

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JANUARY, 2023

R

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 23752 OF 2022 (GM-CC)

BETWEEN:

1. AKSHATA CHOUGALA
W/O BHARAMU P. TEERTH
AGED ABOUT 28 YEARS
RESIDING AT I POST
PARAMANANDAWADI
TQ RAIBAG DIST BELGAVI
BELAGAVI – 591 311.
2. PRIYANKA
W/O MANJESH
AGED ABOUT 27 YEARS
RESIDING AT
B.R.KAVAL VILLAGE
HANAGODU POST AND HOBLI
HUNSUR
MYSURU – 571 105.
3. JYOTHI A.,
W/O MAHESHA P.,
AGED ABOUT 36 YEARS
RESIDING AT NO.4718
NEELAKANTA NAGAR
NANJANGUD
MYSURU – 571 301.
4. RANI H.N.,
W/O NANJESHA
AGED ABOUT 29 YEARS
RESIDING AT NO.307
HUYILALU VILLAGE

Digitally signed
by PADMAVATHI
B K

Location: HIGH
COURT OF
KARNATAKA



NAGAWALA POST
ILVALA HOBLI
MYSURU – 571 130.

5. JYOTI CHANDRASHEKHAR KARIKAL
W/O VISHWANATH
AGED ABOUT 29 YEARS
RESIDING AT SEDAM ROAD
RTO OFFICE SAI NAGAR
KALABURAGI – 585 105.
6. CHAITRA V.Y.,
W/O RAGHU K.S.,
AGED ABOUT 28 YEARS
RESIDING AT
VADDARAHALLI VILLAGE
BELAVADI POST
CHIKKAMANGALURU TALUK
CHIKKAMAGALURU – 577 146.
7. GURULAKSHMI N.,
W/O THIMMAPPARAJU
AGED ABOUT 32 YEARS
RESIDING AT
SADARAHALLI VILLAGE
AKKUR POST
CHANNAPATANA
RAMANAGARA – 562 138.
8. SUNEETHA R.,
W/O JAGADEESHA
AGED ABOUT 32 YEARS
RESIDING AT
DODDA YERAMGERE VILLAGE
BIJJAHALLI POST
KODIHALLI HOBLI
KANAKAPURA TALUK.
9. KALPANA BEERAPPA NAIK
W/O MAHESH G. NAIK
AGED ABOUT 30 YEARS

R/AT VANNALLI POST
KUMTA
UTTARA KANNADA – 581 343.

10. GAYATHRI NAIK
W/O SHIVARAJ SHANTAPPA NAIK
AGED ABOUT 32 YEARS
R/AT ARAMANEKOPPA
POST KODKANI
KUMTA
UTTARAKANNADA – 581 440.

11. NISHA
W/O SATHISH
AGED ABOUT 31 YEARS
RESIDING AT 5-155
THAREMAR HOUSE
DKOLAVOOR
MURHTUR VILALGE
KOLAVAR POST
MANGALORE NORTH
DAKSHINAKANNADA – 574 144.

12. SAVITHA HOSATTI
W/O MAHESH MALI
AGED ABOUT 32 YEARS
RESIDING AT PCAIGALI
ATHANI
CHIKKODI – 591 248.

13. PRATHIBA BEERAPPA YANKANCHI
W/O MURASIDDA GAVADE
AGED ABOUT 29 YEARS
RESIDING AT POST SHIVANUR
ATHANI
CHIKKODI – 591 232.

14. RAMYARANI
W/O PRABHAKAR RAJU POOJARY
AGED ABOUT 30 YEARS
R/AT 1-218

SAPTHAGIRI
BELAVE POST AND VILLAGE
UDUPI – 576 212.

15. NANDA B. GOUDAR
W/O MANJUNATH N. GHATTI
AGED ABOUT 31 YEARS
RESIDING AT HOUSE NO. 2408
SIMHASAN PLOT GAJENDRAGAD
GAJENDRAGAD
GADAG – 582 114.

16. SHEEBA ANJUM
W/O MOHAMED ETHESHAM ULLA
AGED ABOUT 33 YEARS
R/T NO.778/222
BEHIND POLICE STASITON
BUR ROAD BANGARPET
BANGARPET, KOLAR – 563 114.

17. ASHA S.,
W/O VINAYAKUMAR
AGED ABOUT 31 YEARS
R/AT 1/9
REDDI LINGAYATH ONI
DOCPADAHALLI POST
KOTTUR, VIJAYANAGAR
KARNATAKA – 583 134.

18. PRAMILA T.,
W/O GOPALA R.,
AGED ABOUT 37 YEARS
R/AT NO.97
SWAMIVIVEKANANDA
BADAVANE
BAHADURPURA
ANEKAL
BENGALURU – 562 106.

19. PATIMA BABAKKANAVAR
W/O ABDULKHADARJILANI

AGED ABOUT 29 YEARS
R/AT 2579
SAVALABAVIONI
MULGUND RURAL
MULGUND
GADAG - 582 117.

20. SHRUTI
W/O VEERAREDDY
AGED ABOUT 27 YEARS
RESIDING AT H.NO.92
POST CHINTAKUNTA
YADGIR DISTRICT
YADAGIRI - 585 214.

21. LEELA HIREMATH
W/O SANTOSH KUMAR
AGED ABOUT 31 YEARS
RESIDING AT PLOT NO. 2
H.NO.10-934/21/2A/2
OPP. VIVEKANAND COLLEGE
NEAR FIRE STATION
MAHALAXMI LAYOUT
KALABURAGI - 585 10

...PETITIONERS

(BY SRI. K.SHASHI KIRAN SHETTY, SR.ADVOCATE FOR
SMT.LATHA S.SHETTY., ADVOCATE)

AND:

1. STATE OF KARNATAKA
REP. BY UNDER SECRETARY
DEPT. OF PRIMARY AND
SECONDARY EDUCATION
2ND GATE, 6TH FLOOR
M.S. BUIDLING
DR. AMBEDKAR VEEDHI,
BENGALURU - 560 001.

2. DEPARTMENT OF PERSONAL
AND ADMINISTRATIVE REFORMS
SECRETARY TO GOVERNMENT
ROOM NO. 245, 2ND FLOOR
VIDHANA SOUDHA
BENGALURU – 560 001.
3. CENTRALISED ADMISSION CELL
SPECIAL OFFICER
OPP. CAUVERY BHAVAN
BENGALURU – 560 002.
4. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT CHIKKODI
CHIKKODI DISTRICT – 591 232.
5. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI
CHIKKODI – 591 232.
6. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT MYSORE
MYSURU DISTRICT – 570 007.
7. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI
MYSURU – 570 007.
8. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT KALBURAGI
KALBURAGAI DISTRICT – 585 103.
9. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION

OFFICE OF DDPI
KALBURAGI – 585 103.

10. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT, DAKSHINA KANNADA
DAKSHINA KANNADA DISTRICT – 575 003.
11. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI,
DAKSHINA KANANDA – 575 003.
12. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT RAMANAGAR
RAMANAGAR – 562 159.
13. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI
RAMANAGARA – 562 159.
14. THE DISTRICT OFFICER
BACKWARD CLASSES
WELFARE DEPARTMENT
BANGALORE NORTH
BANGALORE NORTH – 560 026.
15. DEPUTY DIRECTOR OF PUBLIC
INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI
BENGALURU NORTH – 560 026.
16. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT BANGALORE SOUTH
BENGALURU SOUTH – 562 106.

17. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBIC INSTRUCTION
OFFICE OF DDPI
BENGALURU SOUTH - 562 106.
18. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT OF HAVERI
HAVERI - 581 110.
19. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI
HAVERI - 581 110.
20. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT SIRSI
SIRSI
UTTAR KANNADA - 581 401.
21. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI
SIRSI - 581 401.
22. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT-RAICHUR
RAICHUR - 584 101.
23. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI
RAICHUR - 584 101.
24. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE

DEPARTMENT-BAGALAKOTE
BAGALAKOTE – 587 101.

25. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI
BAGALAKOTE – 587 101.

26. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION (ADM)
DEPT. OF PUBLIC INSTRUCTION
OFFICE OF DDPI
VIJAYAPURA – 586 101.

...RESPONDENTS

(BY SRI.PRABHULING K.NAVADGI, ADVOCATE GENERAL A/W
SMT.SHWETHA KRISHNAPPA, AGA FOR R-1, R-2, R-4 TO
R-26;
SRI ANANDA K., ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE
PROVISIONAL SELECTION LIST DATED 18.11.2022 BY R3
(ANNEXURE-A TO A18); DIRECT THE R-3 TO CONSIDER THE
CASE OF THE PETITIONER NO.1 TO 15 UNDER 2A PETITIONER
NO.16 UNDER CATEGORY 2B, PETITIONER NO.17 TO 18 UNDER
CATEGORY 3A AND PETITIONER NO.19 TO 21 UNDER
CATEGORY 3B IN THE FINAL SELECTION LIST TAKING NOTE OF
THE CASTE CERTIFICATE ISSUED BY THE TAHSILDAR,
WITHOUT INSISTING ON THE INCOME CERTIFICATE FROM THE
HUSBAND OF THE PETITIONERS ANNEXURE-B TO B20 AND
ETC.,

THIS WRIT PETITION, COMING ON FOR FURTHER
HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners are knocking at the doors of this Court calling in question the action of the respondents in declining to accept the caste and income certificates furnished by the petitioners along with their respective applications for appointment to the posts of Graduate Primary Teachers for 6th standard to 8th standard classes of 2022.

2. Since the issue in all these cases is similar, the subject writ petition i.e., W.P.No.23752 of 2022, is taken as the lead petition, as the pleadings are complete in the said petition, and is heard with the consent of the parties.

3. For the sake of convenience, facts in brief in the subject Writ Petition – W.P.No.23752 of 2022, as borne out from the pleadings are narrated:

A notification is issued on 22-02-2022, by the 1st respondent bringing in certain amendments to the Karnataka Civil Services General Recruitment Rules. In terms of the said notification, another notification on 21-03-2022 comes to be issued calling for applications from eligible candidates for recruitment to the posts of Graduate Primary Teachers from 6th standard to 8th standard classes in Government and aided

institutions. The petitioners in all these cases finding themselves eligible to be considered for appointment to the posts of Graduate Primary Teachers applied. While submitting their applications, the documents that were in their possession were all uploaded or attached to the said applications. One such document that was uploaded was the caste and income certificate. All other criteria in the cases of these petitioners were considered by the Deputy Director of Public Instruction (Adm.) of respective districts (for short 'DDPI'), to whom the task of selection of Graduate Primary Teachers was entrusted. Every other criteria was accepted by the DDPI, except applications which accompanied caste and income certificates depicting the caste and income of the father of the applicants. This forms the bone of contention in all these cases. Those applications which accompanied caste and income certificate of the father were all treated to be general merit candidates despite being entitled to reservation under Category 2A, 2B, 3A and 3B, which forms the chunk of reservations under, other Backward Classes (OBC). The challenge that is raised is to the aforesaid action of treating all these petitioners to be general merit candidates and the reason for treating them being the marriage of daughters.

4. Heard Sri K.Shashikiran Shetty, learned senior counsel appearing for the petitioners, the learned Advocate General along with the learned Additional Government Advocates - Sri B.V.Krishna, Sri M.Vinod Kumar, Smt. Shwetha Krishnappa, Sri N. Kumar, representing the State and Sri Ananda K., learned counsel for respondent No.3.

5. The learned senior counsel for the petitioners would urge that the State is repeating what it had been admonished by the judgments of coordinate Bench of this Court. Coordinate Benches have held that the caste and income certificates of an individual can neither be taken into consideration nor that of the spouse as it is that of the parents will have to be taken into consideration. He would contend that the issue is clearly covered by the judgment of the Apex Court in the case of **SURINDER SINGH**¹. He would submit that the said judgment has been followed by a coordinate Bench of this Court in **SMT. YOGESHWARI**² and later, by the Division Bench in the case of **SMT.DIVYASHREE**³. He would further contend that the selecting authority – DDPI in the case at hand, has no

¹ SURINDER SINGH v. PUNJAB STATE ELECTRICITY BOARD AND OTHERS – (2014) 15 SCC 767.

² STATE OF KARNATAKA v. SMT. YOGESHWARI AND ANOTHER – W.P.NO.24115 OF 2018 AND CONNECTED CASES DECIDED ON 19-11-2018.

³ SMT.DIVYASHREE A.S. VS. THE COMMISSIONER IN W.P.NO.11322/2022, DISPOSED ON 29.11.2022

jurisdiction to interpret the caste and income certificates and decline to accept what is issued by the competent authorities or demand a particular certificate. He would also place reliance upon the judgment of the Division Bench of this Court in **EXECUTIVE DIRECTOR**⁴ and would also submit that a Special Leave Petition preferred by the State against the said judgment has been dismissed in S.L.P.No.12648 of 2019. In all, he would contend that the action of the State impugned in these petitions is contrary to law.

6. On the other hand, the learned Advocate General refuting the submissions of the learned counsel for the petitioners, would seek to urge the following contentions:

- a. The petition in the form that it is presented is not maintainable.
- b. The petitioners have to approach the Karnataka State Administrative Tribunal ('the Tribunal' for short) under Section 19 of the Administrative Tribunals Act, 1985, as it is recruitment to the State and recruitment or any other incidental issues that shall be decided only by the Tribunal as it is a Court of first instance.

⁴ EXECUTIVE DIRECTOR, KARNATAKA EXAMINATION AUTHORITY AND SELECTION AUTHORITY, MALLESHWARAM, BENGALURU v. STATE OF KARNATAKA AND ANOTHER – 2018 SCC OnLine Kar 4112

- He would seek to place reliance upon the judgment of the 7 Judge Bench of the Apex Court in the case of **L.CHANDRA KUMAR⁵**.
- Without prejudice to the aforesaid contentions, he would contend that the caste and income certificates are to be taken into consideration in terms of the policy of the State as enunciated in the Government Order dated 12.12.1986, which directs that the caste and income certificate of a married woman shall always relate to the husband and not to the parents. The income of the spouse will have to be taken into consideration.
- He would place reliance upon the judgment of the Apex Court rendered in the case of **INDRA SAWHNEY AND OTHERS VS. UNION OF INDIA AND OTHERS, ETC.** reported in **AIR 1993 SC 477**. He would contend that the Apex Court in the said judgment has left the policy to the respective State Governments.
- He would submit, the policy that was already in place in terms of the Government Order dated 12.12.1986,

⁵ L.CHANDRA KUMAR v. UNION OF INDIA – AIR 1997 SC 1127

would become applicable to the facts and that the policy is not challenged before the Court. Therefore, the decision of the Authority is based on the prescribed norms and policy of the State and the Government Order, which can neither be held to be arbitrary or unsustainable. He would seek dismissal of these petitions.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance whereof, the following issues arise for my consideration:

- (i) Whether the writ petitions challenging the action of interpretation of caste and income certificates by the Selecting Authority - DDPI would be maintainable?**
- (ii) Whether the caste and income of the husband of the female applicant should be taken into consideration or the caste and income of the parents?**
- (iii) Whether the Selecting Authority – DDPI would get jurisdiction to interpret caste and income certificates issued by competent authorities?**

The aforementioned issues would be considered on their seriatim.

Issue No. (i) : Whether the writ petitions challenging the action of interpretation of caste and income certificates by the Selecting Authority – DDPI would be maintainable?

