

90 FOR EWS

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

General Administration Department - Implementation of 10% Reservation to the Economically Weaker Sections (EWS) for initial appointments in the Posts and Services under the State Government - Orders - Issued.

GENERAL ADMINISTRATION (SERVICES-D) DEPARTMENT

G.O.MS.No. 66

Dated: 14-07-2021.

Read the following:-

1. The Constitution (One Hundred and Third Amendment) Act, 2019, Dt:12.01.2019 communicated from the Ministry of Law and Justice (Legislative Department), Government of India.
2. Office Memorandum F.No.36039/1/2019-Estt (Res.) Dt:19.01.2019 and Dt.31.01.2019 of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India.
3. Office Memorandum F.No.20013/01/2018-BC-II, Dt:17.01.2019 of the Ministry of Social Justice and Empowerment, Department Social Justice and Empowerment, Government of India read with Office Memorandum F.No.12-4/2019-U1, Dt: 17.01.2019 of the Ministry of Human Resource Development, Department of Higher Education, Government of India.
4. L.A. Bill No.33 of 2017, Published in Part IV-A Extraordinary, dated 02.12.2017.
5. Lr.No.173/Legn./2017-6, dated:08.01.2018 of Secretary to Legislature (I/C), A.P. addressed to the Secretary to Govt. of India, Ministry of Home Affairs, New Delhi.
6. Act No.14 of 2019, Dated.20.02.2019 and Act No.15 of 2019, Dated.20.02.2019, published in PART IV-B EXTRAORDINARY, Dated: 20.02.2019.
7. G.O.Ms.No.45 and G.O.Ms.No.46, BCW(F) Dept., Dated: 08.03.2019.
8. W.P.(CIVIL)No. 343 of 2019 with I.A.No.45038/2019 filed by Sri P.V. Ramakrishna and others before the Hon'ble Supreme Court of India.
9. W.P. No.4568 of 2019 filed by Dr. GajulaMadhusudana and others before the Hon'ble High Court of Andhra Pradesh.
10. W.P. No.5206 of 2019 filed by Dr. GajulaMadhusudana and others before the Hon'ble High Court of Andhra Pradesh.
11. W.P. No.8556 of 2019 filed by Sri Kalle Chandra Sekhar Sharma and Smt. KalleMitravinda before the Hon'ble High Court of Andhra Pradesh.
12. G.O.Ms.No.60, BC Welfare (F) Department, Dt.27.07.2019.

ORDER:

The Government of India, in the reference first read above, have brought out the Constitution (One Hundred and Third Amendment) Act, 2019 inserting Clause (6) in Article 15 and Clause (6) in Article 16 in the Constitution providing for 10% reservation in admissions into Educational Institutions and appointments in the posts and services under the State in favour of Economically Weaker Sections (EWS) of citizens other than the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes.

2. In pursuance of the Constitution (One Hundred and Third Amendment) Act, 2019, the Government of India, in the references 2nd and 3rd read above, issued certain guidelines for implementation of the same in Government of India.

- a) The persons who are not covered under existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes and whose gross annual family income is below Rs.8.00 lakh are to be identified as Economically Weaker Sections (EWS) for the benefit of reservation. Income shall also include income from all sources i.e. salary, agriculture, business, profession, etc. for the financial year prior to the year of application.
- b) The persons whose family owns or possesses any of the following assets shall be excluded from being identified as Economically Weaker Sections (EWS) for the benefit of reservation, irrespective of the family income.
- Five (5) Acres of agricultural land and above.
 - Residential flat of 1000 Sq. Ft. and above.
 - Residential plot of 100 Sq. Yards and above in notified Municipalities / Corporations.
 - Residential plot of 200 Sq. Yards and above in areas other than notified Municipalities / Corporations.

The property held by a "Family" in different locations or different places/cities would be clubbed while applying the land or property holding test to determine EWS status.

The term "Family" for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years.

3. Government of Andhra Pradesh vide reference 4th cited had enacted a bill to provide for reservation of seats in educational institutions in the State of Andhra Pradesh and of appointments or posts in the services under the State for the Telaga, Ontari and Balija communities including Kapus in BC-F as detailed below:

(i)	Backward Classes	-	Percent	(%)
	Group-A	-	Seven Percent	(7%)
	Group-B	-	Ten Percent	(10%)
	Group-C	-	One Percent	(1%)
	Group-D	-	Seven Percent	(7%)
	Group-E	-	Four Percent	(4%)
	Group-F (Kapus)	-	Five Percent	(5%)
(ii)	Schedule Castes	-	Fifteen Percent	(15%)
(iii)	Schedule Tribes	-	Six Percent	(6%)
			Total	55 %

4. Further vide reference 5th cited, the Secretary to Legislature (I/C), A.P. has sent the bill to the Secretary to Govt. of India, Ministry of Home Affairs, New Delhi for Assent of the Hon'ble President of India and the same is still pending.

