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Reservation in Promotion: A right or a luxury?

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Nowadays much debate is going on not on the reservation but specifically on “reservation in promotion”. The government justifies reservation by saying that through it, it is trying to compensate the reserved category to whom historical wrongs have been done and it is a means to bring backward classes into the mainstream society. This article analyzes various judgments of the Supreme Court, to look into the constitutional validity of the said reservation and to critically analyze the said judgments. At the end of this article, various suggestions have been given as to what should be done for reservation in promotion and most importantly would try to answer the decade-old question i.e., do we really need reservation in promotion?

Keywords: reservation, promotion, article 15, backward classes.

INTRODUCTION

Originally, the makers of the Indian constitution which came in effect on 26th November 1949¹ provided for the reservation for Other Backward Class (OBC), Scheduled Caste (SC), and Scheduled Tribes (ST). Article 15 (4)² specifically provides the power to the state to make special provisions for their development and advancement of them. According to it, “Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special

¹ Constitution of India, 1949

² Constitution of India 1949, art. 15(4)

provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes". But this article does not give power to the state to grant reservation in promotion. From time and again, the state has been granting reservations in jobs and educational institutes for SC and ST, and in all the instances, various PILs have been filed into various courts of India challenging these reservations on various grounds. Opponents of the reservation have been giving the argument that it is discrimination against the general category candidates.

LANDMARK JUDGMENTS

C. A. Rajendran v Union of India & Ors.: This is the first case that permits granting relaxations to SCs and STs in the promotion. The state loosened the criteria in the promotion to SCs and STs in the administrative posts. According to the rule,³ *"while there would be no reservation for Scheduled Castes and Scheduled Tribes in regard to vacancies filled by promotion, where the passing of tests or examinations had been laid down as a condition for promotion, the authority prescribing the rules for the tests or examinations might issue suitable instructions to ensure that the standard of qualification in respect of members of Scheduled Castes and Scheduled Tribes was not unduly high."* While analyzing this rule and to look whether it is consistent with the constitution, particularly with Article 16, the supreme court held that clause 4 of Article 16 grants power to the state in granting reservation in posts and appointments.

Indra Sawhney & Others v Union of India: Decided in 1992, this is one of the most important cases⁴ which pertains to the question of reservation in promotion. The government led by P.V. Narasimha Rao implemented the report of the Mandal Commission according to which, it granted 27% reservation for backward communities on 7 August 1990. Further on, interpreting Article 16(4)⁵, the government decided to grant reservation to SCs and STs in promotion also. Challenging this particular rule, various PILs were filed in the Supreme Court. Due to the complexities and technicalities involved in the case, it was referred to a higher 5 judge strength of the constitutional bench. After listening to arguments for quite a long period, the court held

³ C.A. Rajendra v Union of India 1968, AIR 507

⁴ Indra Sawhney & Others v Union of India AIR 1993

⁵ Constitution of India, 1949, art. 16(4)

that Article 16(4) talks about reservation in jobs in only initial appointments and it does not grant power to the state to grant reservation in jobs. This decision came as a great respite for general category candidates who were fearing about the reservation to a great extent in promotions.

Another important point that the court recognized is the exclusion of the creamy layer. According to it, the court gave a suggestion to the government to make a list of candidates who do belong to backward classes but who at the same time have sufficient amount of income, good social status and have achieved considerable achievements in the domain of education and jobs. The idea behind this is that if an individual has all the reasonable necessities to compete with the general category candidates, then it won't require aid and help from the government in the form of reservation. This is a quite fair observation noticed by the court, a suggestion which yet has not properly been addressed and implemented till today.

The case is also of paramount significance because, in it, the court held that no matter what the conditions are, the total reservation in jobs should not increase the 50% limit. However, the judgment also clarifies that in extraordinary conditions, the 50% cap could be breached but the conditions should be extremely exceptional. This limitation is necessary to ensure the balance between granting relaxation to backward classes and ensuring fair treatment among general category candidates.

