

The Karnataka Scheduled Castes, Scheduled Tribes And Other Backward Classes (Reservation Of Appointment) Act 1990

KARNATAKA

India

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Act 07 of 1991

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The Karnataka Scheduled Castes, Scheduled Tribes And Other Backward Classes (Reservation Of Appointment) Act 1990[7th March 1991]BE it enacted by the Karnataka State Legislature in the Forty-first Year of the Republic of India as follows :-Act No.7 of 1991PreambleAn Act to provide for the reservation of appointments or posts in favour of the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes in the State Civil Services and establishments in the public sector and in admission to universities and to the educational institutions established or maintained or aided by the State Government.WHEREAS the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens are not adequately represented in the services or posts in the State Civil Services and establishments in public sector and among the students admitted to the universities and to educational institutions established or maintained or aided by the State Government;AND whereas it is expedient to provide in favour of them such reservation;

1. Short title and commencement.—

(1)This Act may be called the Karnataka Scheduled Castes, Scheduled Tribes and other Backward Classes (Reservation of Appointments, etc.,) Act, 1990.(2)It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions.—

In this Act unless the context otherwise requires,—(1)"appointed day" means the date notified under sub-section (2) of section 1;(2)"appointing authority" in relation to a service or posts, means the authority empowered to make appointment to such service or post;(3)"establishments in public sector" means,—a co-operative society registered or deemed to have been registered under the Karnataka Co-operative Societies Act, 1959;an educational institution established or maintained or aided by the State Government;a Government company within the meaning of section 617 of the Companies Act, 1956;a local authority;a statutory body or corporation established by or under a State or Central Act owned or controlled by the State Government;a university established or deemed to have been established by or under any law of the State Legislature;(4)"other backward Classes" means the communities, castes and tribes notified by the State Government from time to time under Article 15(4) and Article 16 (4) of the Constitution;(5)"Scheduled Castes" shall have reference to the Scheduled Castes specified in the Constitution (Scheduled Castes) Order, 1950 made under Article 341 of the Constitution of India and as amended from time to time;(6)"Scheduled Tribes" shall have reference to the Scheduled Tribes specified in the Constitution (Scheduled Tribes) Order, 1950 made under Article 342 of the Constitution of India and as amended from time to time;(7)"service or post" means a civil service of the State of Karnataka or a civil post under the State of Karnataka, and includes a service or post in the establishment in public sector;(8)"Unfilled vacancies" means and includes,—the backlog in direct recruitment as contemplated in the Government order No. DPAR 19 SBC 89 dated 12th July 1989 read with the subsequent Government Order of even number, dated 22nd July 1989 and sub-section (2) of section 4 in respect of a service or post in an establishment in public sector existing as on the date of commencement of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc.) (Second Amendment) Act, 2004 (hereinafter referred to as the Second Amendment Act, 2004);the vacancies to the extent they were not filled by the persons belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be, as per the classification of the vacancies in accordance with the orders of reservation applicable to direct recruitment while regularising the services of the daily wage employees in an establishment in public sector in accordance with the Government Order issued in this behalf or any rule, statute, bye law, regulation or order etc. issued by any establishment in public sector, and existing as on the date of commencement of the Second Amendment Act, 2004; and if even after taking into account the unfilled vacancies mentioned in clauses (i) and (ii) above, the percentage of representation of the persons belonging to the Scheduled Castes and the Scheduled tribes in any service or post in an establishment in public sector to which the order of reservation in direct recruitment under clause (4) of Article 16 of the Constitution are applicable, does not reach fifteen percent in respect of the persons belonging to the Scheduled Castes and three percent in respect of the persons belonging to the Scheduled tribes, as the case may be, of direct recruitment vacancies, then such shortfall of unfilled direct recruitment vacancies existing as on the date of commencement of the Second Amendment Act, 2004.

3. Applicability—

Nothing in this Act shall apply to:-(a)posts meant for conducting or guiding or directing research;(b)posts classified as scientific posts;(c)tenure posts;(d)posts filled up on the basis of any contract;(e)ex-cadre posts;(f)posts which are filled up by transfer or deputation;(g)posts in respect of which recruitment is made in accordance with any provision contained in the Constitution; and(h)such other posts as the State Government may, from time to time, by order, specify: Provided that every order made under clause (h) shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two or more successive sessions.