5. After enactment of the Constitution (One Hundred and Third Amendment) Act, 2019, the Government of Andhra Pradesh have enacted two Acts viz., Act No.14 of 2019 and Act No.15 of 2019 bifurcating the 10% EWS reservation providing 5% reservation to Economically Weaker Sections among Kapus and 5% reservation to Economically Weaker Sections among other than Kapus respectively, for admissions into Educational Institutions and initial appointments in the posts and services under the State Government. These acts also provided for 1/3rd horizontal reservation for women within the reservation provided to both Kapus and other than Kapus.

6. In the reference 7th read above, the Government issued orders bringing the provisions of the Act 14 of 2019 and Act 15 of 2019 into force with effect from 08.03.2019.

7. Meanwhile, a Writ Petition bearing No. WP (CIVIL) No. 343 of 2019 with I.A.No.45038/2019 has been filed before the Hon'ble Supreme Court of India praying for quashing the Constitution (One Hundred and Third Amendment) Act, 2019 as violative of basic structure of the Constitution and also quashing Act 14 & Act 15 of 2019 enacted by Government of Andhra Pradesh as being violative of Articles 15 (1) & 16 (2) of the Constitution.

8. And, two Writ Petitions have been filed before the Hon'ble High Court of Andhra Pradesh praying for issuing an appropriate Writ or Order or direction more particularly one in the nature of Writ of Mandamus to the respondents to notify the Rules for implementing the 10% reservation provided to Economically Weaker Sections among Kapus and other than Kapus in Act No.14 of 2019 and Act No.15 of 2019 enacted by the State of Andhra Pradesh.

9. Further, one more Writ Petition has been filed before the Hon'ble High Court of Andhra Pradesh praying for issuing an appropriate Writ or Order or direction more particularly one in the nature of Writ of Mandamus declaring Act No.14 of 2019 and Act No.15 of 2019 as ultra vires and un-constitutional, violative of the purport of the Constitution (One Hundred and Third Amendment) Act, 2019 and violative of Article 15 of the Constitution of India and consequently, Act No.14 of 2019 and Act No.15 of 2019, have to be struck down. The Hon'ble High Court of Andhra Pradesh passed interim orders in this case.

10. Besides the above Writ Petitions, certain Public Interest Litigations (PILs) bearing W.P. (PIL) No. 122 of 2019 and W.P. (PIL) No. 130 of 2019 have also been filed in this regard, challenging the sub-categorization of EWS reservation into 5% for EWS among Kapus and 5% for EWS among other than Kapus.

11. As mentioned above, several Writ Petitions and Public Interest Litigations (PILs) have been filed before the Hon'ble Supreme Court of India as well as Hon'ble High Court of Andhra Pradesh challenging the validity of the enactment by the Government of India of the Constitution (One Hundred and Third Amendment) Act, 2019 it self providing for 10% reservation to EWS Category on economic basis and also enactment by the Government of Andhra Pradesh of Act No.14 of 2019 and Act No.15 of 2019 providing for sub-categorization of EWS reservation into 5% for EWS among Kapus and 5% for EWS among other than Kapus.

12. All the Writ Petitions and Public Interest Litigations (PILs) filed in this regard are still pending before the Hon'ble Courts and they are yet to be disposed of. But, only in one of the Writ Petitions bearing No. 8556 of 2019 filed by Sri Kalle Chandra Sekhar Sharma and Smt. Kalle Mitravinda, the Hon'ble High Court of Andhra Pradesh have issued interim orders in public interest and to ensure that the academic session and admission of students is not put to jeopardy in the context of the litigation concerning the same.

13. In due obedience to the interim orders of the Hon'ble High Court of Andhra Pradesh passed in the W.P. No. 8556 of 2019 and in consideration of the academic session and interest of the EWS students, Government have issued orders in the reference 12th cited for implementation of 10% reservation to the Economically Weaker Sections (EWS) for admissions into Educational Institutions in accordance with the purport of the Constitution (One Hundred and Third Amendment) Act, 2019 and as per the guidelines issued by Government of India in this regard.

14. In this context, it is to be noted that the State of Telangana and several other States like Kerala, Madhya Pradesh, Bihar, Uttar Pradesh, Rajasthan, Gujarat etc., have already implemented 10% Reservation in favour of Economically Weaker Sections (EWS) both in Education and Employment in consonance with the Constitution (One Hundred and Third Amendment) Act, 2019. Some of the states have also formulated their own eligibility criteria as far as admissions in educational institutions and appointment in employment of their state government concerned.

15. It is pertinent to note that government of Andhra Pradesh have received several representations from public regarding the implementation of 10% EWS reservation in employment and admission in educational institutions wherein the request for modification of certain eligibility conditions considering the differences in cultural aspects, economic status and geographical diversity among various EWS Communities of the state.

16. Government have implemented EWS reservation for admission in educational institutions as per G.O.Ms.No.60, BC Welfare (F) Department, Dt. 27.07.2019 following the eligibility criteria of both income and assets status of the family. However, the representations received from public were carefully examined and it is felt that certain modifications are necessary due to varied cultural, economic and geographical diversities that make a one size fits all approach rendering the accomplishment of objectives of benefit of reservation to EWS as contemplated under Constitution (One Hundred and Third Amendment) Act, 2019, difficult. Therefore, Government have decided to adopt only the family income criteria of annual income of Rs.8 lakhs.