THE AFTERMATH OF INDRA SAWHNEY JUDGMENT

The *Indra Sawhney judgment* made it impossible for the government to implement reservations in promotion for SCs and STs. In order to nullify the effect of this judgment, the parliament using its power as granted under Article 368⁶ enriched in part XX did some constitutional amendments. The parliament passed the 77th Amendment Act⁷, which inserted clause 4(A) in the 16th Article of the Constitution. According to it: *“Nothing in this article shall prevent the State from making any provision for reservation [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favor of the*

⁶ Constitution of India, 1949, art. 368

⁷ Constitution of India, 1949, art.16(4A)

Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State". Insertion of this Article created a big problem which created a situation of mayhem and chaos among the general category candidates in the entire country. Article 16(4A) though unintentionally, gave rise to the problem of consequential seniority. If 2 candidates are appointed to similar posts on a different day, then the one who was posted earlier should be treated as a senior to the latter one. If the general category candidate was posted earlier and the reserved category candidate was posted later, then the general one should be treated as a senior to the reserved category candidate. But due to reservation in promotion, the reserved category candidate would be promoted earlier and would gain seniority over that candidate who was once his senior.

An illustration here would be sufficient to further clarify this rule:

Let us assume that A belongs to the general category and B belongs to the ST category. A was appointed earlier in the 2nd class category than B and consequently would be treated as a senior of B. After a few years, one vacancy arises in the 1st class category, and A because of his seniority should be promoted to that post. But because of reservation in promotion, B would be promoted and would become his senior and would remain senior to him during his entire lifetime. This kind of promotion is said to be promoted on the basis of consequential seniority.

77th amendment Act solved the problem of government in granting reservation in promotion to SC and ST candidates. But this amendment in addition to consequential seniority further gave origin to a new and complex problem. Suppose, there are some vacancies at senior level posts which are reserved for ST category candidates. The government did promote some ST candidates to fill those posts, but even after doing that, some of those posts remain unfilled. Now if the government keeps these vacant posts unfilled for one whole year and filled them in the next year, this filling might break the 50% which would defeat the decision of the Supreme Court in Indra Sawhney's judgment. To solve this intricate situation, the parliament again amended the constitution and passed the 81stAmendment Act, 2000⁸. According to it,

⁸ Constitution of India, 1949, art.16(4B)

“Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on a total number of vacancies of that year.”

The rule enriched under this article is known as the carry-forward rule.

*Jarnail Singh & Ors. v Lachhmi Narain Gupta & Ors.*⁹ This is the latest case that comes under the ambit of reservation in promotion and which is yet to be decided. Regarding granting of reservation in promotion, the court mentioned 3 conditions that should be fulfilled:

The class to or group of classes to which reservation is been granted should be the backward class. Several criteria and conditions have been laid down to decide whether or not the class is backward. Social treatment, financial conditions, educational qualifications should be taken into consideration. Further on, suggestions which have been given by the Mandal Commission¹⁰ in 1980 should be implemented thoroughly as well as inclusively.

The class to whom the government wants to give reservation in posts should be inadequately represented in those posts. The percentage of that class should be extremely low and the reservation should only be allowed to an extent that brings the reasonable number of individuals of that class. In other words, reservation should be as less as possible.

Granting of reservation in those posts should not disturb the efficiency in administration as enriched under Article 335¹¹ of the Constitution. The state is empowered to grant relaxations in qualifying marks for the SCs and STs as well as reserving certain posts for them but it should not hamper the overall efficiency in the administration. Efficiency in the administration could be affected by 2 reasons. Firstly, granting more than enough reservations for SCs and STs category candidates who are less competent than the general category candidates (who have

⁹ *Jarnail Singh & Ors. v Lachhmi Narain Gupta & Ors* (2018)

¹⁰ Mandal Commission, *Report of the Backward Class Commission* (Vol. 1 1980)

<<http://www.ncbc.nic.in/Writereaddata/Mandal%20Commission%20Report%20of%20the%201st%20Part%20English635228715105764974.pdf>> accessed 10 February 2022

¹¹ Constitution of India, 1949, art. 335

higher merit) would bring less competent individuals in the administration which result would affect the smooth functioning of the administration. Secondly, there is a possibility that reserved category candidates who are posted in the lower level might not work sincerely and honestly as they know that they would be granted reservations in promotions.

