

നക്ഷത്ര ചിഹ്നമിടാത്ത
നിയമസഭാ ചോദ്യം നമ്പർ : 42

4.6.2018 ൽ
മറുപടിക്ക്

കേരള അഡ്മിനിസ്ട്രേറ്റീവ് സർവ്വീസിലെ സംവരണം

ചോദ്യം

മറുപടി

ശ്രീ. പി.സി. ജോർജ്ജ്

പിണറായി വിജയൻ
(മുഖ്യമന്ത്രി)

എ) കേരള അഡ്മിനിസ്ട്രേറ്റീവ് സർവ്വീസിലേയ്ക്ക് പരിഗണിക്കുന്ന ഡിപ്പാർട്ടുമെന്റുകളിൽ രണ്ടാം ഗസറ്റഡ് തസ്തികയിൽ സേവനം അനുഷ്ഠിക്കുന്ന പട്ടികജാതി പട്ടികവർഗ്ഗത്തിൽപ്പെട്ട സർക്കാർ ജീവനക്കാരുടെ പ്രാതിനിധ്യം എത്ര ശതമാനം വീതമാണ്; വ്യക്തമാക്കാമോ;

എ) പ്രത്യേകമായി കണക്കാക്കിയിട്ടില്ല.

ബി) കെ.എ.എസ്.ന്റെ സീം 2 ലും കെ.എ.എസ്. സീം 3 ലും പട്ടികജാതി/പട്ടികവർഗ്ഗ വിഭാഗങ്ങൾക്ക് ഭരണഘടനയുടെ ആർട്ടിക്കിൾ 16(4A) പ്രകാരം സംവരണം നൽകുന്നതിന് എന്തെങ്കിലും നിയമതടസ്സം ഉണ്ടോ; എങ്കിൽ വ്യക്തമാക്കാമോ;

ബി) ഇത് സംബന്ധിച്ച അഡ്വക്കേറ്റ് ജനറൽ നൽകിയിട്ടുള്ള നിയമോപദേശം അനുബന്ധമായി ചേർക്കുന്നു,

സി) 1995-ലെ 77-ാം ഭരണഘടന ഭേദഗതി പ്രകാരം ഭരണഘടനയിൽ ഉൾപ്പെടുത്തിയ ആർട്ടിക്കിൾ 16(4A)യ്ക്ക് അനുസൃതമായി 1958-ൽ നിലവിൽ വന്ന കേരള സ്റ്റേറ്റ് & സബോഡിനേറ്റ് സർവ്വീസ് ചട്ടങ്ങളിലെ ബൈട്രാൻസ്ഫർ, ബൈപ്രമോഷൻ സംബന്ധിച്ച ചട്ടങ്ങളിൽ ഭേദഗതി വരുത്തുവാൻ കേരള സർക്കാർ നടപടി സ്വീകരിക്കുമോ; വിശദമാക്കുമോ?

സി) ഇപ്പോൾ പരിഗണനയിലില്ല.

Aji B
സെക്ഷൻ ഓഫീസർ

Perro orimwo

No. S.S. 7/2018/AG

15th March, 2018

The Hon'ble Chief Minister
Government of Kerala
Thiruvananthapuram.

Dear Sir,

Sub:- Reservation to the Scheduled Caste & Tribes in Kerala
Administrative Service – legal opinion forwarding of – reg.

Ref: 1. Letter dated 17.02.2018 of Honourable Chief Minister to
the Advocate General

2. Representation of Advocate K. Somaprasad, Secretary
of the Scheduled Caste Welfare Committee

As per the above representation dated Nil, the Scheduled Caste
Welfare Committee requested to make reservation in the selection and
appointment to the posts under Kerala Administrative Service in all the
three Streams.

The Kerala Administrative Service was formed in the State of
Kerala as per SRO No.861/2017 published in Kerala Gazette Extra
Ordinary dated 29.12.2017. The Kerala Administrative Service Rules,
2018 came into force with effect from 01.01.2018. The objectives of
bringing into force Kerala Administrative Service is to build a cadre of
public servants as the second line of managerial talents for Government
for effective implementation of Government policies and programmes
and to provide opportunities for growth for bright, talented and

committed officers in Government Service and prepare them for senior level administrative and managerial positions in public service and also to constitute the feeder category for the recruitment to Indian Administrative Service in Kerala Cadre through appointment by promotion from State Civil Service category superseding the existing rules in this regard. Rule 5 of the Kerala Administrative Service Rules, 2018 provides that the Rules of reservation of appointment in Rules 14 to 17 of KS & SSR shall apply to appointment by direct recruitment to Kerala Administrative Service under Stream-I under Rule 12 - Method of appointment and qualification. As per Rule 12 of Kerala Administrative Service there are three categories i.e. Stream-I(Direct Recruitment), Stream-II(By transfer Recruitment from Regular Employees or approved probationers in any Government Departments) and Stream III(By transfer appointments from Candidates holding first Gazetted post or above any Department in Schedule -I and equivalent post in common categories listed in Scheduled-I). As per Rule 5, reservation is applicable to Stream-I and not applicable to Streams II and III for which the method of recruitment is By-transfer.

The reservation in posts under the State is governed by Rule 14 to 17 of the Kerala State and Subordinate Service Rules. As per Rule 14 to 17 the reservation is applicable only for direct recruitment and it is not applicable for by-transfer and by promotion methods. Therefore, Rule 5 of Kerala Administrative Service providing reservation in Stream-I is in accordance with Rule 14 to 17 and not providing reservation in Stream II & III is also in consonance with Rule 14 to 17 KS & SSR.

