

The Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006

PUNJAB

India

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Act 22 of 2006

- Published on 5 October 2006
- Commenced on 5 October 2006
- [This is the version of this document from 5 October 2006.]
- [Note: The original publication document is not available and this content could not be verified.]

The Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006(Punjab Act No. 22 of 2006)Statement of Objects and Reasons - Under Article 16(4) of the Constitution, the State can provide reservation to those Backward Class Citizens, which are not adequately represented in its services. Article 16(4)(A) further provides that nothing can prevent the State from making any provision for reservation in matters of promotion with consequential seniority to any class or classes of posts in the services under the State in favour of Scheduled Castes which in the opinion of the State are not adequately represented in the services under the State.² As per the existing reservation policy/instructions of the Government, 25% reservation has been provided to the members of Scheduled Castes and 12% to the members of Backward Classes in direct recruitment in all services i.e. Class I, II, III and IV with effect from 6th June, 1974 and 30th December, 1996 respectively. Further 20% reservation in promotion in class III and IV and 14% in Class I and II services has since been provided to the members of Scheduled Castes. This percentage was fixed in the year 1966 and 1974 respectively.³ It has been that the representation of Scheduled Castes and Backward Classes in Class I, II, III and IV services has been found inadequate.⁴ Policy instructions relating to reservation are often challenged in the various courts, which frustrate the effective implementation of reservation in accordance with the provisions of Articles 335, 16(4) and 16(4B) of the Constitution of India.⁵ It has been felt necessary to implement 81st amendment of Constitution of India to clear the backlog of vacancies meant for Scheduled Castes.⁶ Instructions dated 5th May, 1975 fixing 50% quota of Scheduled Castes for Balmikis and Mazbi Sikhs as a first preference from amongst the Scheduled Castes were challenged in the Hon'ble Punjab and Haryana High Court by Shri Attar Singh Dhoor and others by filing C.W.P. No. 15302 of 2005. In the light of the Hon'ble Supreme Court Judgment delivered by a Constitutional Bench on 5th November, 2004 in the case of E.V. Chinnaiah versus State of Andhra Pradesh and Others, the Hon'ble High Court has quashed these instructions, - vide its judgment delivered on 25th July, 2006.⁷ Consequent upon the decision taken in the meeting held on 10th August, 2006 under the Chairmanship of

Hon'ble C.M., Punjab, a unanimous decision was taken to enact Reservation Act and to provide therein a provision of 50% quota of Scheduled Castes in the services for Mazbi Sikhs 8. Hence, there is necessity to enact Reservation Act to safeguard the interests of Scheduled Castes and Backward Classes in the State. Published by Punjab Government Gazette (Extra.), dated September 15, 2006, Page 1837. [Dated the 5th October, 2006] Department of Legal and Legislative Affairs, Punjab No. 33-Legislative/2006. - The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on the 4th October, 2006, and is hereby published for general information :- An Act to provide for reservation in services for the members of Scheduled Castes and Backward Classes and for the matters connected therewith or incidental thereto.

1. Short title and commencement.

(1) This Act may be called the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006. (2) It shall come into force at once.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a) "appointment" means an appointment made by direct recruitment, by promotion or by transfer of a person already in service of the Government of India or a State Government; (b) "Backward Class" means a Backward Class, declared as such by the State Government by notification in the Official Gazette from time to time; (c) "establishment" means any office of the State Government, a local authority or a statutory authority constituted under any State Law for the time being in force, or a Board or Corporation in which not less than fifty-one per cent of the paid up share of capital is held by the Government of the State of Punjab and includes a university or college affiliated to the university, primary and secondary schools and other educational institutions, which are owned by the State Government and also includes an establishment in public sector; (d) "establishment in public sector" means any industry, trade, business or occupation owned, controlled or managed by, -(i) the State Government; and (ii) Government Company as defined in Section 617 of the Companies Act, 1956, in which not less than fifty-one per cent of the paid up share capital is held by the Government of the State of Punjab; (e) "prescribed" means prescribed by the rules made under this Act; (f) "Scheduled Castes" means Scheduled Castes, notified by the President of India under Article 341 of the Constitution of India by the Constitution (Scheduled Castes) Order, 1950, as amended from time to time; (g) "section" means section of this Act; and (h) "State Government" means Government of the State of Punjab in the Department of Welfare of Scheduled Castes and Backward Classes.

3. Act not to apply in relation to certain employments.

- This Act shall not apply to, -(a) any employment under the Central Government; (b) any employment in private sector; and (c) any employment in domestic service.