17. It is pertinent to note that bill No.33/2017 and Act No.14 of 2019 and 15 of 2019 are contradictory to each other. The bill No.33 of 2017 seeks to include Kapus into the list of BCs through creation of a separate category called BC – F and as per the reservations provided in that bill for various categories like BC, SC, ST, the overall reservation is at 55%. Whereas, the Acts 14 and 15 of 2019 seek to provide 5% reservation to Kapus under EWS Category treating them as OCs by creating a sub category within the overall 10% reservation provided by the Constitution (One Hundred and Third Amendment) Act, 2019 of GoI. Bill No.33/2017 is still pending at the level of Government of India. However, in the meantime the Hon'ble Supreme Court vide judgment in Civil Appeal No.3123 of 2020 against the reservation of Maratha Community has clearly reiterated that the overall cap in reservation shall not exceed 50% as originally ordered in Indra Sawhney judgment.

18. Act No.14 of 2019 and 15 of 2019 are challenged before the Hon'ble High Court as the state government is not competent to bifurcate the 10% reservation by creating sub category within a category of reservation and the litigations are still pending. Because of contradiction between bill No.33 of 2017 which is still pending with GoI and Act 14 of 2019 & 15 of 2019 which are under litigation under various Hon'ble courts, Kapus are neither categorized as BCs nor able to avail the reservations under EWS category. Similarly, because of litigations, members from other EWS communities are also not able to avail the reservations as contemplated under the Constitution (One Hundred and Third Amendment) Act, 2019. This issue has been further compounded by recent Supreme Court Judgement restricting the overall reservations to 50%. In view of all the issues as discussed above, any decision taken by the Government of Andhra Pradesh should be in compliance with the Constitution (One Hundred and Third Amendment) Act, 2019. Anything contrary to that leading to litigation denies the benefits of reservation to the members of EWS community as mandated in the Constitution (One Hundred and Third Amendment) Act, 2019.

19. The Government, therefore, after careful examination of the issue and as per the interim orders of the Hon'ble High Court as referred to above, have decided that the principles / guidelines issued in G.O.Ms.No.60, BC Welfare(F)Department, Dt. 27.07.2019 for the purpose of Education, be replicated in the sphere of Employment also for implementation of 10% reservation to the Economically Weaker Sections (EWS) of the citizens, for appointments in initial Posts and Services under the State Government in accordance with the purport of the Constitution (One Hundred and Third Amendment) Act, 2019 in order to benefit Kapus who are neither benefited under BC quota nor under EWS quota and other OC sections who have been deprived of the benefits of reservations thus far due to non-implementation of EWS quota subject to the outcome of several Writ Petitions and Public Interest Litigations (PILs) filed in this regard before the Hon'ble Courts.

20. The operational guidelines in regard to implementation of 10% reservation to the Economically Weaker Sections (EWS) for initial appointments in the Posts and Services under the State Government are as follows.

- i. The persons who are not covered under existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes and whose gross annual family income is below Rs.8.00 lakh are to be identified as Economically Weaker Sections (EWS) for the benefit of reservation. The Income shall also include income from all sources i.e. salary, agriculture, business, profession, etc. for the financial year prior to the year of application.
- ii. The term "Family" for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years.
- iii. Regarding initial appointments in the posts and services, the persons recruited under EWS category will be adjusted against the roster points earmarked for them. The orders on the roster points earmarked for 10% reservation to EWS category will be issued separately, along with other rules to be framed/amended and guidelines to be formulated, if any.
- iv. 1/3rd (33 1/3) of the initial appointments in posts and services under the State Government earmarked for EWS category shall be allocated to women among them. The one-third reservation earmarked for women is horizontal.
- v. The persons seeking the benefit of reservation under EWS category shall obtain the necessary EWS Certificate issued by the Tahsildar concerned.

21. As far as the posts notified for appointment by Government of India the guidelines issued by the Government of India, vide in the reference 2nd and 3rd read above are applicable.

22. All the Administrative Departments concerned / District Collectors / Appointing authorities in the State shall take necessary action in the matter accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

ADITYA NATH DAS
CHIEF SECRETARY TO GOVERNMENT

To
All the Departments in A.P. Secretariat.
All the Heads of Departments in the State.
All the District Collectors in the State.
The Secretary, APPSC, Vijayawada.
The Advocate General, A.P.
The Law Department, A.P. Secretariat.
The Registrar (Admn.), Hon'ble High Court of A.P.

Copy to:

The P.S. to Secretary to the Hon'ble C.M.
The P.S. to the Hon'ble Minister for B.C. Welfare.
The OSD to Chief Secretary to Government.
The P.S. to Spl. C.S., B.C. Welfare Dept.
The Stock File.

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SECTION OFFICER