

**GOVERNMENT OF INDIA  
MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT  
LOK SABHA**

**UNSTARRED QUESTION NO.1438  
TO BE ANSWERED ON. 20.09.2020**

**SUPREME COURT'S JUDGEMENT ON PROMOTIONS**

**1438. SHRI SAPTAGIRI SANKAR ULAKA:**

**Will the Minister of SOCIAL JUSTICE AND EMPOWERMENT be pleased to state:**

- (a) whether the Government is aware of the Supreme Court's Judgement on not having reservation as Fundamental rights for Promotions and associated challenges;
- (b) if so, the details thereof;
- (c) whether the Government has taken steps to address the issue - file review petition or come up with legislations to mitigate the issues; and
- (d) if not, the reasons therefor?

**ANSWER**

**MINISTER OF STATE FOR SOCIAL JUSTICE AND EMPOWERMENT  
(SHRI RATTAN LAL KATARIA)**

(a) to (d): Yes sir, while hearing the matter in the case titled, 'All India Equality Forum & Ors vs. UOI & Ors', regarding reservation in promotion, Hon'ble Delhi High Court, vide its Order, dated 23.8.2017, quashed the OM, dated 13.8.1997, which provided for reservation in promotions. Government of India has filed an SLP (No. 31288/2017 titled 'Union of India & Ors Vs. All India Equality Forum & Ors') before the Hon'ble Supreme Court which has been tagged with SLP No.30621/2011, titled 'Jarnail Singh and Ors Vs Lachhmi Narain Gupta & Others', and the said case is presently sub judice along with 116 other tagged cases.

In the Civil Appeal No.1226 of 2020, in the case, titled 'Mukesh Kumar & Anr.Vs. The State of Uttarakhand & Ors', the Hon'ble Court held that the State Government was not bound to make reservations, and that there is no fundamental right which inheres in an individual to claim reservation in promotions. Further, in the Civil Appeal No.3240 of 2011, in the matter, titled 'Pravakar Mallick & Anr. Vs. The State of Orissa & Ors' the Resolution dated 20.3.2002 of the State Government providing consequential seniority to the reserved candidates was quashed by the Hon'ble Supreme Court on the ground that it was not Nagaraj compliant. The issue of litigation in both these cases pertains to the services of employees of

the State Government which fall under List II i.e. "State List" of the Seventh Schedule of the Constitution, and as such, fall within the jurisdiction of the Government of these two States.

Government is fully committed to protect the interests of Scheduled Castes (SCs) and Scheduled Tribes (STs) especially in the matters of appointment and promotion in Government Service.

Government has taken several steps in this direction. Vide the 77<sup>th</sup> Amendment, clause 16(4A) was inserted in the Constitution allowing reservation in promotion for SCs and STs in Government service. Through the 81<sup>st</sup> Amendment, Article 16(4B) was inserted providing carry forward of unfilled reserved vacancies from previous years. Vide 82<sup>nd</sup> Amendment; proviso was inserted in Article 335 of the Constitution allowing the Government to relax the qualifying marks or lowering the standard of evaluation for reserved candidates in matters of promotion to members of SC and ST. Through the 85<sup>th</sup> Amendment, Article 16 (4A) was amended to provide the consequential seniority to the SCs and STs in the matters of promotions.

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