

General Studies-1; Topic: Social empowerment; Salient features of Indian society

SC/ST Quota in Promotions

1) Introduction

- The Centre made a strong pitch in Supreme Court for reservation in promotions to the employees of the SC/ST community.
- The case is in relation to a Supreme Court verdict in M Nagaraj vs Union of India case in 2006.

2) 2006 Judgment

- The 2006 Nagaraj judgment was pronounced by a five-judge Constitution Bench.
- According to 2006 judgment of the Supreme Court, the government cannot introduce a quota in promotion for its SC/ST employees unless they prove that
 - a. The particular Dalit community is backward.
 - b. Inadequately represented.
 - c. Such a reservation in promotion would not affect the overall efficiency of public administration.
- The opinion of the government should also be based on quantifiable data.
- The judgment said the three qualifiers were meant to prevent “reverse discrimination” by State.
- The state was also required to ensure that reservations do not breach the 50 per cent ceiling.
- The ruling said that the concept of creamy layer cannot be applied to the SCs and STs for promotions in government jobs.

3) Centre's Argument

- The government wants the 2006 verdict to be referred to a larger Bench for re-examination.
- The Centre contended that the criteria set in 2006 judgement should be done away with as SCs and STs are presumed as backward and there was no need to have a quantifiable data to prove that such categories of employees suffered from backwardness.
- Citing “1000 of years of deprivation” suffered by Dalit communities, the government is pushing for providing “accelerated promotion with consequential seniority” for SC/ST members in public employment.
- Consequential seniority is when an SC/ST employee is promoted purely on reservation basis despite another person waiting for promotion is actually senior to him/her.
- The SC/ST communities have faced centuries of deprivation at the hands of society.
- They have been deprived of access to temples, schools and the basic facilities of life.
- The State needs to show “affirmative action” by giving them equality of opportunity.
- In job promotions also the SCs and STs must account for 23 percent or the real motive for reservations will get defeated.
- Government said it wanted a total of 22.5% (15% for SC+7.5% for ST) posts reserved for promotion for SC/ST in public employment.
- Their representation has to be proportional to the population otherwise it will be inadequate representation.
- The government objected to a creamy layer concept among the SC/ST.

4) Constitutional Provisions

- Article 16 (4) deals with the State's powers for providing for appointments or posts for “any backward class of citizens”.

- Article 16 (4A), enables the state to provide for reservation in matters of promotion to SC/STs who, in the state's opinion, were not adequately represented in the services.
- Article 16 (4B) deals with unfilled vacancies of a year reserved for SC/ST kept from being filled up.

5) Argument against the reservation in promotions

- Provisions under articles 16(4), 16 (4A) and 16 (4B) of the Constitution are only enabling provisions, and not a fundamental right.
- In a case the Supreme Court ruled that no reservation in promotions would be given in appointment for faculty posts at the super specialty block in AIIMS.
- The reservation in promotion may hurt the efficiency of administration.

6) Concerns / Challenges

- Only 4 SC/ST officers held secretary rank in government in 2017.
- It was not possible to comply in every case the conditions laid down by the Nagaraj judgment in 2006.
- Getting quantifiable data for inadequate representation had many procedural limitations.
- Most States did not prepare quantifiable data to show inadequacy/adequacy of representation.
- The elaborate exercise is also leading to large number of posts lying vacant.

7) Way Forward

- Employment and position should not be used as a single yardstick for calculating backwardness as it does not ensure the end of social discrimination.
- Backwardness results from a complex web of social, economic and political structures built to safeguard privilege.
- Find a stable equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system.
- There is a need for a new comprehensive law to end the ambiguity and vagueness in promotion process in view of the unique nature of discrimination and disadvantage Sc/STs face.