

Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2017

KARNATAKA

India

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Act 21 of 2018

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Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2017(Karnataka Act No. 21 of 2018)Statement of Objects and Reasons - (Act 21 of 2018). - It is considered necessary to provide for Consequential Seniority of the Government Servants promoted on the basis of Reservation to the posts in the Civil Services of the State with the effect from the 27th day of April 1978 in pursuance of Article 16 (4A) of the Constitution of India in the following circumstances, namely:-The Government of Karnataka has introduced the policy of reservation in promotion in favour of the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes as per the Government Order No. DPAR 29 SBC 77 dated 27.4.1978;Paragraph 7 of the Reservation Order stipulates that the inter-se seniority amongst persons promoted in accordance with that order on any occasion has to be determined, in the manner provided in rule 4 or 4-A, as the case may be, of the Karnataka Government Servants (Seniority) Rules, 1957;The Supreme Court of India, in its Judgment dated 1 -12-2000, in the case of M.G. Badappanavar and Another Versus State of Karnataka and others in Civil Appeal Nos. 6970-6971 of 2000 with Civil Appeal No. 6972 of 2000 (AIR 2001 SC 260) while dealing with the issue of determination of seniority inter-se between the persons belonging to the reserved categories and the general category, in pursuance of the ratio of the decision of the Constitution Bench in Ajit Singh and Others (II) Vs State of Punjab and others-(1999) 7 SCC 209 has examined rule 2(c), rule 4 and rule 4-A of the Karnataka Government Servants' (Seniority) Rules, 1957 and has observed that there is no specific rule therein permitting seniority to be counted in respect of a person promoted against a (reserved) roster point;Subsequently, the Parliament has enacted the Constitution (Eighty Fifth Amendment) Act, 2001 by insertion of clause (4A) to Article

16 of the Constitution with retrospective effect from 17-6-1995 providing for consequential seniority in the case of promotion on the basis of reservation;The Government of Karnataka has enacted the Karnataka Determination of Seniority of the Government Servants promoted on the basis of reservation (to the posts in the civil services of the State) Act, 2002 (Karnataka Act 10 of 2002) (herein after referred to as Karnataka Act 10 of 2002) to remove any ambiguity and to clarify that the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes promoted in accordance with the policy of reservation in promotion contained in the Reservation Order shall be entitled to seniority as it is available to the Government Servants belonging to the other categories;The validity of the Karnataka Act 10 of 2002 and constitutional amendments to Articles 16(4A) and 16(4B) came to be challenged in Supreme court in Sri.M. Nagaraj & others in W.P.No 61/2002. The Hon'ble Supreme Court in the said case upheld the constitutional validity of Articles 16(4A) and 16(4B) and held that the validity of the individual enactments of the appropriate States shall be gone into in individual Writ petitions by the appropriate Bench. In turn having been remitted, the High Court of Karnataka in W.P.No.14655/2010 has examined the constitutional validity of Karnataka Act 10 of 2002 and declared that the same was a valid piece of legislation as it satisfied the tests specified by the Supreme Court in M.Nagaraja's case. The correctness of the view taken by the High Court of Karnataka was then assailed in Appeal before the Supreme Court in B.K.Pavitra case;The Hon'ble Supreme Court of India in its judgment dated: 09.02.2017 in the case of B.K. Pavitra and others v/s Union of India and others in Civil Appeal No. 2368 of 2011 and connected matters while dealing with the issue of consequential seniority provided to the Scheduled Castes and the Scheduled Tribes, having regard to the ratio of the decision of the Constitution Bench in M. Nagaraj in Writ Petition No. 61 of 2002 has observed that a proper exercise for determining 'inadequacy of representation', 'backwardness' and 'overall efficiency', is a must for exercise of power under Article 16(4A). The court held that in the absence of this exercise under Article 16(4A) it is the "catch up" rule that shall be applicable. Having observed this the Court declared the provisions of Sections 3 and 4 of the Karnataka Act 10 of 2002 to be ultra vires of Article 14 and 16 of the Constitution. The Hon'ble Supreme Court directed that revision of the Seniority lists be undertaken and completed within three months and further consequential action be taken within the next three months;In order to comply with the directions of the Hon'ble Supreme Court in B.K. Pavitra and others v/s Union of India and others in Civil Appeal No. 2368 of 2011 the Government has issued order vide Government order No: DPAR 182 SRR 2011 dated 06.05.2017 to all appointing authorities to revise the seniority lists;While in compliance of the Supreme Court order, the Government considering the need and taking note of the decision of the Constitution Bench in M. Nagaraj, in Writ Petition No. 61 of 2002, has entrusted the task of conducting study and submitting a report on the backwardness of Scheduled Castes and Scheduled Tribes in the State, inadequacy of their representation in the State Civil Services and the effect of reservation in promotion on the State administration, to the Additional Chief Secretary to Government in Government Order No. DPAR 182 SRR 2011 dated: 22.03.2017;The Additional Chief Secretary to Government with the assistance of officers from various departments has collated the scientific, quantifiable and relevant data collected and having made a detailed study of quantifiable data has submitted a report on the backwardness of Scheduled Castes and Scheduled Tribes in the State, inadequacy of their representation in the State Civil Services and the effect of reservation in promotion on the State administration to the State Government;The report confirms the backwardness of Scheduled Castes and Scheduled Tribes in the State, inadequacy of their

