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GOVERNMENT OF ODISHA
ST & SC DEVELOPMENT, MINORITIES & BACKWARD CLASSES
WELFARE DEPARTMENT

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No. 22420 /ST&SC, Bhubaneswar, Dtd. 8.12.2016
OBC-22/2014

From

Sri Surendra Kumar, IAS
Commissioner-cum-Secretary to Government.

To

The Principal Secretary to Government,
Revenue & Disaster Management Department.

**Sub: Determination of creamy layer status at the time of issue of
OBC/SEBC Certificate by Tahasildars.**

Madam,

With reference to the subject mentioned above, I am to say that Government of India, Ministry of Personnel, Public Grievances and Pension (DoPT) vide their letter No.36011, dtd.08.09.1993 have prescribed certain criteria to determine the creamy layer status of a candidate for issue of OBC Certificate. This has been communicated to all Collectors and other Certificate Issuing Authorities in this Department letter No.4030, dtd.29.01.1994. Subsequent clarification of the Ministry of PPGP in this regard also have been communicated vide this Department letter No.32652, dtd.03.10.2013 to all concerned for better understanding of the matter. But it has come to the notice of this Department that different field functionaries especially the Certificate Issuing Authorities are interpreting the guidelines in a wrong manner, while considering the creamy layer status of a candidate.

A close scrutiny of the above guideline and clarification reveals that there have been two separate parameters suggested by the Ministry for two separate categories of candidates to determine their creamy layer status. The first category



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candidates are those whose parents are in Civil Services both at Central & State Government, PSU, Banks, Insurance Organization, Universities etc. and also holding equivalent or comparable post in Private Sector. The other category candidates are belong to parents, who are self employed or are the employees of an organization where evaluation of the post on equivalent or comparable basis with the Government, PSU etc. has not been made.

For the 1st category of candidate, it is prescribed among other that, if the parents (both father and mother) of the candidate are directly recruited Class-I/Group-A/Class-II/Group-B Officer or either of is a directly recruited Class-I Officers, he or she shall be treated as falling in creamy layer.

For the 2nd category of candidate whose parents are employed in an organization where there have been no comparable posts as in 1st category, the determination of the creamy layer status shall be made on the basis of Income/Wealth Test.

It has come to notice that while deciding the creamy layer status of Government servants particularly those belonging to Class-II , the Certificate Issuing Authorities are not referring to the clarifications issued at Note-6 at P.26 of the said clarification. Despite instructions to the contrary, Certificate Issuing Authorities are including the Annual Income from salaries of Class-II and Class-III employees and thereby denying the applicants the SEBC/OBC Certificate on the grounds that they fall under creamy layer category. This is not in accordance with the guideline and as a result many deserving candidates are debarring from getting the benefit in time. This is also causing undue harassment to service seekers due to ignorance of law by the concerned authorities.

The Hon'ble High Court, Odisha, Cuttack also while disposing of W.P. (C) No.10353/2015 filed by Ashis Pradhan Vrs. State in their order dtd.04.03.2016 have taken a view that the amount of gross salary received by the father of the petitioners for the purpose of grant of benefit of OBC Certificate is irrelevant (copy enclosed), which clearly speaks about the misinterpretation of law by the Tahasildar, Bheden. In another case also the Tahasildar, Kalahandi has rejected



the application of one Ashis Kumar Bhoi of Goikela, Kalahandi for issue of non creamy layer OBC Certificate on the ground that the annual income of the father of the applicant is more than Rs.6.00 lakhs who was initially appointed as a Class- III Asst. Teacher now working as Headmaster. Besides, a good number of representations have also been received in this Department regarding non issuance of OBC/SEBC Certificate by the Tahasildars on the above ground.

In view of the above, I would therefore request you to please intervene in the matter and issue suitable instructions to all Tahasildars and Certificate Issuing Authorities to follow instructions/guidelines meticulously in the matter of issue of OBC/SEBC Certificate. Further, it is also requested to take necessary action against the Tahasildars for erroneous interpretation of Govt. guidelines and non issue of OBC/SEBC Certificate to the eligible candidates.

Yours faithfully,



Commissioner-cum-Secretary to Government



IN THE HIGH COURT OF ORISSA: CUTTACK
(ORIGINAL JURISDICTION CASE)

W.P(C) No. 10353 of 2015.

