

SC judgment on Reservation

Why in News?

A recent Supreme Court judgment states that there is no fundamental right to claim reservation in promotions.

What does the latest judgment remind?

- The received wisdom in affirmative action jurisprudence is that a series of Constitution amendments and judgments have created a sound legal framework for reservation in public employment.
- The latest judgment is a reminder that affirmative action programmes allowed in the Constitution flow from “**enabling provisions**” and are **not rights as such**.
- Major judgments note that **Article 16(4)**, on reservation in posts, is **enabling in nature**. The state is not bound to provide reservations.
- But if it does so, it must be in favour of sections that are backward and inadequately represented in the services based on quantifiable data.

What is the Uttarakhand High Court (HC) order?

- The **Supreme Court set aside an Uttarakhand HC order** directing data collection on the adequacy of representation of SC/ST candidates in the State’s services.
- Based on the above “enabling nature”, the Court is not wrong in setting aside this order.
- Its reasoning is that once there is a decision not to extend reservation to the section, the question whether its representation in the services is inadequate is irrelevant.
- The root of the current issue lies in the then government’s decision to give up SC/ST quotas in promotions in Uttarakhand.
- The present political regime also shares responsibility as it argued in the Court that there is **neither a basic right** to reservations **nor a duty** by the State government to provide it.

How the Supreme Court sees reservation?

- The idea that reservation is not a right may be in consonance with the

Constitution allowing it as an option.

- But a question that looms is whether there is no government obligation to continue with affirmative action if the social situation that keeps some sections backward and at the receiving end of discrimination persists.
- Reservation is no more seen by the Supreme Court as an exception to the equality rule; rather, it is a facet of equality.
- The terms “proportionate equality” and “substantive equality” have been used to show that the equality norm acquires completion only when the marginalised are given a legal leg-up.

What is the significance of reservation?

- Some may even read into this an inescapable state obligation to extend reservation to those who need it.
- But its absence may render the entire system unequal.
- If no quotas are implemented and no study on backwardness and extent of representation is done, it may result in a perceptible imbalance in social representation in public services.
- In this case, whether the courts will still say a direction can't be given to gather data and provide quotas to those with inadequate representation.

Source: The Hindu