

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

Wednesday, the 17th day of January 2024 / 27th Pousha, 1945
WP(C) NO. 1727 OF 2024

PETITIONERS:

1. RAJITH V., [REDACTED]

2. POOJA VALAPPIL, [REDACTED]

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GENERAL ADMINISTRATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN - 695001.
2. THE SECRETARY, BACKWARD COMMUNITIES' DEVELOPMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN - 685001.
3. THE PRINCIPAL SECRETARY, REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN - 695001.
4. THE DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION, KAKKANAD, ERNAKULAM, KERALA, PIN - 682030.
5. THE REVENUE DIVISIONAL OFFICER, FORT COCHIN, REVENUE DIVISIONAL OFFICE, FORT KOCHI, ERNAKULAM, KERALA, PIN - 682001.
6. THE TAHSILDAR, KANAYANNUR TALUK, PARK AVENUE ROAD, MARINE DRIVE, ERNAKULAM, KERALA, PIN - 682011.
7. THE VILLAGE OFFICER, THRIKKAKARA NORTH VILLAGE OFFICE, EDAPPALLY TOLL, EDAPPALLY, ERNAKULAM, KERALA, PIN - 682024.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to:

i. Direct the competent among the respondents to issue a non-creamy layer certificate to the 2nd petitioner, provisionally, so as to enable her to progress through the selection process, subject to the final outcome of the above writ petition;

ii. Direct the 4th respondent to consider and pass orders on Exhibit P11 appeal, within the shortest time frame, at any rate before 16.01.2024.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/s. REKHA VASUDEVAN, SOYA D.C., ELIZABETH V.JOSEPH and ROJIT ZACHARIAH, Advocates for the petitioners and of SMT.VIDYA KURIAKOSE, GOVERNMENT PLEADER, the court passed the following:

p.t.o



DEVAN RAMACHANDRAN, J.

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Dated this the 17th day of January, 2024

ORDER

I have heard this matter and *prima facie* there is an incongruity seen in Ext.P1 Scheme.

2. The learned Government Pleader – Smt.Vidya Kuriakose, submitted that Clause 5 of Annexure I of Ext.P1 applies to cases where the parents are not in Government employment but to all other, which has been clarified by the Government through a Circular dated 14.06.2010.

3. Going by Annexure III of Ext.P1, particularly Clause 6 of the schedule thereof, ‘incomes from salaries or agricultural land shall not be clubbed’. *Prima facie*, therefore, it can only appear that wherever a person has income from agriculture and other employment, it cannot be taken together – which is to mean that the latter may have to be excluded.

4. However, one fails to understand how the Government now takes the stand that Government servants are exempted from

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this. This Court certainly requires a clarification because, the argument of the learned Government Pleader in this case is that the parent of the petitioner is not a Government servant, but engaged in a Private Enterprise.

5. When this Court acts under Article 226 of the Constitution of India, any aspect which is incongruous to the Constitutional Scheme will have to be looked into.

6. I say as afore because the classification of employees between Government Department and the Private Sector does not appear to have any reasonable nexus to any objective sought to be achieved, namely the grant of 'Creamy Layer Certificates'. Whether the parents are employed in the Government Department or Private Sector, 'Creamy Layer' is a matter of fact, which cannot be diluted, going by the various declarations of law by the Honourable Supreme Court.

I, therefore, adjourn this matter, for the learned Government Pleader to obtain instructions as to why the salary

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of Government servants are excluded – if it is so – from Ext.P1
Scheme.

Post on 22.01.2024.

H/o

Sd/-

RR

DEVAN RAMACHANDRAN,

JUDGE



APPENDIX OF WP(C) 1727/2024

Exhibit P1

**TRUE COPY OF THE G.O.(P) NO. 1/2015/BCDD DATED
01.01.2015 ISSUED BY THE 2ND RESPONDENT**

