

Govt makes pitch for SC/ST quota in job promotions

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NEW DELHI: The National Democratic Alliance (NDA) government told the Supreme Court on Friday that scheduled castes (SCs) and scheduled tribes (STs) had suffered social inequalities for years and, for the purpose of extending them reservations in government jobs promotions, it should be presumed that they remain underprivileged communities even now.

“It represents thousands of years of backwardness. Affirmative action will have to proceed on the basis of Article 335. State will have to presume that there is backwardness,” attorney general KK Venugopal told a five-judge bench led by CJI Dipak Misra.

Article 335 of the constitution says the State will take into consideration the claims of SCs/STs in making appointments to services and posts.

The bench, also comprising justices Kurian Joseph, RF Nariman, SK Kaul and Indu Malhotra, is considering whether a 2006 Supreme Court judgment, delivered in what is referred to as the Nagaraj case, requires a reconsideration. The apex court had then ruled the State must back the reservations in promotion policy for SCs and STs with quantifiable data to show that the communities do not have adequate representation. It also said that while granting quotas, the State must keep in view the aspect of overall administrative efficiency.

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Since then, the issue has become intensely political with Dalit groups, as well as major political parties, arguing that the verdict blocked reservations in promotions for those belonging to the marginalised communities. In 2012, the legislative route was adopted to alter this, but it could not muster support in the Lok Sabha. In June, the vacation bench of the SC issued an interim order clarifying that the government could go ahead with reservations in promotion.

Prime Minister Narendra Modi has claimed that there was no possibility of revoking reservations in promotion. His rivals, particularly the Bhaujan Samaj Party's Mayawati, have argued that the government has deliberately undermined and blocked reservations. It is an issue with electoral resonance among Dalit and tribal students, government employees, and the middle class.

The bench wondered why centre and states had so far failed to collect "quantifiable data" to justify reservations in promotions despite the 2006 ruling. The Centre wants the top court to reconsider the judgment, terming it non-implementable.

CJI Misra quizzed Venugopal as to how a community's backwardness could be determined without quantifiable data.

"Because it's a dynamic process. People die, retire or are transferred and data keeps fluctuating", replied the AG. He said it was a "practically impossible" task to furnish this data. The top law officer asked the judges to keep in mind that SC and STs had

been socially disadvantaged for over a thousand years.

Justice Joseph asked if there was a roster only at the entry level or for promotions too, to which Venugopal replied that there was one now for promotions. “Since roster is there, it satisfies a quantifiable data. In each case we don’t need to get additional data”, he said. The 2006 judgement, he said, added backwardness as a condition, which goes against the “very grain of reservation.”

Advocating the need for 22.5% reservation in government jobs for SC and STs, AG said it must apply for the communities even in promotions. According to him, the 2006 verdict was unclear as to what it meant by quantifiable data and how it should be determined.

“What is the inadequacy? How is it to be determined? Your lordship has to decide,” Venugopal said.

Opposing this, senior counsel Rajeev Dhavan said backwardness was the pre-requisite for Article 16(4)—the enabling provision for the state to make reservations for any backward classes which are inadequately represented in services.

“This prerequisite does not go away”, he said adding the backwardness of any class has to be proved.” Dhavan dismissed the argument that the 2006 judgement needs a reconsideration.