8. The contention of the State is that these petitions in the form they are presented before this Court would not be maintainable. No doubt, the Apex Court in the case of **L.Chandra Kumar** (*supra*) has held that the Tribunals would be the Courts of first instance and any matter relating to service or recruitment to service under the services of the State would be maintainable only before the Tribunal. In the case at hand, the issue is with regard to the Selecting Authority – DDPI interpreting a caste and income certificate that is issued by the competent authority. Though it concerns recruitment to the posts of Graduate Primary Teachers, the only issue is with regard to the interpretation and power of interpretation of the Selecting Authority - DDPI. The number of applicants to the posts of Graduate Primary Teachers in the subject recruitment is close to six thousand and the applicants whose applications

have been rejected to come under any of the categories aforesaid and are directed to be brought under general merit are several hundreds. Therefore, this Court would not shirk its responsibility of setting the wrong right which is also interpreted and held in a particular manner by the Apex Court, by the Division Bench of this Court and that of the co-ordinate Bench. Therefore, these petitions are held to be entertainable only on the solitary issue concerning caste and income certificates and in the peculiar circumstances.

9. Reference being made to the judgment of the Apex Court in the case of **T.K.RANGARAJAN**⁶ in which the Apex Court has held that the high Court ought to have entertained the petition and not shirk its responsibility as the situation demanded urgent redressal. The High Court of Madras had relegated all the petitioners therein to approach the State Administrative Tribunal. The Apex Court has held as follows:

"5. At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel. It is equally true that extraordinary powers are required to be sparingly used. The facts of the present case reveal that this was most extraordinary case, which called for interference by the High Court, as the State Government had dismissed about two lakh employees for going on strike.

⁶ T.K.RANGARAJAN v. STATE OF TAMIL NADU AND OTHERS – (2003) 6 SCC 581

6. *It is true that in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] this Court has held that it will not be open to the employees to directly approach the High Court even where the question of vires of the statutory legislation is challenged. However, this ratio is required to be appreciated in context of the question which was decided by this Court wherein it was sought to be contended that once the Tribunals are established under Article 323-A or Article 323-B, jurisdiction of the High Court would be excluded. Negating said contention, this Court made it clear that jurisdiction conferred upon the High Court under Article 226 of the Constitution is a part of the inviolable basic structure of the Constitution and it cannot be said that such Tribunals are an effective substitute of the High Courts in discharging powers of judicial review. It is also an established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extraordinary jurisdiction under Article 226 and that has been reiterated by holding that the litigants must first approach the Tribunals which act like courts of first instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to directly approach the High Court even where the question of vires of the statutory legislation is challenged.*

7. *In L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] the Court inter alia referred to and relied upon the case in Bidi Supply Co. v. Union of India [AIR 1956 SC 479 : 1956 SCR 267] wherein Bose, J. made the following observations: SCR p. 284*

"The heart and core of a democracy lies in the judicial process, and that means independent and fearless judges free from executive control brought up in judicial traditions and trained to judicial ways of working and thinking. The main bulwarks of liberty and freedom lie there and it is clear to me that uncontrolled powers of discrimination in matters that seriously affect the lives and properties of people cannot be left to executive or quasi-executive bodies even if they exercise quasi-judicial functions because they are then invested with an authority that even Parliament does not possess. Under the Constitution, Acts of Parliament are subject to judicial review particularly when they are said to infringe fundamental rights, therefore, if under the Constitution Parliament itself has not uncontrolled

freedom of action, it is evident that it cannot invest lesser authorities with that power."

8. The Court further referred to the following observations from the decision in *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225] as under: (SCC p. 300, para 77)

"77. ... From their conclusions, many of which have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme."

The Court further held: (SCC pp. 301-02, paras 78-81)

"78. ... We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

81. If the power under Article 32 of the Constitution, which has been described as the 'heart' and 'soul' of the Constitution, can be additionally conferred upon 'any other court', there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution."

(emphasis supplied)

9. Thereafter, the Court to emphasise that Administrative Tribunals are not functioning properly, quoted the observations with regard to the functioning of

the Administrative Tribunals from the Malimath Committee's Report (1989-90), which are reproduced hereinunder:

Functioning of Tribunals

"8.63. Several Tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such Tribunals.

8.64. Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. The decisions of the State Administrative Tribunals are not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in some of the States where they have been established for their abolition."

(It is to be stated that in Tamil Nadu, at present, the Administrative Tribunal is manned by only one man.)

Finally, the Court held thus: (SCC p. 311, para 99)

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the

Act and the 'exclusion of jurisdiction' clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

10. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier, because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute."

(Emphasis supplied)

The Apex Court considers the judgment of the larger Bench in the case of **L.Chandra Kumar** (supra) and then holds that in cases where thousands of employees are directed to approach the Tribunal, it would not be in a position to render justice to the cause and, therefore, in very exceptional circumstances, the High Court has to entertain the petitions and not dismiss them on the ground of alternative remedy as provided under the statute. The situation in the case at hand is similar to what arose before the Apex Court. There are hundreds of applications where the cases of applicants who come under the reservation of category 2A, 2B, 3A and 3B are held to be general merit candidates and the issue is only with regard to interpretation of whose caste and income should be taken into consideration i.e., the husband or the parents. Therefore, in this peculiar and atypical situation, I entertain the petitions despite objection of the State. Merely because there exists an alternative remedy as provided under the statute, fetters cannot be laid at the hands of this Court exercising its jurisdiction under Article 226 of the Constitution of India to remedy any situation which would warrant immediate and necessary interference. The first issue is thus answered against the State.

Issue No.II: *Whether the caste and income of the husband of the female applicant should be taken into consideration or the caste and income of the parents?*

10. This issue is whether the caste and income of the parents should be taken into consideration or that of the spouse. One common stream that runs through all these cases is that the applications submitted by these petitioners were accompanied by caste and income certificates issued by the respective Tahsildars taking the caste and income of the father into consideration and not the spouse. The certificates were in tune with law. It is the action of the Selecting Authority – DDPI to have interpreted the law, to its whim, according to a Government Order dated 12.12.1986, to contend that on once the daughter gets married the income of the spouse will have to be considered for the purpose of caste and income certificate and not that of the parents. On these lines objections are also filed by the State, it has categorically contended that once the daughter gets married, she loses to be the dependent of the parents and then, the term dependent would mean the spouse and children of a married person and by no stretch of imagination the applicants can speculate that the spouse after marriage loses dependency on the parents. It is the emphatic

submission of the State that it is the spouse and only the spouse whose caste and income should be taken into consideration in the case at hand. I decline to accept any such submissions. The issue whether the caste and income of an individual should be taken into consideration or that of the parents should be taken into consideration or of the spouse to be taken into consideration need not detain this court for long or delve deep into the matter. The Apex Court in the case of **Surender Singh** (*supra*), has held as follows:

"8. The question which still arises is, whether it was open to the High Court, to include the individual's income in determining his eligibility for being declared as backward class, by reading down the policy instructions on the subject? Insofar as the instant aspect of the matter is concerned, there can be no doubt that the issue is determinable with reference to the decision rendered by this Court in *Indra Sawhney v. Union of India* [*Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] . But for the determination of the present controversy, we need not travel to the decision in *Indra Sawhney* case [*Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] . It will be sufficient to make a reference to the decision rendered by this Court in *Ashoka Kumar Thakur v. State of Bihar* [*Ashoka Kumar Thakur v. State of Bihar*, (1995) 5 SCC 403 : 1995 SCC (L&S) 1248 : (1995) 31 ATC 159] , wherein this Court, having examined the Office Memorandum dated 8-9-1993, approved the same by observing as under: (SCC p. 417, para 10)

"10. 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 (Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385]). 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. The learned counsel for the petitioners have also vehemently commended that the State Governments should follow the Government of India and lay down similar criteria for identifying the 'creamy layer'."
(emphasis supplied)

It is apparent from the observations recorded by this Court, as have been extracted hereinabove, that the Office Memorandum dated 8-9-1993 had been examined by this Court, specifically with reference to the decision rendered in Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] . Having done so, this Court expressly approved and confirmed the Schedule to the Office Memorandum dated 8-9-1993.

