

# **The Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975**

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## **The Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975**

### **Act 38 of 1975**

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The Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 Orissa Act 38 of 1975 Published vide Orissa Gazette Extraordinary No. 1460-dated 1.9.1975. Notification No. 10745, Legislative dated 28.8.1975. An Act to Provide for Adequate Representation of Scheduled Castes and Scheduled Tribes in Posts and Services under The State. Be it enacted by the Legislature of the State of Orissa in the Twenty-sixth Year of the Republic of India, as follows ;

### **1. Short title, extent and commencement.**

(1) This Act may be called the Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975. (2) It shall extend to whole of the State of Orissa. (3) It shall come into force [on such date] [Came into force w.e.f. 1st July, 1976 vide Notification No. 1971 Emp. (i)-36/75 -TRW dated 1.9.1976, published in Orissa Gazette Extraordinary No. 1032, dated 23.6.1976.] as the State Government may, by notification, appoint in that behalf. Preamble. - Object of the Act - The purpose of enactment is to provide for adequate representation of Scheduled Castes and Scheduled Tribes in Posts and Services under the State.

### **2. Definitions.**

- In this Act, unless the context otherwise requires- (a) "prescribed" means prescribed by rules made under this Act; (b) [ "recruitment year" means the calendar year during which recruitment is actually made;] [Substituted by Orissa Act 22 of 1987.] (c) "reservation" means reservation of vacancies in Posts and Services for the Scheduled Castes and the Scheduled Tribes; (d) "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;(e)"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;(f)"select list" means the list of candidates arranged in order of precedence prepared according to the rules and orders issued by the State Government in that behalf and adopted by the competent authority for making appointment in respect of initial recruitment and promotion;(g)"State" includes the Government and the Legislature of the State of Orissa and all [local or other authorities] [Substituted by Orissa Act 9 of 1982.] within the State or under the control of the State Government;(h)[ "selection" means selection made for promotion on the basis of merit and suitability with due regard to seniority;] [Inserted by Orissa Act 22 of 1987.]

### **3. Applicability.**

- This Act shall apply to all appointments to the Posts and Services under the State except-(a)[ Class I posts which are above the lowest rank thereof and meant for conducting or guiding or directing Scientific and Technical research; [Substituted by Orissa Act 22 of 1987.](b)Class I posts which are above the lowest rank thereof and classified as scientific posts;](c)tenure posts;(d)those filled up on the basis of any contract;(e)ex-cadre posts;(f)[ those which are filled up by transfer within the cadre or on deputation; [Substituted by Orissa Act 22 of 1987.](g)the appointment of, such staff the duration of whose appointment does not extend beyond the term of office of the person making the appointment and the work charged staff which are required for emergencies like flood relief work, accident restoration and relief etc.];(h)temporary appointments of less than forty-five days duration;[(h-1) those which are required to be filled up by appointment of persons under the rehabilitation assistance given to the members of the family of the deceased of permanent disabled employee who suffers from the disability while in service;] [Inserted by Orissa Act 22 of 1987.](i)those in respect of which recruitment is made in accordance with any provision contained in the Constitution.[\* \* \*] [Omitted by Orissa Act 22 of 1987.]

### **4. Reservation and the percentage thereof.**

(1)Except as otherwise provided in this Act, the vacancies reserved for the Scheduled Castes and the Scheduled Tribes shall not be filled up by candidates not belonging to the Scheduled Castes and Scheduled Tribes.(2)The reservation of vacancies in Posts and Services shall be at such, percentage of the total number of vacancies as the State Government may, from time to time, by, order, determine:[Provided that the percentage so determined shall, in no case, be less than percentage of the persons belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be, in the total population of the State:Provided further that there shall be no reservation of vacancies to be filled up by promotion where(a)the element of direct recruitment in the grade or cadre in which the vacancies have occurred is more than sixty-six and two-third percent;(b)the vacancies have occurred in Class I posts and are to be filled up by promotion through limited departmental examination; or(c)the vacancies have occurred in Class I posts which are above the lowest rung thereof, and are to be filled upon the basis of selection.]Explanation. - The expression "population" means the "population" as ascertained at the last Census for which the relevant figures have been