representation in the State Civil Services and that the overall efficiency of administration has not been affected or hampered by extending reservation in promotion to the Scheduled Castes and Scheduled Tribes in the State and continuance of reservation in promotion within the limits will not affect or hamper overall efficiency of administration; The Government of Karnataka has also obtained the views of Legal Experts and the Karnataka Law Commission in this regard; and After having examined the report submitted by the Additional Chief Secretary and the views expressed by the Legal Experts, the Government of Karnataka has accepted the report. Keeping in view the findings of the report, the Government is satisfied and having identified and measured, has come to the conclusion that compelling reasons continue to exist for providing consequential seniority to persons promoted on the basis of policy of reservation in the State since 1978 so as to ensure adequate representation of the Scheduled Castes and Scheduled Tribes across all departments; Hence, the Bill. [L.A. Bill No. 40 of 2017, File No. Samvyashae 44 Shasana 2017] [entry 41 of List II of the Seventh Schedule to the Constitution of India.] (First Published in the Karnataka Gazette Extra-ordinary on the 23rd day of June, 2018) (Received the assent of President on the 14th day of June, 2018) An Act for Determination of Seniority of the Government Servants Promoted on the Basis of Reservation to the Posts in the Civil Services of the State. Whereas, the Government of Karnataka has introduced the policy of reservation in promotion in favour of Government Servants belonging to the Scheduled Castes and the Scheduled Tribes as per the Government Order No. DPAR 29 SBC 77 dated 27.4.1978; Whereas, paragraph 7 of the Reservation Order stipulates that the inter-se seniority amongst persons promoted in accordance with that order on any occasion has to be determined, in the manner provided in rule 4 or 4-A, as the case may be, of the Karnataka Government Servants (Seniority) Rules, 1957; Whereas, the Supreme Court of India, in its Judgment dated 1-12-2000, in the case of M.G. Badappanavar and Another Versus State of Karnataka and others in Civil Appeal Nos. 6970-6971 of 2000 with Civil Appeal No. 6972 of 2000 (AIR 2001 SC 260) while dealing with the issue of determination of seniority inter-se between the persons belonging to the reserved categories and the general category, in pursuance of the ratio of the decision of the Constitution Bench in Ajit Singh and Others (II) Vs State of Punjab and others-(1999) 7 SCC 209 has examined rule 2(c), rule 4 and rule 4-A of the Karnataka Government Servants' (Seniority) Rules, 1957 and has observed that there is no specific rule therein permitting seniority to be counted in respect of a person promoted against a (reserved) roster point; Whereas, subsequently, the Parliament has enacted the Constitution (Eighty Fifth Amendment) Act, 2001 by insertion of clause (4A) to Article 16 of the Constitution with retrospective effect from 17-6-1995 providing for consequential seniority in the case of promotion on the basis of reservation; Whereas, the Government of Karnataka has enacted the Karnataka Determination of Seniority of the Government Servants promoted on the basis of reservation (to the posts in the civil services of the State) Act, 2002 (Karnataka Act 10 of 2002) (herein after referred to as Karnataka Act 10 of 2002) to remove any ambiguity and to clarify that the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes promoted in accordance with the policy of reservation in promotion contained in the Reservation Order shall be entitled to seniority as it is available to the Government Servants belonging to the other categories; Whereas, the validity of the Karnataka Act 10 of 2002 and constitutional amendments to Articles 16(4A) and 16(4B) came to be challenged in Supreme court in W.P.No 61/2002 titled Sri.M. Nagaraj & others Vs Union of India. The Hon'ble Supreme Court in the said case upheld the constitutional validity of Articles 16(4A) and 16(4B) and held that the validity of the individual enactments of the appropriate States shall be gone into in

