



2. The Haryana State Employment of Local Candidates Act and The Andhra Pradesh Employment of Local Candidates in the Industries/Factories Act, 2019: A Comparative Study

Priyanka
JRF Holder,
Faculty of Law,
MDU Rohtak.

ABSTRACT

States Domiciles are the proof of residence only, but recently these are very helpful for the people in finding jobs in their nearby area. The State Governments these days makes the rules for the locals. Recently many states pass the laws for domicile reservation in private jobs up to 75%. According to the researcher, these laws are very helpful for the people in finding jobs. In this paper we will discuss about the laws which are providing the reservation in private jobs passed by different states. Haryana became the first state to pass such law, which ensure the 75% reservation for the locals in the private entities and also provide the regulation mechanism for the check and balance. After the COVID-19 it is also need of the people that they will find a job in the nearest place which is affordable also. In this paper, we will compare the policies of Act passed by Haryana and Andhra Pradesh. Our object behind this paper is to identify the different and similar provisions passed by the states.

KEYWORDS

Domicile Reservation; Local Employment; Reservation in Private Jobs.

Introduction:

Reservation is a general concept which is very common in our Indian Laws, for providing equality among the equals. Reservation is for promoting that group which is left over from the race of progress. on the face of it, it appears the negative approach but it is positive aspect of differences. The wording of “Equity among all” is having the positive sense with the help of reservation. With so many amendments the diversification of reservation policies were come into existence. Then there is a new criterion for reservation was launched which is reservation on the “Basis of domicile”. Reservation on the basis of state domicile was introduced in private jobs.

Haryana was the first state to pass such legislation which empowers the domicile-based reservation in private jobs. MP, Jharkhand, AP, Maharashtra also make provisions for 75% or more than 75% reservation in their states. Mostly states started the concept of 75% in their local employment for the purpose of job security in their local sphere.

There are enforcement machineries also with different names like Nodal Agency, Designated officer, Authorizing Agency. In this mechanism there are penalty provisions only fine imposition by many states, do not criminalizing it by way of imprisonment or any other method.

Monetary amount is also not so high, it is also a nominal amount as well as the purpose of makers shows from the penal provisions and exemption clauses that they want to secure jobs for locals only, do not want to compromise with diversity in employment. Let's start an analytical study upon the provisions of these Acts.

Object of Paper:

The object behind this paper is to analyses the provisions of Haryana and Andhra Pradesh Acts. Our object is to know what is the purpose policy of legislature behind these Acts. Whether these are similar in nature or different from each other. Is the word domicile reservation being similar or other provisions also?

Silent features of the Haryana's Act:

Under this heading we will discuss the basic features of this Act, under different sub heads.

Application of the Act:

ACT NO. 3 OF 2021 known as THE HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES ACT, 2020¹ which aims to provide seventy-five percent employment of local candidates by employer in the State of Haryana and for matters connected therewith and incidental thereto. It was enacted by the Legislature of the State of Haryana in the Seventy-first Year of the Republic of India.

This is a local law which applies to State of Haryana Only. It is a periodic law which applies for a decade. It shall cease to have effect on the expiry of ten years from the date of its commencement, except as respect to the things to be done or omitted to be done before such cesser, and upon such cesser section 6 of the General Clauses Act, 1897 (Central Act 10 of 1897), shall apply as if this Act had then been repealed by a Central or State Act, as the case may be. This Act applies to all the Companies, Societies, Trusts, Limited Liability Partnership firms, Partnership Firm and any person employing ten or more persons and an entity, as may be notified by the Government, from time to time. It is applicable to only for those jobs whose wages are less than 50,000.

¹ The Haryana State Employment of Local Candidates Act

Nature of the Act:

This is a substantive law which lays down the provisions for which penal punishment is there, instead of procedure. The penalty provisions are there for default in part of employer. If employer is company or registered society then who will be the liable also discussed.

