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HARYANA LOCAL CANDIDATES LAW UNCONSTITUTIONAL: KEY TAKEAWAYS FROM THE PUNJAB AND HARYANA HIGH COURT RULING

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In a significant development, a Division Bench of Hon'ble Punjab and Haryana High Court (High Court), through its common judgment and order dated 17 November 2023 in a group of nine petitions reported as *IMT Industrial Association and Another v State of Haryana and Another* [MANU/PH/2939/2023], has struck down the Haryana State Employment of Local Candidates Act, 2020 (Haryana Law) as unconstitutional and ineffective from the date of its enforcement (i.e., 15 January 2022). This comes after the Hon'ble Supreme Court of India sent the matter back to the High Court which in turn had reserved its judgment for some time.

Revisiting the Provisions

As we had noted in our [update](#) on this topic, the Haryana Law, applicable to all companies, societies, trusts, limited liability partnership firms, partnership firms and any person employing 10 or more persons (Covered Employers), envisages 75% reservation in new jobs, where monthly gross salary is not above INR 30,000, for persons domiciled in Haryana. The Haryana Law further requires Covered Employers to register such employees on the government's designated portal (Haryana Udhyam Memorandum portal), and to furnish quarterly reports regarding local candidate recruitment. Employers may claim exemption where adequate number of local candidates of the desired skill, qualification or proficiency are not available, by applying in the manner prescribed in rules, post which the authority may accept or reject the claim or direct the employer to train local candidates to achieve the desired skill, qualification, or proficiency. Notably, the Haryana Law has a sunset clause that provides for the law ceasing to have effect after 10 years from its commencement.

In the months following assent by the Governor of Haryana to the bill on 26 February 2021, the Deputy Chief Minister of Haryana [announced](#) that the state government will grant a 2-year exemption from the Haryana Law to new startups and information technology companies. He also declared that the State Government will consider all individuals completing more than 5 years in the State as persons eligible to avail themselves of the benefits under the Haryana Law.

Contentions of the Parties

- a) Stance put forth by the petitioners: The petitioners argued that as per Article 16(3) of the Constitution, only Parliament has the power to enact a law that places 'residence' as a qualification for appointment to a public post. Moreover, petitioners submitted that the Statement of Objects and Reasons of the Haryana State Employment of Local Candidates Bill, 2020 provides that *"the influx of a large number of migrants competing for low-paid jobs places a significant impact on local infrastructure and*

housing and leads to proliferation of slums” and that the issue of inter-state migration was not within the state domain as per the mandate of the Constitution of India.

- b) Stance put forth by the government: The State Government acknowledged the above submission of petitioners. However, it went on to argue that under the Haryana Law, residence was a qualification for appointment only to a private sector post as the definition of ‘employer’ in the Haryana Law excluded ‘the Central Government or the State Government or any organisation owned by the Central Government or the State Government.’ The State Government also submitted that the classification created by the Haryana Law had a relation to the object sought to be achieved, which is addressing the problem of unemployment in the region on account of private employers being reluctant to provide jobs to the locals in the State.

Key Takeaways from the Ruling

The following are few important observations made by the High Court that laid the foundation for its decision:

- a) Regionalism at the cost of talent: The High Court noted that the Haryana Law, while laying out a statutory framework for the benefit of local candidates, discriminates against individuals from other regions and ends up directing employers in the State as to the source from where they can generate employment. The High Court expressed its fear that this would lead to *“large scale similar State enactments providing similar protection for their residents and putting up artificial walls throughout the country, which the framers of the Constitution had never envisaged”*.
- b) State cannot do indirectly what it cannot do directly: On the State Government’s contention that it was not violating the prohibition under the Constitution of India on a State legislature against specifying ‘residence’ for public sector employment since the Haryana Law did not cover such employment, the High Court remarked that the State Government was seeking to achieve, through private sector employment, something that it could not have done directly. It stated that *“the exploitation of the prohibition to private employment by way of a legislative command keeping States out of the said restrictions and putting the employer under the domain of criminalization on account of the violation of the same can be termed as unconstitutional as a private individual could not be asked to do what the State has been forbidden for itself”*.

Comment

The Supreme Court of India in *Pradeep Jain v Union of India* [1984] 3 SCC 654], observed that *“no citizen can be given preference...on the ground only of residence”* and that, therefore, *“residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State.”* With the Constitution of India prohibiting a State from introducing residence-based reservations in public sector employment, it appears to be only natural for the High Court to hold that this embargo could not have been subverted through private sector reservation for locals.

Until now, there has been limited jurisprudence around reservation in private sector employment, although it is likely that we would see the same emerging in the future due to measures in this regard by other states including Andhra Pradesh. However, it seems that the High Court’s ruling echoes the sentiment expressed by the Bombay High Court in the case of *Shree Krishna Education Society and Others v State of Maharashtra and Others* [2020 (1) MhLJ 87] in the following words:

“Political parties have long advocated reservations in private employment. But there is currently no constitutional provision that allows for it, no Supreme Court judgment on the subject...Therefore, enforcement of Article 16 horizontally, that is in the purely private sphere,

needs a constitutional device...otherwise, state action in that regard may fall foul of the constitutional mandate, as it exists now."

While [reports](#) suggest that the Government of Haryana is planning to file an appeal against the High Court's decision, for now, the ruling serves as a respite for private sector employers including multinational companies that have regularly made representations before the State Government requesting for a reconsideration of its decision to implement the law.

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