

S.C. upholds job reservation 50 p.c. ceiling: 10 p.c. extra quota quashed Advanced sections to be excluded

From Our Legal Correspondent

NEW DELHI, Nov. 16.

A special nine-judge Bench of the Supreme Court, by a majority today upheld the 27 per cent reservation for backward classes ordered by the V. P. Singh Government but ruled that "socially advanced persons" ('creamy layer') within the Socially and Educationally Backward Classes (SEBCs) should be excluded in the matter of implementation of the Government orders.

The orders dated August 13, 1990 were issued by the V. P. Singh Government specifying 27 per cent reservation to the SEBCs in Central Government services and public undertakings.

(The "advanced sections," according to the judges' are those who have acquired the capacity to compete with the forward classes).

According to the order, the reservation was given to the candidates belonging to those SEBCs as specified in the Mandal Commission report read with the relevant 'State lists' (on SEBCs) in the States concerned.

The majority judges declared as "invalid and inoperative" Clause (ii) of the Central Government order dated September 25, 1991, issued by the Narasimha Rao Government, reserving 10 per cent in civil posts and services under the Government of India "for other economically backward sections of the people who are not covered by any of the existing schemes of reservation."

The majority judgment also said that Clause (i) of the September 25 order giving "preference to candidates belonging to poorer sections of SEBCs" in the implementation of August 13, 1990, Central Government order, requires "to uphold its validity — to be read, interpreted and understood as intending a distinction between backward and more backward classes on the basis of degrees of social backwardness and a rational and equitable distribution of the benefits of the reservation amongst them." To be valid, the said clause will have to be read, understood and implemented accordingly, the majority ruled.

The judgment delivered by Mr. Justice B. P. Jeevan Reddy directed the Government to specify, within four months from today, the basis for

applying the relevant and requisite socio-economic criteria to exclude "socially advanced persons/sections ('creamy layer') from Other Backward Classes (OBCs).

It also directed the Government of India, the State Governments and the administrations of Union Territories to constitute, within four

months from today, a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of OBCs. The advice tendered by such a body shall ordinarily be binding upon the Government, the judgment said.

Some States given time

The majority, however, made it clear that its direction (relating to the exclusion of 'creamy layer' from the OBCs) shall "not apply to States where the reservations in favour of backward classes are already in operation." They can continue their reservations.

Such States shall, however, evolve the said criteria, within six months from today, and apply the same to exclude the "socially advanced persons/sections from the designated 'OBCs'.

Mr. Justice Jeevan Reddy pronounced the majority verdict speaking for himself, the Chief Justice, Mr. Kania, Mr. Justice M. N. Venkatachaliah and Mr. Justice A. M. Ahmadi.

Mr. Justice P. B. Sawant, in his separate judgment, agreed with some crucial conclusions contained in the majority judgment.

The majority judgment also clarified and directed that "any and all objections to the criteria that may be evolved by the Government of India and State Governments" (relating to the exclusion of socially advanced persons from the OBCs) as well as "to the classification among backward classes and equitable distribution of benefits of reservations among them that may be made" as contemplated by clause (i) of the September 25 order (issued by the Narasimha Rao Government) — shall be preferred only before the Apex Court and not before or in any other High Court or tribunal.

Similarly, any petition or proceedings questioning the validity, operation or implementation of the two impugned Central Government orders — August 13, 1990 order and September 25, 1991 order — on any grounds whatsoever shall be filed or instituted only before the Apex Court and not before any High Court or other court or tribunal, the majority said.

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