The employers also ensure the compliance with the provisions within 3 months. The nature of Act in case of rigidity, the provisions of the Act also ensure the strict compliance with the provisions of Act. But there is an exemption clause for the employer in case of non-availability of the candidates. So, we can say that, this Act is rigid in nature with some of the subsidiary flexible features.²

Basic Provisions of Act:

The purpose of the Act is to ensure 75% reservation for locals in the private jobs. To achieve the target section 3 and 4 ensures that, every employer shall, within three months of the effective date of this Act, register all such employees who receive gross monthly salaries or wages of not more than Fifty Thousand Rupees or as otherwise specified by the Government on the designated portal. Provided, however, that no person shall be employed or engaged by any employer until the registration of all such employees has been completed on the designated portal. Following the implementation of this Act, every employer is required to hire 75% of local candidates for positions where the gross monthly salary or wages does not exceed 50,000 rupees, or as otherwise determined by the Government from time to time.³

The local candidates may come from any district of the State, but the employer may limit the employment of local candidates from any district to no more than 10% of the total local candidates, at his discretion. Furthermore, a local candidate must register on the designated portal in order to be eligible to receive the benefits under this Act.⁴

Exemption Clause for Employers:

Section 5 of the Act provides the exemption clause for employers. When there are insufficient local candidates with the desired skill, qualification, or proficiency, the employer may submit an application to the Designated Officer in the prescribed form and manner to request an exemption from the section 4 requirement.⁵

After conducting any necessary inquiries and evaluating the employer's efforts to find local candidates with the desired skill, qualification, or proficiency, the Designated Officer shall either accept the employer's request for exemption from the provisions of Section 4.

² THE HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES ACT, 2020

³ Ibid

⁴ Ibid

⁵ THE HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES ACT, 2020

After rejecting the request for exemption for reasons to be documented in writing; or direct the employer to train local candidates to acquire the desired skill, qualification, or proficiency.⁶

Employer's duty to furnish Report:

Section 6 of the Act, ensures the liability of employer to furnish the report relating to appointments. Every employer is required to submit a quarterly report of the local candidates hired and appointed during that quarter on the designated portal in the form that may be prescribed, by the date that may be announced by the Government in the Official Gazette.

Power to enter Premises:

Authorized Officer have right to determine whether any of such functions which are assigned to employer are to be carried out, and if so, how, as well as whether any provisions of this Act or the rules made thereunder are being or have been followed; when he has reason to believe that a violation of this Act or the rules made thereunder has been or is being committed, for the purpose of inspecting any record, register, or document. Every employer is required to provide the Authorized Officer with all assistance required and if they do not without a valid reason, they are in violation of this Act. If anyone purposefully hinders or delays the Authorized Officer, he shall be guilty of an offence under this Act. As long as notice of the intention to enter is given at least one day before the date on which the entry is proposed to be made, no entry may be made other than between the hours of 6:00 and 18:00.⁷

Penalty Provisions:

As per section 10 of the Act general penalties are provided. Except as otherwise expressly provided in this Act, the employer shall be liable for a penalty that shall not be less than ten thousand rupees but may extend up to fifty thousand rupees for any violation of this Act's provisions, rules made thereunder, or of any written order issued under this Act. If the violation continues after the conviction, the additional penalty may increase to one hundred rupees for each violation.⁸

As per section 11, Except as otherwise expressly provided in this Act, any employer who violates section 3 of this Act, (every employer shall register employees) any rules made thereunder, or any written order issued thereunder shall be guilty of an offence punishable by a fine of not less than twenty-five thousand rupees but not more than one lakh rupees, and if the violation is continued after conviction, by a further fine of not less than five hundred rupees.⁹

⁶ ibid

⁷ ibid

⁸ ibid

⁹ ibid

As per section 12, Except as otherwise expressly provided in this Act, any employer who violates the provisions of Section 4(ensure 75% local candidate employment) or any rules made thereunder or of any written order given thereunder is guilty of an offence punishable by a fine of not less than 50,000 rupees but not more than 2 lakh rupees, and if the violation continues after conviction, by an additional fine of up to 1,000 rupees for each day until the violation is remedied.¹⁰

