

(2003) 05 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12514 of 2002

Bhakthavathsala Sukumar

APPELLANT

Vs

Hindustan Petroleum Corporation Limited and Others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)
Regulation of Issue of Community Certificates Act, 1993 — Section 4

Citation : (2003) 4 ALD 25 : (2003) 6 ALT 133

Hon'ble Judges : T. Meena Kumari, J

Bench : Single Bench

Advocate : A. Srinivasa Sarma, for the Appellant; K. Srinivasa Murthy, SC MPCL for Respondent Nos. 1 to 3 and Government Pleader for Social Welfare for Respondent Nos. 4 to 10, for the Respondent

Final Decision : Allowed

Judgement

T. Meena Kumar, J.—Aggrieved by the orders of the first respondent dated 25.6.2002 wherein the petitioner was discharged from the services of the respondents 1 to 3 -Corporation on the ground that he secured employment by giving false information that he belongs to Scheduled Caste, the present Writ Petition is filed.

2. The case of the petitioner, as narrated in the affidavit, is as follows:

The petitioner belongs to SC Community and he joined in the organization of respondents 1 to 3 on 5.1.1980 as Clerk-cum-Typist under reserved quota meant for Scheduled Castes by producing caste certificate with serial No. 2/80-B3 dated 1.1.1980 issued by the Mandal Revenue Officer, Salur. The respondents 1 to 3 got verified his caste certificate through the District Collector, Visakhapatnam as genuine one and as such he continued in the employment without any interruption till 25.6.2002 on which date he was discharged from service.

It is also stated that in the year 1989, the respondents 1 to 3 sought clarification

about his caste with the District Collector, Vizianagaram when the case of the petitioner has come up for consideration to select him to the management cadre. The Mandal Revenue Officer, Ramabhadrapuram, as per the instructions of the Joint Collector, Vizianagaram conducted a detailed enquiry and found that he belongs to SC Community. It is stated that again the Mandal Revenue Officer, Visakhapatnam was directed to conduct enquiry about as to whether the petitioner belongs to SC Community or not since the petitioner has been residing at Visakhapatnam and the Mandal Revenue Officer, Visakhapatnam found that he is a Christian and the Joint Collector, Vizianagaram passed an order on 4.5.1993 cancelling the caste certificate issued to him on the basis that he has faith in Christianity and therefore he does not belong to SC Community. It is stated that the Joint Collector, Vizianagaram has given under preference to the hearsay enquiry conducted by the Mandal Revenue Officer, Visakhapatnam by discarding the detailed enquiry conducted by the Mandal Revenue Officer, Ramabhadrapuram.

It is also stated that against the order dated 4.5.1993, he made an appeal on 22.12.1993 to the Director, Department of Social Welfare, Government of A.P., Hyderabad and on such appeal enquires were made and found that he belongs to SC Community and the certificate issued by the Mandal Revenue Officer, Saluru to him is a genuine one.

3. Further, it is stated that in the departmental enquiry initiated by respondents 1 to 3, the enquiry officer after conducting enquiry has stated that the charges levelled against the petitioner in the charge-sheet dated 25.11.1993 were held not proved. It is also stated that though the petitioner made a representation to respondents 1 to 3 along with the report of the Director, Social Welfare Department, Hyderabad, they did not consider those orders and passed the impugned order dated 25.6.2002 terminating the services of the petitioner. Questioning the said termination order, the present writ petition has been filed along with WPMP No. 15549 of 2002 seeking interim suspension of the orders of the first respondent dated 25.6.2002.

4. The respondents 1 to 3 filed counter stating that the petitioner has approached this Court without exhausting the remedy available to him under Standing Orders and that they have taken action basing on the report of the statutory authority.

5. This Court while hearing the writ petition for admission, passed interim order in WPMP No. 15549 of 2002 suspending the orders of the first respondent dated 25.6.2002 after hearing both sides.

6. Against the said orders, the respondents herein preferred Writ Appeal No. 1144 of 2002 and a Division Bench of this Court has set aside the orders dated 15.7.2002 passed in WPMP No. 15549 of 2002 and directed to dispose of the writ petition as expeditiously as possible. Thus, the Writ Petition has come up for final hearing.

7. After disposal of the Writ Appeal, the petitioner filed WPMP No. 27072 of 2002 to bring on record the following officials as respondents 4 to 10 i.e., (1) The Joint Collector, Vizianagaram District, Vizianagaram; (2) The District Collector, Vizianagaram District, Vizianagaram; (3) The District Collector, Visakhapatnam District, Visakhapatnam; (4) The Director, Social Welfare Department, Government of AP, Hyderabad; (5) The Deputy Director, Social Welfare Department, Government of AP, Hyderabad; (6) The Deputy Director, Social Welfare Department, Government of AP, Visakhapatnam; and (7) The Commissioner, Social Welfare Department, Government of AP, Hyderabad since they are connected with the passing of the orders cancelling the caste certificate of the petitioner and hence they are also necessary parties to this writ petition and the said WPMP was ordered after hearing all the Counsel by order dated 9.1.2003.