published.(3)[ Notwithstanding anything contained in this section, one third of the vacancies in Class II, Class III (including those specially declared to be Gazetted) and Class IV Services and Posts, reserved for the Scheduled Castes and Scheduled Tribes in a year, which are required to be filled up by direct recruitment, shall be reserved for women belonging to the respective communities and, in the event of non-availability or availability of insufficient number of eligible woman candidates belonging to any particular community, the vacancies or, as the case may be, the remaining vacancies shall be filled up by male candidates of that community] [Inserted by Orissa Act 15 of 1993.]

## **5. Model roster.**

(1)The State Government shall prescribe model rosters indicating the number of vacancies to be reserved for the Scheduled Castes and the Scheduled Tribes and the number to be left unreserved.(2)The appointing authorities shall maintain rosters in the prescribed form.(3)The rosters shall be consulted for ascertaining the number of reserved vacancies but the appointments shall be made in accordance with the order of precedence as shown in the select list.

## **6. Exchange of reservation between the Scheduled Castes and Scheduled Tribes.**

- The reserved vacancies in appointments shall be exchanged between the Scheduled Castes and Scheduled Tribes in the event of non-availability of candidates from the respective communities, but the vacancies reserved for a particular community shall continue to be reserved for that community only for two recruitment years and if candidates, are not available for appointment in particular reserved vacancies in the third year, the vacancy so filled by exchange shall be treated as reserved for the candidates of that particular community who are actually appointed:[Provided that nothing in this section shall apply to reserved vacancies in appointments in respect of Class III and Class IV posts and services.] [Inserted by Orissa Act 11 of 1992.]

## **7. Carry-forward of reservation and de-reservation.**

- If, in any recruitment year, the number of candidates either from Scheduled Castes or Scheduled Tribes is less than the number of vacancies reserved for them even after exchange of reservation between the Scheduled Castes and Scheduled Tribes, the remaining vacancies may be filled up by general candidates after de-reserving the vacancies in the prescribed manner, but the vacancies so de-reserved may be carried forward to subsequent three years of recruitment:Provided that in the years following the recruitment year the normal reserved vacancies together with the vacancies carried forward shall not exceed fifty per cent of the total number of vacancies of the year in which recruitment is made and the excess over fifty per cent of the reserved vacancies shall be carried forward to subsequent years of recruitment.[Provided further that the provisions of this section shall not apply to the reserved vacancies to be filled up by promotion on the basis of selection where such promotion is to be made -(a)from Class III posts to Class II posts,(b)within Class II posts,(c)from Class II posts to Class I posts, and(d)from posts, in the lowest rung of Class

I.][Provided also that nothing in this Section shall apply to the vacancies reserved in respect of Class III and Class IV posts, if candidates are not available for filling up such reserved vacancies these remaining vacancies shall be filled up by holding fresh recruitment only from candidates belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be, and Sub-Section (5) of Section 9 shall not apply to such vacancies.] [Added by Orissa Act 9 of 1982.]

## **8. Relaxations and concessions.**

- For initial appointment-(a)the upper age-limit prescribed for recruitment shall be increased by five years,[(a-1) the qualification regarding experience, if any, may be relaxed up to two years by the Orissa Public Service Commission, the Selection Board or the competent authority, as the case may be, provided such relaxation is not inconsistent with efficiency.] [Added by Orissa Act 9 of 1982.](b)[fees prescribed for admission into any competitive examination or interview for recruitment shall be exempted] [Substituted by Orissa Act 5 of 1987, w.e.f. 26.11.1986.](c)the Scheduled Caste and Scheduled Tribe candidates shall be paid travelling allowance to attend competitive recruitment examination or interview at such rate as may be prescribed.