... ..

11. The above issue came to be examined yet again by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) through its memorandum dated 14-10-2004. In the above memorandum, a large number of queries were clarified. Queries at Serial Nos. (vi) and (vii) of Para 4 are relevant to the present controversy, and are accordingly reproduced hereunder:

"4. Following questions have been raised from time to time about the application of the above provisions to determine creamy layer.

(vi) Will a candidate who himself is a directly recruited Class I/Group A officer or a directly recruited Class II/Group B officer who got into Class I/Group A at the age of 40 or earlier be treated to be falling in creamy layer on the basis of his service status?

(vii) Will a candidate who has gross annual income of Rs 2.5 lakhs or above or possesses wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years be treated to fall in creamy layer?"

The aforesaid queries came to be answered in Para 8 by observing as under:

"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."

(emphasis supplied)

In view of the above, there is no room for any further consideration, whether or not the individual's income is to be taken into consideration, while computing the total income relevant to determine whether an individual belongs to the "creamy layer". The above clarification reveals, that it is only the parents' income, which has to be taken into consideration."

(Emphasis supplied)

The Apex Court holds that there is no room for any further consideration of individuals income to be taken into consideration while computing total income. The clarification issued therein would reveal that it is only the parents' income which has to be taken into consideration. The Apex Court further in the case of **SUNITA SINGH**⁷ has held as follows:

"5. There cannot be any dispute that the caste is determined by birth and the caste cannot be changed by

⁷ SUNITA SINGH v. STATE OF U.P. – (2018) 2 SCC 493

*marriage with a person of Scheduled Caste. Undoubtedly, the appellant was born in "Agarwal" family, **which falls in general category and not in Scheduled Caste. Merely because her husband is belonging to a Scheduled Caste category, the appellant should not have been issued with a caste certificate showing her caste as Scheduled Caste. In that regard, the orders of the authorities as well as the judgment of the High Court cannot be faulted.***

(Emphasis supplied)

The Apex Court was considering determination of caste status of a community 'Jatav' on the basis of caste status of the husband. It is held that determination of caste status on the basis of the caste of the husband was unsustainable as the caste is determined by birth which cannot change by marriage. Following the said judgment a co-ordinate Bench of this Court in **SMT. YOGESHWARI** (*supra*) has held as follows:

"IV. POINTS FOR CONSIDERATION

16. In view of the rival contentions urged by the learned counsel for the parties, the points that would arise for consideration in these writ petitions are:

1. Whether the petitioner – Yogeshwari in W.P. No.3390/2018 has made out a case to quash the impugned order dated 13.12.2017 passed by the 2nd respondent – Deputy Commissioner & Chairman, District Caste & Caste Verification Committee and to issue direction to the 2nd respondent to issue validity certificate in her favour subject to the condition that her parents income does not exceed the limit prescribed by the respondents, in the facts and circumstances of the present case?

2. Whether the State Government has made out a case to interfere with the order dated 18.11.2016 passed by the Appellate Authority, in

the facts and circumstances of the present case?

17. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record carefully.

V. CONSIDERATION

18. The substance of the case of the petitioner is that she applied for the post of Civil Judge in response to the notification issued by the 6th respondent under Category III(B) as she belonged to Veerashiava community and she succeeded in the preliminary and Main examinations conducted by the 6th respondent and thereafter she also attended viva voce. Later, she came to know that her application was not forwarded for police verification and medical test, as she has not submitted the caste certificate. Therefore the petitioner has once again applied and obtained the fresh caste and income certificate that she belongs to Category III(B) and income of the family does not exceed Rs.16,000/- issued by the Tahsildar, Chamarajanagar as per Annexure-G dated 3.2.2016. Thereafter the petitioner has applied for the validity certificate before the jurisdictional authority - 2nd respondent. The 2nd respondent rejected the said application on the ground that husband's income has to be taken into consideration. That is the subject matter of the Appeal before the Appellate Authority - Commissioner for Backward Classes. The Appellate Authority by an order dated 18.11.2016 (Annexure-K) allowed the appeal and set aside the order passed by the 2nd respondent - Deputy Commissioner & Chairman, District Caste & Verification Committee.

19. The order passed by the Appellate authority has reached finality. Thereafter, the petitioner has submitted the detailed representations dated 27.2.2017 and 22.3.2017 to the 2nd respondent to issue validity certificate based on the order dated 18.11.2016 passed by the Appellate Authority. In spite of the representations, when the 2nd respondent has not proceeded to consider the representations in pursuance of the order passed by the Appellate Authority, the petitioner was forced to file writ petition before this Court in W.P. No.17079/2017. This Court after hearing the parties, by the order dated 9.11.2017 allowed the said writ petition and directed the respondent - District Caste & Income Verification Committee to consider the representations and take a

decision as expeditiously as possible, but not later than two months from the date of receipt of the order. The said order passed by this Court has reached finality.

20. It is an undisputed fact that the 2nd respondent - Deputy Commissioner & Chairman, District Caste & Income Verification Committee, Chamarajanagar and members of the Committee in its meeting dated 27.2.2017 raised eight questions and sought clarification from the Appellate Authority - Commissioner, Department of Backward Classes, Bangalore as per Annexure-P dated 6.3.2017 and from the Government as per Annexure-S dated 25.3.2017. It is also not in dispute that the Appellate Authority by a letter dated 17.3.2017 (Annexure-G) intimated the 2nd respondent - Deputy Commissioner & Chairman, District Caste & Caste Verification Committee to issue validity certificate to the petitioner - Yogeshwari in accordance with law since the appeal filed before the Appellate Authority was allowed and the order passed by the 2nd respondent was set aside. The order passed by the Appellate Authority - Commissioner, Department of Backward Classes has reached finality. The Commissioner also clarified the same to the Secretary, Backward Classes on 30.5.2017 as per Annexure-R. At clarification No.3, he has specifically stated that the Hon'ble Supreme Court in the case of SURINDER SINGH vs. PUNJAB STATE ELECTRICITY BOARD, PATIALA AND OTHERS (AIR 2015 SC 537) has clarified that the creamy layer status of a candidate is determined on the basis of the status of his/her parents and not on the basis of his/her 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 his/her spouse shall not be taken into account. The clarification reveals that it is only the parents income, which has to be taken into consideration. The said clarification issued by the Commissioner, Department of Backward Classes to the Secretary also has reached finality.

21. It is also relevant to state at this stage that in response to the clarification sought by the 2nd respondent - Deputy Commissioner dated 25.3.2017, the Prl. Secretary, Law Department by a letter dated 6.9.2017 has answered all the queries. The relevant portion of the clarification issued by the Prl. Secretary to Query No.3 is as under:

ಜಾತಿ ಮತ್ತು ಆದಾಯ ಪ್ರಮಾಣಪತ್ರವನ್ನು ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ಸಕಇ 225 ಬಿಸಿಎ2000, ದಿನಾಂಕ: 30.03.2002ರ ಆದೇಶದ ಕಂಡಿಕೆ (3)ರಲ್ಲಿ 'ಕೆನೆಪದರ ನೀತಿಯು ಪರಿಶಿಷ್ಟ ಜಾತಿ, ಪರಿಶಿಷ್ಟ ಪಂಗಡಗಳಿಗೆ ಮತ್ತು ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಪ್ರವರ್ಗ-1ಕ್ಕೆ ಅನ್ವಯಿಸುವುದಿಲ್ಲ. ಅಭ್ಯರ್ಥಿಯ ಪತಿಯು ಪ್ರವರ್ಗ-1ಕ್ಕೆ ಸೇರಿರುವುದು ದಾಖಲಾತಿಗಳಿಂದ ಕಂಡು ಬರುತ್ತದೆ.

ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ಸುರೇಂದ್ರ ಸಿಂಗ್ ವಿರುದ್ಧ ಪಂಜಾಬ್ ಸ್ಟೇಟ್ ಎಲೆಕ್ಟ್ರಿಕ್ ಸಿಟಿ ಬೋರ್ಡ್ ಪ್ರಕರಣದಲ್ಲಿ ಸಿವಿಲ್ ಅಪೀಲು ಸಂಖ್ಯೆ: 6957/2009 ದಿನಾಂಕ: 25.09.2014 ರಲ್ಲಿ ಆದೇಶ ಭಾಗ ಕಂಡಿಕೆ: (11) ರಲ್ಲಿ "In regard clauses (vi), (vii) & (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 person the status or the income of the candidate himself or of his/her souse shall not be taken into account."

The above clarification reveals, that it is only the parents income, which has to be taken into consideration.

22. It is also clarified that while determining the creamy layer status of a person, the status or income of the candidate himself or his/her spouse shall not be taken into account and the clarification reveals that it is only the parents income which has to be taken into consideration. In spite of the clarification issued by the Appellate Authority as well as the Prl. Secretary, Law Department, unfortunately the 2nd respondent - Deputy Commissioner & District Caste & Income Verification Committee proceeded to pass the impugned order dated 13.12.2017 mainly on the ground that the income of the husband of the petitioner has to be taken into consideration and the certificate sought cannot be granted. The same is against the very Government Order issued by the State Government dated 30.3.2002 made in G.O. No. 225 ©¹ 2000 and contrary to the dictum of the Hon'ble Supreme Court in the case of SURINDER SINGH vs. PUNJAB STATE ELECTRICITY BOARD, PATIALA AND OTHERS reported in AIR 2015 SC 537, wherein at paragraphs - 9, 10 and 11 it is held as under:

"9. Based on the aforesaid declaration of law, we are of the view that it was not open to the High Court to evaluate the office memorandum dated 8.9.1993 from any other parameters. It also needs to be noticed, that the issue which came up for determination in Ashok Kumar Thakur's case (AIR 1996 SC 75) came to be re-examined before a Constitution Bench of this Court in Ashok Kumar Thakur vs. Union of India (2008) 6 SCC 1, wherein on the subject of identification of the "creamy layer", the Constitution Bench observed as under:

"1-B. IDENTIFICATION OF CREAMY LAYER

415. Income as the criterion for creamy layer exclusion is insufficient and runs afoul of Sawhney (I). (See p.724 at para 792). 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 (I) 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."

Here again, this Court expressly approved the office memorandum dated 8.9.1993. In view of the decisions rendered by this Court in both Ashok Kumar Thakur's cases (supra), we are of the view that the High Court clearly erred in reading down the office memorandum dated 8.9.1993 and to include therein the income of the individual concern while determining whether or not he fall within the "creamy layer".

10. Despite the declaration of law in the judgments, referred to hereinabove, it is also necessary to take into consideration the clarification issued by the Government of India, Ministry of Personnel, P.G. and Pensions (Department of Personnel and Training) dated 21.11.2002. The aforesaid clarification was with reference to the office memorandum dated 8.9.1993. Relevant

extract of the clarificatory letter dated 21.11.2002 is being reproduced below:

"I am directed to refer to your letter No.2/25/2001 RC-1/670 dated 17-10-2002 on the above noted subject and say that determination of creamy layer for an OBC candidate is done with reference to the income of parents as per instructions contained in DOPT's O.M. No.36012/22/93-Estt(res) dated 8.9.93."

Based on the aforesaid conclusion, there is really no room for any doubt, that the exposition with reference to category VI in the office memorandum dated 8.9.1993 related only to the income of the parents of the individual concerned. And that, the income of the individual concerned was not to be taken into consideration.

11. The above issue came to be examined yet again by the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training) through its memorandum dated 14.10.2004. In the above memorandum, a large number of queries were clarified. Queries at serial nos.(vi) and (vii) of paragraph 4 are relevant to the present controversy, and are accordingly reproduced hereunder:

"4. Following questions have been raised from time to time about the application of the above provisions to determine creamy layer.

(vi) Will a candidate who himself is a directly recruited Class I/Group A Officer or a directly recruited Class II/Group B officer who got into Class I/Group A at the age of 40 or earlier be treated to be falling in creamy layer on the basis of his service status?

(vii) will a candidate who has gross annual income of Rs.2.5 lakh or above or possesses wealth above the Exemption limit as prescribed in the Wealth Tax Act for a

period of three consecutive years be treated to fall in creamy layer?"

The aforesaid queries came to be answered in paragraph 8 by observing as under:

"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."

In view of the above, there is no room for any further consideration, whether or not the individual's income is to be taken into consideration, while computing the total income relevant to determine whether an individual belongs to the "creamy layer". The above clarification reveals, that it is only the parents income, which has to be taken into consideration.

23. Writ Petition No.24115/2018 is filed by the State Government against the order passed by the Appellate Authority dated 18.11.2016 mainly on the ground that the order passed by the Appellate Authority cannot be sustained as it was not a speaking order. Admittedly the 2nd respondent - Deputy Commissioner & Chairman, District Caste and Income Verification Committee passed the order on 13.12.2017 rejecting the grant of Validity certificate, which is the subject matter of W.P. No.3390/2018 filed by the petitioner - Yogeshwari. Admittedly, the Deputy Commissioner & Chairman, District Caste and Income Verification Committee raised certain queries and sought clarification from the Appellate authority and also the State Government and the State Government has clarified the queries and therefore now the State Government ought not to have filed the writ petition. Instead of filing the writ petition against the order passed by the appellate authority, the State Government ought to have directed the Deputy Commissioner & Chairman, District Caste & Income Verification Committee to issue the validity certificate in accordance with law. The same has not been done. The order was passed by the appellate authority on 18.11.2016

and the writ petition No.24115/2018 was filed by the State Government on 1.6.2018 challenging the said order, after the delay of more than 1 ½ years stating that the appellate authority has not passed speaking order and no reasons are assigned.

24. It is not the case of the State Government that the income of the husband has to be taken into consideration while considering the issue of validity certificate to the petitioner - Yogeshwari. If that is so, the State Government ought not to have filed the present writ petition and drove the petitioner - Yogeshwari unnecessarily before this Court. The State Government should act as custodian of the citizens of the State and the State Government is in position of the mother and treat all the children of the State equally and should not discriminate. Unfortunately, the State Government filed the writ petition No.24115/2018 without there being any ground to challenge the order passed by the appellate authority. The order of the appellate authority has been culminated into the impugned order passed by the 2nd respondent - District Caste Verification Committee after obtaining clarification from the very appellate authority and the State Government. In all fairness, the State Government ought not to have filed writ petition No.24115/2018. The writ petition filed by the State Government is devoid of merits and liable to be rejected.

VI. CONCLUSION

25. For the reasons stated above, the 1st point raised in these writ petitions has to be answered in the affirmative holding that the petitioner - Yogeshwari in W.P. No.3390/2018 has made out case to quash the impugned order dated 13.12.2017 (Annexure-W) passed by the respondent - Deputy Commissioner & Chairman, District Caste and Verification Committee and to issue direction to the said respondent to issue validity certificate in her favour subject to the condition that her parents income does not exceed the limit prescribed in the Government Order dated 30.03.2002.

26. In view of the above, the 2nd point raised in the present writ petitions has to be held in the negative holding that the State Government has not made out any case to interfere with the order dated 18.11.2016 passed by the appellate authority, in the facts and circumstances of the case.