Code No:

IN THE MATTER OF:

An application under Articles 226
and 227 of the constitution of India.

AND

IN THE MATTER OF:

An application for quashing of the
order passed by the opposite party
no.3 and for a direction to the said
opposite party to issue the OBC-Non
Creamy Layer certificate in favour of
the petitioner for production of the
same before the competent
authority to enable the petitioner to
take admission pursuant to the
declaration of result/rank in the
Joint Entrance Examination (Main)
and Joint Entrance Examination
(Advanced) examinations.



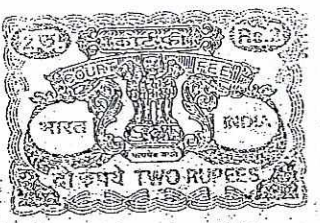
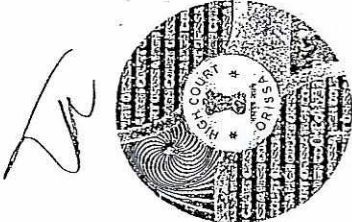
AND

IN THE MATTER OF:

Ashish Pradhan, aged about 18 years, S/o- Shri Khageswar Pradhan, Qr. No. H-82, Sector-2, Rourkela-6, Dist- Sundergarh.

..... Petitioner
Vrs.

1. State of Odisha, represented through its Secretary to Government, Revenue and Disaster Management Department, At - Secretariat Building, P.O/ P.S./ Munsifi- Bhubaneswar, Dist-Khurda.
2. Collector, Bargarh, At/P.O./ P.S./ Munsifi/ Dist- Bargarh.
3. Tahasildar, Bheden, At/P.O./P.S- Bheden, Dist- Bargarh.
4. Union of India, represented through its Secretary, Department of Personnel, Public Grievance & Pensions (Department of Personnel & Training), North Block, New Delhi,



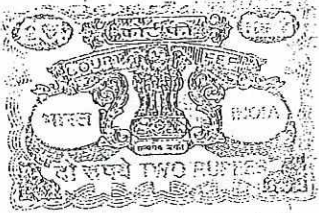
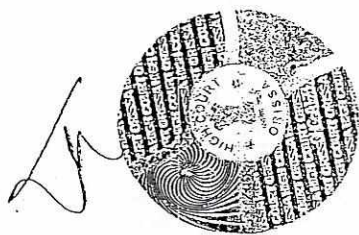
5. JEE Apex Board, Central Board of Secondary Education, H-149, Sector-63, District Goutam Budh Nagar, Uttarpradesh-201309.

