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NOTIFICATION

The 7th February 2009

No. 2139/I-Legis.8/08 – The following Act of the Odisha Legislative Assembly having been assented to by the Governor on the 3rd February, 2009 is hereby published for general information.

ODISHA ACT 6 OF 2009

**THE ODISHA RESERVATION OF POSTS AND SERVICES
(FOR SOCIALLY AND EDUCATIONALLY BACKWARD
CLASSES) ACT, 2008**

[Received the assent of the Governor the 3rd February, 2009, First published in an Extraordinary issue of the Odisha Gazette dated the 7th February, 2009]

AN ACT TO PROVIDE FOR RESERVATION OF POSTS
AND SERVICES UNDER THE STATE FOR SOCIALLY
AND EDUCATIONALLY BACKWARD CLASSES AND
FOR MATTERS CONNECTED THEREWITH
OR INCIDENTAL THERETO.

Whereas the policy of reservation for the social, economic and educational advancement of the people belonging to the Scheduled Castes and the Scheduled Tribes and for Socially and Educationally Backward Classes for appointments in posts and services under the State have been implemented in the State of Odisha by the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 in case of Scheduled Castes and Scheduled Tribes and by Resolution No.25455/TW dated the 10th September, 1993, as modified from time to time, in case of Backward Class Citizens ;

And whereas the Government of Odisha, in the erstwhile Welfare Department in Resolution No.35758-75-94-N dated the 8th December, 1994 had enhanced the percentage

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of reservation in Civil posts and services for Socially and Educationally Backward Classes in the initial recruitment from 11.25% to 27% as there are peculiar features in the social, economic and physical infrastructure of Odisha to make out special case in terms of the judgement of the Hon'ble Supreme Court in *Indra Sawhney Vrs. Union of India*, reported in AIR 1993 SC-477, for providing reservation beyond the limit of 50% in posts and services under the State ;

And whereas the Odisha Administrative Tribunal in O.A.No.1737 (C)/98-Harapriya Dash *Vrs. State of Odisha* considered the extent of reservation made in favour of Socially and Educationally Backward Classes provided in the said Resolution and by a common order dated the 14th December, 1998 declared that reservation cannot exceed 50% and that the said Resolution dated the 8th December, 1994 is contrary to the principles of law decided by the Apex Court in *Indra Sawhney* case on the ground that by no stretch of imagination, can Odisha be treated as far-flung and remote area and the people of this State out of mainstream of national life ;

And whereas the State Government preferred a writ petition against the said order of the Odisha Administrative Tribunal before the High Court of Odisha, which dismissed the writ petition by judgement and order dated the 17th April, 2007 by taking into consideration the judgement of the Hon'ble Supreme Court in case of *M. Nagraj and others Vrs. Union of India*, reported in 2006 (8) S.C.C. 212 ;

And whereas against the judgement, the State Government further preferred a Special Leave Petition before the Supreme Court and the Supreme Court also dismissed the Special Leave Petition ;

And whereas clause (4) of article 16 of the Constitution 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 the State Government, after careful consideration, have taken a policy decision that the posts and services under the State shall be reserved for the Socially and Educationally Backward Classes to the extent of twenty-seven *per centum* in initial recruitment.

BE it enacted by the Legislature of the State of Odisha in the Fifty-ninth Year of the Republic of India as follows :-

Short title
and extent

1. (1) This Act may be called the Odisha Reservation of Posts and Services (For Socially and Educationally Backward Classes) Act, 2008.

Definitions

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

2. In this Act, unless the context otherwise requires,-

- (a) "appointment" means appointment of a person to any post or service by direct recruitment but does not include promotion ;
- (b) "creamy layer" refers to the individuals at the upper stratum of the backward class as may be prescribed ;
- (c) "prescribed" means prescribed by rules made under this Act ;
- (d) "recruitment year" means recruitment year during which the recruitment is actually made ;