individual Writ petitions by the appropriate Bench. In turn having been remitted, the High Court of Karnataka in W.P.No.14655/2010 has examined the constitutional validity of Karnataka Act 10 of 2002 and declared that the same was a valid piece of legislation as it satisfied the tests specified by the Supreme Court in M.Nagaraja's case. The correctness of the view taken by the High Court of Karnataka was then assailed in Appeal before the Supreme Court in B.K.Pavitra case;Whereas, the Hon'ble Supreme Court of India in its judgment dated: 09.02.2017 in the case of B.K. Pavitra and others v/s Union of India and others in Civil Appeal No. 2368 of 2011 and connected matters while dealing with the issue of consequential seniority provided to the Scheduled Castes and the Scheduled Tribes, having regard to the ratio of the decision of the Constitution Bench in M. Nagaraj in Writ Petition No. 61 of 2002 has observed that a proper exercise for determining 'inadequacy of representation', 'backwardness' and 'overall efficiency', is a must for exercise of power under Article 16(4A). The court held that in the absence of this exercise under Article 16(4A) it is the "catch up" rule that shall be applicable. Having observed this the Court declared the provisions of Sections 3 and 4 of the Karnataka Act 10 of 2002 to be ultra vires of Article 14 and 16 of the Constitution. The Hon'ble Supreme Court directed that revision of the Seniority lists be undertaken and completed within three months and further consequential action be taken within the next three months;Whereas, in order to comply with the directions of the Hon'ble Supreme Court in B.K. Pavitra and others v/s Union of India and others in Civil Appeal No. 2368 of 2011 the Government has issued order vide Government order No: DPAR 182 SRR 2011 dated 06.05.2017 to all appointing authorities to revise the seniority lists;Whereas, while in compliance of the Supreme Court order, the Government considering the need and taking note of the decision of the Constitution Bench in M. Nagaraj, in Writ Petition No. 61 of 2002, has entrusted the task of conducting study and submitting a report on the backwardness of Scheduled Castes and Scheduled Tribes in the State, inadequacy of their representation in the State Civil Services and the effect of reservation in promotion on the State administration, to the Additional Chief Secretary to Government in Government Order No. DPAR 182 SRR 2011 dated: 22.03.2017;Whereas, the Additional Chief Secretary to Government with the assistance of officers from various departments has collated the scientific, quantifiable and relevant data collected and having made a detailed study of quantifiable data has submitted a report on the backwardness of Scheduled Castes and Scheduled Tribes in the State, inadequacy of their representation in the State Civil Services and the effect of reservation in promotion on the State administration to the State Government;Whereas, the report confirms the backwardness of Scheduled Castes and Scheduled Tribes in the State, inadequacy of their representation in the State Civil Services and that the overall efficiency of administration has not been affected or hampered by extending reservation in promotion to the Scheduled Castes and Scheduled Tribes in the State and continuance of reservation in promotion within the limits will not affect or hamper overall efficiency of administration;Whereas, the Government of Karnataka has also obtained the views of Legal Experts and the Karnataka Law Commission in this regard; andWhereas, after having examined the report submitted by the Additional Chief Secretary and the views expressed by the Legal Experts the Government of Karnataka has accepted the report. Keeping in view the findings of the report, the Government is satisfied and having identified and measured, has come to the conclusion that compelling reasons continue to exist for providing consequential seniority to persons promoted on the basis of policy of reservation in the State since 1978 so as to ensure adequate representation of the Scheduled Castes and Scheduled Tribes across all departments;Now therefore, State on finding of compelling necessity for exercise of its powers, it

is of the opinion that, it is expedient to provide for the following and for the matters connected therewith and incidental thereto; Be it enacted by the Karnataka State Legislature in the sixty eighth year of the Republic of India, as follows:-

1. Short title and commencement.

(1) This Act may be called the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the basis of Reservation (to the posts in the civil services of the State) Act, 2017. (2) Section 3 and 4 shall be deemed to have come into force from 17th day of June, 1995 and other provisions shall come into force at once.

2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "Government" means the Government of Karnataka; (b) "Government Servant" means a person who is a member of the Civil Services of the State of Karnataka or who holds a Civil post in connection with the affairs of the State of Karnataka and includes any person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority, any person or persons whether incorporated or not; (c) "Reservation Orders" means the Government Order No. DPAR 29 SBC 1977 dated 27th April 1978 and other orders containing the policy of reservation in promotion, as modified from time to time; and (d) "Backlog" means promotional vacancies reserved for Scheduled Castes and Scheduled Tribes but not filled by the respective categories for want of eligible persons.