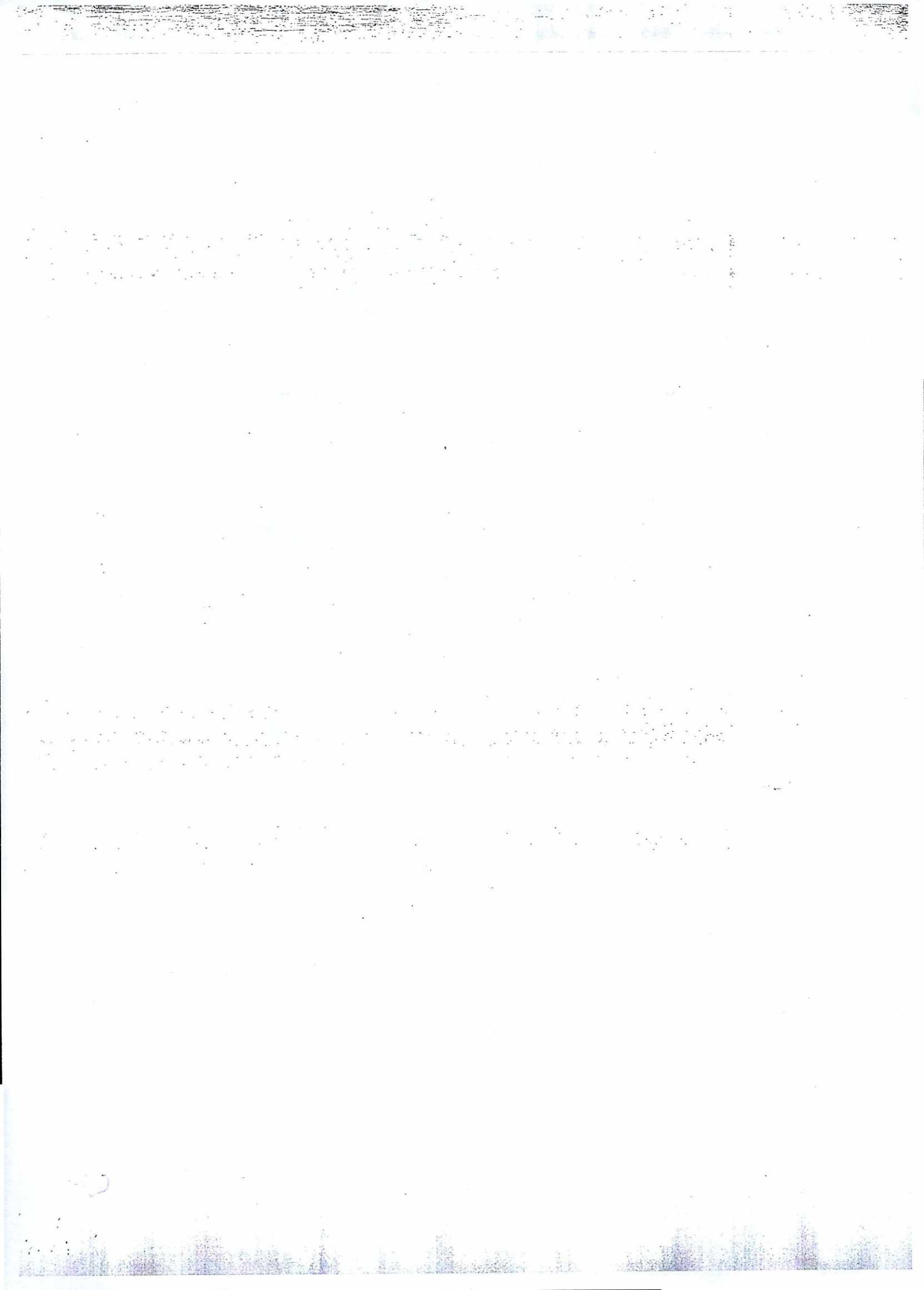
6. Organizing Chairman, Joint Admission Board, JEE (Advanced) 2015, Indian Institute of Technology, Bombay, Powai, Mumbai, 400076.

7. Chairman, Central Seat Allocation Board (2015)-cum-Director, National Institute of Technology, Patna-800005, Bihar.

8. National Institute of Technology, Rourkela, represented through its Director, At/P.O/P.S./ Munsifi-Rourkela, Dist- Sundergarh

opposite parties





THE HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No.10353 of 2015

In the matter of an application under Articles 226 & 227 of the
Constitution of India

Ashish Pradhan Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : Mr. J.Rath, Sr. Advocate
M/s. D.N. Rath & P.K.Rout

For Opp. Party Nos.1 to 3 : Additional Govt. Advocate.

For Opp. Party No.4 : Mr. D.K. Sahoo-1
For Opp. Party No.5 : M/s. T.Pattanayk, S.Pattanayak
M. Ojha.

For Opp. Party Nos.6 to 8 : None.

P R E S E N T :

THE HON'BLE MR. JUSTICE INDRAJIT MAHANTY.

&

THE HON'BLE DR. JUSTICE D.P. CHOUDHURY.

Date of hearing: 13.01.2016 Date of Judgment: 04.03.2016

I. Mahanty, J. In this writ application, the petitioner-Ashish Pradhan has sought for quashing of the order dated 06.05.2015 passed in Miscellaneous Certificate Case No.e-OBC/234/2015 under Annexure-6, whereby, the Tahasildar, Bheden (opposite party No.3) has been pleased to reject an application filed by the petitioner for



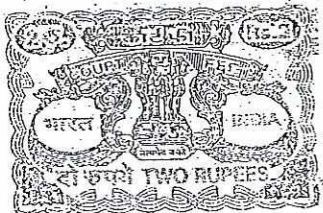
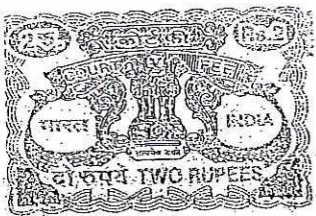
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being issued with an O.B.C. certificate for the reason "The annual family income of the applicant comes to Rs.8,59,934/- which exceed the limit and he comes under Creamy Layer. Hence the application is rejected." While challenging the said order dated 06.05.2015, the petitioner has also sought for a further direction to the Tahasildar, Bheden to issue necessary O.B.C. Certificate in order to enable him to continue with his education.

