



3. The Jharkhand State Employment of Local Candidates in Private Sector Act, 2021: an Analytical Study

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ABSTRACT

Jharkhand Government passes an Act related to reservation for locals in their state. This Act is similar to Haryana State Employment of Local Candidate Act 2020. This is the local law which has its application in a fix geographical area. This Act provides reservation in private jobs on the basis of state domicile. New rise in the sphere of reservation is the domicile reservation. In this paper we will not discuss about the nature of reservation or its validity. We will discuss about the basic features of the Act or we can say an analytical study of the Jharkhand's Act. Whether the state laws follow the natural justice principle, is it compulsory or not. The Act has penalty or some other enforcement machinery or these are directory in nature. Our Object behind the study of this Act is to analyse whether it is rigid or flexible, compulsory or directive, up to what extent the state government has control over it.

KEYWORDS

State Laws for Local Employment; Employment in Private Jobs; State Domicile and Reservation.

Introduction:

In 2021, Jharkhand Govt passes an Act, Act no 14 of 2021 for the employment of Local Candidates by employer in the State of Jharkhand and for matters connected therewith and incidental thereto. Be it enacted by the Legislature of the State of Jharkhand in the Seventy-second year of Republic. It extends to the whole of the State of Jharkhand. This Act applies to such Shops, Establishments, Mines, Enterprises, Industries, Companies, Societies, Trusts, Limited Liability Partnership Firms, Partnership Firm and any person employing ten or more persons in private sector and an entity, as may be notified by the Government, from time to time. As we know this is the initiation of Local Employment in private sector. The concepts of this Act are different from the other central laws.

In this paper we will discuss the basic features of the Act. Let's discuss these features of Acts in detail, but before that have a look upon the objectives of the study.

Objectives of the Study:

In this research our object is to study the nature of Jharkhand's Act. Whether it is compulsory in nature of directory. The time limit for enforcement, consequences of noncompliance with the provisions. To know the applicability of the Act upon which entity. To know the scope of Act, and sphere of state government's power and role in this Act.

Basic Features of the Act:

To understand the purpose and policy of the Act, and state of mind of the makers, it is necessary to know the basic features of the Act.

Nature of Act:

This Act is a state law and it has its application to the Jharkhand State only. It has specific application upon the Private Sectors Only.

This is local law which is applicable on a specific geographical area. In the nature of Act, we will be discussing the rigidity factor and whether procedural or substantive.

Nature of the Act depends upon the provisions of the Act and as well as upon the rigidity of Act. Let's discuss it step by step. Section 3 of the Act provides the guideline for the employers as follows:

“Within three months of this Act's entry into force, every employer must register any employees receiving gross monthly salaries or wages of no more than Rs. 40,000 (forty thousand rupees) or as the limit as announced by the Government from time to time, on the designated portal.

As long as all employees register on the designated portal after the designated portal has been developed and notified, no one may be employed or engaged by any employer.”¹

Act clears that the provisions are compulsory in nature. The limit for wages and its application for enforcement also fixed by 40,000/-. Time limit for following the provisions also fixed, only 3 months after enforcement.

Let's discuss some of very important sections of this Act.

¹ THE JHARKHAND STATE EMPLOYMENT OF LOCAL CANDIDATES IN PRIVATE SECTOR ACT, 2021 (Jharkhand Act, 14, 2021)

“Section 4: Recruitment of local candidates²

- I. With regard to positions where the gross monthly salary or wages are not more than Rs. 40,000/- (Forty Thousand Rupees) or as the limit announced by the Government from time to time, every employer shall fill seventy-five percent of the total existing vacancies on the date of notification of this Act and thereafter by local candidates.
- II. During the hiring process for local candidates, consideration will be given to the representation of those who have been relocated as a result of the establishment of the relevant institution, local candidates from the relevant district, and members of all social classes.
- III. With the caveat that no local candidate will be eligible to use the benefits provided by this Act unless they register on the designated portal.”.

