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Reservation in Promotions in India

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ABSTRACT

In India, decades after independence, the question of reservation in promotions holds the rank of a contentious subject. Reservations are meant to remedy historical injustices and promote diversity, but to win over backward classes, different parties have politicized reservations frequently. This article undertakes a thorough examination of several Supreme Court rulings concerning reservation in promotions. The article seeks to spell out the nuances and consequences of reservation rules on the subject of job promotions by critically analyzing these rulings.

Keywords: Promotion, Reservation, Backward class.

I. INTRODUCTION

Reservation policy in service matters attempts to preserve some governmental seats for historically deprived sections like Scheduled Castes and Tribes. These reservations extend to Promotional matters as well. 16(4)(A)² which permits reservation in promotions was inserted in 1995 by 77th Amendment aims at defending and safeguarding the rights of the disadvantaged sections who have been deprived parts of society for ages. In 2005, 85th amendment further modified this article to include the provisions of consequential seniority in promotions.

II. CONSEQUENTIAL SENIORITY

Consequential seniority means that owing to the reservation policies governing promotional matters, a reserved category candidate gains consequential seniority over his general category peer. This type of seniority assumes consequential effect upon the circumstances and deviates from the normal course of promotional rules. This is one of the most common issues in reservation matters in promotional avenues. If a particular number of seats are kept vacant for a specified caste because there aren't enough employees in that category, then the administrative efficiency suffers adversely and a backlog is also created.

III. JUDICIAL PERSPECTIVE

Article 16 brought everyone on equal footing in matters of public employment. Article 16(4) served as an enabling provision whereby the state has been given the power to make available

¹ Author is a PhD scholar at RGNUL, India.

² DD BASU, COMPARATIVE CONSTITUTIONAL LAW (Lexis Nexis 2021).

reservations for the disadvantaged sections and those sections lacking adequate representation. Even before 77th Amendment, such beneficial provisions for disadvantaged sections were held to be implicit in Article 16(4) in *G.M. Southern Railway*³ by the apex court. Safeguards as to employment extended not just to the first appointment or recruitment of a person but in other spheres of employment as well like, gratuity, promotions, superannuation, etc.

*C.A. Rajendran v. UOI*⁴ (1968), the apex court in this historic decision ruled in favor of the state's right in affording reservation in matters of promotions as well. SC permitted Scheduled Castes (SCs) and Scheduled Tribes (STs) to enjoy promotions inside administrative offices with lesser restrictions. The verdict said that, although SCs and STs would not be given preference when it came to promotions, authorities could nevertheless issue directives to ensure that requirements for these groups should not be unduly stringent.

In *M. Nagaraj*,⁵ the hon'ble court in context of reservations has stated in unequivocal terms that whether or not to preserve seats for different classes in promotional matters would depend entirely on the will of the state. There is an obligation to offer a valid reason for the same, i.e. by showing the backwardness. In the instant case 16(4) was upheld constitutionally and was declared to be valid.

- Articles 16 and 16 (4) (A) doesn't enable any class/ caste to demand that reservation be given to them, as these are merely enabling provisions.
- State is endowed with power to take decisions on all the matters pertaining to reservations.
- State must pay heed to criterias like backwardness and poor representation of any community or class in affording reservation to them. Providing indefinite reservations must be refrained by states and the 50 percent cap placed on reservations must be duly fulfilled.⁶

In *UP Power Corporation Ltd.*⁷ the verdict of *M. Nagaraj* was upheld, and following observations were made:

- Affirmative action was absolutely essential to eliminate discrimination due to oppressive caste structure and further to ameliorate and upgrade backward and ill-

³ *General Manager, Southern Railway v. Rangachari*, AIR 1962 SC 36.

⁴ *C.A. Rajendran v. Union of India*, AIR 1968 SC 507.

⁵ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

⁶ *Dr. Gulshan Prakash v. State of Haryana*, (2010) 1 SCC 477.

⁷ *UP Power Corporation Ltd v. Rajesh Kumar*, (2012) 7 SCC 1.

represented classes and castes.

- Reservations including those in promotional matters must promote lower-classes representation in higher governmental offices and in bureaucratic offices.
- Those who argue against providing reservations on the ground that it would affect efficiency negatively are of the idea that lower classes are cognitively inferior by default and they believe that no amount of affirmative action could help them to uplift their conditions. This thinking must be rejected completely and affirmative action must be applied for providing equitable opportunities to backward classes.