2. Heard Mr. J. Rath, learned Sr. Advocate for the petitioner, Mr. Bhuyan, learned Additional Government Advocate for the State on behalf of opposite party Nos.1 to 3, Mr. D.K. Sahoo-1, learned counsel for opposite party No.4 and Mr. T. Pattanayak, learned counsel for opposite party No.5.

3. The brief uncontroverted facts of this case are that, the petitioner's father-Khageswar Pradhan belongs to 'Kulta' caste and was appointed as Assistant Research Scientist under the Ministry of Health & Family Welfare Department, Government of India and joined the said post on 16.04.1990. The post of Assistant Research Scientist was a Class-II (Group-B) post under the Central Government and when continuing as such, the petitioner's father was promoted to the post of Research Scientist, Class-I (Group-A) post on 27.09.2006 at the age of 46 years. The petitioner's father continues to be a Central Government employee.

Since the petitioner's father belongs to 'Kulta' community which comes under the Other Backward Classes Category, the



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petitioner had applied for issuance of O.B.C. certificate for the purpose of higher education. Thereafter, Miscellaneous Certificate Case No.14085 of 2013 was registered before opposite party No.3- Tahasildar, Bheden and the necessary certificate was issued by opposite party No.3 to the petitioner in August, 2014. A copy of the said caste certificate issued by the Tahasildar to the petitioner is available at Annexure-3 which is quoted hereunder:

**“IN THE COURT OF THE TAHASILDAR, BHEDEN
DIST - BARGARH**

Miscellaneous Certificate Case No.14085 of 2013

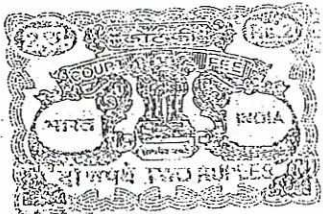
**FORM OF CERTIFICATE TO BE PRODUCED BY
OTHER BACKWARD CLASSES APPLYING FOR
APPOINTMENT TO POSTS UNDER THE
GOVERNMENT OF INDIA**



This is to certify that Sri Ashish Pradhan son of Sri Khageswar Pradhan of village Resham, District: Bargarh, in the State of ODISHA belongs to the “KULTA” (SL No.118) community, which is recognized as a backward class under Govt. of India, Ministry of Welfare.

- i) Resolution No.12011/68/93 BCC (C) dated the 10th Sept 1993 Published in the Gazette of India Extra ordinary part-I Section-I. No.186 dated the 13th Sept 1993.
- ii) Govt. of India Ministry of Welfare Resolution No.12011/9/94 BCC. Dated 19-10-94 published in the Gazette of extraordinary Part-1, Section-1, No-163, dated 29th Oct. 1994.
- iii) Resolution No.12011/7/95-BCC published in the Gazette of India Extra ordinary part-1, Section-1, No-88-dated-25th May 1995.
- iv) Resolution No.12011/96/94-BCC dated the 9th March 1996 published in the Gazette of India Extraordinary part-1, section-1, No.60 dated the 11th March 1996.

The sub-caste “KULTA” find place Sl.No.118 of Central list and Sl. No.89 of State List of Odisha.



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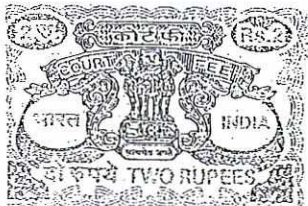
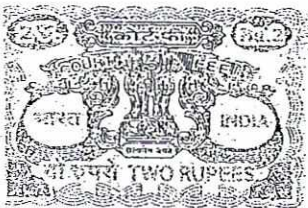
Sri Ashish Pradhan and his family ordinarily reside(s) in the Bargarh District/Division of the Odisha state. This is also to certify that he does not belong to the person/sections (Creamy Layer) Section in Column-3 of the schedule to the Govt. of India. Department of Personnel and Training O.M. No.36012/22/93 ESN (SCT) dated 8/9/93

TAHASILDAR
BHEDEN

NOTE: The term "Ordinary" used here will have the same meaning as in Section-20 of the Representation of the people Act, 1950."