Section 4 also uses the strict language of the interpretation by using the word “Shall”. As per the directions of this section, it is compulsory for the employer to fill up 75% vacancies with the local candidates, who are registered with state govt designed portal. The term Registered candidate is also a qualifying term, which ensures that candidates must come with the fair process and there shall be no loophole for fraud.³

Apart from these provisions. From section 9-13 there are provisions for the penalty and recovery of penalty. The maximum amount for penalty also specified and it may be continuing nature.

“Section 5. Exemption

1. When there are insufficient local candidates with the desired skill, qualification, or proficiency, the employer may request an exemption from section 4 by applying to the Designated Officer in the prescribed form and manner.⁴
2. The Designated Officer will serve as the chairman of an inquiry committee made up of the following members:
 - Member of Legislative Assembly (MLA) of that area, where the concerned institution is established or his nominated representative.
 - Deputy Development Commissioner (DDC)
 - Circle Officer (CO) of the Circle where the institution is established.
 - Labour Superintendent of the concerned district.
 - District Employment Officer of the concerned district.
3. The Designated Officer may either accept or reject the employer's claim or 10 direct the employer to train & employ local candidates in such a manner as may be prescribed from time to time on the basis of the inquiry report of the district level inquiry

² Ibid

³ Ibid

⁴ The JHARKHAND STATE EMPLOYMENT OF LOCAL CANDIDATES IN PRIVATE SECTOR ACT, 2021 (Jharkhand Act, 14, 2021)

committee and after evaluating the attempt made by the employer to recruit local candidates of the desired skill, qualification, or proficiency. Every order issued by the Designated Officer pursuant to this subsection shall be posted on the Government's designated portal.⁵

This section provides an exemption clause for the employer under some specific terms and conditions. In sub section (3) also the provision for training of the local candidates. This section provides the employer liberty to set his norms and qualification as per his choice but also applies a duty upon him to provide training programs for making local people into skilled and efficient workers. From the above discussion it can be concluded that the nature of Act is rigid with some subsidiary flexible provisions. As the section 3-4 makes the compulsory provisions for the local employment and their compulsory registration. Section 5 provides the liberty to employer to employ outside these criteria but upon fix terms. It does not bound the employer to compromise with the Quality and Talent by providing the subsidiary clause under section 5. It creates the liability of employer towards the local whose resources used by him, to train them up to date. If candidate is not fully suitable then ok, if there is lack of only training programs then it is duty of employer to provide them.

Application of the Act:

This is a local Act which has its application to local geographical area of State of Jharkhand. This Act provides the reservation to the locals in employment in Shops, Establishments, Mines, Enterprises, Industries, Companies, Societies, Trusts, Limited Liability Partnership Firms, Partnership Firm and any person employing ten or more persons in private sector and an entity, as may be notified by the Government, from time to time.⁶

Law lays down by Government:

Section 3 and 4 lays down the provisions for employment of local candidates in Shops, Establishments, Mines, Enterprises, Industries, Companies, Societies, Trusts, Limited Liability Partnership Firms, Partnership Firm and any person employing ten or more persons in private sector and an entity, as may be notified by the Government, from time to time. This Act provides the provisions for registration on the portal by candidate.

This process makes easy for employer to select the candidates. Govt also considers the candidates local only when they registered on the govt designed portal. Section 4 lays down the rule that the employer shall hire 75% locals in the job's salary up to 40,000. Entity shall give preference to the candidates which are displaced due to establishment of concerned institution. These provisions shall be complied by the employer not later than 3 months of enforcement.⁷

⁵ Ibid

⁶ The JHARKHAND STATE EMPLOYMENT OF LOCAL CANDIDATES IN PRIVATE SECTOR ACT, 2021 (Jharkhand Act, 14, 2021)

⁷ The JHARKHAND STATE EMPLOYMENT OF LOCAL CANDIDATES IN PRIVATE SECTOR ACT, 2021 (Jharkhand Act, 14, 2021)

Exemption by Act:

Section 5 of the Act, is an exemption clause for the employers, in case of non-availability of desired skilled, qualification candidate. Then the employer may claim exemption to designated officer, a committee under his chairmanship start enquiry. After enquiry he may accept or reject the application, or may direct him to provide the suitable training. These orders shall be displaced on the portal.⁸

Penalty under Act:

From Section 9-13 there are provisions for penalty in case of default by employer in compliance with principles laid down by this Act. These provisions are as follows.

