

# THE JAMMU AND KASHMIR RESERVATION ACT, 2004

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[Act No. XIV of 2004]

*[Received the assent of the Governor on 19 March, 2004 and published in Government Gazette dated 23rd March, 2004].*

An Act to provide for reservation in appointment, and admission in Professional Institutions, for the members of Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes and for matters connected therewith or incidental thereto.

Be it enacted by the State Legislature of Jammu and Kashmir in the Fifty-fifth Year of the Republic of India as follows: —

## CHAPTER I

### PRELIMINARY

**1. Short title, extent and commencement.** — (1) This Act may be called the Jammu and Kashmir Reservation Act, 2004.

(2) It extends to the whole of the State of Jammu and Kashmir.

(3) It shall come into force from the date of its publication in the Government Gazette.

**2. Definitions.** —In this Act, unless the context otherwise requires,—

- (a) “Act” means the Jammu and Kashmir Reservation Act, 2004;
- (b) “Appellate Authority” means the authorities prescribed under section 17;
- (c) “areas adjoining the actual line of control” means the area declared as such by the Government from time to time;
- (d) “available vacancies” means the vacancies, permanent or temporary, in any service and includes other posts under the Government, statutory authorities, autonomous bodies and Public Sector Undertakings owned and managed by the Government;

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- (e) “backlog vacancies” means those reserved vacancies which remain unfilled for want of suitable candidates after two attempts in the recruitment year to fill up those vacancies;
- (f) “backward area” means the villages and areas declared as socially and educationally backward by the Government from time to time;
- (g) “Competent Authority” means the authority competent to issue a certificate under the Act;
- (h) “Government” means the Government of Jammu and Kashmir;
- (i) “prescribed” means prescribed by rules framed under the Act;
- (j) “Professional Institutions” means the institutions notified from time to time, by the Government and shall initially include Government Medical College, Srinagar/Jammu, Government Dental College, Srinagar, Government Polytechnics, both male and female, Government College of Education and Government College of Engineering and Technology, Jammu;
- (k) “recruitment year” means the year in which the selection agencies make recommendations for appointment of candidates for a particular service or post to the appointing authorities;
- (l) “reserved categories” means the categories for which reservation is to be made under the Act;
- (m) “Scheduled Caste” means the castes specified in the Schedule to the Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956 made by the President under clause (1) of Article 341 of the Constitution of India;
- (n) “Scheduled Tribe” means the tribes or tribal communities or parts of or groups within tribes or tribal communities as specified in the Constitution Scheduled Tribes Order, 1989 made by the President under clause (1) of Article 342 of the Constitution of India;

- (0) “socially and educationally backward classes” mean—
- (i) persons residing in the backward area;
  - (ii) the persons residing in the area adjoining Actual Line of Control; and
  - (iii) weak and under-privileged classes (social castes), declared as such under notification SRO-394 dated 5-9-1981 read with notification SRO-272 dated 3-7-1982 and notification SRO-271 dated 22-8-1988 as amended from time to time:

Provided that the Government may, on the recommendations of the State Backward Classes Commission, make inclusions in, and exclusion from, the said category from time to time:

Provided further that the persons specified below and their children shall be excluded from the category of socially and educationally backward classes:—

- (i) Governor (serving or retired);
- (ii) Chief Justice and Judges (serving or retired) of High Court or the Supreme Court of India;
- (iii) Chief Minister and Ex-Chief Minister;
- (iv) Ministers and Ex-Ministers of Cabinet rank;
- (v) Ministers of State and Deputy Ministers having more than one term;
- (vi) Chairman and members of Jammu and Kashmir Public Service Commission or the Union Public Service Commission;
- (vii) Members of the State Legislature (elected and nominated both) having more than one term irrespective of the period under the second term;
- (viii) Members of All India Services;
- (ix) any person whose annual income from all sources, determined in the prescribed manner, exceeds rupees three lacs or such amount as may be notified by the

Government from time to time in accordance with the prescribed norms:

<sup>1</sup>[Provided that the income ceiling shall not apply to a person who has lived and completed entire school education from an area identified as Backward or Actual Line of Control, as the case may be, and in case such schooling is not available in such area, from the nearest adjoining area;]

- (x) such other persons as the Government may notify from time to time;
- (p) “selection agency” means the agency, authority, Board or official committee, as the case may be, prescribed for recommending appointments or promotions or for selecting candidates for admission to professional institutions and includes the appointing authority wherever selections are made directly by such authority;
- (q) “weak and under-privileged classes” mean the classes declared as such under notification SRO-394 dated 5-9-1981 read with notification SRO-272 dated 3-7-1982 and notification SRO-316 dated 18-7-1984 as amended from time to time.