4. Reservation of Appointments or Posts etc.—

(1)After the appointed day, while making appointments to any office in a civil service of the State of Karnataka or to a civil post under the State of Karnataka, appointments or posts shall be reserved for the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes to such extent and in such manner as may be specified from time to time in the order made by the Government under clause (4) of Article 16 of the Constitution of India.(1A)Notwithstanding anything contained in any law for the time being in force, the appointing authority shall identify unfilled vacancies reserved for the persons belonging to Scheduled Castes and Scheduled Tribes in any service or post in an establishment in public sector as existing on the date of commencement of the Second Amendment Act, 2004 and take action to fill them as a one time measure within a specified time. The manner in which the number of vacancies is to be computed, the procedure for filling such vacancies and the time within which action is to be taken shall be as specified by notification by the State Government:Provided that the provisions of this sub-section shall not apply to any unfilled vacancy in Karnataka State Civil Services or post in respect of which provisions have been already made:Provided further that where the appointing authorities covered under this sub-section have already filled all or part of the unfilled vacancies before the date of coming into force of the Second Amendment Act, 2004 by making appointment of persons belonging to the Scheduled Castes and the Scheduled Tribes, then such appointments shall not be affected.(2)The provisions of the said order made under clause (4) of Article 16 of the Constitution shall be deemed to be an order made under this Act and shall mutatis mutandis apply to a service or post in an establishment in public sector.(3)Subject to such rules as may be prescribed, while making admissions, after the appointed day, to a course of study in a university established or deemed to be established by or under any law of the State Legislature or an educational institution established or maintained or aided by the State Government, there shall be made reservation for the persons belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes to such extent and in such manner as may be prescribed.(4)All appointments made in contravention of the provisions of this section shall be voidable.

4A. Issue of caste certificate and income and caste certificate.-

(1)Any candidate or his parent or guardian belonging to the Scheduled Castes or the Scheduled Tribes may, in order to claim benefit of reservation under section 4, either for appointment to any

service or post or for admission to a course of study in a university or any educational institution, make an application to the Tahasildar in such form and in such manner as may be prescribed for issue of a caste certificate.(2)Any candidate or his parent or guardian belonging to other Backward Classes may, in order to claim benefit of reservation under section 4 either for appointment to any service or post or for admission to a course of study in a university or any educational Institution, make an application to the Tahasildar in such form and in such manner as may be prescribed for issue of an income and caste certificate.(3)The Tahasildar may, on receipt of an application under sub-section (1) or (2), and after holding such enquiry as he deems fit and satisfying himself regarding the genuineness of the claim made by applicant pass an order issuing a caste certificate or, as the case may be, an income and caste certificate in such form as may be prescribed, or rejecting the application.(4)The Tahasildar shall follow such procedure as may be prescribed before passing the order under sub-section (3).(5)The burden of proving that the candidate or his parent or guardian belongs to Scheduled Castes, Scheduled Tribes or other Backward Classes shall be on the applicant.

4B. Appeal against order under section 4A.-

(1)Any person aggrieved by an order of the Tahasildar under section 4A may, within thirty days from the date of receipt of the order prefer an appeal to Assistant Commissioner of the revenue sub-division.(2)The Assistant Commissioner of the revenue sub-division may after giving both parties an opportunity of being heard pass orders allowing or dismissing the appeal and in appropriate cases directing issue of a caste certificate or as the case may be, an income and caste certificate to the applicant.

4C. Verification of Caste Certificate and Income and Caste Certificate.-

(1)The State Government shall constitute one or more Verification Committees for each district consisting of such person or persons as may be prescribed for verification of caste certificate and income and caste certificate issued under section 4A or section 4B.(2)Any person who has obtained a caste certificate or an income and caste certificate under section 4A or 4B or the appointing authority or any authority making admission to a course of study in the university or any educational institution may make an application to the Verification Committee in such form and in such manner as may be prescribed for issue of a validity certificate.(3)The Verification Committee may after holding such enquiry as it deems fit within thirty days from the date of the application either grant a validity certificate in a prescribed form or reject the application.

4D. Appeal:-

(1)Any person aggrieved by an order passed by the Verification Committee under section 4C may, within thirty days from the date of receipt of the order appeal,-to the Commissioner / Director, Social Welfare in case the verification certificate relates to a person belonging to the Scheduled Castes;to the Director, Tribal Welfare in case the verification certificate relates to a person belonging to the Scheduled Tribes;to the Director, Backward classes Department, in case the verification certificate relates to a person belonging to other Backward Classes; in such form and in such manner

and on payment of such fee as may be prescribed.(2)The Appellate Authority shall after giving to both the parties an opportunity of being heard pass such order in appeal as it deems fit.

4E. Tahasildar and the Verification Committee to exercise the powers of the Civil Court.- Tahasildar and the Verification Committee, while holding enquiry under this Act, shall have all the powers of a Civil Court while trying a suit under Code of Civil Procedure, 1908 (Central Act No. 5 of 1908) and in particular in respect of following matters, namely:-

(a)summoning and enforcing the attendance of any person and examining him on Oath;(b)discovery and production of any document;(c)receiving evidence on affidavits;(d)requisitioning any public record or copy thereof from any Court or office;(e)issuing commissions for the examination of witnesses or documents; and(f)any other matter which may be prescribed;

4F. Revision by Deputy Commissioner.-

(1)The Deputy Commissioner may at any time either suo moto or on an application made to him with in the prescribed period, call for and examine the records relating to any decision made or order passed by the Tahasildar under section 4A or the Assistant Commissioner under section 4B, for the purposes of satisfying himself as to the legality, propriety of such decision or order and if, in any case, it appears to the Deputy Commissioner that any such decision or order shall be modified, annulled, revised or remitted for reconsideration, he may pass orders within thirty days accordingly; provided that the Deputy Commissioner shall not pass any order prejudicial to any person unless such person is given an opportunity of being heard.(2)The Deputy Commissioner may, stay the execution of any such decision or order pending the exercise of his powers under sub-section (1) in respect thereof.

