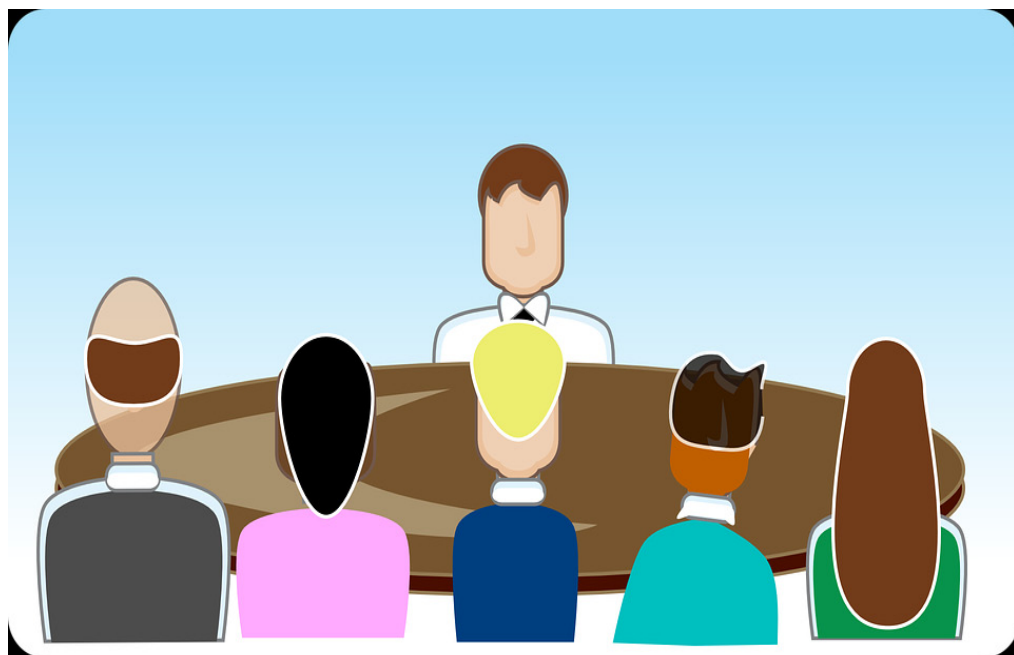


VOCAL FOR LOCALS

On 17 February 2022 the Supreme Court set aside the Punjab and Haryana High Court order staying the controversial law of the government of Haryana providing for 75% reservation for the local youth in private sector jobs paying less than ₹ 30,000 a month. The Court observed that the High Court had not given sufficient reasons for stopping the Haryana law in its tracks on February 3. Without going into the merits of the matter, the Court ordered that the High Court should decide the petition before it expeditiously and not later than a period of four weeks. At the same time the Court directed the state government not to take any “coercive steps” against employers for violating the Haryana State Employment of Local Candidates Act, 2020.



On behalf of the state government it was averred that there is no presumption of illegality in favour of the law and it is ordinarily not stayed unless the legislation is prima facie unconstitutional or illegal. The state’s counsel further argued that the act was a means to regulate migrants from settling in other states. Moreover, the reservation was applicable only to Class III and IV jobs and those with salary up to ₹ 30,000 per month only. Moreover, in return for various facilities and concessions availed by industries, they should be obligated to provide employment to local youth at least in unskilled jobs.

The counsel for the Faridabad Industries Association, the petitioner, urged that there was no empirical study done and



there was no data whatsoever to justify the law. It was submitted that the law would have far-reaching consequences in the economic sector, not only in Haryana but across India, as it would lead to other states too enacting similar laws to exclude jobs to residents of other states, which was against the integrity of the country and affected the very idea of the Indian economy as a unit. The core issue, therefore, was whether the government can impose reservation in the private sector on the basis of domicile. Earlier, within 24 hours of the Punjab and Haryana High Court staying the Haryana law mandating 75% quota in private jobs for locals, the government of Haryana had moved the Supreme Court for vacation of injunction alleging that the High Court had stalled implementation of the law after a 90-second hearing in clear breach of principles of natural justice. The petitioners had argued that the domicile requirement violated article 16 of the Constitution.



In 2020, the Haryana State Assembly had passed the Haryana State Employment of Local Candidates Act. The original notification had prescribed salary cut off of ₹ 50,000 and the domicile stipulation of 15 years for purposes of reserving jobs in private industries for the local candidates. However, subsequently, from January 15, 2022, following negotiations with state-based entrepreneurs, a revised notification was issued lowering the salary cut off to ₹ 30,000 and the domicile requirement to 5 years. Thus those invested in less mobile capital, such as medium or large factories, may have to raise salaries as they seek to cross the ₹ 30,000 threshold to keep essential non-local employees on their rolls.

First and foremost, the law militates against the provision in article 19(1)(g), which guarantees freedom to practice any profession or to carry on any occupation, trade or business, subject, of course, to reasonable restrictions in the interest of general public, including prescribing professional and technical qualifications.