As per section 13, Except as otherwise expressly provided in this Act, any employer who disobeys a written order issued by the Designated Officer pursuant to Section 5(employer claims the exemption) is guilty of an offence punishable by a fine of not less than ten thousand rupees but not more than fifty thousand rupees, and, if the violation persists after conviction, by an additional fine of not less than one hundred rupees for each day the violation continues.¹¹

Section 14 provides the penalty for non-furnishing the records. When it comes to complying with any of the provisions of this Act or any rules made thereunder, one who knowingly creates false records, counterfeits, or makes or uses a false statement, declaration, or evidence regarding any document, or knowingly creates, gives, or delivers a false return, notice, record, or report containing a statement, entry, or detail is subject to a fine that may reach 50,000 rupees for each offence. If a person previously convicted of an offence punishable under subsection (1) is found guilty of an offence under the same provision again, they will face a penalty of at least two lakh rupees but up to five lakh rupees.

The Andhra Pradesh Employment of Local Candidates in the Industries/ Factories Act, 2019:

Andhra Pradesh government passes the Act in 2019.

Silent features of the Andhra Pradesh Act:

In 2019, Andhra Pradesh Governor gives assent on a local Act for the 75% reservation in the private jobs for local candidates on 14 Aug 2019. This Act consists 14 sections. This Act extends to whole State of Andhra Pradesh. The particular Area of application is Industries, factories which were already established and to be establish after enactment of Act, also applies to PPP and Joint Venture as per provisions of Section 1 of this Act.

PPP means a Public and Private Partnership and cooperative arrangements between two or more Public and Private sectors as per definition given in section 2(m). Joint venture means a commercial enterprise undertaken jointly by two or more parties otherwise retain their distinct identities. Let's start with the nature and features of the Act.¹²

¹⁰ *ibid*

¹¹ THE HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES ACT, 2020

¹² The Andhra Pradesh Employment of Local Candidates in the Industries/Factories Act, 2019

Rigid or Flexible:

The basic nature of every law whether that law is rigid or flexible. The time limit for following the provisions of this Act is three year which is an enough time period for any industry or factory. In case of non-compliance with provisions there are penalty provisions but no imprisonment. Not specify the amount of penalty in Act but as per rules. When the employer needs some relaxation then he may apply to government, govt will after due enquiry makes final order. So, it is suggested by the above discussion that this Act is flexible in nature with some rigidity, as the final order for exemption is taken by government only.

Section 3 of the Act, provides that there shall be at least 75% reservation for locals in private employment. According to this section in any industry, factory, or joint venture or project taken under PPP, shall appoint not less than 75% local candidate. Provided that where suitable/qualified candidate not available within 3 yrs. then with active collaborations with govt shall train the candidate. As per section 5, every employer shall file quarterly report of such appointments to Nodal Agencies. As per section 6, Nodal Agency shall verify the report furnish by such employers then submit it to government.¹³

Exemption Clause: Section 4 provides an exemption clause for the employers that if they do not find suitable candidate the they can apply for exemption to the government and government after making the due enquiry may allow them to do so.

Penalty Provisions:

Section 8 provides the provision for penalty in case of default with the section 3 provisions. If any employer is not ensuring at least 75% employment to the locals of Andhra Pradesh and not starting the training programs in case of lack of quality, or ability in candidates. Then the Act ensures the penalty provisions as per the rules by government. This Act has its own sanction.¹⁴

Appeal: In case of a default, if Nodal Agency has been served order to any industry, factory, Joint venture or PPP, they can appeal against the order within 30 days of service of order to prescribed authority or specify the government as per the section 9.¹⁵

Powers of the Government:

The major powers to issue directions and make rules relating to the Act are inherited in the State Government. Because this Act has been made for welfare policy under the state. But State has no right to override the express provisions of the Act. Let's discuss the powers of the state.¹⁶

¹³Ibid

¹⁴ ibid

¹⁵ ibid

¹⁶ ibid

Power to Remove Difficulties:

Under section 11 of the Act, state government has power to remove the difficulties arising during giving effect to this Act. State empowered to resolve the problem in any way but cannot override the express provisions. After the order state government is bound to laid before each house of State Legislator as soon as possible.