5. Penalty.—

If any appointing authority makes an appointment or any authority making admission to course of study in a university or any educational institution makes admission in contravention of the provisions of this Act or rules made thereunder, he shall be punishable with fine which may extend upto rupees one thousand and imprisonment not exceeding six months:Provided that nothing contained in this section shall apply in relation to appointment to any service or post of which the appointing authority is the Governor.

5A. Penalties for obtaining false Caste Certificate or Income and Caste Certificate.-

Whoever has obtained a Caste Certificate or Income and Caste Certificate by;-(a)furnishing false information; or(b)filing a false statement; or(c)any other fraudulent means.shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than six months but which

may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees: Provided that the Court may, for adequate and special reasons to be recorded, impose a sentence of imprisonment for a lesser term or lesser fine.

5B. Penalty for issuing a false Caste Certificate or Income and Caste Certificate.-

If the Tahasildar intentionally issues a false Caste Certificate or Income and Caste Certificate, he shall on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years and with fine which shall not be less than one thousand rupees but which may extend to five thousand rupees: Provided that the Court may, for adequate and special reasons to be recorded, impose a sentence of imprisonment for a lesser term or lesser fine.

6. Cognizance of offences.-

No prosecution for an offence under this Act shall be instituted except by, or with the sanction of the State Government.

6A. Penalty for abettors.-

Whoever abets any offence punishable under this Act, shall be punished with the penalty provided for in this Act for such offence.

6B. Bar of jurisdiction of Civil Court.-

No Civil Court shall have jurisdiction in respect of any order passed by any officer or authority under this Act and no stay or injunction shall be granted by a court in respect of any action taken or to be taken by such officer or authority under this Act in pursuance of any power conferred by or under this Act.

6C. Cancellation of Degree etc.-

Notwithstanding anything contained in any other law for time being in force any Degree, diploma or any other educational qualifications acquired by a person after securing admission in any educational institution on the basis of a false caste certificate or as the case may be, a false income and caste certificate, shall stand withdrawn, on cancellation of caste certificate, or as the case may be income and caste certificate obtained by him.

6D. Act to override other laws.-

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time-being in force.

6E. Act to override the applicability of decided specific cases in any of the courts.-

The provisions of this Act shall have effect, notwithstanding anything contained in any of the decided cases by any of the courts.

7. Maintenance of records and submission of annual report, etc.-

(1) Every appointing authority and every authority making admissions to a course of study in a university or an educational institution having an establishment in public sector shall maintain such records and shall furnish to the State Government an annual report in such form and in such manner, as may be prescribed. (2) Any officer authorised by the State Government in this behalf may inspect the records of an authority which is required to maintain under subsection (1) for the purpose of ensuring proper implementation of the provisions of this Act and rules made thereunder. (3) It shall be the duty of the concerned appointing authority or the authority making admissions to the university or educational institution to produce such records and documents, furnish such information and afford all such assistance and facilities as may be necessary for the aforesaid purpose.

8. Constitution of the Standing Committee.-

There shall be a standing committee consisting of the following members, namely:-

Composition of Standing Committee

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| Minister of Social Welfare, Government of Karnataka | Chairman |
| Four members of the Karnataka Legislative Assembly to be nominated by the Speaker out of whom, one shall be from the Scheduled Caste and one shall be from the Scheduled Tribe | Members |
| Two members of the Karnataka Legislative Council to be nominated by the Chairman | Members |
| Chief Secretary to the Government of Karnataka | Member |
| Secretary to Government, Home Department, Government of Karnataka | Member |
| Secretary to Government, Social Welfare & Labour Department, Government of Karnataka | Member-Secretary |

Provided that on issue of a proclamation under Article 356 of the Constitution of India, the composition of the Committee may be altered by the State Government to such extent as it deems fit.

9. Functions of the Standing Committee .-

The Standing Committee shall perform the following functions, namely :-(a) review of the implementation of the provisions of this Act and the rules made thereunder as far as possible twice a

year;(b)suggest measures for the removal of difficulties in such implementation or for the improvement thereof; and(c)such other functions as the State Government may, from time to time, assign to the Committee.

10. Annual report .-

The State Government shall prepare an annual report on the working of this Act and lay the same before each House of the Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two or more successive sessions.

11. Protection of action taken in good faith .-

No suit, prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done under this Act.

12. Removal of difficulties .-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may take such steps or issue such orders not inconsistent with the provisions of this Act, as the State Government may consider necessary for removing the difficulty.

13. Power to make rules .-

(1)The State Government may make rules for carrying out the purposes of this Act.(2)Until such rules are made under sub-section (1) any executive order made by the State Government relating to such reservation shall be deemed to be rules made under this Act.(3)Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before expiry of the session in which it is so laid or the session immediately following the session or successive sessions aforesaid both Houses agree in making any modifications in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.