3. Determination of Seniority of the Government Servants Promoted on the basis of Reservation.

- Notwithstanding anything contained in any other law for the time being in force, the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes promoted in accordance with the policy of reservation in promotion provided for in the Reservation Order shall be entitled to consequential seniority. Seniority shall be determined on the basis of the length of service in a cadre: Provided that the seniority inter-se of the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes as well as those belonging to the unreserved category, promoted to a cadre, at the same time by a common order, shall be determined on the basis of their seniority inter-se, in the lower cadre. Provided further that where the posts in a cadre, according to the rules of recruitment applicable to them are required to be filled by promotion from two or more lower cadres, - (i) The number of vacancies available in the promotional (higher) cadre for each of the lower cadres according to the rules of recruitment applicable to it shall be calculated; and (ii) The roster shall be applied separately to the number of vacancies so calculated in respect of each of those lower cadres: Provided also that the serial numbers of the roster points specified in the Reservation Order are intended only to facilitate calculation of the number of vacancies reserved for promotion at a time and such roster points are not intended to determine inter-se seniority of the Government Servants belonging to the Scheduled Castes and the Scheduled Tribes vis-a-vis the Government Servants belonging to the unreserved category promoted at the same time and such inter-se

seniority shall be determined by their seniority inter-se in the cadre from which they are promoted, as illustrated in the Schedule appended to this Act.

4. Protection of consequential seniority already accorded from 27th April 1978 onwards.

- Notwithstanding anything contained in this Act or any other law for the time being in force, the consequential seniority already accorded to the Government servants belonging to the Scheduled Castes and the Scheduled Tribes who were promoted in accordance with the policy of reservation in promotion provided for in the Reservation Order with effect from the Twenty Seventh Day of April, Nineteen Hundred and Seventy Eight shall be valid and shall be protected and shall not be disturbed.

5. Provision for review.

- All promotions to the posts belonging to the State Civil Services shall be within the extent and in accordance with the provisions of the reservation orders and other rules pertaining to method of recruitment and seniority. The Appointing Authority shall revise and redraw the existing seniority lists to ensure that the promotions are made accordingly: Provided that subsequent to such a review, wherever it is found that Government Servants belonging to the Scheduled Castes and Scheduled Tribes were promoted against reservation and backlog vacancies in excess or contrary to extent of reservation provided in the reservation orders shall be adjusted and fitted with reference to the roster points in accordance with the reservation orders issued from time to time by assigning appropriate dates of eligibility. In case, if persons belonging to the Scheduled Castes and the Scheduled Tribes who have already been promoted against reservation or backlog vacancies in excess or contrary to the extent of reservation provisions cannot get adjusted and fitted against the roster points they shall be continued against supernumerary posts, to be created by the concerned administrative department presuming concurrence of Finance Department, in the cadres in which they are currently working, till they get the date of eligibility for promotion in that cadre.

6. Power to make rules.

(1) The State Government, if it deems necessary, may by notification make rules, after previous publication, to carry out the purposes of this Act. (2) 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 the expiry of the session, immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification 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.

7. Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may by order published in the official Gazette, make provisions as appear to it be necessary or expedient for removing the difficulty: (2) Every order made under this section shall as soon as may be after it is made, be laid before each House of the State Legislature.

8. Repeal.

- The Karnataka Determination of Seniority of the Government Servants Promoted on the basis of Reservation (to the posts in the civil services of the State) Act, 2002 (Karnataka Act 10 of 2002) is hereby repealed.

9. Validation of action taken under the provisions of this Act.

- Notwithstanding anything contained in any Judgment, Decree or Order of any court, tribunal or other authority contrary to section 3 and 4 of this Act any action taken or done in respect of any promotions made or purporting to have been made and any action or thing taken or done, all proceedings held and any actions purported to have been done since 27th April, 1978 in relation to promotions as per sections 3 and 4 of this Act, before the publication of this Act shall be deemed to be valid and effective as if such promotions or action or thing has been made, taken or done under this Act and accordingly:-(a) no suit or other proceedings shall be maintained or continued in any court or any tribunal or before any authority for the review of any such promotions contrary to the provisions of this Act; and (b) no court shall enforce any decree or order to direct the review of any such cases contrary to the provisions of this Act.

Schedule

(see the proviso to section 3) If three vacancies of Assistant Commissioner are to be filled by promotion at the same time, by a common order, classification of vacancies would be as follows :

1st. ... Scheduled Caste

2nd. ... Scheduled Tribe

3rd. ... Unreserved

If the seniority of persons in the cadre of Tahsildars who are eligible and qualified and whose cases are to be considered at that time is as indicated below, A ... Scheduled Caste B ... Unreserved C ... Scheduled Tribe D ... Unreserved E ... Unreserved then, on promotion, their inter-se seniority in the cadre of Assistant Commissioners, will be as follows : A ... Scheduled Caste B ... Unreserved C ... Scheduled Tribe If on the other hand the seniority of the Tahsildars at that time is as indicated below, A ... Unreserved B ... Unreserved C ... Unreserved D ... Scheduled Caste E ... Scheduled

Then their inter-se seniority, on promotion, in the cadre of Assistant Commissioners will be as follows :A ... UnreservedD ... Scheduled CasteE ... Scheduled TribeThe above translation of PÀŁÁõlPÀ