27. For the reasons stated above, the writ petition filed by the petitioner – Yogeshwari in W.P. No.3390/2018 is allowed. The impugned order dated 13.12.2017 passed by the 2nd respondent – Deputy Commissioner & Chairman, District Caste and Income Verification Committee as per Annexure-W is hereby quashed. The 2nd respondent is directed to issue validity certificate in favour of the petitioner – Yogeshwari in pursuance of the Government Order dated 30.3.2002 made in No. G.O. No.SaKae 225 BCA 2000 and in view of the dictum of the Hon'ble Supreme Court in the case of SURINDER SINGH vs. PUNJAB STATE ELECTRICITY BOARD (AIR 2015 SC 537) stated supra, within one month from the date of receipt of copy of this order."

(Emphasis supplied)

The co-ordinate Bench was following the judgment of the Apex Court in the case of **SURINDER SINGH** (*supra*). The co-ordinate Bench set at naught similar action of determination of the caste and income of the applicant on the basis of the caste and income of the husband and directed that the caste and income of the parents is to be taken into consideration. It is further germane to notice a later judgment of the Division Bench in the case of **SMT.DIVYASHREE A.S. VS. THE COMMISSIONER IN W.P.NO.11322/2022, DISPOSED ON 29.11.2022**, wherein, the Division Bench has held as follows:

"8. The learned Single Judge of this Court in the case of The State of Karnataka Vs. Smt. Yogeshwari in Writ Petition No.24115/2018 c/w Writ Petition No.3390/2018(GM-CC) has considered the similar aspect wherein a candidate applied for the post of Judicial Officer showing her father's income and caste certificate. Since her husband was

also Judicial Officer she was denied the appointment as income exceeds to claim reservations. The learned Single Judge of this Court relying on the decision in the case of Surinder Singh Vs. Punjab State Electricity Board, Patiala and others reported in AIR 2015 SC 537 has upheld the appointment of Smt. Yogeshwari. The relevant paragraphs are as under:

"20. It is an undisputed fact that the 2nd respondent - Deputy Commissioner & Chairman, District Caste & Income Verification Committee, Chamarajanagar and members of the Committee in its meeting dated 27.2.2017 raised eight questions and sought clarification from the Appellate Authority - Commissioner, Department of Backward Classes, Bangalore as per Annexure-P dated 6.3.2017 and from the Government as per Annexure-S dated 25.3.2017. It is also not in dispute that the Appellate Authority by a letter dated 17.3.2017 (Annexure-G) intimated the 2nd respondent - Deputy Commissioner & Chairman, District Caste & Caste Verification Committee to issue validity certificate to the petitioner - Yogeshwari in accordance with law since the appeal filed before the Appellate Authority was allowed and the order passed by the 2nd respondent was set aside. The order passed by the Appellate Authority

- Commissioner, Department of Backward Classes has reached finality. The Commissioner also clarified the same to the Secretary, Backward Classes on 30.5.2017 as per Annexure-R. At clarification No.3, he has specifically stated that the Hon'ble Supreme Court in the case of SURINDER SINGH vs. PUNJAB STATE ELECTRICITY BOARD, PATIALA AND OTHERS (AIR 2015 SC 537) has clarified that the creamy layer status of a candidate is determined on the basis of the status of his/her parents and not on the basis of his/her 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 his/her spouse shall not be taken into

account. The clarification reveals that it is only the parents income, which has to be taken into consideration. The said clarification issued by the Commissioner, Department of Backward Classes to the Secretary also has reached finality."

9. In the case mentioned supra, a clarification was sought by the Deputy Commissioner and the clarification clearly stated that the creamy layer status of a candidate is determined on the basis of the status of his/her parents and not on the basis of his/her 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 his/her spouse shall not be taken into account. The clarification reveals that it is only the parents income, which has to be taken into consideration.

10. Therefore, in view of this decision, the order passed by the tribunal in this regard does not holds good. Further learned counsel also relied on the decision of this Court in case of Smt. Suma C.C. Vs. Karnataka Examinations Authority and others in W.P.No.44784/2019 (S-KSAT) at paragraph no.12 and 13 which is held as under:

"12. This point need no longer detain us any further. The coordinate bench of this Court in the case of MS. RAMJANBEE v. STATE OF KARNATAKA AND OTHERS passed in W.P.No.56370/2018(S-KAT) dated 30.06.2021, considered the said aspect and in the decision of the Hon'ble Supreme Court in the case of RAM KUMAR GIJROYA v. DELHI SUBORDINATE SERVICES SELECTION BOARD AND ANOTHER reported in (2016) 4 SCC 754 is also relied. At para 9, the co-ordinate bench held as under:-

"9. In a similar case relating to selection to the post of Assistant Professor in History, one Renuka had filed Application No.11680/2016 challenging non-inclusion of her name in the selection list dated 6.12.2016 on the ground that the Income and Caste Certificate produced by her at the time of making application was not valid; that since the subsequent certificate was obtained after the last date prescribed for receipt of applications, in view the law laid down by the Hon'ble Supreme Court in BEDANGA TALUKDAR v. SAIFUDAULLAH

KHAN, reported in (2010) 12 SCC 85 that strict adherence to stipulated selection procedure is a necessity, certificate produced subsequent to the last date prescribed for receipt of applications cannot be accepted. But this Tribunal following the decision of the Hon'ble Supreme Court in RAM KUMAR GIJROYA v. DELHI SUBORDINATE SERVICES SELECTION BOARD AND ANOTHER reported in (2016) 4 SCC 754, held that non-submission of a reserved (OBC) category certificate of the selected candidate within the cut off date mentioned in the advertisement cannot render a candidate ineligible for selection, as it would amount to denial of equality of opportunity contemplated under Articles 14, 15, 16 and 39-A of the Constitution of India and allowed the application and the KEA was directed to include the name of the Applicant in the said selection list and to appoint the applicant pursuant to the said selection list. The KEA challenged the said order before the Hon'ble High Court of Karnataka in Writ Petition No.49066/2017 (EXECUTIVE OFFICER, KARNATAKA EXAMINATIONS AUTHORITY v. STATE OF KARNATAKA AND ANOTHER) and connected cases. The Hon'ble High Court by order dated 26.03.2018 has upheld the view taken by this Tribunal with regard to claim for reservation by the Applicant in the said Application, but so far as the direction to appoint the Applicant therein is concerned, the Hon'ble High Court has modified the said direction to read that the Government shall issue appointment order to the Applicant after issuance of Validity Certificate by the prescribed competent authority. Hence, a direction has to be issued to the KEA to consider the caste and income certificate produced by the Applicants in relation to income of their husband.'

13. Therefore, it is evident that non-submission of a reserved (OBC) category certificate of the selected candidate within the cut-off date cannot render a candidate ineligible for selection, as it would amount to denial of equality of opportunity contemplated under Article 14, 15, 16 and 39 of the Constitution of India.

11. Admittedly, in this case, the order of the Tribunal holding that applicant has produced caste and income certificate of her father instead of her husband is bad in law does not hold good. In the endorsement for cancellation also it is stated that a married woman should furnish the caste and income of her husband, as she was selected under IIA women reservation and as she is married, her father's income and caste certificate cannot be considered. Therefore, respondent has come to the conclusion that she has given wrong information and her appointment was cancelled. But such contention does not hold good in the eyes of law."

(Emphasis supplied)

Therefore, in the considered view of this Court, the issue stands covered by the judgment of the Apex Court in the case of **SURINDER SINGH** (*supra*) and the judgment of the Division Bench in the case of **SMT. DIVYASHREE** (*supra*) and that of the co-ordinate Bench in **Smt. YOGESHWARI** (*supra*). The submission of the learned Advocate General is, that the Apex Court in the case of **INDRA SAWHNEY** (*supra*) had permitted the State Governments to regulate the procedures providing reservations to other backward classes and therefore, the Government Order dated 12.12.1986 or the Government Order dated 28.10.1993 should be followed, would amount to placing the Government Order on a higher pedestal than that of the judgment of the Apex Court, the Division Bench of this Court and that of the co-ordinate Bench, which can by no stretch of imagination be done, therefore, the said submission is rejected.

