

Maharashtra State Reservation (Of Seats For Admission In Educational Institutions In The State And For Appointments Or Posts In The Public Services Under The State) For Educationally And Socially Backward Category (Esbc) Act, 2014

1 OF 2015

[09 January 2015]

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Maharashtra State Reservation (Of Seats For Admission In Educational Institutions In The State And For Appointments Or Posts In The Public Services Under The State) For Educationally And Socially Backward Category (Esbc) Act, 2014

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An Act to provide for reservation of seats for admission in educational institutions in the State and of appointments or posts in public services under the State to Educationally and Socially Backward Category (ESBC) in the State of Maharashtra for their advancement and for matters connected therewith or incidental thereto.

WHEREAS the policy of reservation for the educational and social advancement of people belonging to the backward classes of citizens in admissions to educational institutions in the State and for reservation of appointments or posts in public services under the State has been under implementation in the State of Maharashtra since formation of the Maharashtra State;

AND WHEREAS the two notifications, providing for reservation of seats in public employment were issued in the Karveer State (Kolhapur) in the year 1902, on the 26th July 1902 and the 2nd August 1902, respectively, by Rajarshi Shahu Maharaj, who is known as the father of the concept of reservation in India, and from whom Dr. Babasaheb Ambedkar got inspiration to make provisions for reservation in the Constitution of India, and in the said two notifications of 1902, reservation was provided to Backward Classes wherein Maratha community was also included;

AND WHEREAS by Resolution of the then Government of Bombay, dated the 23rd April 1942, about 228 communities including Maratha and other castes were declared as intermediate and Backward community and Maratha community is shown at serial number 149 in the list annexed to the said Resolution;

AND WHEREAS the matter of Maratha reservation was referred to the Maharashtra State Commission for Backward Classes for their recommendations in the year 2004 and the State Backward Classes Commission had submitted its 22nd Report on the 28th July 2008 stating therein that such reservation cannot be given to the Maratha community in the category of "Other Backward Classes";

A N D WHEREAS the Cabinet Sub-Committee after detailed discussion referred the matter back to the State Backward Classes Commission asking for its report on inadequacy of the quantifiable data on educational and social backwardness of the Maratha community and also was requested to give its opinion on whether Maratha community could be given reservation without touching the present structure of reservation;

AND WHEREAS after repeated request to submit the report, the

State Backward Classes Commission insisted only on taking decision as per subsection (2) of section 9 of the Maharashtra State Commission for Backward Classes Act, 2005 on the 22nd Report of the State Backward Classes Commission;

AND WHEREAS the Government appointed the Rane Committee who had submitted adequate quantifiable data pertaining to the backwardness of Maratha community and thereafter the State Backward Classes Commission was again requested to offer its remarks on the issue of providing reservation to Educationally, Socially and Economically Backward Maratha community without affecting the present reservation of Other Backward Classes;

AND WHEREAS the State Backward Classes Commission by its letter dated the 20th May 2014 requested the Government to take decision on the 22nd Report of the Commission;

AND WHEREAS on the above backdrop there was a scope to believe that the State Backward Classes Commission was reluctant to take decision in the matter and hence, the Government decided to take decision after waiting for almost a decade and the Government, in its Cabinet meeting held on the 25th June 2014 decided, to partly reject the 22nd report of the Commission and with certain modifications accepted that Maratha community is Educationally and Socially Backward and hence, eligible for reservation, by virtue of sub-section (2) of section 9 of the Maharashtra State Commission for Backward Classes Act, 2005;

AND WHEREAS the Government of Maharashtra was of the view on the basis of material and data collected by the Rane Committee that Maratha community is Socially, Educationally and Economically Backward and inadequately represented in services under the State, hence, require reservation in employment and reservation for admissions in the educational institutions ;

AND WHEREAS clause (4) of Article 15 of the Constitution of India enables the State to make any special provision for the advancement of any socially and educationally backward classes of citizens;

AND WHEREAS clause (5) of Article 15 of the Constitution of India enables the State to make any special provision, by law, for the advancement of any socially and educationally backward classes of citizens in so far as such special provision relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India;

AND WHEREAS clause (4) of Article 16 of the Constitution of India enables the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State;

AND WHEREAS even otherwise Articles 15(4), 15(5), 16(4) and 46 of the Constitution of India enable the State to provide reservation to a separate class;