“9. General penalty:

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 and may extend up to fifty thousand rupees for any violation of the provisions of this Act or rules made thereunder or of any order in writing given under this Act. If the violation persists even after the order of penalty, then additional penalty shall be imposed that shall be one thousand rupees for each subsequent violation.”⁹

“10. Penalty for contravention of section 3¹⁰

Except as otherwise expressly provided in this Act, any employer who violates section 3 of this Act, 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 two thousand rupees.”

“11. Penalty for contravention of section 4

Except as otherwise expressly provided in this Act, any employer who violates the provisions of Section 4 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 two lakh rupees, and if the violation continues after conviction, by an additional fine of not less than 5,000 rupees for each day until the violation is remedied.¹¹

⁸ Ibid

⁹ The JHARKHAND STATE EMPLOYMENT OF LOCAL CANDIDATES IN PRIVATE SECTOR ACT, 2021 (Jharkhand Act, 14, 2021)

¹⁰ Ibid

¹¹ The JHARKHAND STATE EMPLOYMENT OF LOCAL CANDIDATES IN PRIVATE SECTOR ACT, 2021 (Jharkhand Act, 14, 2021)

“12. Penalty for disobedience of direction issued under section 5

Except as otherwise expressly provided in this Act, any employer who disobeys a written order issued by the Designated Officer pursuant to section 5 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 persists after conviction, by a further fine of not less than 5,000 rupees for each day the violation persists.”¹²

“13. Penalty for falsification and non-furnishing of records etc.

(1) Any employer who

(i) creates false records, forges documents, or knowingly makes, creates, or uses a false statement, declaration, or evidence regarding any document in connection with compliance with any provision of this Act or any rules made thereunder; or¹³

(ii) creates, gives, or delivers knowingly a false return, notice, record, or report containing a statement, entry, or detail is subject to a fine that may reach \$50,000 for each offence.

(2) If a person who has previously been convicted of an offence punishable under subsection

(1) is found guilty of the same offence again, they will face a fine of at least two lakh rupees but up to five lakh rupees.

Only monetary penalty provisions are there. These are continuing in nature if the offence is continuing nature. But no penalty can impose before giving him a chance to being heard.¹⁴ This Act provides different penalty for different acts/omissions. The nature of penalty is also continuing. The amount also varies for contravention in different provisions. Falsification and non-furnishing of records also punishable. The nature of punishment is neither regrious nor simple kind of imprisonment. There is only amount of penalty fixed for the contravention.

Power to Call for Record:

As per section 7 of the Act the authorized officer has power to call for record from the employer. The Authorized Officer must review the report that the Employer submitted in accordance with Section 6. In order to confirm that the report submitted in accordance with Section 6 of the Act, the Authorized Officer shall have the authority to request any record, information, or document held by any employer. After reviewing the report, the Authorized Officer may issue any order it sees fit to carry out the purposes of this Act. Every employer is required to offer the Authorized Officer all assistance, and if they do not without a valid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

excuse, they are in violation of this Act. Each order issued in accordance with subsections (3) and (4) must be posted on the designated portal of Government.¹⁵

Concept of Natural Justice:

Section 5, 8 and 14 all support the principle of natural justice. Section 5 provides the exemption clause and proper enquiry conduct by designated officer means no rejection on the face. Section 8 provides appeal provisions means not only one decision is final there is an option of appeal. Section 14 lays down the rule that no penalty shall be imposed by designated officer unless a notice of being heard in writing provides to the employer with reasons why penalty imposes upon him. After hearing only, the decision can be given. These sections follow the principle of natural justice.

