

Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015

RAJASTHAN

India

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Act 32 of 2015

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Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015(Act No. 32 of 2015)Statement of Objects and Reasons. - Kaka Kalelkar Commission in the year 1955 described the Gurjar (Gujar) community as cowherds and graziers, whereas Lokur Committee in the year 1965 has recommended special assistance to the Gurjar (Gujar) and Banjara communities as they require larger aid than provided to other Backward Classes while observing that it would not be sufficient to treat them as merely "Other Backward Classes".Way back in 1981, the State Government, looking to the extreme backwardness of Banjaras and Gadia Lohars, had recommended to the Central Government to include them in the list of Scheduled Tribes. Similarly, in the year 2007 High Powered Committee headed by Justice (Retd.) Jasraj Chopra had recommended special dispensation/measures to the Gurjar (Gujar) community looking to their extreme social and educational backwardness. The Raikas (Rabari/Debasis) due to their nomadic life style, are also extremely backward both from social and educational point of view.In pursuance of the directions issued by the Hon'ble Rajasthan High Court in Captain Gurvinder Singh etc. V/s State of Rajasthan, (2011(1) ILR (Raj.) 693) the State Government reconstituted the Rajasthan State Backward Classes Commission and referred the issue of the reservation to the said Commission. The Commission submitted its report on 22nd November, 2012. The Commission, while considering the quantifiable data placed before it, the representations made to it, the various judgments of the Hon'ble Supreme Court, including the judgments in Indra Sawhney V/s Union of India (AIR 1993 SC 477), M. Nagaraj V/s Union of India (2006)8 SCC 212], Ashok Thakur V/s Union of India ((2008) 6 SCC 1), Surajbhan Meena V/s State of Rajasthan ((2011) 1 SCC 467), etc., various reports of different Commissions and Committees

constituted for the study of the Backward Classes, including Kaka Kalelkar Commission, Lokur Committee, Mandal Commission, etc., and various historical sources, inter alia, concluded that the Gadiya Lohar, Rebari/Debasi, Banjara, Gurjar and Gadariya castes/classes, having been wanderer/herdsman (nomadic) community and having been residing with animals at far flung areas like forests, low lying land of hills in search of fodder, have been cut off from the main stream of the society. Although the Government is running many welfare schemes like extension of education, providing medical facility, veterinary facility and many more, yet since they used to move from forests to forests, hilly areas to grazing land, with animals in search of fodder, they could not be benefitted by the schemes. Since they are living away from main society in forests and on grazing land with cattle for a long period, they remain unaffected from social upgradation. No change is seen in their livelihood, custom and tradition, superstition, values etc. While referring to paragraph 810 of the Indra Sawhney's case, the Commission further concluded that if special case is made out, reservation can be given in excess of 50% and these castes/classes, viz. Gadiya Lohar, Rebari, Banjara, Gurjar and Gadariya, fulfill all legal norms suggested in Indra Sawhney's case and in such peculiar circumstances, special case is made out in favour of these castes/ classes. Accordingly, the Commission recorded its recommendations in the following words: "After analyzing quantifiable data and considering other indexes, the Commission has come to the conclusion that for advancement of these five castes/classes, viz. Gadiya Lohar, Rebari, Banjara, Gurjar and Gadariya, special case is made out to give them status of Special Backward Classes."After going through the above report of the Rajasthan State Backward Classes Commission, the State Government was satisfied that the report of the Commission was based on quantifiable data and strong evidences, which indicates not only that the above five Castes/Classes are extremely backward classes socially and educationally and whose representation in public services is highly inadequate in comparison to the other Backward classes but also that they complied with all legal norms suggested in Indra Sawhney's case, which had made it imperative for the State to provide these Castes/ Classes five percent reservation in relaxation of general rule of 50% in terms of paragraph 810 of the Indra Sawhney's case. Accordingly, the State Government had issued orders to provide 5% reservation to the aforesaid Castes/Classes after the Commission's report. However, the State Government is of the opinion that this 5% reservation should also be given statutory status and recognition by enacting a separate legislation. The Bill seeks to achieve the aforesaid objectives. Hence the Bill. [Dated 9.10.2015]. [Received the assent of the Governor on the 7th day of September, 2015] An Act to provide for the reservation of seats in educational institutions in the State and of appointments and posts in the services under the State in favour of the Special Backward Classes for their advancement, upliftment and for matters connected therewith or incidental thereto. Whereas, the policy of reservation for the social, economic and educational advancement of the people belonging to Backward Classes of Citizens in admissions to educational institutions in the State and for reservation of appointments and posts in the services under the State has been under implementation in the State of Rajasthan for a long time; And whereas, a large percentage of the population of Rajasthan suffering from social and educational backwardness for many years have started enjoying the fruits of the reservation policy and have been able to improve their lot and attain a higher standard of living; And whereas, in the opinion of the State Government, certain backward classes viz., the Banjara/Baladiya/Labana, Gadiya Lohar/Gadoliya, Gujar/Gurjar, Raika/Rebari/Debasi, Gadariya/ Gadri/Gayari need special treatment in view of their being extremely backward - educationally and socially; And whereas, Clause (4) of Article 15 of the