In this case, the court also answered 4 questions that were framed by the learned Attorney Journal of India:

What should be the criteria for deciding the backwardness?

The court held that it is competent to look at whether or not the other 2 branches of the government i.e., the legislative and executive are doing their work and exercising their powers well within their limits as granted under the constitution. The court is not competent to decide how the work of government should be done. It is the work of the government to decide conditions and criteria to decide the backwardness of a particular class.

What should be the unit for collecting quantifiable data?

The court recognized and confirmed that cadre should be the unit for collecting quantifiable data as was decided in the M. Nagaraj case¹²

Whether the entire population of SCs and STs should be considered to decide whether or not they are inadequately represented in posts so as to consider reservation in posts for them?

Answering it, the court once again said that it is not the court that should decide whether or not the entire population of SCs and STs should take into account. Deciding the criteria depends upon numerous factors which should be decided by the government itself.

After how much time should the government recollect, reconsider and reevaluate the data to determine the inadequacy in the representation of SCs and STs?

After listening to arguments from both sides, the court held that the government should after every 10 years of the span decide whether SCs and STs are inadequately represented or not.

¹² M. Nagaraj & Ors. v Union of India (2006) 8 SCC 212

CONCLUSION

Even after more than 75 years of independence, the problem of reservation has not been yet solved. Various political parties have come and gone but they all used reservation as a political tool to gather votes of backward classes. Article 14¹³ says that there should be equality before the law, i.e., all citizens should be treated equally by the state. But it would be pertinent to note that equality should be practiced among the equals. To bring backward classes into the mainstream and to make them competent to fight with general category candidates, reservation is important and surely it would play a major role in the upcoming years. But it is important that reservation should be granted to those who in reality need it. Many well-deserved candidates whose parents are in the civil services also take advantage of reservation in promotion. Is it fair that those who could compete with sufficient easiness would get the benefits of reservation in promotions? Forget about granting reservations in promotions, they should not even be allowed to get reservations in initial appointments.

One important point that the Supreme Court decided in *Indra Sawhney's* judgment (supra) is that reservations should not be more than 50%. But what if more than 50% of the population in a particular state is backward i.e., if 60 or 70% population is backward, then the state couldn't provide reservation appropriately. This situation has arisen various times and the latest one was in relation to granting reservation to the Maratha community in Maharashtra. Gaikwad's report¹⁴ recommended granting reservation to the Maratha community as it was a backward class. After it was implemented by the Maharashtra government, it was struck down by the Supreme Court as unconstitutional. In the end, I would like to conclude that reservation in promotions is not a good step for the overall effective working of the government. Firstly, if a candidate is posted at a government post, then this post in itself is an achievement. It is common in Indian society that people give respect and value to a person if he/she grabs a government job. The future of that individual is bright and safe as various facilities, handsome salary and a significant amount of pension are provided to that person. Is it necessary that

¹³ Constitution of India, 1949, art.14

¹⁴ Sonam Saigal, 'Gaikwad report on Maratha quota most reliable' (*The Hindu*, 14 March 2019) <<https://www.thehindu.com/news/cities/mumbai/gaikwad-report-on-maratha-quota-most-reliable/article26525963.ece>> accessed 10 February 2022

further reservation should be given to that individual in promotions also? The answer in all the circumstances must be no. Reservation in promotion moreover exaggerates and promotes casteism in society.