'ble Apex Court, the State Government is empowered to identify creamy layer and determine the income status. In exercise of the power so conferred, the State of Karnataka has issued the aforementioned Government Order, determining the income status of married women.

But in the present issue, the State Government has issued Government Order No, DPAR 21 SBC 1985, dated: 19.09.1985 and order No. DPAR 28 SBC 1986, dated: 12.12.1986 regarding determination of income of the married women. In all the appointment notifications, how to calculate the income of the married women will be mentioned i.e. in accordance with Government Notification dated 12-12-1986. Therefore, the principal laid down by their lordships in the above referred Hon'ble Apex Court in Surinder case is not applicable.

In W.P. No. 24115/2018 c/w. W.P. No. 3390/2018 (GM-CC) his lordships held that as per the Apex Court judgment the income of the parent of the married women is required to be considered in deciding the creamy layer and family income.

From the said judgment it is clear that Government Order DPAR 28 SBC 86, dated 12-12-1986 was not brought to the notice of Hon'ble High Court. Therefore, the order passed by the Hon'ble High Court of Karnataka in the above Writ Petition is judgment in personam. As on today Government Order dated 12-12-1986 is not at all question before the Court of law. In accordance with said Government Order in all appointment notifications condition will be mentioned that in case of married women her husband and her husband family income will be considered.

Further our Hon'ble Supreme Court in WP(C) No 961/2021 between Neil Aurelio Nunes and Ors. Versus Union of India and Ors. In para No. 29 has observed that "Article 15(5) reads thus:- (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."

Thus as per the Judgments quoted above and in exercise of the power conferred on the State Government under Article 15 and 16, the State is empowered to make special provisions for the advancement of socially and educationally Backward Classes and accordingly the Government Orders regarding determination of income status of married women is issued by the State of Karnataka. Hence the Law Department is of opinion that the State Government can relay upon the Government Order No. DPAR 21 SBC 1985, dated: 19.09.1985 and order No. DPAR 28 SBC 1986, dated: 12.12.1986 in determining income of the married women.

ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ಕಾನೂನು ಇಲಾಖೆಯ ಅಭಿಪ್ರಾಯದಂತೆ ಸಹಾಯಕ ಪ್ರಾಧ್ಯಾಪಕರ ನೇಮಕಾತಿಯಲ್ಲಿ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ ಹಾಗೂ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ನೀಡಿರುವ ಆದೇಶದನ್ವಯ ಸೂಕ್ತ ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ ತಮ್ಮನ್ನು ಕೋರಲು ನಿರ್ದೇಶಿತನಾಗಿದ್ದೇನೆ.

ತಮ್ಮ ನಂಬುಗೆಯ,

A. C. Gadgil
(ಮಧು. ಎ.ಸಿ.) 19/11/23

ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ (ಪ್ರ),
ಉನ್ನತ ಶಿಕ್ಷಣ ಇಲಾಖೆ (ಕಾಲೇಜು ಶಿಕ್ಷಣ).

19/11/23