Power to Issue Direction:

Section 12 of the Act empowers the state government to issue directions to the industries/factories/joint venture/PPP. These directions must be in writing. By passing an order state government may direct the employer/occupier or owner to comply with the directions which are issued by the state government to give effect to the provisions of the Act.¹⁷

Power to Make Rules:

As per Section 14 of the Act, state government may make rules relating to fulfilment of any or all purposes of the Act. State Government is bound to produce the rules passing by it, before the state legislature immediately. If Legislation is not in session, then, within 14 days of coming session. It is discretion of the Legislature that it may agree or not with the state government rules, it may pass the resolution or annual the rules.¹⁸

Comparative Analysis of features of Acts:

Applicability Criteria: The Haryana's Act applicable to 50,000 wages while Andhra Government does not make any monetary bar upon the employment. Andhra Pradesh's Act provides only limit for enforcement of the Act not any other bar. This Act ensures the 75% placement of locals in the entities specified by the Act. It also not providing any registration portal for the candidates while Haryana Government provide the portal for registration.

Exemption Clause: Both the states make the provisions for the exemption from the employer's liability to hire from the local candidates. In case of non-availability of the suitable candidates, the employer has to be bound to make application to the government or authority. The designated authority is different in each state but the decisions power of all is same, and the procedure for enquiry is almost same. They may direct for training or reject the application or may sustain it.

Enforcement Time Period: Haryana State provides the time period for the enforcement of Act or following strictly provisions but the Andhra Pradesh has different provisions. Andhra Pradesh provides three years for complying with the provisions after the enforcement of the Act. While Haryana state provide three months only. Haryana's Act

¹⁷ ibid

¹⁸ The Andhra Pradesh Employment of Local Candidates in the Industries/Factories Act, 2019

came in force for 10 years only while in AP there is no provisions for continuation period. This will remain in force till the next order passed.

Limitation for cognizance: In Haryana, no court shall take cognizance of any offence punishable under this Act, unless a complaint in respect thereof is made within six months of the date on which the alleged commission of the offence came to the knowledge of the Authorized Officer or Designated Officer. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act. In AP's Act there is no such specification for the purpose of taking cognizance of the cases.

Protective Clause: Although the sections are different in each states laws but the protective clause is there in each law. All the Acts makes provision for the protection of actions which are taken in good faith by authority or designated officers.

State Government Powers: Both the Acts provides state government an important role in enforcement of their provisions. State government exercises the power to issue directions in case of any difficulty arises during giving effect to this Act. And power to make rules relating to enforcement of Act in proper way also inherited by it. State Government have to present the orders or rules passed by it in exercise of its powers before the state legislature within the fixed time period. Andhra Pradesh makes the clause for immediate presentation in case of not in session then within 14 days. And the Haryana Government does specify the time when, legislation is not within session but makes the provision for immediately presentation

Conclusion and Suggestion:

These Acts are similar in nature except the time of enforcement. The purpose policy of both these Acts is to ensure employment for locals. Let's conclude the importance and key points of the Act. These Acts has been lays down provisions for residence-based employment to locals in the state. This state has passed the resolution for 75% minimum local employees in industries/ factories/Joint Venture/ PPP. It ensures that entities are working properly or not by Nodal Agency, which is empowered to take or check any documents, or order to furnish the documents needed by it. Every employer bound to submit reports quarterly relating to their employment. In case, if employer need any exemption, then he has to report to the state government, which after making an enquiry may order for exemption or denial. In these Acts the state government plays an important role in giving effect to this Act. State Government may pass the orders to remove difficulties in giving effect to the provisions of this Act. Both the Acts are enforcing for welfare purpose.