8. The petitioner also filed WPMP No. 27073 of 2002 for amendment of the prayers wherein the petitioner also sought a direction to quash the impugned order of the fourth respondent dated 4.5.1993. This Court allowed both the above WPMPs on 9.1.2003 after hearing all the Counsel.

9. From the above pleadings, the following points arise for consideration?

i. Whether the disciplinary authority has committed any illegality in discharging the petitioner from service; and the delay in concluding the enquiry by it has vitiated the entire proceedings of the departmental enquiry?

ii. Whether the impugned order of cancellation of the caste certificate of the petitioner by the fourth respondent is vitiated on the ground of violation of principles of natural justice?

10. To decide the first point, the following facts have to be taken into consideration. The learned Counsel for the petitioner submits that when the case of the petitioner has come up for consideration to select him to the management cadre in the organization of respondents 1 to 3, respondents 1 to 3 entertained a doubt about the genuineness of the caste certificate of the petitioner and they sought clarification about his caste certified from the District Collector, Vizianagaram and at the same time they also initiated departmental enquiry. After enquiry, the departmental Enquiry Officer submitted his report on 17.3.1995 stating that the charges levelled against the petitioner are not proved. Even then, the disciplinary authority has passed the impugned order on 25.6.2002 discharging the petitioner basing on the cancellation of the caste certificate of the petitioner by the fourth respondent. The learned Counsel for the petitioner submits that without issuing a show-cause notice calling for the explanation of the petitioner, the impugned order has been passed by the first respondent discharging the petitioner from service and hence the same is liable to be set aside as it would amount to violation of principles of natural justice.

11. The learned Senior Counsel, Sri K. Srinivasa Moorthy appearing for respondents 1 to 3 submits that when the petitioner is due for promotion,

respondents 1 to 3 have referred the matter to the Revenue Authorities to find out the genuineness of the caste of the petitioner and the Joint Collector has reported that the petitioner does not belong to SC Community and basing on the said report only, respondents 1 to 3 conducted departmental enquiry and after completion of the said enquiry, the impugned order has been passed. The first respondent discharged the petitioner basing on the impugned order of cancellation of the caste certificate of the petitioner by the fourth respondent and hence there is no irregularity or illegality in the impugned order warranting interference by this Court and hence even if there is any lapse on the part of respondent No. 1 in conducting enquiry, the impugned order of discharge cannot be vitiated.

12. The case of the petitioner is that respondents 1 to 3 passed the impugned orders discharging the petitioner from service without taking note of further developments in this regard. The petitioner filed appeal to the Director of Social Welfare Department, Government of AP, Hyderabad against the orders dated 4.5.1993 of the Joint Collector, Vizianagaram cancelling his caste certificate on 22.11.1993. Though the caste certificate of the petitioner was cancelled on 4.5.1993, he has been continued in service till 25.6.2002 i.e., for more than 9 years without any interruption. It is also stated that respondents 1 to 3 passed the impugned order discharging the petitioner from service ignoring the further proceedings dated 7.2.2000 of the Assistant Social Welfare Officer, Visakhapatnam who conducted detailed enquiry in pursuance of Memo RC.nO.e 1/522/97 dated 14.7.1997; 17.9.1997 and 9.12.1997 of the Deputy Director, Social Welfare Department, Government of AP, Hyderabad and issued a clean chit to the petitioner by confirming his caste certificate as genuine one. It is also stated that the Commissioner of Social Welfare Department, Government of A.P., Hyderabad vide his proceedings Rc. No. R/2049/2000 confirmed that he belongs to SC Community and that the caste certificate issued to the petitioner is a genuine one.

13. From the above, it is clear that respondents 1 to 3 have merely acted on the proceedings of the fourth respondent wherein he cancelled the caste certificate of the petitioner by observing that the petitioner does not belong to SC Community without taking into consideration of the proceedings of the 10th respondent dated 17.4.2000 in which he has forwarded the report of the Deputy Director, Social Welfare Department, Visakhapatnam dated 17.2.2000. The Deputy Director, Social Welfare (SW), Visakhapatnam addressed a letter to the Commissioner of Social Welfare Department, A.P., Hyderabad stating that in the enquires that have been made with regard to the caste of the petitioner, it was found that he belongs to SC Community.