AND WHEREAS the State of Maharashtra has enacted the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 in pursuance of clause (4) of Article 16 of the Constitution;

AND WHEREAS the Maharashtra State was of the view that on the basis of material and data collected by the Rane Committee that Maratha community is Socially, Educationally and Economically Backward and inadequately represented in services under the State, hence, require special provision for their advancement;

AND WHEREAS the State Government had, after careful consideration, taken a policy decision to create a new category namely Educationally and Socially Backward Category (ESBC) and, there should be a separate sixteen percent reservation for such newly created Educationally and Socially Backward Category (ESBC) and, the Maratha community was included in the said category, without affecting the then existing fifty-two percent reservation applicable in the State, in admissions to educational institutions including private educational institutions, whether aided or un-aided by the State, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, and in appointments or posts in public services under the State, excluding reserved in favour of the Scheduled Tribes candidates in the Scheduled Areas of the State under the Fifth Schedule to the Constitution of India, as per the notification issued on the 9th June 2014 in this behalf ;

AND WHEREAS both Houses of the State Legislature were not in session;

AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law to create a new Educationally and Socially Backward Category (ESBC) and to provide sixteen percent separate reservation for Educationally and Socially Backward

Category (ESBC) in which Marathacommunity is included under this category, without affecting the then existing fifty-two percent reservation applicable in the State, in admissions to educational institutions including private educational institutions, whether aided or un-aided by the State, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, and in appointments or posts in public services under the State, excluding reservation in favour of the Scheduled Tribes candidates in the Scheduled Areas of the State under the Fifth Schedule to the Constitution of India, as per the notification issued on the 9th June 2014 in this behalf, for their advancement and for the matters connected therewith or incidental thereto; and, therefore, promulgated the Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments or posts in the public services under the State) for Educationally and Socially Backward Category (ESBC) Ordinance, 2014, on the 9th July 2014 ;

AND WHEREAS, it is expedient to replace the said Ordinance by an Act of the State Legislature; it is hereby enacted in the Sixty-fifth Year of the Republic of India as follows :-

1. Short title, extent and commencement :-

(1) This Act may be called the Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments or posts in the public services under the State) for Educationally and Socially Backward Category (ESBC) Act, 2014.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall be deemed to have come into force on the 9th July 2014.

2. Definitions :-

(1) In this Act, unless the context otherwise requires,-

(a) "admission authority" in relation to admissions to educational institutions means the authority having supervisory and controlling powers over the educational institutions responsible for admissions to particular educational institutions;

(b) "appointing authority" in relation to public services and posts means the authority empowered to make appointment to such services or posts;

(c) "Competent Authority" means the Competent Authority appointed under section 6;

(d) "educational institutions" means the educational institutions in the State of Maharashtra owned and controlled by the Government, which receives grant-in-aid from the Government including a University established by or under the relevant Maharashtra Acts, including private educational institutions, whether aided or un-aided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India.

Explanation.-For the purposes of this clause, the expression "private educational institutions" means institutions which have been given either prior to coming into force of this Act or thereafter, aid in the form of Government land at concessional rates or any other monetary concessions by the Government, or are recognized, licensed, supervised or controlled by the Government;

(e) "Educationally and Socially Backward Category (ESBC)" means such category or categories of citizens who are Educationally and Socially Backward Class of citizens and declared by the Government as Educationally and Socially Backward Category (ESBC), from time to time;

(f) "establishment" means any office of the Government or of a local authority or statutory authority constituted under any Act of the State Legislature for the time being in force, or a University or a Company or a Corporation or a Co-operative Society in which share capital is held by the Government or any Government aided institutions.

Explanation.-For the purposes of this clause, the expression "Government aided institutions" shall also include institutions or industries which have been given either prior to coming into force of this Act or thereafter, aid in the form of Government land at concessional rates or any other monetary concessions by the Government or is recognized, licensed, supervised or controlled by the Government;

(g) "Government" or "State Government" means the Government of Maharashtra;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "public services and posts" means the services and posts in connection with the affairs of the State and includes services and posts in-

(i) a local authority;

(ii) a co-operative society established under the Maharashtra Co-operative Societies Act, 1960, in which the Government is a share holder;

(iii) a Board or a Corporation or a statutory body established by or

under a Central or a State Act which is owned and controlled by the Government, or a Government company as defined in the Companies Act, 1956 or the Companies Act, 2013;

(iv) an educational institution owned and controlled by the Government, which receives grant-in-aid from the Government including a University established by or under a Maharashtra Act; and

(v) any other establishment in respect of which reservation was applicable by Government orders on the date of commencement of this Act and which are not covered under sub-clauses (i) to (iv);

(j) "reservation" means the reservation of seats for the members of Educationally and Socially Backward Category (ESBC) for admission in educational institutions in the State and for appointments or posts in the services under the State.