(2) The words ‘service’, ‘class’, ‘category’ and ‘grade’ shall have the same meaning as assigned to them in service rules in force in the State.

## CHAPTER II

### RESERVATION IN APPOINTMENT BY DIRECT RECRUITMENT

**3. Reservation in appointment.** —<sup>2</sup>[(1)] Except as otherwise provided hereinafter, available vacancies to the extent as may be notified by the Government from time to time shall be reserved for appointment by direct recruitment from amongst the person belonging to : —

- (a) Scheduled Castes and the Scheduled Tribes which shall not exceed the ratio and proportion as the population of each such category bears to the total population of the State as per the latest available census; and

<sup>1</sup> Proviso inserted by Act No. III of 2009, s. 2, w. e. f. 5th March, 2008.

<sup>2</sup> Existing section 3 renumbered as sub-section (1) of section 3 *ibid*.

(b) socially and educationally backward classes:

Provided that the total percentage of reservation shall in no case exceed 50%:

Provided further that the Government shall exclude the services and posts, which, on account of their nature and duties are such as call for highest level of intelligence, skill and excellence, from operation of the Act.

<sup>1</sup>[(2) Notwithstanding anything to the contrary contained in any law for the time being in force, any person appointed against any available vacancy on the basis of his being a resident of backward area or an area adjoining Line of Actual Control shall serve in such areas for a period of not less than seven years:

Provided that in case the post against which he has been appointed is not available in such area, he shall be posted in the nearest adjacent backward area.

(3) Any person who, after being appointed on the basis of reservation, declines to serve in the reserved area as provided under subsection (2) shall be liable to termination from service:

Provided that no order of termination shall be issued without affording a reasonable opportunity of being heard to such person.]

**4. Reservation not to bar appointment in open merit.** — Nothing contained in section 3 shall prevent the appointment of any person belonging to any reserved category against unreserved vacancy on the basis of his merit and such appointment shall not result in reduction in the number of posts reserved for that category.

**5. Vacancies to be carried forward.** — (1) Subject to the provisions hereinafter contained, if a sufficient number of candidates is not available from any reserved category during a recruitment process, the posts shall remain vacant and shall be carried forward to the next recruitment process:

Provided that nothing herein contained shall prevent launching of a special drive by a selection agency to fill the carried forward vacancies by inviting applications exclusively from persons belonging to such

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<sup>1</sup> Inserted by Act No. III of 2009, s. 3, w. e. f. 5th March, 2008.

category.

(2) If in the first attempt of recruitment, suitable candidates are not available, second attempt may be made in the same recruitment year and if even then suitable candidates are not available, the vacancies shall be treated as backlog vacancies.

(3) In subsequent year, when recruitment is made for reserved vacancies, the backlog vacancies shall also be notified:

Provided that the total number of reserved vacancies including backlog vacancies shall not exceed the percentage reserved for such categories.

(4) The reserved vacancies remaining unfilled for a period exceeding three years shall be treated as de-reserved.

### CHAPTER III

#### RESERVATION IN GOVERNMENT SERVICE (BY PROMOTION)

**6. Reservation in promotions.** —Except as otherwise provided in the Act, available vacancies to the extent as may be notified by the Government from time to time, shall be reserved in any service, class, category or grade carrying a pay scale the maximum of which does not exceed the pay scale of the post of Deputy Secretary to Government, for promotion from amongst the persons belonging to the Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes:

Provided that total percentage of reservation shall not exceed <sup>1</sup>[31%] of the available vacancies:

Provided further that the Government shall exclude the services and posts, which on account of their nature and skill are such as call for highest level of intelligence, skill and excellence, from the operation of the Act.

**7. Assessment of the members of the reserved categories.** —In filling vacancies by promotion carrying a pay scale the maximum of which exceeds the pay scale specified under section 6, the concerned selection authority shall assess the officers who are members of any reserved category by relaxed standards.

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<sup>1</sup> Substituted for “25%” by Act No. III of 2009, s. 4, w. e. f. 5th March, 2008.

**8. Reservation not to bar promotion.** —Nothing in section 6 shall bar the promotion of a member of any reserved category against the vacancies other than, or in addition to, those reserved for them under the Act, if such member is found to be qualified for such promotion on the basis of his merit and seniority.

## CHAPTER IV

### RESERVATION IN PROFESSIONAL INSTITUTIONS

**9. Reservation in professional institutions.** — (1) The Government shall reserve seats in the Professional Institutions for candidates belonging to reserved categories and such other classes and categories as may be notified from time to time:

Provided that the total percentage of reservation shall in no case exceed 50%.