4. Percentage of Reservation.

(1) While making appointments in services by any of the methods, provided under any Service Rules, reservation shall be made for the members of the Scheduled Castes and Backward Classes in the services under all the establishments. (2) The percentage of reservation for filling up the vacancies by direct recruitment or by transfer in Group 'A', Group 'B', Group 'C' and Group 'D' services, shall be twenty-five per cent for Scheduled Castes and twelve per cent for Backward Classes. (3) [The percentage of reservation for filling up the vacancies by promotion by Scheduled Castes in Group 'A' and Group 'B' Services shall be fourteen per cent. (4) The percentage of reservation for filling up the vacancies by promotion by Scheduled Castes in Group 'C' and Group 'D' Services shall be twenty per cent.] [Inserted by Punjab Act No. 17 of 2018, dated 14.9.2018.] (5) Fifty per cent of the vacancies of the quota reserved for Scheduled Castes in direct recruitment, shall be offered to Balmikis and Mazhbi Sikhs, if available, as a first preference from amongst the Scheduled Castes. (6) Reservation shall be implemented by reserving vacancies by means of a running roster, as may be prescribed till the percentage of reservation, as specified in sub-sections (2), (3) and (4), are completed. (7) Reservation shall be applicable to vacancies to be filled on ad hoc basis, short term vacancies, work charged establishment, daily wages staff and the staff engaged on contract basis. (8) [Reservation shall also be applicable to proforma promotion and appointment by transfer.] [Added by Punjab Act No. 17 of 2018, dated 14.9.2018.]

5. Certificate of identification.

(1) A candidate, who claims to be a member of Scheduled Castes, shall support his candidature as such by a certificate of caste identification, issued under the Constitution (Scheduled Castes) Order, 1950, notified by the President of India for the State of Punjab. (2) A candidate, who claims to be a member of Backward Classes, shall support his candidature as such by a certificate of class identification as per the notification, issued by the State Government in this regard from time to time.

6. To implement backlog of vacancies.

(1) The backlog or carry forward reserved vacancies for Scheduled Castes shall be treated as a separate class of vacancies and the ceiling of fifty per cent on filling up these reserved vacancies in succeeding year or years, shall not apply to such class of vacancies. (2) The vacancies, referred to in sub-section (1), shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year. (3) The backlog or carried forward reserved vacancies for Scheduled Castes shall be calculated keeping in view the total number of vacancies filled up in each cadre or service.

7. De-reservation of reserved vacancy.

(1) There shall be no de-reservation of any reserved vacancy by any appointing authority in any establishment, which is to be filled up by direct recruitment or by promotion. In case, a qualified or

eligible Scheduled Castes or Backward Classes candidate, as the case may be, is not available to fill up such vacancy, in that situation, such vacancy shall remain unfilled.(2)Notwithstanding anything contained in sub-section (1), if, in the public interest, it is deemed necessary to fill up any vacancy referred to in that sub-section, the appointing authority shall refer the vacancy to the Department of Welfare of Scheduled Castes and Backward Classes for de- reservation. Upon such reference, the Department of Welfare of Scheduled Castes and Backward Classes may, if it is satisfied that it is necessary or expedient so to do, by order in writing, de-reserve the vacancy, subject to the condition that the vacancy so de-reserved, shall be carried forward against a subsequent unreserved vacancy.

8. Penalty.

- If any officer or official is found guilty of committing any omission or commission in contravening the provisions of this Act, he shall be punishable under the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 or any other relevant service Rules.

9. Protection of Action Taken in Good Faith.

- No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of the State Government for anything, which is in good faith done or intended to be done in pursuance of any of the provisions of this Act and the rules made thereunder.

10. Power to Remove Difficulties.

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

11. Submission of Annual Report, Maintenance of other records, Roster Register and Inspection thereon.

(1)Every establishment shall maintain such records, roster register or documents in respect of reservation in appointment and promotions, and in such form, as may be prescribed, and shall furnish to the State Government in the prescribed manner an annual report on the appointments and promotions made by it during the previous year reckoned according to the English Calendar.(2)Any officer, authorized by the State Government in that behalf, may inspect any records or documents, which are maintained in relation to the appointments and promotions made by any establishment.(3)It shall be the duty of the Establishment Branch In-charge to produce such records or documents for inspection by the officer authorised under sub- section (2), and furnish such information or afford such assistance, as may be necessary for him to carry out his functions under this Act.

12. Power to make Rules.

(1)The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.(2)In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-(a)to prescribe the form of running roster under sub-section (6) of Section 4;(b)to prescribe the form in which records, roster register or documents are to be maintained under sub-section (1) of Section 11 by every establishment;(c)to prescribe the manner in which annual report on the appointments and promotions made by every establishment is to be maintained and furnished under sub-section (1) of Section 11; and(d)any other matter, which is required to be or may be prescribed.

13. Overriding effect.

- Notwithstanding anything to the contrary contained in any other law for the time being in force, or any judgment, decree, order or decision of any Court or any authority, the provisions of this Act or the rules made thereunder, shall have effect.

14. Saving.

- Notwithstanding anything done or any action taken in pursuance of any instructions, issued before the commencement of this Act to implement the reservation policy by the State Government, shall be deemed to have been done or taken under the corresponding provisions of this Act and the rules made thereunder.