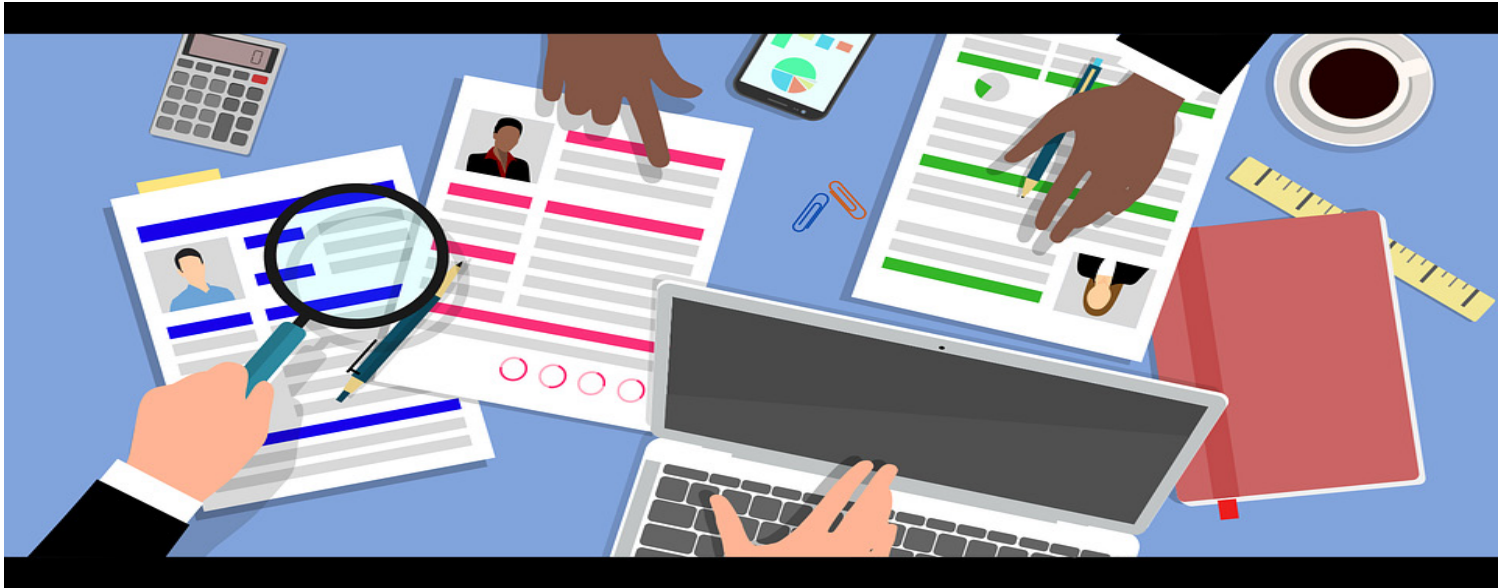


More importantly, article 16(2) provides that no citizen shall, on grounds of only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state. Clause (3) of article 16, however, provides that nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the government of or any local or other authority within a State or Union territory, any requirement as to residence within that the state or the union territory prior to such employment or appointment. Exercising the power under article 16(3), Parliament enacted the Public Employment (Requirement as to Residence) Act, 1957. The Act aimed at abolishing all existing residence requirements in the states and enacting exceptions only in the case of the special instances of Andhra Pradesh, Manipur, Tripura and Himachal Pradesh. Thus Andhra Pradesh under article 371D has powers to provide for "direct recruitment to posts in any local cadre" in a specified areas. In Uttarakhand, class III and class IV jobs are reserved for the locals. In Arunachal Pradesh, there is 80% reservation for the local scheduled Tribes in state government jobs. In Meghalaya, Khasis, Jaintias and Garos have a combined reservation of 80% in state government jobs. Taking a cue from the Parliament's Act of 1957, some states have tried to circumvent the mandate of article 16(2) by

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Constitutionally, some states also have a special protection under article 371

