

Reservation in Promotion in India

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Abstract – Indian polity has witnessed several critical issues under its development like that of castes untouchably slavery etc. One among those has been reservations in promotion. The following concept turned the entire structure of Indian polity upside down as the same was vehemently opposed by the people of other stratification. Granting of reservation in Promotion seeks to withhold seats in the government office for the socially and economically weaker sections of the society ensuring them benefit at the time of Promotion. The government under the leadership of Narsimha Rao, by inculcating the 77 Constitutional amendment to the Indian constitution under (Art. 16 (4A) initiated the first step towards providing reservations in Promotions. Further by virtue of the 85th Constitutional amendment, later on with a view to grant legal status to consequential Promotion the Govt. headed by Dr. Manmohan Singh replaced the Particular section.

The issue was not to be dealt single handedly while in chain came several other issues which were to be paid attention too. There were debates that the following provision should also tend to cover not only the SC ST group people but shall also be implemented for the benefit of those falling under the OBC strata[1]. There was a Problem in seeking preference amongst the SC ST people particularly in areas where the distribution of the two classes was inappropriate particularly when any candidate is to be considered for any govt. Office of highest order; also whether the following reservation policy would also seek its place in a private institutions or would it just remain confined or restricted to any Govt. office in consideration

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OBJECTIVE

Reservation for the socially and economic backward classes existed since the very making of the Indian Constitution

The following study aims to highlight -

- 1) The scheme of Reservation in India with special reference to Reservations in Promotion.
- 2) The origin and evolution of the concept of seeking reservation during promotion
- 3) The implementation of the reservation policy in promotion,
- 4) Judicial Pronouncements denying and backing reservation in Promotion

RESEARCH QUESTION

The study tends to find out;

- 1) Whether the scheme of Reservation is effectively implemented during promotions amongst those, of whose benefit it sought to achieve

- 2) Whether Granting reservations during promotions helps to achieve social and economic equality in India

LITERATURE REVIEW

Reservation in India has been one of the important concerns for the Government system as pointed and stated in the Indian Constitution but there is a lack of written literature discussing about reservation during promotion. Very few writings deal with the Question of ensuring reservation during Promotion. History of reservation by Bhagwan Das, 2000: It deals with the commencement structure of reservation the various constitutional and legal developments in India. Further it points towards the need for a representative bureaucracy and how granting reservations in promotion can help the cause. The writing points out the fact that the basic idea behind reservations is criticized only when it tends to injure one's own personal interest. An Overview of the writing made me capable of knowing the basic idea behind reservation and its evolution in the Indian polity. It mentions the various arguments favouring reservation. In Promotion

Political rivalry among religious communities: a case study of communal reservations in India, by Dick Kooiman, 1993:

The following literature talks about community based reservations in India how the reservation policy seeks to achieve equal economic and social status amongst the deprived sections of the society It talks about distribution of the reservation policy to SC ST OBC at the promotional level of governance and how the same could help the lower strata people to compete better at the highest of the government offices Further it deals with the critical examination of the various judicial pronouncements delivered towards reservation by the Indian judiciary namely the Nag raj Case Balaji Case weather it includes detailed case studies various comments writing opinions and criticism offered by various renowned scholars from time to time.

M. NAGRAJ CASE

The Court in the celebrated case of “M. Nagaraj vs. Union of India[2]” stated in its judgment that state are at liberty to entitle a class of section to reservations during promotion but while granting so there must be a proper reasoning for the same provide a proper reasoning for the same There must be shown as to why a particular class during promotion has been granted reservations the essence of the people being backward must be established of those who seek to secure reservation during promotion The Judgment of the court carved out the following points

- 1) There is no fundamental right constituted under the respective clause of Art.16 and clause 4A for those Classes of people who secure reservation during Promotion the respective clauses of Art. 16 have

Discretionary effect

- 2) In Order to achieve administrative efficiency in working the state must adhere strictly to the reservation cap as provided at reservation in Promotion

“THE UP POWER CORPORATION CASE”

In the following case the decision of M. Nagaraj case was kept as under

- 1- An Affirmative act is an inevitable act in the society facing discrimination due to rigid caste system in India
- 2- Reservations in promotions tends to end the marginalization by securing reservation to the lower sect of the People in the government