14. The learned Counsel for the petitioner further submits that the enquiry officer appointed by the respondents 1 to 3, who conducted the enquiry with regard to the allegation that he does not belong to SC Community has submitted a report stating that the charges levelled against him are not proved. In spite of the said

report of the enquiry officer, respondents 1 to 3 passed the impugned order discharging the petitioner without affording any opportunity to him and without giving any reasons for disagreeing with the report of the Enquiry Officer and hence the impugned discharge order is violative of principles of natural justice.

15. The Supreme Court in the case of Ram Kishan Vs. Union of India and others, , has held that non-mention of reasons for disagreeing with the conclusions of enquiry officer in the show-cause notice would vitiate the entire proceedings of the disciplinary authority. In the case of Ram Kishan (supra), the Supreme Court at para 10 held as follows:

"The purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the enquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the findings by the enquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show-cause on the basis of which the findings of the enquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactory give reasons to persuade the disciplinary authority to agree with the conclusions reached by the enquiry officer. In the absence of any ground or reason in the show cause notice, it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect".

16. Thus, in the above judgment the Supreme Court, it has been held that non-mention of reasons by the disciplinary authority for disagreeing with the findings of the enquiry officer and non-inviting the explanation of the delinquent by way of issuing notice in such circumstances would vitiate the entire proceedings. The Supreme Court has observed that the purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the enquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the findings by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the enquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactory give reasons to persuade the disciplinary authority to agree with the conclusions reached by the enquiry officer. The Supreme Court also observed that in the absence of any ground or reason in the show-cause notice, it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect.

17. In the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, ,

the Supreme Court has held that whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings.

18. A Division Bench of the High Court of Himachal Pradesh while dealing the case of Dr. K.C. Malhotra Vs. The Chancellor, H.P. University, Shimla and Others, , in which the Vice-Chancellor of Himachal Pradesh University was sacked on mere accusations of inefficiency, without being heard and without being asked for any explanation on the basis of an enquiry carried on behind the back of the Vice-Chancellor, it was observed that the word "enquiry" implies to investigate a matter from various sources in order to find the truth and the person being affected by such an enquiry, on the basis of fair play, was definitely required to be heard, specially when it is that person's conduct and efficiency and other capabilities which were the subject matter of enquiry and the order of removal being result of enquiry conducted against the principles of natural justice.

19. The Supreme Court in the case of State of U.P. Vs. Vijay Kumar Tripathi, and Another, , it was held that even when a competent authority censures an employee, the aggrieved employee is entitled to an opportunity of pre-decisional or post-decisional hearing.

20. The learned Senior Counsel for respondents 1 to 3, Sri K. Srinivasa Murthy, relying on the judgment of the Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , has contended that there is no need to give him any notice before terminating the services of the delinquent and his services can be terminated at any stage without giving any opportunity since the first respondent acted on the report of the fourth respondent, who is the competent authority to decide the genuineness or otherwise of the caste certificate of the petitioner.

21. It is to be seen that the said decision deals with the admission of students in to educational institutions to prosecute their studies and hence the said decision is not applicable to the facts of this case.

22. In this writ petition, the disciplinary authority did not assign any reasons for disagreeing with the report of the enquiry officer and no opportunity of hearing was given to the petitioner before discharging him vide its proceedings dated 25.6.2002 and therefore it has to be held that the impugned order of discharge was passed by violating the principles of natural justice.

23. The next ground urged by the learned Counsel for the petitioner is that there was abnormal delay in conducting the enquiry and passing the final orders. It is to be noted that the charge-sheet in the enquiry was issued on 25.11.1993 and enquiry officer submitted his report on 17.3.1995 and final orders discharging the petitioner was passed on 25.6.2002 i.e., nearly after a period of 9 years from the date of charge-sheet and after seven years from the date of the enquiry.

24. The learned Counsel for the petitioner further submits that respondents I to 3 have taken much time to complete the enquiry and the delay in concluding the enquiry has caused great prejudice to the defence of the petitioner and therefore the departmental proceedings are liable to be quashed.

25. In support of his contention, the learned Counsel for the petitioner relies on a judgment of the Supreme Court in the case of State of M.P. v. Bani Singh and Anr. (1990) 2 SLR 798, and of the judgments of the Madras High Court in the case of Krishnan v. The Chief Engineer (U&S), TNWS and DB, Madras 1998 MLJ 279, and on a Division Bench judgment of the Bombay High Court in the case of Dharmendra J. Solanki Vs. Hindustan Petroleum Corporation Limited and Another,

26. The Supreme Court in the case of State of M.P, (supra), it has been held that initiation of the departmental enquiry after 12 years without any satisfactory explanation for such delay, the departmental proceedings are liable to be quashed. In this case, admittedly, the petitioner joined into service in 1980 and the departmental enquiry was initiated in 1989 and thus, there was delay of 9 years and no explanation is coming forward for such delay and hence the departmental proceedings are liable to be quashed.