In the result, I hold that the action of the Selecting authority - DDPI in interpreting and holding that the caste and income of the husband is to be taken into consideration is contrary to law and a direction is to be issued to the respondents to consider the applications of the petitioners on the basis of caste and income certificates of the parents and not their spouse and as belonging to the respective categories against which they have applied for. Issue No.2 is accordingly answered.

Issue No.iii : *Whether the Selecting Authority - DDPI would get jurisdiction to interpret caste and income certificates issued by competent authorities?*

11. The issue is whether the Selecting Authority – DDPI would get the jurisdiction to interpret a caste certificate issued by the competent authority while undertaking the selection process. This issue need not detain this Court for long or delve deep into the matter. A Division Bench of this Court in Executive Director (supra) has held as follows:

"10. *In the facts and circumstances as culled out, and the rival submissions made, the questions that arise for consideration in these petitions are:*

- (a) *Whether KEA, while finalising the Selection List, can decide on the validity of the Caste and Income and Caste Certificates issued by the Competent*

Authorities in the prescribed Form under the provisions of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 and the Rules made thereunder? And

- (b) *Whether appointments can be made by an Appointing Authority without Validity Certificates issued by the Competent Authorities in the prescribed Form under the provisions of the Karnataka Scheduled Castes, Scheduled Tribes, Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 and the Rules made thereunder?*

11. *The answer to these questions will have to be discerned from the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990, the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Rules, 1992 and the Government order dated 12-2-1993 in No. SWL 247 SAD 90; and except this Government order dated 12-2-1993 (for short, 'G.O. dated 12-2-1993'), no other order is relied upon or placed before this Court for consideration.*

12. *The Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 [This Act is brought into force from 1-6-1992 after the Governor's assent on 4-3-1991] (for short, 'Act'), as it stood, on it being brought into force, enabled inter alia for reservation of appointments or posts in favour of the Scheduled Castes, Scheduled Tribes and Other Backward Classes in the State Civil Services and establishments in the Public Sector and in admission to Universities and to the Education Institutions established or maintained or aided by the State Government, but later, the Government of Karnataka, issued G.O. dated 12-2-1993, according approval for the constitution of Caste Verification Committee and Caste and Income Verification Committee and laid down the procedure, amongst others, for seeking Validity Certificate. Section 12 of the Act enables the Government to take such steps or to issue such order, as are not inconsistent with the provisions of the Act, as the State may consider necessary for removal of difficulties in giving effect to the provisions of the Act and G.O. dated 12-2-1993 is issued in the exercise of this power.*

13. The G.O. dated 12-2-1993 insofar as the recruitment stipulated that the benefit of reservation either for SC/ST or other Backward Classes cannot be extended without a Validity Certificate issued by the specified Caste Verification Committee or the Caste and Income Verification Committee. The stipulation in this regard in the G.O. dated 12-2-1993 read as follows:

"No candidate seeking the benefit of reservation as an Scheduled Caste/Scheduled Tribe or a Backward Class shall be appointed by any of the Departments of the State Government including appointment to State Civil Services and Establishments in Public Sector etc., without a Validity Certificate issued by the Caste Verification Committee of the Social Welfare Department in respect of Scheduled Castes/Scheduled Tribes and by the Caste and Income Verification Committee of the Directorate of Backward Classes and Minorities in respect of candidates belonging to Backward Classes.

The procedure to be followed shall be as follows:

Any Selection/Recruiting and Appointing Authority shall first prepare a provisional select list on the basis of the criteria laid down for selection. The provisional select list shall be made public calling for objections. After the time-limit fixed for filling objections, the final select list shall be taken up for finalisation by the Selection/Recruitment Committee. In the interim period, the Selection/Recruiting authority shall send the select list to the Directors of Social Welfare and Backward Classes and Minorities Department for verification of the claims of the candidates seeking reservation benefit and issue of validity certificate.

The Caste Verification Committee and Caste and Income Verification Committee shall verify the claims of the candidates in the select list and issue validity certificates to the candidates concerned. After the validity Certificates are issued, the final select list is prepared and the list will be forwarded to the Appointing Authority. No candidate shall be eligible for appointment under the reserved quota, without the validity certificate."

14. Subsequently, the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments etc.) Rules, 1992 [The Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Rules, 1992 are notified vide Notification dated 22-2-1993] (for short, "Rules") - was notified, and thereafter there are amendments to the Act [The Act has been amended vide Act No. 27 of 1997 with effect from 8-2-2000, Act No. 8 of 2004 with effect from 23-2-2004 and Act No. 7 of 2012 with effect from 22-6-2012] and Rules [The Rules has been amended vide Notification dated 11-11-1993 with effect from 11-11-1993, Notification dated 8-2-2000 with effect from 8-2-2000, Notification dated 22-1-2001 with effect from 1-2-2001, Notification dated 11-3-2002 with effect from 15-3-2002, Notification dated 8-7-2009 with effect from 13-8-2009 and Notification dated 17-2-2012] with multiple insertions and substitutions. The amendments to the Act and Rules, amongst others, provide for the following:

Under the Act:

- **Issuance of Caste Certificate or Income and Caste Certificate under Section 4-A:** The Tahsildar after receiving an application in the prescribed Form and following the prescribed procedure for an enquiry and satisfying himself about the genuineness of the claim for reservation may make orders issuing Caste Certificate to persons from Scheduled Castes, Scheduled Tribes and Other Backward Classes - Category I or Income and Caste Certificate for Other Backward Classes as the case may be;
- **Section 4-B.** The Assistant Commissioner on an appeal by any person aggrieved by orders of the Tahsildar under Section 4-A may make orders issuing Caste Certificate to persons from Scheduled Castes/Scheduled Tribes and Backward Classes - Category I and Income and Caste Certificate for other Backward Classes after giving both the parties an opportunity of being heard;
- **Section 4-C.** Verification of the Caste Certificates and income and Caste Certificates issued under Section 4-A or Section 4-B and issuance of Validity Certificate by the District Verification Committees on an application in the prescribed Form by:
 - i. Any person who has obtained a Caste Certificate or an Income and Caste Certificate; or
 - ii. the Appointing Authority; or

iii. any Authority making admissions to a course of study in the University or any Educational Institution.

It must be emphasised that the Selecting Authority is not included in the list of persons who can make an application for Verification of the Caste Certificate or an Income and Caste Certificate.

Under the Rules:

- **Rule 3-A.** This Rules prescribes that every application for Caste Certificate and Income and Caste Certificate should be in Form A, Form B or Form C, and as per the Appended Forms:

Form A: Is for Caste Certificate in cases of persons belonging to Scheduled Castes and Scheduled Tribes.

Form B: Is for Caste Certificate in cases of persons belonging to Backward Classes Category I.

Form C: Is for an Application for Income and Caste Certificate.

- **Rule 3-B :** This Rule provides that the Assistant Commissioner in an appeal from the Orders of the Tahsildar may issue necessary orders after hearing both the parties and holding Enquiry.
- **Rules 4 and 5 :** These Rules provide for constitution of Caste Verification Committees and Income and Caste Verification Committees.
- **Rule 6 :** These Rules provide for submission of application in Form I to these Committees for issuance of Validity Certificates.
- **Rule 6-A :** This Rule provides for Reference by these Committees of the applications to the Prescribed Authority to verify and report after holding enquiries.
- **Rule 7 :** This Rule provides for issuance of Validity Certificate in Form 1- A after issuance of the report under Rule 6-A and after examination of the records and examining persons as mentioned in Rule 7(2).