In *Virpal Singh Chauhan*⁸ the apex court reaffirmed the judgment delivered in the *Indira Sawhney* case. In the instant case the candidates under consideration for promotion were entirely constituted of SC/ST candidates and whole field consisted of 33 candidates and the total seats available for promotion were 11. There was not even a single candidate from the general category. The court pointed to fact that there was hardly any need to provide reservations as the reserved category candidates had clearly outperformed their general category counterparts. There was no uniform or authorized practice or procedure for granting reservations, according to the Hon'ble court. It was entirely up to the state's discretion to decide on the matters governing reservation policy.

In *Ajit Singh Januja*⁹, the Hon'ble court further expanded the horizons of decision laid in the *Virpal* case. The court ruled that whenever the question comes regarding filling any reserved seat in any higher office/ grade, a person from that category must firstly be given priority for that seat.

(A) Jarnail singh case¹⁰:

Three quintessential factors were elucidated by the apex court in *Jarnail singh* regarding reservations.

- First, any group that is given a reservation must be backward in different aspects like social treatment, financial standing, and level of education.
- Second, only notably underrepresented groups should be eligible for reservations.
- Thirdly, reservations may be made, but they should never jeopardize administrative effectiveness. This includes suitability of applicants and their possible influence on the

⁸ Union of India v. Virpal Singh Chauhan, AIR 1996 SC 448.

⁹ Ajit Singh Januja v. State of Punjab, AIR 1996 SC 1188.

¹⁰ Jarnail Singh v. Union of India (2018) 10 SCC 396.

workplace culture.

(B) Not a Fundamental Right:

In MR Balaji¹¹, 16(4) and 16(4)(A) were stipulated by hon'ble court as enabling provisions and not as a command or an obligation. No mandatory duty is enjoined upon the state to compulsorily provide reservation in promotional matters and no fundamental right is endowed on anyone to claim reservations. All the provisions governing such matters must be well-balanced. The interests of one class must be weighed against those of others in various social groups and classes. While framing reservation rules and regulations for backward classes, equality in opportunity must also be protected. These provisions are in place to safeguard the meritorious and deserving candidates. In MG Badappamavar¹² the judgment delivered in the MG Balaji case was reaffirmed.

(C) Pros of Reservation in Promotions:

- Providing reservations in promotional matters is an initiative to bring the deprived and oppressed sections on equal footing with the general masses and to provide an equitable opportunity to these people.
- These classes have been at receiving end of discriminations and are still not adequately represented at senior level posts, hence to raise their numbers in governmental posts, especially in higher ranks, consequential seniority is of utmost importance.
- Reservations in promotional matters also help resolve the issue of nepotistic tendencies of the general category candidates who occupy higher ranks.¹³

(D) Cons of Reservation in Promotions:

- Reservation can not by itself eradicate all forms of discrimination, hence other positive initiatives like social awareness and education must be undertaken with full zeal to uplift the oppressed.
- Yet another concern pertains to the reservation in promotional matters because reservation during an appointment can eradicate backwardness and in promotional matters, all the candidates must be treated on equal footing sans any reservation.
- Reservation is often criticized on the ground that it is responsible for adversely affecting

¹¹ MR Balaji v. State of Mysore, AIR (1998) 4 SCC 1.

¹² MG Badappamavar v. State of Karnataka, AIR 2001 SC 260.

¹³ Babra Wani, *Reservation in Promotions, arguments in favour and against*, Groundreport (Apr. 28, 2024, 9.30 PM), <https://groundreport.in/reservation-in-promotion-arguments-in-favor-and-against/>.

administrative efficiency and many meritorious persons are losing opportunities.¹⁴

IV. CONCLUSION

In India, oppression and discrimination have been committed by higher castes since time immemorial. Reservations were there to bring the oppressed castes on equal footing with the general category people. Politicians are undermining the intent behind reservations by promoting casteism and it using it merely as a ruse to attract votes.

The demand by some sections to further infiltrate society with reservations points to the fact that the reservation system has not been able to realize its true goal of uplifting the backward sections. Had the reservation policy been successful, then the reservation should have concluded in educational institutions, as requisite skills developed would have enabled such sections to bag jobs on the basis of skills acquired. Those in dire need of benefit from reservation policies rarely are able to avail of the benefits and mostly the affluent sections are benefitted from such policies. If the true goal of empowerment is to be realized then the pre-requisite is to provide education and skill development to deprived sections and also such regulations are required whereby the marginalized sections can avail the benefits of reservation policies and it doesn't stay concentrated in the hands of just a few powerful families. Time demands that reservations must be modified to bring within its ambit the economic basis and not just the backwardness of caste or community, then the true realization of the goal of upliftment of masses can be realized.

Reservation falls under the ambit of Article 16(4) and while granting promotional reservations consequential seniority assumes the primary role. Providing reservations in promotional avenues has been a contentious issue for a long time and conflict whether to grant reservation or not still stands unresolved.

¹⁴ Id.

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