4. The petitioner had appeared in the Joint Entrance Examination conducted by the Orissa State and on the basis of the certificate under Annexure-3 claims to be an O.B.C category student and in Joint Seat Allocation 2015, the petitioner was allocated with a seat in the National Institute of Technology, Rourkela, who undertaking courses in B.Tech Electronics and Communication Engineering and M.Tch. Communication and Network (five years Dual Degree Courses). But, in spite of the aforesaid facts, since the O.B.C Certificate submitted by the petitioner did not have the issue date, the petitioner was called upon by the Institution to get the same rectified.

Accordingly, the petitioner had approached the Tahasildar, Bheden for necessary correction. While the matter stood such, the petitioner in order to hasten the process of obtaining the necessary O.B.C. certificate, filed a fresh application for grant of such certificate in the appropriate format and Miscellaneous Certificate Case No.e-OBC/234 of 2015 came to be registered by the Tahasildar on



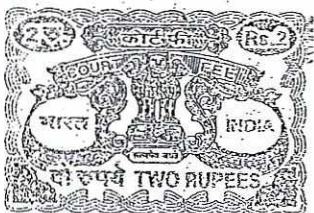
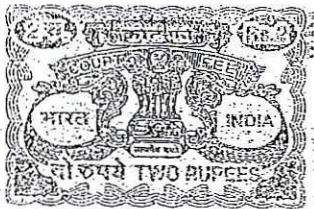
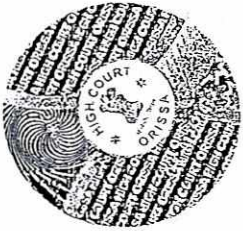
05.05.2015. But, the said application of the petitioner came to be rejected on the next date i.e. on 06.05.2015 on the ground that the family income of the applicant came to an amount of Rs.8,59,934/- which exceeded the limit prescribed and, consequently, held that the petitioner and his family came under the "Creamy Layer" of the O.B.C. Category.

5. In course of hearing of this Case, pursuant to various interim orders passed by this Court, the petitioner was admitted into the National Institute of Technology, Rourkela which is subject to the result of the present writ petition.

The essential contention raised by the learned counsel for the petitioner in the present case is that, the Office Memorandum dated 08.09.1993 issued by the Government of India in the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) came to be issued on account of the direction issued by the Hon'ble Supreme Court in the case of **Indira Sawhney & Others vs. Union of India & Others** (Writ Petition (Civil) No.930 of 1990) recommending the criteria for exclusion of the socially advanced persons/sections from the benefit of reservations for Other Backward Classes in civil posts and services under the Government of India. In terms of the schedule appended to the said Office Memorandum, admittedly, the petitioner falls under Category-II(B)(b). For better appreciation, Category-II(B)(b) & VI are quoted hereunder:

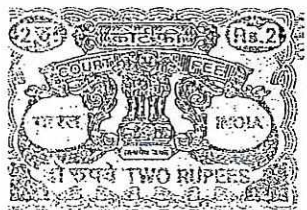
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Description of Category	To whom Rule of exclusion will apply
<p>“II. SERVICE CATEGORY A. Group A/Class 1 officers of the All India Central and State Services (Direct Recruits).</p>	<p>XXX XXX XXX</p>
<p>B. Group B/Class II Officers of the Central & State Services (Direct Recruitment)</p>	<p>Son(s) and daughter(s) of (a) parents both of whom are Class II officers. (b) parents of whom only the husband is a Class II officer and he gets into Class I at the age of 40 or earlier.</p>
<p>VI. Income/Wealth Test</p>	<p>Son(s) and daughter(s) of (a) Persons having gross annual income of Rs.1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years. (b) Persons in Categories I, II, III and VA who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above. Explanation: (i) Income from salaries or agricultural land shall not be clubbed; (ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.”</p>