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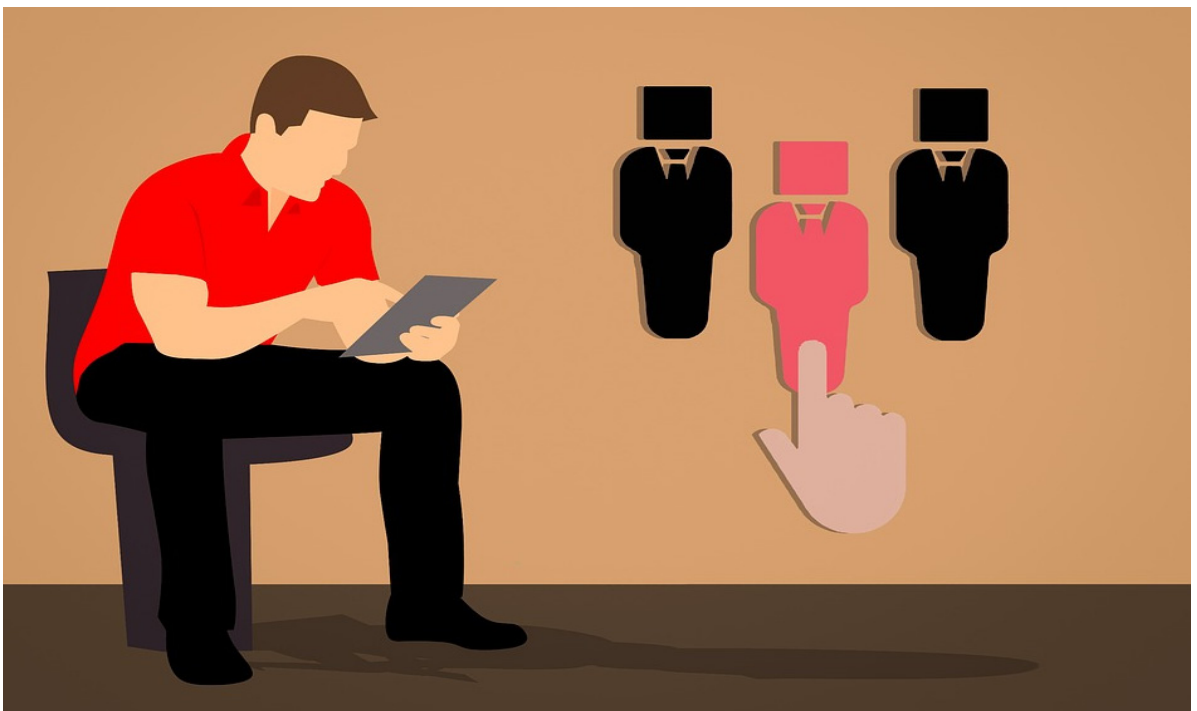


prescribing knowledge of the state language as a criterion since they conducted official business in their respective regional language. For example, the states of Maharashtra, West Bengal and Tamil Nadu require a language test. However, these stipulations do not impact on employment in the private sector.

The realisation of the fact that reservation in government jobs alone cannot satisfy the expanding expectations of the burgeoning population, certain states have had recourse to the somewhat invidious device of reservation of jobs for locals in the private sector as well. The ostensible argument in favour of reservation of jobs for locals is that it will stop migration of people from backward states to metropolitan areas and reduce the burden on such cities. It is also contended that this step will help in rightful location of the resources of the state and would encourage people to work within the boundaries of the state.

In recent times, Andhra Pradesh, Jharkhand and Madhya Pradesh have all passed laws mandating between 70 and 75 percent quota for the locals. In 2017, Karnataka government prepared similar legislation but it was dropped after the state's Advocate General raised questions on its legality. However, in 2019, the Karnataka government once again issued a notification asking private employers to "prefer" Kannadigas for blue-collar jobs.

Significantly, Telangana cabinet, after approving the proposal to reserve 80% of semiskilled jobs and 60% of skilled jobs in the private sector for locals in August 2020, subsequently had a change of heart and the State Assembly was informed that the state government was against reservation in jobs since in a competitive world, Google, Amazon or any other private company would not invest in the state if their employment options were restricted to locals. The state has, therefore, decided to follow a two-pronged strategy of educating local youths in market



able skills so that they can get jobs without quota even as the government offers some incentives to industries that employ locals.

Getting 'vocal for locals' in this fashion is bound to create friction among locals and non-locals in the implementing States as well as against the natives of that State in the other States. Again, these laws are against the spirit of constitutional provisions (Article 16 and 19). Further, a state, attracting and encouraging talent from other States will be in a better position to become developed and promote welfare of its people, compared to the one making the process difficult.

In *Dr. Pradeep Jain v Union of India* (1984) the Supreme Court discussed the issue of legislation for "sons of the soil". It expressed an opinion that such policies would be unconstitutional but did not expressly rule on it as the case was on different aspects of the right to equality. Again in *Sunanda Reddy v State of Andhra Pradesh* (1995) the Supreme Court affirmed the observation in *Pradeep Jain case* (supra) to strike down a state government policy that gave 5% extra weightage to candidates who had studied with Telugu as the medium of instruction. In 2002, the Supreme Court invalidated appointment of government teachers in Rajasthan in which the state selection board was given preference. In 2019, the Allahabad High Court struck down a recruitment notification issued by the Uttar Pradesh Subordinate Service Selection Commission which prescribed preference for women who were original residents of the State. Moreover, in *Indra Sawhney and Others vs Union of India* (1992) the Supreme Court has capped reservation in public services at 50 percent. However, a specific and definitive ruling of the Supreme Court on the subject of reservation of jobs in the private sector is not available.

While vacating the stay, the Supreme Court added a note of caution advising the state not to use "coercive steps" perhaps on account of the fact that the counsel for the Government of Haryana had informed the bench that similar laws have been passed in certain other states too. The Court observed: "Do you want us to transfer all. It would thus appear that, in all likelihood, after the High Court of Punjab and Haryana has given its final verdict, the matter may reach the portals of the Supreme Court once again for the matter to be settled, once and for all, for the country as a whole. ■"

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