Limitation of taking Cognizance of Offence:

Section 15 provides the limitation for prosecution and cognizance of offence under this Act. As per Section, no one below SDM, shall take the cognizance of offence punishable under this Act. The cognizance shall be taken upon a complaint within 6 months of offence come to the knowledge of designated officer. When time is granted or extended on the employer's request for the performance of any act, the limitation period is calculated from the date on which the time granted or extended expired.¹⁶

Appeal¹⁷:

- 1) Any employer who feels wronged by a decision made by the Designated Officer under Section 5 or the Authorized Officer under Section 7 has sixty days to file an appeal with the appropriate Appellate Authority using the prescribed form and procedure.
- 2) Any appeal filed in accordance with subsection (1) must be accompanied by the appropriate fees.
- 3) The Appellate Authority must decide an appeal within sixty days of receiving it under subsection (1), after giving the appellant a chance to be heard.
- 4) The appellate authority may annul, uphold, or alter the said order.
- 5) The appellate authority must adhere to any prescribed procedures.

Powers of State Government:

Powers of the State Government are inherited from section 17-18 and 20 of this Act.

Section 17 of the Act, if there is a problem implementing the provisions of this Act, the Government may, within two years of the Act's passage, by an order published in the

¹⁵ The JHARKHAND STATE EMPLOYMENT OF LOCAL CANDIDATES IN PRIVATE SECTOR ACT, 2021 (Jharkhand Act, 14, 2021)

¹⁶ Ibid

¹⁷ The JHARKHAND STATE EMPLOYMENT OF LOCAL CANDIDATES IN PRIVATE SECTOR ACT, 2021 (Jharkhand Act, 14, 2021)

Official Gazette, make any provisions that are not in conflict with the provisions of this Act that it deems necessary or practical to resolve the problem.¹⁸

The Government may occasionally issue written directives or orders to carry out this Act's provisions as per Section 18 of the Act.¹⁹

As per Section 20 of the Act the state government has power to make rules relating to provisions of the Act. The Government may issue notifications containing rules for implementing all or a portion of this Act's purposes. Within six months of its creation, each rule made in accordance with this Act must be presented to the State legislature.

Role of State Legislature:

State legislature plays an important role in passing the rules made by the government. Government after exercising the power of section 20, have to present created rules before State Legislature within 6 months of formation.²⁰

Conclusion:

From the overall discussion it can be concluded that this law ensures 75% employment for its candidates in all private entities including shops where more than 10 employees are working. The salary criteria for the reservation are 40,000 not more than means where the labour class works near to C and D groups jobs, for raising their living standards. Act provides the exemption in case of non-availability. And the Act also provides the mechanism for exemption from the liability to recruit from locals. But this is subject to a fair provision of enquiry by designated officer. In case of penalty also a notice of hearing shall be served in writing to the employers. And the order of designated officer is not final there is appellate authority which may rescinds the previous order or final it. State government may alter the rules and if there is any difficulty in case of application or giving effect to the Act. The State Government may issue directions for removing the difficulties. But the power of state government is not absolute. It is subject to check and balance by the State Legislature. The Act passed by the Jharkhand Govt having rigid features with some of the subsidiary provisions. First point for supporting my statement, is there is no imprisonment for violation of provisions but only penalty imposes, which may be continuing nature. This Act does not provide the imprisonment for violation of provisions. But penalty imposes only monetary punishment provision is there.

All these things shows that how beautifully this Act is designed.

¹⁸ Ibid

¹⁹ ibid

²⁰ The JHARKHAND STATE EMPLOYMENT OF LOCAL CANDIDATES IN PRIVATE SECTOR ACT, 2021 (Jharkhand Act, 14, 2021)