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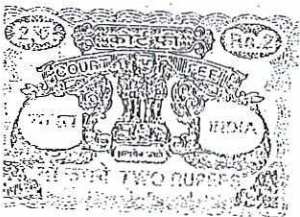
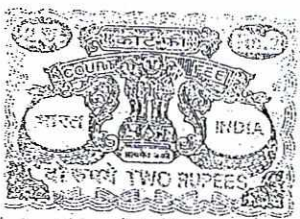
6. Placing reliance on the above, Mr. Rath, learned Sr. Advocate for the petitioner submitted that the petitioner's father, who was earlier a Class-II Officer was promoted to Class-I at the age of 46 years. Consequently, as available in Office memorandum i.e. Clause-(II) (B) (b), the petitioner's father cannot be treated to have been excluded therefrom. Insofar as the criteria of Income/Wealth Test is concerned, as noted in Clause-VI above, learned counsel for the petitioner submitted that the petitioner's father has no other income other than from his salary and if the petitioner's father had income from other sources, the same could have been taken into consideration for applying the Income/Wealth Test to the petitioner's father. In categorical terms it is submitted by Mr. Rath that since the income from salary is not required to be taken into account for the purpose of Income/Wealth Test in respect of service category and while calculating the income or wealth Tax of a Government employee of a Backward Class, who is not covered under category- I, II (a, b, c, d) III & IV, he would become entitled to the benefit of reservation under backward classes category. Since his salary will not be included but his other sources of "income/wealth" are required to be taken into consideration for income/wealth test. In this regard, reliance is placed by the learned counsel for the petitioner on a judgment of the Hon'ble Supreme Court in the case of **Siddarth Saini vs. State of Haryana and Others**, (2001) 10 Supreme Court Cases 625 and in particular para-3 thereof which is quoted hereunder:



S. Rath

“3. Pursuant to the judgment of this Court in Indra Sawhney v. Union of India, the Haryana Government vide notification, dated 12.10.1993 had set up the Haryana Second Backward Classes Commission. The terms of reference of the Commission were to entertain, examine and recommend, upon requests for inclusion and complaints of over-inclusion and under-inclusion in the list of Backward Classes. Vide notification, dated 26.5.1994, the Commission was also assigned the function of specifying the basis, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections (creamy layer) from Backward Classes. A perusal of the criteria, referred to above, shows persons falling in certain categories as belonging to creamy layer. In this case, we are not concerned with any other category, except the category of Government Servant Class-II post. Father of the appellant was directly recruited as Assistant Engineer (SDO) on Class-II post, in the Irrigation Department of Haryana. The father of the appellant still continues to be a member of Class-II service only. According to the affidavit filed by the father of the appellant, his source of income is only salary and he derives income from no other source. The Government of Haryana issued a Clarification Order no. 22/36/2000-3G.S.III, dated 9-8-2000 for issuance of certificate to OBCs in Haryana on 9-8.2000. In the said order, it has been clarified that income from salary is not required to be taken into account for the purpose of income/wealth test in respect of service category and while calculating income or wealth tax of Government employee of Backward Classes, who is not covered under Annexure-A description of Category nos. I, II (a, b, c, d) III & IV, he would become entitled to the benefit of reservation under Backward Classes category, his salary shall not be included but his other sources of income/ wealth, be included for income/wealth test.”

7. In the light of the aforesaid authoritative pronouncement rendered by the Hon'ble Supreme Court, in the present case, it is the admitted case of the parties that the petitioner's father's only source of income was his salary. It is also not in dispute that the father of the petitioner was originally appointed as a Class-II Officer and later on promoted to Class-I after the age of 40 years i.e. at the age of 46 years



and the mother of the petitioner is a housewife. Therefore, the amount of gross salary received by the father of the petitioner for the purpose of grant of benefit to the O.B.Cs is irrelevant. This being the position, it is obvious that the petitioner should not have been refused the O.B.C. Certificate by taking into consideration the salary of the father of the petitioner into account. Consequently, we are of the considered view that the order of the Tahasildar, Bheden dated 06.05.2015 under Annexure-6 refusing to grant O.B.C certificate to the petitioner is clearly erroneous and we further hold that the petitioner is entitled to grant of O.B.C. Certificate since no other facts concerning his entitlement are in dispute.

8. Accordingly, the present writ application is allowed and the order dated 06.05.2015 passed by the Tahasildar, Bheden in Miscellaneous Certificate Case No.e-OBC-234 of 2015 under Annexure-6 is quashed with a direction to the Tahasildar, Bheden to issue O.B.C. certificate to the petitioner. The said certificate be issued to the petitioner within a period of one week from the date of the presentation of a copy of this order before the Tahasildar, Bheden-opposite party No.3.

Sd/- I. Mahanty, J.

Dr. D.P.Choudhury, J. I agree.

Sd/- Dr. D.P. Choudhury

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