- 3- A contention of the segment based on the fact that the administrative efficiency would be thereby reduced opine the argument that the lower sect people are inferior in terms of intellect and no amount of an affirmative act would be the best to them The thought need to be over processed

SUBMISSIONS DEBARING & RESTRICTING RESERVATIONS DURING PROMOTIONS P.V INDIRESAN (IIT MADRAS)

MR PV INDIRESAN the former director, Professor at IIT Madras contended that reservation during promotions at the Government level was just not serving the purpose which it sought to achieve He arguably quoted the following points

- 1- Dual Benefit-. Reservations in Promotion seeks to grant double benefit primarily at the joining of civil services reservations are granted and then further during promotions to avoid its misuse reservation should stand curtailed during promotion
- 2- It tends to give rise to discrimination between the various sects of the society
- 3- State is at liberty to put for the guidelines ensuring reservations but at the same time it must be seen that equal weightage is given to the decision of the Supreme Court lying n this regard which should stand capable of practical implementation and should also ensure fairness and reasonableness in the administration
- 4- On Account of reservations during promotions at times the scholars are merit seekers are turned down who in time must have performed better in comparison to the one by the virtue of reservations it, leads to the downfall or the tortoise growth of the administration
- 5) Reservations at times falls to meet the set up standards of justice by debarring back the people for Whose benefit it was established due to unequal distribution between the masses

SENIORITY EFFECT- VIRPAL CHAUHAN CASE – RESEVATION DURING PROMOTIONS NOT A MANDATE

In the case of “*Union of India v. Virpal Singh Chauhan* [4]”, the Apex Court reiterated the contention as put forth in the “*Indira Sawney Judgment*” that granting reservation during promotions is nowhere specifically warranted under the relevant article 16 sub clause(4).

Reservation actually created a Questionable circumstance in the present case.

There were 33 People to be taken into consideration during promotion for a total of 11 vacancies, all appearing candidates belonged to the lower class segment there were no contestant to the General class court. It was observed that the contesting candidates were way ahead of the general sect group in case of their merit and hence do not require reservations during promotions

It was also found that there is no uniformity in prescribing reservations. It was totally a state subject when anyone from the reserved group would secure promotion they will be senior to their general mates as long that candidate did not get promotion to the similar level

BAR IN AJIT SINGH CASE – GENERAL POSITIONS RESERVED FOR GENERAL CATEGORY PEOPLE

In the following case of **“Ajit Singh Januja v. State of Punjab”**[5] bench of the Apex court took a step forward to that of previous case and contended that that when there is a need to procure the position held for a lower sect group at a higher position then the candidate of that sect will get priority On the other hand the seats for general class the candidate of that sect would have priority Hence in such cases the court has restricted the arbitrariness of state regarding cases pertaining to reservation during promotions. The court ruled that the seniorship in the two sect during reservation in promotion will continue to be governed in respect of their inter se senior ship at the down position.

SENIORSHIP TO BE TAKEN IN CONSIDERATION FROM DAY OF PROMOTION – JAGDISH LAL CASE

An closure to the hot debate about the consequential senior ship came with the judgment laid down in the case of **“Jagdish Lal vs. State of Haryana”**[6] which ruled out the previous decisions of the court. It was contended that the established rule of senior ship should be applicable as it is and should be taken into consideration from the day of promotion.

It was further coined that the prima facie objective of article 16 (4) is to secure due representation to some classes at certain positions along with Art. 16 other relevant Articles 14, 16(1) and 335 do also talks about the permutable lines of the affirmative acts by reservations during promotions which can be considered within articles 16 (4) also 16 (4 A). Further Art. 335 provides that the effectiveness of the administration is not hampered

NO FUNDAMENTAL RIGHT WITH RESPECT TO RESERVATION DURING PROMOTION-MR BALAJI CASE

It was coined in **“MR Balaji Vs State of Mysore”**[7] that Art. 16 (4), 16 (4 A) holds no mandate, it's only an empowering provision and it attaches no constitutional obligation upon the state and imposes no FR upon any person. It is important to adjust every provisional arrangements made in the constitution

