

No Reservation in Promotions

What is the issue?

- The Supreme Court ruled that no individual including the Scheduled Caste and Scheduled Tribes could claim reservation in promotions.
- It said that the court could not issue a mandamus directing State governments to provide reservation.

What is the concern with this case?

- This verdict on reservation on promotions has affected the social justice and the advancement of the under-privileged.
- This case should have been dealt by a larger constitutional bench which could have a Scheduled Caste (SC) or Scheduled Tribe (ST) judge.
- So, it is the moral responsibility of the Union Government to appeal this case and request a constitutional bench hearing.

Is reservation in promotions a fundamental right?

- The scope for reservation for the Backward Classes is promised in Part III of the Constitution under Fundamental Rights.
- Articles 16(4) and 16(4A) empowers the state to provide reservation for SCs and STs in public employment.
- The right to equality is enshrined in the Preamble of the Constitution.
- Many see that the reservation is against Article 16 (Right to equality).
- But there is an absence of equal opportunities for the Backward Classes due to historic injustice by virtue of birth entails them reservation.
- Articles 16 (2) and 16(4) are neither contradictory nor mutually exclusive in nature, but are complementary to each other.

Is there any necessity to provide data on inadequate reservation?

- There is a question whether the quantifiable data for inadequate representation is a must for giving reservation in promotions.
- This question has been addressed by Article 16(4) in the Constitution.
- It reads that the State can make any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the State's opinion, is not adequately represented in the State services.
- Here, "in the State's opinion" should **not be construed as the discretion**

of the state to give the reservation or not.

- On the contrary, it means if the state feels that SCs and STs are under-represented, it is in the domain of the state to provide reservation.
- There is **no mention in the Constitution** about quantifiable data.
- Even after 70 years of SC/ST reservation, their representation is as low as 3%.

Is it the obligation of the state to give reservation?

- It must be noted that when reservation rights are in Part III, it's the obligation of the state to ensure reservation to the underprivileged.
- This recent SC judgment has interpreted Articles 16 (4) and 16(4A) only as enabling provisions.
- Enabling provisions mean that these provisions empower the state to intervene; it does not mean the state is not bound to provide it.
- Interpreting the Constitution by paraphrasing and selective reading is dangerous.

What does this judgment say about administrative efficiency?

- This judgment has raised a new point that the decision of the State government to provide reservation for SC/STs shouldn't affect the efficiency of administration.
- This implies that the entry of SC/STs in the job market can reduce the quality of administration; this by itself is discriminatory.
- There is no evidence that performance in administration is affected on account of caste.
- There have been many attempts to dilute reservation in the past.
- But, this judgment appears to be debatable in the larger context and should be challenged in a constitutional bench.
- In a country of parliamentary democracy, even the Constitution of India can be amended.
- If the government at the Centre has genuine concern for SC/STs, it can amend the Constitution using its political majority.

Why reservation should be applied in promotions?

- As there is a peculiar hierarchical arrangement of caste in India, it is obvious that SCs and STs are poorly represented in higher posts.
- Denying application of reservation in promotions has kept SCs and STs largely confined to lower cadre jobs.
- Hence, providing reservation for promotions is even more justified and appropriate to attain equality.

- This judgment destabilises the very basis of reservation, when there is no direct recruitment in higher posts.
- This delineation of the scope of reservation as at the entry level and in promotions will only lead to confusion in its implementation.
- Now, by declaring that reservation cannot be claimed as a fundamental right is a dangerous precedent in the history of social justice.

Source: The Hindu