In the State of Kerala, no reservation is provided either for promotion or for appointment by-transfer. Therefore, the request made:

in the representation to make reservation in Streams-II & III also is not in accordance with reservation policy of the State Government. In case the reservation is made applicable to Streams-II & III that would have wide ramifications for the reason that the same principles has to be applied for the all other posts under the State which are filled up by promotion and by-transfer method of appointment. At present the post which are filled up by promotion or by appointment by transfer do not provide any reservation and therefore, in case reservation is provided to Streams II & III, the employees working in other posts under the State would be discriminated and they may also claim for reservation in promoted post and in the posts filled by appointment by transfer.

In the decision in Indra Sawhney etc etc. Vs. Union of India and others reported in AIR 1993 SC 477, the Hon'ble Supreme Court has held that reservation cannot be made applicable to promotions. The Hon'ble Supreme Court has held that it is settled proposition of law that right to be considered for promotion is a condition of service. Once a person is appointed, he is governed by the conditions of service applicable thereto. Appointment and conditions of service are two separate incidents of service. Condition of service exclusively come with the expression "matters relates to employment" and are covered by Article 16(1) and not by Article 16(4). When all other conditions of service fall outside the purview of Article 16(4) and are exclusively covered by Article 16(1), then where is the justification to bring promotion with Article 16 (4) by giving strained meaning to the expression 'post'. Accordingly the Hon'ble Supreme Court has held that Article 16(4) makes a departure only to the extent it permits the State Government to make any provision for the reservation of appointments or posts at the initial stage of appointment and not in the process of promotion.

In view of the declaration of law made by the Hon'ble Supreme Court in Indra Sawhney's case, Article 16(4A) was introduced by Constitution (Seventy-Seventh Amendment) Act, 1995. As per Article 16(4A) nothing in this Articles prevent State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Caste and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State. Articles 16(4A) is an enabling provision to the Government to make provisions for applying reservation in the matter of promotion also. However the State has to make a study and to form an opinion regarding the adequacy of the members of SC & ST in services under the State. The Kerala Administrative Service is formed only with effect from 01.01.2018 and therefore the adequacy of the members of SC & ST cannot be considered at this stage. Only after filling up the post under the Kerala Administrative Service and no adequate representation of SC & ST is made, then only the power under the enabling provisions of Article 16(4A) can be invoked. It is relevant to note that under the State Service or Subordinate Service, the State Government have not yet invoked the enabling provision under Article 16(4A). Therefore, invoking power under the Article 16(4A) in respect of Kerala Administrative Service only would be discriminatory in respect of other Services. In the decision in Rajendra Vs. Union of India reported in AIR 1968 SC 507 it has been held by the Hon'ble Supreme Court that Article 16 (4) is an enabling provision and the power under Article 16(4) cannot be exercised as a matter of right as the same is a discretion vested with the Government.

In the decision in Suraj Ban Meena Vs. State of Rajasthan & others, reported in (2011) 1 SCC 467 the Hon'ble Supreme Court held that the condition precedent for making provisions for reservation in promotion posts are inadequacy of representation of members of SC & ST and ascertainment of necessity of such reservation. Accordingly the notification providing reservation for promotions for members of SC & ST with consequential seniority issued by the State of Rajasthan without first acquiring the qualifiable data regarding the inadequacy of representation of SC & ST in public services was set-aside by the Hon'ble High Court of Rajasthan and it was upheld by the Hon'ble Supreme Court in that decision reported in 2011 (1) SCC 467. In the above decision the Hon'ble Supreme Court followed the decision in M. Nagaraj's case reported in 2006 (8) SCC 212. The Hon'ble Supreme Court in B.K. Pavithra and others Vs. Union of India and others reported in 2017 (4) SCC 620 has held that the mere fact that there is no proportionate representation in promotional post for reserved category candidates is not by itself sufficient to grant consequential seniority to promotees who are otherwise juniors. The Hon'ble Supreme Court has held that the determination of inadequacy of representation, backwardness and overall efficiency is mandatory for exercising power under Article 16(4A). It is for the State to decide that there was compelling necessity for exercise of such power and decision of the State was based on materials including the study that overall efficiency is not compromised.

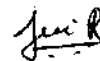
The Kerala Administrative Service is formed as stated in the objectives is to provide effective implementation of Government policies and programmes and therefore the efficiency of service is mandatory. The provisions of Kerala Administrative Service Rules are drafted in such a way to make an efficient service under the State to implement the

policy of the Government. Stream-I, the provision relating to the reservation has already been incorporated. Therefore the principles of reservation is not omitted in the matter of appointment to the post under the Kerala Administrative Service. Therefore I am of the view that there is no necessity to make a reservation in the Stream II & III for which the method of recruitment is by-transfer. The by-transfer selection method was entrusted to the PSC to select the best candidate from among the feeder category to maintain the efficiency of service. All the candidates coming under the feeder category can compete for selection. Therefore there is no discrimination in the selection. Only to maintain the efficiency of service the selection is entrusted with the PSC. Therefore there is no necessity at this stage to make reservation in Stream II & III of Kerala Administrative Service.

Yours sincerely,



C.P. SUDHAKARA PRASAD
ADVOCATE-GENERAL



Section Officer