MULNIVASI SANGH

Nationwide Campaign to Expose the evil design in Amending Article 16(4) of the Constitution
Adequate Representation in Governance to Backward Class of Citizens (SC, ST & OBC) by Appointments and Promotions is a Fundamental Right and Not an Enabling Provision.

Dear Mulnivasis,

Brushing aside the inhuman Brahmanical law of Manu, the Constitution of India on 26th Jan. 1950 has provided equality to all citizens including the erstwhile Sudras and Ati-Sudras and present SC/ST/OBCs under Articles 14, 15 and 16 of the Constitution. While defining the term Equality in Article 14 of the Constitution, the Hon. Supreme Court held that in an unequal society like India, equality can be achieved only by providing additional benefits by constitutionally mandated positive discrimination to the disadvantaged sections. As such, the principle of Reservation by Representation is in-built in Article 14 of the Constitution. This definition of Equality in Article 14 is made applicable to Article 15 and Article 16 wherein Representations are provided to the Socially and Educationally Backward Class of Citizens in the education and public employment by the makers of the Constitution to establish equality in all walks of life.

Despite that Constitution is heavily loaded in favour of disadvantaged and weaker section of the society, the Brahminical Forces due to their over-representation in all positions of power (due to process of transfer of power from the British in 1947), have been appropriating all benefits of the state. Situation is so precarious that according to the recent report of Arjun Sen Dasgupta committee, 78% people in this country cannot afford even Rs. 20/- per day. Of the affluent 22%, 15% belong to the so-called high castes and 7% are SC/ST/OBCs who are either in Govt. services or marginal farmers. Therefore, it would not be incorrect to say that the Govt. is not honest enough to implement the Constitution in its letter and spirit and is deliberately avoiding adequate representation of SC/ST/OBC in the recruitment and in promotion.

Article 16(1) provides for Equality of opportunity in the public employment and Article 16(4) makes it explicitly clear that nothing in Article 16(1), 16(2) and 16(3) shall prevent the State from making any provision for the reservation of appointments or posts in favour of any Backward Class of Citizens which, in the opinion of the state, is not adequately represented in the services under the state. Article 16(4) being a part of Fundamental right, it is the duty of the State to provide reservation to Socially and Educationally Backward Class of Citizens Viz. SC/ST/OBC to ensure their adequate representation in all the cadres in the services under the state.

The state is the creation of the Constitution under Article 12. Therefore whatever is provided by the constitution, the supreme authority cannot be taken away by the subordinate authority the state. Further, the fundamental rights are provided in the Constitution to prevent the state from doing any injustice to the Citizens and it is for the Parliament to direct the Govt. to fulfill its Constitutional duty and intervene if the Govt. prevents enforcement of the fundamental right of SC/ST/OBCs by not making any provision for reservation in violation of the Constitution.

It is our experience that time and again the Brahmanical Sections create hurdles in implementing the provisions of the Constitution and prevent any social polarization of the victim castes (SC/ST/OBCs) through misinterpretation of the statutes. The phraseology of Article 16(4) and Article 16(4A) is identical except that the term Backward Class of Citizens in Article 16(4) is restricted to Scheduled Castes and Scheduled tribes. In fact, Article 16(4A) is an extension of Article 16(4) and if SC/ST and OBC are Backward Class of Citizens for the purpose of Article 16(4) then why should Article 16(4A) be restricted only to the SCs and STs? The reservation in promotion should also be provided to OBCs as their fundamental right and to maintain the principle of equity amongst the Backward Class of Citizens.

The chronological events which led Govt. to present 117th Constitution amendment bill 2012, are that the U.P. State Power Corporation promoted SC/ST candidates in accordance with the provisions contained in Rule 8A of U.P. Govt. Servants Seniority Rules 1991. This was challenged before the Division Bench of the High Court of Allahabad, which upheld Rules. However Lucknow Bench of the High Court ordered that Rules as brought into force in 2007 are invalid, ultra virus and
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The Hon. Supreme Court in the case of M. Nagraj held that the above conditions are essentially to be examined by the State as Article 16(4A) is not a fundamental right but is an enabling provision. In our opinion Art. 16(4A) is an extension of Art. 16(4) and the Constitution makers have deliberately incorporated it in the Part-III of the Constitution i.e. fundamental rights. Hon. Supreme Court had erred in taking it away from the fundamental rights. Notwithstanding above Constitutional mandate, if we go by the procedure laid down for effecting promotion by the Departmental Promotion Committee, the condition no. 1 is inbuilt in the procedure and hence redundant. The condition no. 2 is also redundant as it had already been examined at the time of their recruitment. The qualifying criteria and other benchmarks for promotions for reserved as well as non-reserved candidates are same and therefore one cannot conclude that efficiency of administration shall be compromised if the promotions are given to SC/ST candidates. Therefore the decision of the Hon. Supreme Court in M. Nagraj case is incorrect so far as imposition of aforesaid three conditions are concerned. Therefore the solution to present problem lies in appeal to the higher Constitutional Bench of the Supreme Court with a prayer to strike down the conditions.

Now, in an attempt to rectify this situation, the Union Government came up with the 117th Constitution Amendment Bill 2012. But this Constitution amendment Bill which has been tabled by the Govt. in the monsoon session of the Parliament with a view to protect reservation i promotion to the SC/ST by substituting of Art. 16(4A) with the new Art. 16(4A), will harm the interests of SC/ST for promotion rather than to protect reservation in promotion as Constitutionally tested and valid existing Art. 16(4A) will no longer exist and anti reservationists are bound to challenge substituted Art. 16(4A) in the Supreme Court for its Constitutional validity and make the matter sub-judice. In the process of constitutional amendment the SC/STs shall loose the battle for promotion from both the ends.

Therefore the Constitutional amendment should be such that it incorporates –

1) That it should be made explicitly clear that Art. 16(4A) is a fundamental right and not an enabling provision,
2) That Art. 16(4A) be amended by substitution of the term 'the Scheduled Castes and Scheduled Tribes' with the term 'Backward Class of Citizens',
3) That the term 'Adequately represented' should be maintained in the amended Art. 16(4A) and it should not be substituted with the term 'to the extent of percentage of reservation' as it will not be in harmony with Art. 16(4). Otherwise we shall loose Constitutionally mandated adequate representation and will be at the mercy of the Governments to decide percentage of reservation which in fact anti reservationists wants.

It is now the duty of the Mulnivasis to rise to the occasion and create awareness among the citizens as well as among the members of both the Houses of Parliament to put an end to the Brahminical hegemony and demand reservation in promotion to all Backward class of Citizens for creating a democratic society.

Mulnivasi Sangh is organizing several campaigns all over the country on this crucial issue. We appeal all Mulnivasis (SC, ST & OBCs and Religiously converted Minorities) to support this Nationwide Campaign.

Yours in Mission
B.D. Borkar
National President
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New Delhi.

Jai Bhim Jai Mulnivasi.