(2) The words and expressions used in this Act, but not defined, shall have the same meanings respectively assigned to them in the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 and in any other relevant Act.

3. Applicability :-

(1) This Act shall apply to all the direct recruitments, appointments or posts made in public services under the State except,-

(a) the super specialized posts in Medical, Technical and Educational field;

(b) the posts to be filled by transfer or deputation;

(c) the temporary appointments of less than forty-five days duration; and

(d) the post which is single (isolated) in any cadre or grade.

(2) This Act shall also apply, for the Educationally and Socially Backward Category (ESBC), for admission in educational institutions including private educational institutions, whether aided or un-aided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India.

(3) The State Government shall, while entering into or renewing an agreement with any educational institution or any establishment for the grant of any aid as provided in the explanation to clauses (d) and (f) of section 2 respectively, incorporate a condition for compliance with the provisions of this Act, by such educational institution or establishment.

4. Reservation of seats for admission in educational institutions, appointments or posts in public services under State for Educationally and Socially Backward Category (ESBC) :-

(1) Notwithstanding anything contained in the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 and notwithstanding anything contained in any judgment, decree or order of any Court or other authority, and subject to the other provisions of this Act, sixteen percent of the total seats in educational institutions including private educational institutions, whether aided or un-aided by the State, other than minority educational institutions referred to in clause (1) of Article 30 of the Constitution of India, and sixteen percent of the total appointments or posts in direct recruitment in public services under the State, shall be separately reserved for the Educationally and Socially Backward Category (ESBC) in which the Maratha community is included:

Provided that, the above reservation shall not be applicable to posts reserved in favour of the Scheduled Tribes candidates in the Scheduled Areas of the State under the Fifth Schedule to the Constitution of India as per the notification issued on the 9th June 2014 in this behalf.

(2) The principle of Creamy Layer shall be applicable to the Educationally and Socially Backward Category (ESBC).

Explanation.-For the purposes of this sub-section, the expression "Creamy Layer" means the person falling in the category of Creamy Layer as declared by the Government in the Social Justice and Special Assistance Department, by general or special orders issued in this behalf, from time to time.

5. Reservation not to be affected :-

Notwithstanding anything contained in section 4, the claims of students or members belonging to Educationally and Socially Backward Category (ESBC) shall also be considered for the unreserved seats, appointments or posts which shall be filled on the basis of merit, and where a student or member belonging to such category is selected on the basis of merit, the number of seats, appointments or posts reserved for the Educationally and Socially

Backward Category (ESBC), as the case may be, shall not in any way be affected.

6. Competent Authority :-

(1) The Government may, by notification in the Official Gazette, appoint any officer not below the rank of District Social Welfare Officer to be the Competent Authority for the purposes of carrying out the provisions of this Act and the rules made thereunder.

(2) The Competent Authority shall exercise such powers and perform such functions as may be prescribed.

7. Power of Government to give directions :-

(1) The Government may, in public interest, by order, direct the Competent Authority, from time to time, to make an enquiry or to take appropriate proceedings under this Act specified in the order, and the Competent Authority shall report to the Government, the result of the enquiry made or the proceedings taken by him within such period as may be prescribed.

(2) On receipt of the report from the Competent Authority under subsection (1), the Government shall give such directions as it deems fit and such directions shall be final.

8. Carrying forward of reserved vacancies :-

(1) If in respect of any recruitment year, any vacancy reserved for Educationally and Socially Backward Category (ESBC) of persons remains unfilled, such vacancy shall be carried forward up to five years in case of direct recruitment:

Provided that, on the date of commencement of this Act, if any Government Order, Resolution, Circular and Office Memorandum regarding filling of posts is in force then, the same shall continue to be in force unless modified or revoked by the Government and the Government is empowered to revise such Government Orders, Resolutions, Circulars and Office Memorandums :

Provided further that, notwithstanding anything contained in section 17 of this Act, the Government Departments are hereby empowered to give effect to the provisions of this Act including revision of roster prescribed for direct recruitment, as may be necessary, by the Government orders for enforcement and implementation of this reservation:

Provided also that, if the sanctioned posts are not adequate to

allocate atleast one post for each reserved category, then the reserved post shall be filled in by applying the principle of rotation in accordance with the Government roster orders or rules as may be prescribed or modified in this behalf and the Government is empowered to revise the roster points and orders or rules accordingly.