15. The scheme under the Act and Rules as now available contemplates issuance of Caste Certificate and Income and Caste Certificate by the Tahsildar and its

verification and validation by issuance of Validity Certificate of the Caste Certificate by the Caste Verification Committee and the Income and Caste Certificate by the Income and Caste Verification Committee. The Act and Rules elaborate in detail who should make applications for issuance and verification of Caste Certificate or Income and Caste Certificate, to whom such applications are to be made, the details to be furnished in the applications in the prescribed Forms (i. e. in Form A or Form B or Form C for Caste Certificate and Income and Caste Certificate and Form 1 for the Validity Certificate for the Caste Certificate and Income and Caste Certificate), how such applications will have to be considered and that the issuance of Caste Certificate and Income and Caste Certificate in the prescribed Forms ('Form D' or 'Form E' or 'Form F') and Validity Certificate for Caste Certificate and Income and Caste Certificate in Form 1-A.

16. The Act (Section 4-B) prescribes that the Assistant Commissioner of the concerned Revenue Sub-Division, as the Appellate Authority, has to decide on the claim for the Caste Certificate or the Income and Caste Certificate, as the case may be, as per the procedure prescribed under Rule 3-B of the Rules. Further, review is also provided under Section 4-F of the Act against the orders of the Tahsildar under Section 4-A and the order in appeal by the concerned Assistant Commissioner under Section 4-B. Further, an appeal against the Orders of the Caste Verification Committee and Income and Caste Verification Committee is also provided for under Section 4-D of the Act to the Authorities as mentioned therein.

17. Therefore, if the Caste Certificate/s and Income and Caste Certificate/s are issued in the prescribed form by the Competent Authority, it is only the Authority under the Act which can adjudicate upon such certificate, and that too in the manner provided under the Act and Rules. Therefore, KEA, a Selecting Authority, could not have taken upon itself the jurisdiction to decide upon the validity of the Income and Caste Certificate that is issued in the Prescribed Form by the Competent Authority and make a short shrift of the statutory mechanism.

18. The validation of the Caste Certificate and the Income and Caste Certificate, as the case may be, is because Section 4-C(l) of the Act read with Rule 9 of the Rules. While Section 4-C(l) contemplates constitution of

Committee/s for verification of the Caste Certificate and Income and Caste Certificate, Rule 9 of the Rules mandates that no person who claims the benefit of reservation shall be appointed to a service or to a post under the Government with an Establishment in public sector without production of a validity certificate. Thus, in terms of the Act and Rules what is inevitable is that every candidate seeking reservation in appointments to a service or post with the Government or Establishment in Public Sector, should initially obtain a Caste Certificate or the Income and Caste Certificate, and the same should be verified and validated with issuance of the Validity Certificate; and the terms of the Act and Rules, which are detailed and elaborate, do not brook jurisdiction in a Selecting Authority or the Appointing Authority to decide on the validity of a Caste Certificate and an Income and Caste Certificate.

19. *Therefore, the question that arises now is at what stage should the Validity Certificate be obtained and by whom. The Validity Certificate, as stated in Section 4-C(2) of the Act, can be issued only at the instance of a person who has obtained a Caste Certificate/Income and Caste Certificate, or any Appointing Authority or an Authority making admission to a course of study in the university or educational institution. However, the stage at which the Validity Certificate will have to be ascertained from the provisions of the Act and Rules, more specifically Section 4-C of the Act and Rule 9 of the Rules.*

20. *The G.O. dated 12-2-1993 stated that a Selection/Recruiting Authority in the interregnum between publishing of the Provisional Select List and the finalisation of the Final Select List, shall send the selection list to the then prescribed Competent Authority who had to verify the claims made by the candidates and issue Validity Certificates. But, Rule 4-C enables only the Appointing Authority (or the admitting Authority in the matter of admissions to Educational Institutions) as against the Selecting/Recruiting Authority, to initiate the process for verification by the concerned Verification Committee. As such it cannot be held that the Selecting/Recruiting Authority could initiate the said process.*

21. *If this be so, it would also inevitably be that until the finalisation of the selection list, which is an exercise to be completed by the Selecting/Recruiting Authority, the process for verification of Caste Certificate and Income and Caste Certificate and issuance of Validity*

Certificate thereof also cannot be initiated until the selection list is finalised by the Selecting/Recruiting Authority. This is also because Rule 9 of the Rules prescribes embargo only as against appointment of persons claiming benefit of reservation without a Validity Certificate, and if the embargo had to be at any stage before the issuance of the Appointment, it would have been so specified in Rule 9 of the Rules.

22. For the foregoing reasons, the questions that are formulated for consideration are answered declaring that the KEA cannot decide on the validity of the Income and Caste Certificate, or exclude the Applicants from the Revised Provisional List, and that the Appointing Authority shall issue appointment orders only after the requisite Validity Certificates are issued by the Competent Authorities under the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 and the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Rules, 1992. Therefore, the direction issued by the Tribunal to the Karnataka Examination Authority to include the name of the applicants at appropriate places in the Provisional Lists dated 6-12-2016 for the posts of the Assistant Professors in the Government First Grade Colleges in the State of Karnataka in the respective subjects of 'Social Work', 'History' and 'Commerce' and forward the same to the Principal Secretary, Education Department (Higher Education) does not call for any interference by this Court. However, the direction to the Principal Secretary, Education Department (Higher Education) to appoint the applicants as per this final Selection List is modified to read that the Principal Secretary, Education Department (Higher Education) can, subject to all exceptions permissible in law, issue appointment orders to the applicants for the posts of Assistant Professors in the Government First Grade Colleges in the State of Karnataka in the respective subjects of 'Social Work', 'History' and 'Commerce' only upon the Validity Certificate issued by the prescribed Competent Authorities. Further, it is clarified that the finding of the Tribunal that the applicants belong to OBC category is only a prima facie finding based on the Certificate issued by the Tahsildar, and whether the applicants indeed belong to OBC category is a matter to be

gone into by the prescribed Competent Authority while issuing the Validity Certificates."

(Emphasis supplied)

The issue formulated by the Division Bench was whether the Selecting Authority – the Karnataka Examinations Authority therein, while finalizing the select list can decide about the validity of a caste and income certificate issued by the competent authority, it is answered against the Karnataka Examinations Authority, the Selecting Authority. The State tossed the said decision of the Division Bench unsuccessfully before the Apex Court in SLP No.12648 of 2019. Therefore, the finding of the Division Bench in so far as this Court is concerned has become final and the action challenged in the cases at hand is the one that was similar to what was challenged before the Division Bench i.e., the Selecting Authority interpreting caste and income certificate issued by the competent authority. In the light of the Selecting Authority - DDPI having no jurisdiction to do so, the action of the Selecting Authority, *albeit* on the Government Order dated 12.12.1986 and the directions of the State is unsustainable. Therefore, this issue is answered in favour of the petitioners and against the respondents.

12. It is rather surprising that the State is time and again repeating the very same mistake and driving the applicants to knock at the doors of this Court despite the declaration of law by the Apex Court and that of this Court, by clinging on to a Government Order dated 12.12.1986, which is on the face of it unsustainable. Therefore, it is for the State to direct the selecting authorities to act in tune with law and not contrary to law. It is high time to state, sets its house in order, and refrain from generating unnecessary litigation.

13. For the aforesaid reasons, I hold that the writ petitions are maintainable for the reasons rendered on issue No.1; the caste and income certificates submitted by the petitioners shall be taken into consideration by the Selecting Authority - DDPI; the Selecting Authority - DDPI has no jurisdiction to interpret the caste certificates issued by the competent authorities. The petition would thus succeed.

14. In view of the preceding analysis, I pass the following:

ORDER

- (i) The Writ Petition is allowed.

- (ii) The provisional select list insofar as it relates to the petitioners being brought under the general merit category is quashed.
- (iii) The petitioners shall be treated as belonging to the categories to which they had applied for, *qua* the caste and income certificates appended to the applications.
- (iv) The State is reserved liberty to regulate its procedure by continuing the recruitment and taking it, to its logical conclusion.

**Sd/-
JUDGE**

NVJ
List No.: 2 Sl No.: 1