	<p>(e) “Socially and Educationally Backward Classes” means Backward Classes as defined in clause (a) of section 2 of the Odisha State Commission for Backward Classes Act, 1993 (Odisha Act 16 of 1993)</p> <p>(f) “State” includes the Government, the Legislature of the State of Odisha, local or other Authorities within the State which are under the control of the State Government, an Aided Educational Institution as defined in the Odisha Education Act, 1969 or Institutions, Societies and Companies which are owned or controlled by the State Government or instrumentalities or agencies of that Government. (Odisha Act 15 of 1969)</p>
Percentage of reservation	<p>3. There shall be reserved twenty-seven per centum of the posts and services under the State, in case of direct recruitment, for Socially and Educationally Backward Classes subject to the exclusion of creamy layer :</p> <p>Provided that if a candidate belonging to the Socially and Educationally Backward Class is selected on his own merit while competing with others and secures an appointment, his appointment as such shall be shown against the post left unreserved and his appointment as such shall not be added to any post reserved for the Socially and Educationally Backward Classes and shall not be taken into consideration for working out the percentage of reservation meant for the Socially and Educationally Backward Classes.</p>
Model Roster	<p>4. Model Roster :- (1) The State Government shall prescribed model rosters indicating the number of posts and services to be reserved for the Socially and Educationally Backward Classes and the number to be left unreserved :</p> <p>Provided that no such roster shall operate after the required percentage of the reservation is achieved in a grade or cadre and the posts released thereafter by retirement, resignation, promotion or otherwise of the persons belonging to the unreserved or reserved category, as the case may be, are to be filled up by appointment of person belonging to the respective category, so that the prescribed percentage of reservation is maintained.</p> <p>(2) The appointing authorities shall maintain rosters in the prescribed form.</p> <p>(3) The rosters shall be consulted for ascertaining the number of posts reserved but the appointments shall be made in order of merit as shown in the select list.</p>
Carry forward of reservation, and dereservation	<p>5. If, in any recruitment year, the number of candidates from Socially and Educationally Backward Classes is less than the number of posts reserved for them, the remaining posts shall be filled up by the candidates belonging to unreserved category after de-reserving the posts in the prescribed manner and the posts so de-reserved may be carried forward to subsequent three years of recruitment.</p>
Percentage of reservation	<p>6. Relaxation :- For appointment of candidates belonging to Socially and Educationally Backward Class–</p> <p>(a) the upper age limit prescribed for the recruitment shall be increased by five years ; and</p> <p>(b) any other relaxation or concession may be allowed by the State Government as may be prescribed.</p>
Continuance of Resolution, orders etc.	<p>7. Any order, Resolution by whatever name called, issued by the State Government and as amended from time to time in the matter of Creamy Layer, de-</p>

reservation, carry forward including model roster indicating the number of posts reserved for such Socially and Educationally Backward Classes or any other matter concerning such classes so far as it is not inconsistent with the provisions of this Act, be deemed to have been made under this Act unless such order, resolution etc. is superseded after commencement of this Act.

Overriding effect	8. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law for the time being in force.
Rule making power	9. (1) The State Government may, after previous publication, make rules to carry out all or any of the purpose of this Act. (2) In particular and without prejudice to the generality of the foregoing powers, they may make rules in respect of all matters expressly required or allowed by this Act to be prescribed.
Validation	10. Notwithstanding anything contained in any judgement, decree or order of any Court or Tribunal, the reservation of twentyseven <i>per centum</i> made or anything done or any action taken on the basis of such reservation for appointment to the posts and services under the State, during the period commencing on the 8th December, 1994 and ending with the date of commencement of this Act shall, for all purposes, be deemed to be and to have always been, validly made, done or taken in accordance with law, as if this Act was in force at all material times when such reservation was made and such thing done or such action taken.
Irregular appointments to be voidable	11. All appointments made in contravention of the provisions of this Act, after the date of commencement of this Act, shall be treated as voidable.
Penalty for contravention	12. Any appointing authority who makes the appointment in violation of this Act and Rules made thereunder shall, on conviction, be punished with a fine which may extend to five thousand rupees and shall also be liable for disciplinary proceedings and punishment, if any, imposed shall be recorded in his Confidential Character Roll : Provided that nothing contained in this section shall apply to a case where the Governor is the appointing authority.
Nomination of Liasion Officer	13. In each department of the Government including Public Sector Undertakings, an officer not below the rank of Under Secretary authorised by the Secretary of the Department in that behalf shall act as Liasion Officer in respect of the matters in this Act and such other duties as may be prescribed.
Constitution of Standing Committee	14. There shall be a Standing Committee consisting of the following members, namely :- (a) Minister, Minorities and Backward Classes – Chairman Welfare Department, (b) Five members of the Odisha Legislative – Member Assembly to be elected in such manner as may be determined by the Speaker, (c) Chief Secretary to Government, – Member (d) Secretary to Government, Home Department, – Member (e) Secretary to Government, (Minorities – Member and Backward Classes Welfare Department).

Function of
the standing
committee

15. The Standing Committee shall perform the following functions, namely :-

- (a) Review of the implementation of the provisions of the Act and the Rules made thereunder, as far as possible, twice a year;
- (b) Suggesting measures for the removal of difficulties in such implementation or for the improvement thereof; and
- (c) Such other functions as the State Government may, from time to time, assign to the Standing Committee.

Annual report

16. The State Government shall prepare an annual report on the working of this Act and lay the same before the Legislative Assembly for a period of not less than fifteen days in the succeeding calendar year.

Power to
remove
difficulty

17. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the *Odisha Gazette*, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty :

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

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

By order of the Governor

B. K. NAYAK

Principal Secretary to Government