Constitution of India enables the State to make any Special provisions for the advancement of any socially and educationally Backward Classes of citizens; And whereas, Clause (4) of Article 16 of the Constitution of India enables the State to make any provision for the reservation of appointments or posts in favour of any Backward Classes of citizens which, in the opinion of the State is not adequately represented in the services under the State; And whereas, in the opinion of the State Government the Special Backward Classes, who constitute a large part of the total population of the State, are not adequately represented in the services under the State in proportion to their population in the State of Rajasthan; And whereas, the State Government has, after careful consideration and looking to the extraordinary situation in the State, taken a policy decision that the existing level of reservation in admissions to educational institutions in the State and in appointments and posts in the services under the State, for persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes should be continued and the extremely backward classes like the Banjara/Baldiya/Labana, Gadiya Lohar/Gadoliya, Gujar/Gurjar, Raika/Rebari/Debasi, Gadariya/ Gadri/Gayari should be provided five percent reservation separately as Special Backward Classes, beyond the existing provisions of reservation, for ensuring the advancement of the aforesaid people of the State of Rajasthan. Now, therefore, be it enacted by the Rajasthan State Legislature in the Sixty-sixth Year of the Republic of India, as follows: -

1. Short title, extent and commencement.

(1) This Act may be called the Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015. (2) It shall extend to the whole of the State of Rajasthan. (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "creamy layer" means such class of persons within the Special Backward Classes, as the State Government may notify, in the Official Gazette for the purposes of this Act; (b) "prescribed" means prescribed by rules made under this Act; (c) "services under the State" means the public services and posts in connection with the affairs of the State and includes the services and posts in - (i) any local authority; (ii) any corporation or company owned or controlled, wholly or substantially, by the State Government; (iii) any other authority or body constituted by or under an Act of the State Legislature and funded, wholly or substantially, by the State; and (iv) respect of which reservation was applicable by Government orders on the date of commencement of this Act and which are not covered under sub-clauses (i) to (iii); (d) "Special Backward Classes" means the following castes/classes, namely: -

1. Banjara/Baldiya/Labana 2. Gadiya Lohar/Gadoliya 3. Gujar/Gurjar 4. Raika/Rebari/Debasi 5. Gadariya/Gadri/Gayari.

3. Reservation of seats in educational institutions in the State.

(1)The reservation in respect of the annual permitted strength for admission into such educational institutions and courses in the State, as may be prescribed, for Special Backward Classes shall be five percent.(2)Notwithstanding anything contained in sub-Section (1), persons belonging to creamy layer shall not be eligible for consideration against the reserved quota of seats in any educational institution in the State.

4. Reservation of appointments and posts in the services under the State.

(1)The reservation of appointments and posts in the services under the State for the Special Backward Classes shall be five percent.(2)Notwithstanding anything contained in sub-Section (1), persons belonging to creamy layer shall not be eligible for consideration against the reserved quota in the appointments and posts under the State.

5. No reservation in certain cases.

- Notwithstanding anything contained in Section 4, there shall be no reservation in respect of the following posts, namely : -(a)the posts to be filled by transfer or deputation; and(b)the post which is single (isolated) in any cadre or grade.

6. Power to make rules.

(1)The State Government may make rules for carrying out the purposes of this Act.(2)All rules made under this section shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days, which may comprise in one session or in two successive sessions and, if before the expiry of the sessions in which they are so laid or of the sessions immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

7. Removal of difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by an order, published in the Official Gazette, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for removing the difficulty :Provided that no order under this section shall be made after the expiry of a period of two years from the date of commencement of this Act.(2)Every order made under this section shall be laid, as soon as may be, after it is so made, before the House of the State Legislature.

8. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against any authority or person for anything done or purported to have been done in good faith in pursuance of the provisions of this Act or the rules made thereunder.

9. Repeal and savings.

(1)The provisions of the Rajasthan Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 (Act No. 12 of 2009), in so far as they relate to the reservation of Special Backward Classes, shall, from the date of commencement of this Act, stand repealed.(2)Without prejudice to the provisions of the Rajasthan General Clauses Act, 1955 (Act No. 8 of 1955), all rules, orders, circulars etc. made or, as the case may be, issued before the commencement of this Act by the State Government in relation to reservation of seats in educational institutions and of appointments and posts in the services under the State for the Special Backward Classes shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made or, as the case may be, issued under this Act, as if this Act had been in force on the date on which such rules, orders, circulars etc. were made or, as the case may be, issued and shall continue in force unless and until they are superseded by any rule made under this Act.(3)Nothing in this Act shall be deemed to have affected any orders made by the Governor in exercise of his powers under the Fifth Schedule of the Constitution of India in respect of the Scheduled Areas.