



आमदार
विधानपरिषद सदस्य



सत्यमेव जयते

हरिभाऊ राठोड
आमदार (MLC)

माजी खासदार
लोक सभा

मोबाईल : ९९२०७१६९९९
टेली फॅक्स : ०२२ २५६८६६९९

Issue of Reservation in Promotions **Grave injustice has been caused to crores of employees** **due to wrong interpretation by Supreme Court.**

The Indian Constitution has made it clear provision for promotion to members of Schedule Castes and Schedule Tribes in Clauses 16(4a) and 16(b). However, the Five Judges bench of the Supreme Court has issued order to stop promotions vide orders issued in the matter of M.Nagaraj on what basis? As the Supreme Court has come to wrong conclusion, the promotions in reservation of crores of employees is held up. As a result of this, the governments of various states facing difficulties in filling back logs in reservations. Due to this, we are drifting away from the principle of equal opportunity and Social Justice. One more issue has to be mentioned here, Various High Courts are ordering stay on the promotions based on this orders issued by M.Nagaraj case. It is necessary to observe what the Supreme Court while drawing its conclusions. The conclusions states that “ The impugned constitutional amendments by which Articles 16(4A) and 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs.”



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It is incorrect to link clause 16(4) with the provision

The aforesaid clause 16(4) is actually meant for state and for other backward i.e backward clause other than Schedule Castes and Schedule Tribes. (Nomadic Tribes, De-notified Tribes and people engaged in traditional occupations) and hence it is totally incorrect to say that this constitutional amendment has arisen out clause 16(4) of the constitution. This clause has not even remote connection or link with the SC/ST factor. During the discussions in the council in 1948 on this section, Shri T. Ram Krishnachari asked Dr. Babasaheb Ambedkar "Dr. Bhimraoji, what is the meaning of Backward Class?". That time, Dr. Ambedkar clarified that if in the opinion of backward class of citizen is backward, and it has not got proper representation in the government (in education and job) then there should not be any objection on keeping any posts reserved for them. Dr. Ambedkar had clarified at that time under this clause, the state government has powers to decide backward classes. This means that a clause which is backward within the state need not be backward in the central list.

After taking into consideration the discussion in the council, it is clear that clause 16(4) is not at all related with Schedule Caste and Schedule Tribes. One thing is accepted in the issues of law and judicial decision, that if a clause of the constitution is to be interpreted, then the discussions and speeches regarding that clause and the High Courts and Supreme Courts are drawing conclusions based on these discussion and speeches. Similarly, if there is dispute about interpretation of a law, then the court examines the objects and reasons attached to the bill tabled at the council (parliament or assembly). Similarly, in this issue also the object of reservation is clear that the reservation has been given in order to fill up the back log of the concerned posts and for achieving the object of provisions of reservation and to achieve principles of equal opportunity and social justice and that is constituted. Hence, the courts should not waste time in too much digging in law and making misinterpretation and doing grave injustice on backward classes.

We humbly request advocates of both sides and to the court that we cannot stand in court and conduct cross examination. However, we humbly request all experts to give justice.



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The Learned Lawers and Learned people should carefully study following matters.

- 1) For whom the clause 16(4) of the constitution is meant? If it is meant for other backward classes, it is correct to link this clause with Schedule Castes and Schedule Tribes?
- 2) The Schedule Castes and Schedule Tribes have been included in the Schedule after the concerned stated have compiled with the conditions stipulated about the backwardness of Schedule Castes and Schedule Tribes as per 341 and 342 of the constitution for the purpose of proving their backwardness. The Schedule Castes and Schedule Tribes have been included in the Schedule on recommendation of Hon. Governors of the relevant states and after obtaining approval granted by the Hon. President of India. They are deemed to be backward.
- 3) The above matter means backwardness need not to proved. Consider this example, if you are granting promotion to a clerk appointed ten years ago on Schedule Caste post as per roster, it is correct to ask him now "Do you belong to backward class". It is correct to ask the state government this question? How can we ask this? How this issue can be considered in the judicial decision. This matter should be reconsidered in the case of M.Nagranjan.
- 4) In case there is a back log in establishments under jurisdiction of state government the courts should suggest a scheme to fill the backlog or to measures to solve this issue so that a law can be enacted which will be consistent with the constitution and Social Justice and the fundamental rights granted by the constitution can be protected.

I am of the opinion stated above and I am of the firm opinion that the Supreme Court has erred here. Hence, I humbly request advocates of both sides that they should solve this in-passe or else the government should amend the constitution This is the only situation

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