Local Job Laws that raise Constitutional Questions

What is the issue?

The Supreme Court of India will soon hear a petition to remove the stay on the Haryana State Employment of Local Candidates Act that reserves 75% of jobs in the private sector in the State for local residents.

What is the Haryana State Employment of Local Candidates Act about?

- The Act was enacted in February 2021, and brought into effect in January 2022.
- **Employment Quota -** The Act requires private sector employers to reserve 75% of jobs that offer a monthly salary of less than Rs. 30,000 for individuals who are domiciled in Haryana.
- **Application-** The Act applies to all private companies, societies, partnership firms, trusts and any person employing 10 or more persons in Haryana or any other entity as may be notified by the Government.
- **Period**- The Act will only have effect for 10 years from the date of its commencement.
- **Exemptions-** An employer may seek an exemption from the employment quota requirement by applying to the Designated Officer under the Act, if adequate number of local candidates of the desired skill, qualification or proficiency are not available.
- The Government may also exempt certain industries by notification, and has so far exempted new start-ups and new Information Technology Enabled Services (ITES) companies, short-term employment, farm labour, domestic work, and promotions and transfers within the State.
- **Registration and Reporting Obligations-** Employers are required to register employees receiving gross monthly salary or wages of less than Rs. 30,000 on the **Haryana Udhyam Memorandum portal** within three months of the commencement of the Act.
- Employers are also required to furnish a quarterly report of local candidates hired and employed during that quarter on the portal.
- **Penalty for non-compliance -** An employer who fails to comply with the Act is punishable upon conviction to a fine.

Which other states have similar legislation?

- Other States such as Andhra Pradesh and Jharkhand have passed similar Bills.
- The Andhra Pradesh legislation has been challenged in the Andhra Pradesh High Court.
- The Punjab and Haryana High Court admitted a petition challenging the constitutionality of the Act, and stayed the implementation until it heard the case.
- The petition in the Supreme Court is by the Haryana government to remove the stay.

What constitutional questions arise from this Act?

- **Right to carry occupation- Article 19(1)(g)** of the Constitution guarantees freedom to carry out any occupation, trade or business.

- There may be reasonable restrictions in the interests of the general public, specifying any professional or technical qualifications, or to reserve a sector for government monopoly.
- This Act, by requiring private businesses to reserve 75% of lower end jobs for locals, encroaches upon their right to carry out any occupation.
- **Domicile criteria**- The provision of reservation by virtue of domicile or residence may be unconstitutional.
- **Article 16** of the Constitution specifically provides for equality of opportunity for all citizens in public employment and prohibits discrimination on several grounds including place of birth and residence.
- However, it permits Parliament to make law that requires residence within a State for appointment to a public office.
- This enabling provision is for **public employment** and not for private sector jobs and the law needs to be made by **Parliament**, and not by a State legislature.
- **Limit of reservation**- The other question is whether 75% reservation is permitted.
- In the *Indra Sawhney case* in 1992, the Supreme Court capped reservations in public services at 50%.
- It however said that there may be extraordinary situations which may need a relaxation in this rule.
- The onus is on the State to make a special case of exceptional circumstances, for the 50% upper limit on reservations to be relaxed.

What were the earlier cases recorded regarding these constitutional questions?

- **Right to carry occupation-** In 2002, in the *T.M.A. Pai Foundation case*, the Supreme Court stated that private educational institutions have autonomy in their administration and management.
- In 2005, in the *P.A. Inamdar case*, it said that reservation cannot be mandated on educational institutions that do not receive financial aid from the state, as that would affect the freedom of occupation.
- In 2005, the Constitution was amended to allow reservation in private educational institutions for socially and educationally backward classes and Scheduled Castes and Scheduled Tribes.
- This amendment applies to admissions in private educational institutions and not to jobs in the private sector.
- **Public employment**- In 1995, Rules in Andhra Pradesh that gave preference to candidates who had studied in the Telugu medium were struck down on grounds that it discriminated against more meritorious candidates.
- The Supreme Court, in 2002, ruled that preference given to applicants from a particular region of Rajasthan for appointment as government teachers was unconstitutional.
- It said that reservations can be made for backward classes of citizens but this cannot be solely on account of residence or domicile.
- **Cap on reservation**- Telangana, Rajasthan and Maharashtra have passed Acts which breach the 50% limit.
- The Maharashra Act, which provided reservations for Marathas was struck down by the Supreme Court in 2021 on grounds of breaching the 50% limit.
- It stated that the 50% limit is to fulfil the objective of equality, and that to breach the limit is to have a society which is not founded on equality but on caste rule.

What would be the effect of Haryana Act?

- **Social implications**- The Haryana Act does not propagate the caste rule as it is for all residents of the State irrespective of caste but it breaches the notion of equality of all citizens of India.
- This restriction may also indirectly affect the right to reside across India as finding employment becomes difficult and it would be difficult for citizens to migrate from their State to other States to find work.
- **Economic implications**- It potentially increases the costs for companies.
- There may also be an increase in income inequality across States as citizens of poorer States with fewer job opportunities are trapped within their States.
- **Political implications-** Several States have enacted laws that limit employment for citizens from outside the State raising questions on the conception of India as a nation.
- The courts, while looking at the narrow questions of whether these laws violate fundamental rights, should also examine whether they breach the basic structure of the Constitution that views India as one nation which is a union of States, and not as a conglomeration of independent States.

References

1. https://www.thehindu.com/todays-paper/tp-opinion/local-job-laws-that-raise-constitutional-questions/article38410392.ece
2. https://www.lexology.com/library/detail.aspx?g=1d729017-2b58-47c6-be0c-f255003fac4b

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