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ವಿಷಯ / ವಿಭಾಗ: DEPARTMENT / SUBJECT: *Resort Matters Reservation*

ಪತ್ರಿಕಾ ಕಡತದ ಹೆಸರು / NAME OF THE NEWS PAPER: *The Hindu*

ದಿನಾಂಕ / DATE: *8/12/19*

Govt. seeks review of SC/ST creamy layer

It urges the Supreme Court to refer the matter to a seven-judge Bench

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NEW DELHI
The Centre on Monday asked the Supreme Court to refer to a seven-judge Bench the question whether the creamy layer concept should apply or not to the Scheduled Castes/Scheduled Tribes while providing them reservation in promotions.

On September 26 last year, a five-judge Bench in the Jarnail Singh case unanimously agreed with a 2006 judgment of another five-judge Bench in the M. Nagaraj case, which had upheld the application of the creamy layer principle in promotions. The 2018 judgment, authored by Justice Rohinton F. Nariman, had also refused the government's plea to refer the 2006 Nagaraj case judgment to a seven-judge Bench.

On Monday, however, At-

torney General K.K. Venugopal urged the court to reconsider the ruling and refer the Nagaraj case judgment to a seven-judge Bench. A Bench, led by Chief Justice of India Sharad A. Bobde, agreed to hear the case after two weeks.

Plea rejected

The 2018 judgment, modifying the part of the Nagaraj case verdict which required the States to show quantifiable data to prove the "backwardness" of a Scheduled Caste/Scheduled Tribe in order to provide quota in promotion in public employment, had, however, rejected the Centre's argument that the Nagaraj case ruling had misread the creamy layer concept by applying it to the SCs/STs.

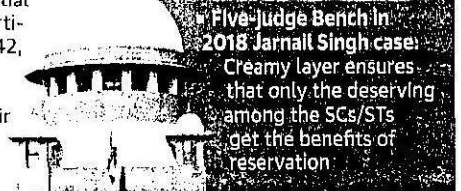
"The whole object of reservation is to see that the

Case history

Salient points from the past verdicts which dealt with the application of creamy layer concept in reservation

Nine-judge Bench in 1992 Indra Sawhney case: SCs/STs are the most backward among backward classes. Once part of the Presidential List under Articles 341 & 342, there is no question of showing their backwardness again

Five-judge Bench in 2006 M. Nagaraj case: Quota benefits should go to the weakest of weak and not be snatched away by members of the class who are in the "top creamy layer"



backward classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were," Justice Nariman had said,

upholding the Nagaraj case ruling. The 2018 judgment said that when a court applies the creamy layer principle to the Scheduled Castes and the Scheduled Tribes, it does not in any manner tinker with the Presidential List under Article 341 or 342 of the Constitution. The caste or group or sub-group named in the list continues exactly as be-

fore, Justice Nariman had reasoned.

"It is only those within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation," he had explained.

He had observed that unless the creamy layer principle was applied, those genuinely deserving reservation would not access it and those who were underserving within the same class would continue to get it. The court held that the principle was based on the fundamental right to equality. "The benefits, by and large, are snatched away by the top creamy layer of the backward caste or class, keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake," Justice Nariman had observed.