

BOOST TO SC/ST QUOTA IN PROMOTIONS

Relevant for: Government Policies & Welfare Schemes | Topic: Welfare of SCs - Schemes & their performance; Mechanisms, Laws, Institutions & Bodies

A Constitution Bench of the Supreme Court on Wednesday modified a 2006 judgment requiring the State to show quantifiable data to prove the “backwardness” of a Scheduled Caste/Scheduled Tribe community in order to provide quota in promotion in public employment.

The 58-page judgment by a five-judge Bench led by Chief Justice of India Dipak Misra gives a huge fillip for the government’s efforts to provide “accelerated promotion with consequential seniority” for Scheduled Castes/ Scheduled Tribes (SC/ST) members in government services.

Directly contrary

Writing the verdict for the Bench, Justice Rohinton Nariman held that this portion of the M. Nagaraj judgment of another five-judge Constitution Bench in 2006 was directly contrary to the nine-judge Bench verdict in the Indira Sawhney case. In the Indira Sawhney case, the Supreme Court had held that the “test or requirement of social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes, who indubitably fall within the expression ‘backward class of citizens’.”

Justice Nariman pointed out that the Presidential List for Scheduled Castes contains only those castes or groups or parts as “untouchables.” Similarly, the Presidential List of Scheduled Tribes only refers to those tribes in remote backward areas who are socially extremely backward.

“Thus, it is clear that when Nagaraj requires the States to collect quantifiable data on backwardness, insofar as Scheduled Castes and Scheduled Tribes are concerned, this would clearly be contrary to the Indira Sawhney and would have to be declared to be bad on this ground,” Justice Nariman wrote.

But the unanimous judgment differed with the Centre’s argument that Nagaraj misread creamy layer concept to apply it to SC/ST.

March ahead

“The whole object of reservation is to see that backward classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were,” Justice Nariman said and upheld Nagaraj’s direction that creamy layer applied to SC/ST in promotions. It said that when a court applies the creamy layer principle to Scheduled Castes and Scheduled Tribes, it does not in any manner tinker with the Presidential List under Articles 341 or 342 of the Constitution of India.

The caste or group or sub-group named in the said List continues exactly as before.

“It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation,” Justice Nariman wrote.

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