The interests of the held classes must be adjusted against the likes of different portions of society The founding principle of equality is to be accommodated for in reverse classes in such a way, that while considering the retrogressive classes, no infringement will be done upon the established doctrine of equality It is important to strike such an equalization in order to draw in meritorious candidates to the common administrations. It is additionally suggested that the guidelines of satisfactory portrayal be appropriately pursued with the goal that the effectiveness of organization does not get influenced under Art.335

RESERVATION DURING PROMOTION IN PRIVATE ENTITY WILL END UP DILUTING THE CANDIDATE MERIT – PK DORAISWAMY-FORMER CHIEF SECRETARY –ANDHRA

P.K Doraiswamy opines regarding reservations during promotions at the private entity and the other obstacles which would be the outcome are listed as under

In Contrast to the government level where promotion is regularity and are based upon the seniority ship of the candidates, on the other hand private entities promotions are looked upon the outcome which can create or destroy the fate of an entity securing reservation during promotions in the private entity will tend to disorganize the entire business

- 1- Reservations during promotions for any of sub-sect of persons from any group holds the inbuilt restriction in this the capable candidate in the particular sect be will be inferior to the candidate from other sect it might not hinder in routine course where less acostomblity is needed its importance in higher level of competency high-impact ijobs, such as, say, those of pilots, surgeons, scientists, designers, professional teachers, and management consultants where entities will look to choose the available best for the entity
- 2- **The anti -SC/ST biasness and difference** is the accusation limited people in the government hold the patience to counter it. This might prevail in

the private entity also as governments holds numerous ways of persuading the manager.

- 3- Once we welcome reservation during promotion it will lead us to legal machinery for keeping A view upon entity rosters along with all level of harassment

TODAY'S POSITION – THE 117TH AMENDMENT BILL

Government in the recent past brought the 117th amendment Bill in the Upper House which received the subsequent assent of the House was The amendment was essential to circumviate the decision of the Apex Court which held that valid reasoning is a mandate prior to securing reservations during promotions. Hence it would not be necessary anymore to establish the backwardness of the sect securing reservations in the Promotions

"In the Indira Sawney Judgment" the apex court contended, reservation during promotions was not legal but was permitted by the court to be in force to continue up to the tenure of five years under special circumstances To do away the Judgment that discontinued reservations during promotions the Indian Parliament brought amendment in the year 1995, 2000 2002. The Constitutional amendment (77th & 85th) secured benefit to SC/ST People promoted during reservation.[8]

The new Position Put forward by the amendment will prove to be more advantageous. The Contentions raised by the Judiciary which diluted various propositions of the government before for providing reservations during promotions stands nullified once again

CONCLUSION & SUGESTIONS

The present debate is about granting reservations in the Pvt. arena There has been an increase in the jobs under the Private sector entity. Further there has been a downfall in the opportunities created in the public sector sphere. Why does every time Indian polity leaders hypes the centralized point of the backward sect. At the site of elections around the leader announces some or the other form of reservation to punch the voting machine.

The end task should be of real empowerment The extent and scope of reservations among the lower groups should be proportional and restricted as decided by the guidelines It will take them ahead in sougning the grievances. If the lower sect group look upon the Indian political leaders again and again and believe that reservation will assist their cause out then they will tend to commit the similar wrong which they have been doing since long. It will lead to the

centralization of authority among the lower sect community.

I trust it to be the inconvenience of reservation during promotion which has advanced to the degree that reservation is now voicing up in the Non-Government substances too If the entire reservation arrangement would have been effective then reservation ought to have finished in the instructive establishments itself as the individuals who might have into these foundations would have built up their aptitudes whereby they could function as experts or join the open area relying on their advantage. In any case, the retrogressive likewise need to alter their perspective set as they believe they would continue getting reservation anyway so why to work. I have seen the relying back demeanor of the regressive classes around due to which is one among the ten National Law Universities set up in the nation where they are totally supported by the state disregarding which they do not work hard.

I am unequivocally against granting any sort of reserve at ion based on cast which I don't believe is essentially a decent component to decide the backwardness of the sect. A superior component would distinguish the backwardness dependent on the monetary foundation. A genuine guide to comprehend this will be the Brahmins who are viewed as the higher sect in the various leveled structures among the Hindus amongst which many are not by any means ready to meet their closures meet But because as they are the higher group people they are not entitle to reservation.

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2019-20

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