

2.1.3 Reservation police of college / government.

चि 2-1-5

क्रमांक १०७

बिहार सरकार
कार्मिक एवं प्रशासनिक सुधार विभाग
:: संकल्प ::

विषय : राज्य सरकार के अधीन सभी स्तर के एवं सभी प्रकार के शैक्षणिक संस्थानों में नामांकन हेतु आरक्षण का प्रावधान करने के संबंध में ।

बिहार पुनर्गठन अधिनियम-2000 के आलोक में शेष बिहार में हुए जनसंख्या में परिवर्तन के कारण पदों एवं सेवाओं की रिक्तियों में आरक्षण प्रतिशत को संशोधित करते हुए नया आरक्षण प्रतिशत निर्धारित किया गया है । एतद् संबंधी बिहार अधिनियम-17, 2002 पारित किया जा चुका है ।

2. बिहार अधिनियम 17, 2002 के माध्यम से संशोधित आरक्षण प्रतिशत लागू हो जाने के फलस्वरूप सभी स्तर के एवं सभी प्रकार के शैक्षणिक संस्थानों में नामांकन हेतु बिहार अधिनियम 17, 2002 के अनुरूप आरक्षण की व्यवस्था आवश्यक हो गयी है । अतः सरकार द्वारा निर्णय लिया गया है कि राज्याधीन सभी स्तर एवं सभी प्रकार के यथा सामान्य, तकनीकी, गैर-तकनीकी व्यावसायिक आदि शैक्षणिक संस्थानों में नामांकन हेतु बिहार अधिनियम-17, 2002 के अनुरूप निम्न रूप से आरक्षण की व्यवस्था की जाये:-

1. अनुसूचित जातियों	16 प्रतिशत
2. अनुसूचित जन जातियों	01 प्रतिशत
3. उच्चतम पिछड़ा वर्ग	18 प्रतिशत
4. पिछड़ा वर्ग	12 प्रतिशत
5. पिछड़े वर्ग की महिलाएँ	03 प्रतिशत

3. एतद् संबंधी इस विषय पर निर्गत सभी संकल्प/परिपत्र इस अंश तक संशोधित समझा जाय ।

4. यह आदेश तात्कालिक प्रभाव से लागू होंगे तथा जिन संस्थानों में नामांकन हेतु परीक्षाएँ/आवेदन पत्र लिये जा चुके हैं परंतु नामांकन नहीं हुआ हो तो उस पर भी लागू होंगे ।

आदेश: आदेश दिया जाता है कि इस संकल्प को बिहार राजपत्र के असाधारण अंक में जनसाधारण के सूचनार्थ प्रकाशित किया जाय ।

बिहार राज्यालय के आदेश से,

(अरविंद प्रसाद) 9.2.07
सरकार के सचिव ।

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PATNA CITY

28.08.2019

भारत सरकार
GOVERNMENT OF INDIA
राष्ट्रीय अल्पसंख्यक आयोग
NATIONAL COMMISSION FOR MINORITIES
नई दिल्ली
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2.1.2

pro reservation in
admission

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सं. 10-45/97-NCM
No. 10-45/97-NCM

दिनांक 15/12/98
Dated 15/12/98

to

All the Vice-Chancellors of Universities
(As Per List Enclosed)

Sub.: Admission intake and faculty appointments in Minority managed Educational Institutions - Position regarding reservation for Minority community candidates and reservation for SCs/STs - decision of the Commission - reg.

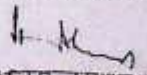
Sir,


I am directed to forward herewith a copy each of the Commission's findings/decision dated 24.9.98 on the issue of reservation for SC/ST candidates in admission intake and faculty appointments in Minority - managed Educational Institutions and further clarification dated 3.10.98 regarding the position of Minority Community candidates standing on their own merit, for information and necessary action.

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You are requested to keep in view the Commission's findings/views/clarification, while dealing with such matters related to the Minority - managed Educational Institutions.

Yours faithfully,


(HASIB AHMAD)
DEPUTY SECRETARY TO GOVT. OF INDIA


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As regards Category II above, the Supreme Court assertively held that:

"The admission of other community candidates shall be done purely on the basis of merit".

According to this mandatory direction of the Supreme Court, in the 50% Category-II admissions in a Minority Educational Institution there can be no reservation or weightage for any class of admission-seekers; here the admissions are to be based "purely" on merit. This decision of the Apex Court rules out any reservation for SC/ST candidates in Category-II.

(ii) As regards admissions in Category I as set by the Supreme Court, as per the judgement these are necessarily to go to candidates of the minority community owning the institution. For obvious reasons, there can be no reservation for SC candidates in this category - at least in an institution established and administered by the Christian or the Muslim minority (members of which two communities can never be SCs).

(iii) The aforementioned Supreme Court decision has not been changed by any later decision of the Apex Court and is, therefore, supreme and binding on the Union and State Governments and applies to all the Minority Educational Institutions (general, technical and professional). It cannot be overruled or negated by any executive order or Government policy. On the contrary, all executive orders and Government policies have to give way to the said Supreme Court decision.

(iv) As regards teaching-faculty appointments in Minority Educational Institutions, insistence on reservation for SC/ST candidates is clearly violative of Article 30 of

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The issue of reservation for SC/ST candidates in admission - intake and faculty-appointments in Minority Educational Institutions
Commission's Findings/Views

1. Under Section 9(1) of the National Commission for Minorities Act 1992, this Commission has the statutory obligation to "monitor the working of the safeguards provided in the Constitution" for the minorities and to "look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters". In discharge of these statutory obligations, the Commission has been considering the abovementioned issue for quite some time and has examined all its Constitutional and legal aspects.