(2) When a vacancy is carried forward as provided in sub-section (1), it shall not be counted against the quota of the vacancies reserved for the concerned category of persons for the recruitment year to which it is carried forward :

Provided that, the appointing authority may, at any time undertake a special recruitment drive to fill up such unfilled vacancies and if such vacancies remain unfilled even after such special recruitment drive then, it shall be filled up in the manner prescribed by the Government.

9. Responsibility and powers for compliance of Act :-

(1) The Government may, by order in writing, entrust upon every admission authority or appointing authority or any officer under such authority, with the responsibility of ensuring the compliance with the provisions of this Act.

(2) The Government may, in the like manner, invest the admission authority or appointing authority or officer with such powers or authority as may be necessary for such authority or officer, to effectively discharge such duty assigned to such authority or officer.

10. Penalty :-

(1) Any admission authority or appointing authority or officer or employee entrusted with the duty or responsibility who wilfully acts in a manner intended to contravene or defeat the purpose of this Act shall, on conviction, be punished with imprisonment for a term which may extend to ninety days or fine which may extend to five thousand rupees, or with both.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government or officer authorized in this behalf by the Government.

11. Power to call for records :-

When it comes to the notice of the Government or is brought to its

notice that any person belonging to Educationally and Socially Backward Category (ESBC) is adversely affected, on account of non-compliance with the provisions of this Act or the rules made thereunder or the Government orders issued in this behalf, by any admission authority or appointing authority, it may call for such records and pass such appropriate orders as it deems fit.

12. Representation in selection committee :-

(1) The Government may, by an order, provide for nomination of officers belonging to Educationally and Socially Backward Category (ESBC) in selections, screening and Department Committee for the purpose of selecting persons for appointment to public services and posts.

(2) The Government may, by an order, grant such monetary or other concessions as may be considered necessary in favour of the Educationally and Socially Backward Category (ESBC).

13. Irregular admissions and appointments void :-

Any admissions or appointments made in contravention of the provisions of this Act shall be void.

14. Competent Authority to be public servant :-

The Competent Authority shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

15. Protection of action taken in good faith :-

No suit, prosecution or other legal proceeding shall lie against the Competent Authority or its officers, for anything which is in good faith done or intended to be done under this Act or the rules or orders made thereunder.

16. Provisions of Act to be in addition to any other law for the time being in force :-

The provisions of this Act shall be in addition to and not in derogation of the provisions contained in any other Act, for the time being in force

17. Power to make rules :-

(1) The State Government may, by notification in the Official

Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in any rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall, from the date of publication of notification of such decision have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

18. Savings :-

(1) The provisions of this Act shall not apply to the cases in which selection process has already been initiated before the commencement of this Act, and such cases shall be dealt with in accordance with the provisions of law and the Government orders as they stood before such commencement.

Explanation.-For the purposes of this section, the selection process shall be deemed to have been initiated where, under the relevant service rules,-

(i) recruitment is to be made on the basis of written test or interview only, and such written test or the interview, as the case may be, has started; or

(ii) recruitment is to be made on the basis of both, written test and interview and such written test has started.

(2) The provisions of this Act shall not apply to admissions in educational institutions and the cases in which the admission process has already been initiated before the commencement of this Act and such cases shall be dealt with in accordance with the provisions of law and the Government orders, as they stood before such commencement. Explanation.-For the purposes of this section, the admission process shall be deemed to have initiated where,-

(i) admission is to be made on the basis of any entrance test, and procedure for such entrance test has started; or

(ii) in case of admission to be made other than on the basis of entrance test, the last date for filling up the application form is lapsed.

19. Power to remove difficulty :-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty :

Provided that, no such order shall be made after expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

20. Repeal of Mah. Ord. XIII of 2014 and saving :-

(1) The Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments or posts in the public services under the State) for Educationally and Socially Backward Category (ESBC) Ordinance, 2014 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any notification, order, resolution, circular, office memorandum issued or appointments made) under the said Ordinance shall be deemed to have been done, taken, issued or made, as the case may be, under the corresponding provisions of this Act.