(2) The Government shall prescribe the percentage for each category in admission in the Professional Institutions:

Provided that different percentage may be prescribed for different courses:

Provided further that 50% of the seats in each category including open category for admission to MBBS and BBS, shall be selected from amongst female candidates belonging to such category:

Provided also that the seats in any reserved category, which cannot be filled for want of candidates belonging to that category, shall be filled from amongst the candidates belonging to open merit category.

**10. Reservation not to bar admission in open merit.** —Nothing contained in section 9 shall bar admission of members of the reserved categories against seats other than, or in addition to, those reserved for them under the said section, if such members are found qualified for admission on merit as compared with candidates not belonging to any reserved category.

## CHAPTER V

### MISCELLANEOUS

**11. Roster.** —With a view to giving effect to the reservation provided in the Act, the appointing authority shall maintain a roster in such manner and

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form as may be prescribed.

**12. Preparation of the select list.** —The selection agency shall prepare the select list of candidates in such manner and form as may be prescribed.

**13. Authority competent to issue certificates.** —The Government may, by notification in the Government Gazette, invest any revenue officer, not below the rank of Tehsildar, with powers to issue certificates in favour of members of the reserved categories:

Provided that in respect of remote and inaccessible areas, the Government may invest any officer of the Revenue Department, not below the rank of Naib-Tehsildar, with such powers.

**14. Presentation of application.** —A person claiming benefit under the Act shall apply in the prescribed manner to the Competent Authority for grant of a certificate.

**15. Registration and verification.** —The Competent Authority shall, on receipt of the application, —

- (i) immediately record it in a register to be maintained by it and issue to the applicant a receipt to that effect; and
- (ii) scrutinize the application and conduct enquiries as may be necessary for verification of the details of the application as also with regard to the eligibility of the applicant for the certificate.

**16. Issuance of Certificate.** —The Competent Authority shall, within fifteen days from the date of the receipt of the application and for reasons to be recorded in writing either accept the application or reject it. On acceptance of the application, the authority shall immediately issue the requisite certificate to the applicant in the prescribed form.

**17. Appeals.** —(1) Any person aggrieved by an order of the Competent Authority under section 16, may, at any time before the expiry of ninety days from the date of the order, prefer an appeal to—

- (i) Deputy Commissioner, if the order appealed against is passed by an officer below the rank of Deputy Commissioner in his capacity as Competent Authority; or
- (ii) Divisional Commissioner, if the order appealed against is



passed by Deputy Commissioner in his capacity as Competent Authority.

(2) The Appellate Authority shall, within 30 days from the date of receipt of the appeal, pass such orders on it as it deems fit:

Provided that no order shall be made against any person without affording him a reasonable opportunity of being heard.

**18. Revision.** —The Appellate Authority may, *suo moto* or on an application made to it, call for the records of the proceedings taken, or orders made, by any Competent Authority for purposes of satisfying itself as to the legality or propriety of such proceedings or orders and may pass such orders in reference thereto as it deems fit:

Provided that no order shall be made against any person without affording him a reasonable opportunity of being heard.

**19. Choice.** —A candidate belonging to more than one category shall be entitled to claim the benefit of reservation in one category only, as per his choice, for appointment or promotion in Government service or admission in Professional Institutions, as the case may be.

**20. Monthly statements.** —The Competent Authority shall prepare monthly statements of all persons in whose favour certificates have been granted and shall submit the same to the Government.

**21. Duplicate certificate.** —If a certificate of being member of any of the reserved categories, issued under the Act, is lost, damaged or destroyed and the applicant desires to have a duplicate certificate, the Competent Authority may, after due verification of the genuineness of the applicant's statement, issue within fifteen days from the date of such application, a duplicate certificate recording thereon in block letters the word "Duplicate" or refuse to issue such certificate communicating the reasons of refusal to the applicant.

**22. Penalty for contravention of the provisions of the Act.** —Any person who obtains a certificate under the Act by misrepresentation, fraud or concealment of any material fact or impersonation shall, in addition to prosecution under the law for the time being in force, be liable to—

- (a) cancellation of the certificate and forfeiture of benefit;

- (b) removal or dismissal from service; and
- (c) fine of not less than rupees ten thousand.

**23. Framing of rules.** —The Government may make rules to give effect to the provisions of the Act.

**24. Repeal and saving.** — (1) All rules, notifications and orders corresponding to the provisions of the Act shall, in so far as they are inconsistent with any provision of the Act, stand repealed.

(2) Notwithstanding such repeal—

- (i) anything done or any action or any order issued under the rules, notifications or orders, so repealed, shall be deemed to have been done, taken or issued under the corresponding provisions of the Act;
- (ii) the reservation in appointment or promotion against available vacancies and for admission in Professional Institutions provided under the repealed rules, notifications and orders, shall continue to be in force till a notification under the provisions of the Act is issued.