2. The Commission has studied in depth the relevant provisions of the Constitution of India, all the relevant judicial decisions, the University Grants Commission Act 1956, the Education Policy of 1986 and all the other relevant legislation and executive directions. On the basis of a coherent reading of all these, the Commission has arrived at the following findings:

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(1) The Supreme Court of India very clearly laid down the law on admissions to Minority Educational Institutions in its judgment in the case of St. Stephen's College v. University of Delhi, AIR 1992 SC 1620. Affirming that it arrived at that decision "in the light of all the principles and factors and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1)", the Court decided that there have to be two categories for annual admissions in a Minority Educational Institutions, viz.:

(a) Category I : 50% seats
for candidates belonging to the minority community which has established and administers the institution

(b) Category II : 50%
for candidates of "communities other than the minority community" (which runs the institution).

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the Constitution. In the case of Mmedkolod St. Xavier's College v. State of Gujarat, AIR 1974 SC 1309, the Supreme Court has held:

Appointment

The selection and appointment of the teachers for an educational institution is one of the essential elements of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1)... so long as the persons chosen (as faculty teachers) have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right (under Article 30).

(v). In a very recent case - H. Ahmad v. L.V. High School, decided on 7.9.1998 - the Supreme Court has referred to the assertive observation of the Court in an earlier case (Re. Kerala Education Bill, AIR 1958 SC 956) that:

"The right guaranteed under Article 30(1) is a right that is absolute and any law or executive direction which infringes the substance of that right is void to the extent of infringement".

It has added that "the legal position adumbrated in Re Kerala Education Bill remains unchanged now". The Court has emphatically held further that the protective cover of Article 30(1) of the Constitution cannot be chiselled out through any legislative act or executive rule".

3. The aforesaid decisions of the Supreme Court of India are extremely just, humane and equitable - as the minorities surely are "weaker sections" whose "educational and economic interests" must be "promoted with special care", like those of the SCs/STs, as per the Directive Principle of State Policy contained in Article 46 of the Constitution. The interests of SCs/STs, very logically, cannot be promoted at the cost of the interests of other "weaker sections" - as this will amount to introducing an element of 'preference' into Article 46 not warranted by its language or by Article 15(4) of the Constitution.

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In the light of the aforesaid provisions of the Constitution of India and the clear ruling of the Supreme Court, the Commission has arrived at the following Findings/Views:

- i) Under the legal position as it stands, today, the Government policy on SC/ST reservation in the admission in lower and faculty appointments cannot be imposed on the Minority Educational Institutions - especially those belonging to the Christian and Muslim Minorities.
- (ii) Unless Parliament chooses to change this legal position by specific superseding legislation, or the Supreme Court of India itself upturns it by clearly pronouncing a contrary ruling, it remains in force and is absolutely binding on all Governments, governmental agencies, statutory bodies and educational institutions.
- (iii) In view of the above, actions of the UGC imposing SC/ST reservations on the Minority Educational Institutions and withholding their grants or any part thereof for that purpose, being without legal authority and violative of both Constitutional provisions and decisions/directives of the Supreme Court of India, have to be regarded as void ab initio.

5. It is directed that these findings/Views of the Commission be forwarded to the UGC for necessary action and their copies be provided to all those Minority Educational Institutions which have made representations to the NCM in respect of the matter herein dealt with. It is further decided under Rule 16 of the Commission's Rules of Procedure 1983 that these findings/Views will not be treated as confidential and may be furnished to any individual or institution who ask for it.

Approved on behalf of and under the statutory authority of the Commission (under Section 9(1) of the NCM Act 1992).

(Signature)
(Professor Dr. Tehir Inshood)
Chairman, NCM

24 September 1998

(Signature)
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28.09.1998

THE SECRETARY TO THE COMMISSION FOR MINORITIES, NEW DELHI

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Subject: Admission-Intake in Minority Educational Institutions : Position of the Minority-Community candidates standing on their own Merit

COMMISSION'S DECISION/CLARIFICATION

1. An important question relating to admissions in Minority Educational Institutions has been referred to the Commission for clarification. The question is formulated below:

The Supreme Court of India had held in the case of St. Stephen's College vs. University of Delhi (AIR 1992 SC 1630) that "Minority aided educational institutions are entitled to prefer their community candidates to maintain the Minority character of the institutions". For "such intake" the Court had fixed a ceiling of 50%. The question to be decided is: whether a Minority-community candidate standing on his own Merit (in terms of his performance at the qualifying examination) will also be accommodated against this 50% intake? Or, will he be admitted against the general unreserved seats?

The Commission has closely examined this question in the light of relevant laws, judicial decisions and the established practice in respect of other reserved-category admissions.

2. In the judgment cited above, the Supreme Court had upheld the right of the Minority educational institutions "to prefer" their community candidates. "Preference" pre-supposes existence of an option — whereas in respect of those who stand on their own Merit there is no other "option" but to admit them. Obviously, therefore, the 'Rule of Preference' approved by the Court is meant for and will apply only to those Minority-community candidates who do not stand on their own Merit. If a Minority community candidate stands on his own Merit, he does not even need any "preference" and has to be admitted in his own right. To say that he is being admitted on the basis of the 'Rule of Preference' for a particular community is to deny his Merit, and, therefore, a clear violation of the Fundamental Right to Equality.

3. The ceiling of 50% (of the total intake) for the Minority-community candidates was fixed by the Court, specifically, for "such intake" — i.e., for Minority-community candidates covered by the "Rule of Preference". It cannot, therefore, include Minority-community candidates who stand on their own Merit and must be admitted in any case.

4. Looking into the established practice in respect of the admission of Scheduled Castes and Scheduled Tribes against seats reserved for them, it is found that these S.C./S.T. candidates who stand on their own Merit are invariably admitted against the general (unreserved) seats — and not against the quota reserved for these categories. The Constitutional

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