## **9. Manner of initial recruitment.**

(1)For recruitment through Employment Exchange, in the requisition sent to the Exchange, the number of vacancies reserved for Scheduled Castes and Scheduled Tribes shall be specified against the total number of vacancies.(2)For recruitment made through the Orissa Public Service Commission or any Selection Board on the basis of competitive examination or interview, the advertisement shall specify the number of vacancies reserved for Scheduled Castes and Scheduled Tribes against the total number of vacancies.(3)[ In the case of direct recruitment otherwise than by written examination in respect of reserved vacancies in such non-technical and quasi technical posts in Class III and Class IV, as may be notified by the State Government, the best among the available Scheduled Caste and Scheduled Tribe candidates may be selected, provided they possess the minimum qualification required for the post or service.] [Substituted by Orissa Act 9 of 1982.](4)If the required number of Scheduled Caste and Scheduled Tribe candidates are not available for filling up the reserved vacancies a fresh recruitment may be made only from candidates belonging to the Scheduled Castes or the Scheduled Tribes as the case may be, for filling up the remaining reserved vacancies.(5)If after holding such fresh recruitment candidates belonging to the Scheduled Castes or the Scheduled Tribes are still not available or if the number of such candidates is less than the number of reserved vacancies, the vacancies which remain unfilled shall be filled up by general candidates in accordance with the procedure laid down in Sections 6 and 7.

## **10. Promotion based on seniority-cum-fitness.**

(1)Where promotion is to be made on the basis of seniority subject to fitness, the Scheduled Caste and Scheduled Tribe officers shall be promoted to the next higher post or grade against reserved vacancies provided they possess the minimum qualifications and experience required for such promotion.(2)The number of reserved vacancies shall be determined on the basis of the reserved points shown in the roster maintained under Section 5.(3)[ There shall be no zone of consideration

in respect of promotions based on seniority subject to fitness.] [Inserted by Orissa Act 22 of 1987.]

## **11.**

[\* \* \*] [Omitted by Orissa Act 18 of 1988.]

### **11A. [ [Substituted by Orissa Act 22 of 1987.]**

(1)Where promotion is to be made on the basis of selection, the procedure for filling up of the reserved vacancies shall be as may be prescribed and the number of reserved vacancies will be determined on the basis of the reserved points shown in the roster maintained under Section 5.(2)Except the promotions mentioned in Sub-Section (3) of Section 10;(a)there shall be a separate zone of consideration for Scheduled Caste and Scheduled Tribe candidates in respect of promotions to Class III posts and within Class III posts;(b)there shall be a common zone of consideration in respect of promotion other than those specified in Clause (a).(3)The extent of the zone of consideration shall be as may be prescribed.] [Inserted by Orissa Act 11 of 1992.]

## **12. Selection from different services.**

- Where selection is to be made from different services, the recruiting or appointing authority shall select Scheduled Caste and Scheduled Tribe candidates to the extent of the reserved quota, provided such candidates satisfy the minimum conditions of suitability, qualifications and experience laid down in respect of the posts concerned.

### **12A. [ Irregular appointments to be voidable. [Inserted by Orissa Act 9 of 1982.]**

- All appointments made in contravention of the provisions of this Act, after the commencement of the Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 1982 shall be treated as voidable.] [Substituted by Orissa Act 22 of 1987.]

### **12B. [ [Inserted by Orissa Act 22 of 1987.]**

Any appointing authority who makes the appointment in violation of this Act and Rules made thereunder shall, on conviction, be punished with a fine which may extend to [Five thousand rupees]. The Government may also draw up disciplinary proceedings against the authority concerned and punishment so imposed shall be recorded in his confidential character roll :Provided that nothing contained in this section shall apply in relation to an appointment to which the Governor is the appointing authority.]

