**Issue of Reservation in Promotions and State of confusion.**

Lot of confusion has arisen throughout the Nation because various High Courts and the Supreme Court have given different verdicts in the matter of M. Nagarajan. Now this matter shall be coming for hearing before the bench of seven judges. The Supreme Court refused on 11.07.2018 to grant interim relief against its order given in 2006 in respect of reservation for Scheduled Caste and Schedule Tribes. Chief Justice Deepak Mishra indicated that he is transferring this case to bench of seven judges. The central government requested for conducting immediate hearing in this matter because the promotions and recruitment in Government jobs are pending because of these judgments. The matter was heard before the chief Justice Mishra, Justice N. M. Khanvilkar & Justice D. Y. Chandrachood on 11.07.2018. Hon. Court stated that in order to reconsider the decision taken in the case of M. Nagarajan, the bench of seven judges is required.

**Let us see what is M. Nagarajan issue:-**

The five judge bench had given a decision in 2006 that the amendments in clause 16 (4)a and 16 (4)b are valid, however, the issue whether to bring SC/ST under the coverage of the term **“Creamy Layer”** and whether there is backwardness and whether appropriate representation is there or not should be decided by the respective states. Similarly, the states should see that as per clause 335 of the constitution, the administrative efficiency should not be affected adversely. Subsequently, various High Courts interpreted the decision of Supreme Court in different ways and brought injunction to the reservations in promotion. This has resulted in creating confusion regarding this issue. Hence, this article has been written..

**Great in justice has been caused to cores 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 Judges bench of the Supreme Court has issued order to stop promotions vide orders issued in the matter of M.Nagaranjan 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 N.Rajan case. It is necessary to observe what the Supreme Court while drawing its conclusions. The conclusions states that the constitutional amendment by which the Clauses 16(4a) and 16(b) have been introduced in the constitution has arisen out clauses 16(4) of the constitution. The factors or reasons due to which the state government can provide for reservation after considering efficiency at the state government under clause 335 of the constitution remain same, because factors means backwardness and lack of sufficient representation. The constitutional amendments vide which said clauses 16(4a) and 16(b) does not alter the structure of clauses 16(4) of the constitution. These constitutional amendments are limited upto Schedule Castes and Schedule Tribes. None of the provisions of the constitution are deleted or obscured.

**It is incorrect to link clause 16(4)C of the constitution with the matter of promotions**

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 inthe 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 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.

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.
5. Hon. Supreme Court had. introduced the concept of “Creamy Layer” for O.B.C in the matter of Indra Sahani v/s Government of India. At that time, a High Powered Committee was appointed under the Chairmanship of Justice Ramanand Prasad. It was limited for O.B.C. and getting benefit for Education and direct recruitment. Hence, “Creamy Layer” and O.B.C. do not have any relation whatsoever. Similarly S.C./S.T. also are not connected with this issue because, different stigma is attached to SC/ST and it shall never be wipeded out. The Prasad Committee took this point in consideration and had recommended that the Nomadic tribes be deleted from Creamy Layer. Hence, the Creamy Layer is not applicable to SC/ST and the question of Creamy layer does not apply in promotions.

**The State Governments do not obey the order of Central Government-Awkward position in Country.**

In one of the matters pertaining to the reservation in promotions, Hon. Supreme Court gave a verdict on 05.06.2018 that the reservation in promotion should be continued. However, it should be subject to final decision of the Supreme Court. While doing so, the promotions should be given as per Law. Accordingly, Hon. Prime Minister Shri Narendra Modi convened an urgent cabinet meeting. As per the decision taken in this cabinet meeting, the Central Minister Ramvilas Paswan stated that the reservation is in force. The D.O.P.T. Department has issued a circular that the reservation is in promotions is in force. However, even though the BJP is ruling in Maharashtra, Madhya Pradesh and Uttar Pradesh, these States are avoiding to give reservation in Promotion. This clearly implies that Shri Devendra Phadanvis does not obey the orders of Prime Minister Narendra Modi.

**What is the necessity of reservation in promotion?**

The clauses 16(4) a & 16(4) b were introduced in the constitution by amendments made in year 2000 and 2002 respectively. However, the promotion policy was started from 1974 in Central Government and State Government because there was a lot of backlog in posts of class 1 and class 2 and other posts and it was not possible to fill the same by direct recruitment, because the rules of filling posts were prepared in different administrations. It was decided to fill 50% of the posts by direct recruitment and 50% by promotion. Social reservation was kept in promotion. Roster System was followed for this purpose. This means that this is a scheme for filling the backlog and also it is an administration necessity. Hence, the reservation in promotion started.

A point worth mentioning here is that as decided by Hon. Supreme Court in Sabarwal Case, once backlog is filled the reservation in the promotion stops automatically. Subsequently, open to open & backward to backward policy shall start. However, the backward employees/officer shall be eligible for promotion.

**How much quota is given promotions?**

Actually the opponents of backward should understand that only 22% reservation is given in promotion in the center and 33% in Maharashtra.

This means 80% of the post in Center and 67% of the posts in Maharashtra are available for open category. The principles of Social Justice provide that the backward people also should get proper representation, and then only we shall be giving equal opportunity and Social Justice as stated in preamble to constitution. As of today, only 15% back log is filled in the Center. There is no option to fill this backlog other than reservation in promotion.

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 impasse or else the government should amend the constitution. This is the only solution. If one looks at earlier decisions of Hon. Supreme Court, decisions of various High Courts, and present circumstances. It will be seen that there is utter chaos and confusion in reservation in promotion.

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