### **13. Submission of annual report, maintenance of other records and inspection thereof.**

(1) Every appointing authority shall furnish to the Government, in the prescribed manner an annual report on appointments by the end of the month of [April of the succeeding calendar year] [Substituted by Orissa Act 18 of 1988.] and maintain such other records as may be prescribed. (2) Any officer authorised by the State Government in that behalf [hereinafter referred to as the inspecting officer] [Substituted by Orissa Act 18 of 1988.] may inspect any record or documents and require the appointing authority to produce the roster and other records relating to appointments made by him which are maintained in his office. (3) It shall be the duty of the appointing authority to produce such records and documents, furnish such information and afford all such assistance and facilities as may be necessary for the aforesaid purpose.

#### **13A. [ [Inserted by Orissa Act 15 of 1993.]**

(1) It shall be the duty of every Inspecting Officer to institute prosecution against an appointing authority who is found during his inspection under Sub-section (2) of Section 13 to have made any appointment in violation of this Act and Rules made thereunder subject to the previous sanction of an authority who is one level above, the said appointing authority and to whom such appointing authority is subordinate. (2) The authority competent to accord sanction under Sub-Section (1) may, on receipt of a reference for such sanction from the Inspecting Officer, either accord such sanction or refuse it if he so considers appropriate for reasons to be recorded in writing and shall, in every case of such reference, communicate his decision to the Inspecting Officer concerned within thirty days from the date of receipt of the reference. (3) Nothing in this section shall be construed to prevent any person from making a complaint to any Court alleging commission of an offence under Section 12-8.]

### **14. Nomination of Liaison Officer.**

- In each department of the Government, an officer not below the rank of an Under-Secretary authorised by the Secretary of the Department in that behalf shall act as Liaison Officer in respect of the matters provided in this Act who shall be specially responsible for -(a) ensuring proper implementation of the provisions of this Act and the Rules made thereunder; (b) ensuring compliance by the subordinate authorities; (c) ensuring timely submission of returns; (d) conducting annual inspection of rosters and such other records as may be prescribed; (e) acting as Liaison Officer between the Administrative Department and the [Harijan and Tribal Welfare] [Substituted by Orissa Act 18 of 1988.] Department; and (f) ensuring necessary assistance to the [Harijan and Tribal Welfare] [Substituted by Orissa Act 18 of 1988.] Department and the Commissioner for Scheduled Castes and Scheduled Tribes in the investigation of complaints received from organisations or individuals belonging to the Scheduled Castes and Scheduled Tribes.

## 15. Constitution of Standing Committee.

(1) There shall be a Standing Committee consisting of the following members, namely:

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| (a) Minister [Harijan and Tribal Welfare] [Substituted by Orissa Act 18 of 1988.]                                    | Chairman  |
| (b) Five members of the Orissa Legislative Assembly to be elected in such manner as may be determined by the Speaker | Members   |
| (c) Chief Secretary to Government  | Member    |
| (d) Secretary to Government, Home Department   | Member    |
| (e) Secretary to Government, [Harijan and Tribal Welfare] [Substituted by Orissa Act 18 of 1988.] Department         | 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 they deem fit.

## 16. 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) suggesting 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.

## 17. Annual report.

- The State Government shall prepare an annual report on the working of this Act and lay the same before the Legislative Assembly for a period of not less than fifteen days in the [succeeding calendar year.] [Substituted by Orissa Act 18 of 1988.]

## 18. Rule-making power.

(1) The State Government may after previous publication, make rules to carry out all or any of the purpose of this Act. (2) In particular and without prejudice to the generality of the foregoing powers, they may make rules in-respect of all matters expressly required or allowed by this Act to be prescribed. (3) All rules made under this Act shall, as soon as may be, after they are made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one or more sessions and, if during the said period, the State Legislature makes modifications, if any, therein the rules shall thereafter have effect only in such modified form, so, however, that such modifications shall be without prejudice to the validity of anything previously done under the rules.

## **19. Overriding effect of the Act.**

- The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law or in any rule, order or resolution made by the State Government.