27. In the case of Krishnan (supra), I (as a Judge of the High Court of Madras) have taken a view that the departmental proceedings are liable to be quashed if there is delay in concluding the enquiry as it would disable the delinquent from putting forth his defence effectively and it would prejudice the delinquent for such delay. In this case, the departmental enquiry was initiated against the petitioner in 1993 and the final orders have been passed in 2002. Thus, the petitioner is discharged from service nearly after 9 years from the date of initiation of the enquiry and hence the delay in concluding the enquiry has disabled the petitioner from putting forth his defence.

28. In the case of Dharmendra J. Solanki (supra), a Division Bench of Bombay High Court held that discharging the petitioner after 9 years of initiation of the enquiry has caused great prejudice to the defence of the petitioner.

29. The Madras High Court in the case of V.S. Ramanarayan v. The Food Corporation of India, 1985 Writ Law Reports 522, has held that the unexplained delay, as spoken against the department, will constitute a denial of a reasonable opportunity to the petitioner to defend himself and it would amount to violation of the principles of natural justice and the impugned charge memo was struck down on that ground alone.

30. Yet another judgment, the High Court of Madras in the case of C.N. Ramaswamy v. The Chief Engineer, Distribution. Tamil Nadu Electricity Board, Madras (1981) 2 SLR 469, has held that initiation of the departmental enquiry after 12 years without any satisfactory explanation for such delay, the departmental proceedings are liable to be quashed.

31. In this case, it is not the case of the respondents 1 to 3 that the petitioner

did not co-operate with the enquiry and that the respondents 1 to 3 did not explain the delay in concluding the departmental enquiry. It is not the case of respondents 1 to 3 that the petitioner did not co-operate with the enquiry and hence the delay has occurred. On this count also, the impugned order discharging the petitioner is liable to be set aside.

32. It is to be seen that after cancelling the caste certificate of the petitioner by the Joint Collector, Vizianagaram dated 5.4.1993, the Deputy Director (Social Welfare) Department, Visakhapatnam addressed a letter on 17.2.2000 to the Commissioner of Social Welfare Department, AP, Hyderabad informing that the matter has got been enquired into and found that the petitioner belongs to SC Community, sub-caste Mala. It is also stated that the Commissioner of Social Welfare Department, Hyderabad in turn addressed a letter to the Joint Collector, Vizianagaram District in Rc. No. R/2049/2000 dated 17.4.2000 along with the letter of the Deputy Director (Social Welfare), Hyderabad to take necessary action. From the material available on record, the Joint Collector, Vizianagaram did not communicate the said letters to the respondents. Thus, the observation of the first respondent in the impugned order that the petitioner could not substantiate his cause in spite of long time given to him has no basis since the petitioner has taken effective steps by way of filing appeal to the Deputy Director, Social Welfare Department, Hyderabad. Moreover, for the lapse on the part of the Joint Collector, Vizianagaram in not sending the report of the Deputy Director (Social Welfare) Department, Hyderabad to respondent No. 1, the petitioner cannot be penalized. The first respondent passed the impugned discharge order dated 25.6.2002 without taking into consideration of the above letters of the Deputy Director (Social Welfare) Department, Visakhapatnam dated 17.2.2000 and of the Commissioner of social Welfare, Hyderabad dated 17.4.2000 though the same have been submitted by the petitioner along with his representations dated 17.10.2000, 5.3.2001 and 21.6,2002 to respondents 1 to 3.

33. The learned Senior Counsel appearing for respondents 1 to 3 also submits that there is a considerable delay on the part of the petitioner to avail the remedies that are available to him by approaching the competent authority against the impugned order dated 25.6.2002 and as the petitioner did not avail such opportunity, the order of the fourth respondent has become final and respondents 1 to 3 have rightly acted on the said report and hence the writ petition is liable to be dismissed.

34. It is pertinent to note that against the orders of the fourth respondent dated 4.5.1993, the petitioner made an appeal to the Director, Social Welfare Department, Hyderabad on 22.12.1993. Basing on such appeal, the Assistant Social Welfare Officer, Visakhapatnam conducted enquiry and submitted report to the Deputy Director, Social Welfare on 7.2.2000 and the Deputy Director in turn submitted report to the Commissioner, Social Welfare Department, Hyderabad on 17.2.2000. The Commissioner, Social Welfare Department, Hyderabad on

17.4.2000 addressed a letter to the Joint Collector, Vizianagaram enclosing the report of the Deputy Director (Social Welfare) Department, Visakhapatnam District to take necessary action. But, the Joint Collector has taken no action on such report. Thus, the petitioner has been making representations to the authorities against the impugned order of the fourth respondent and there was no lapse on the part of the petitioner to avail the remedies that are available to him by approaching the competent authority against the impugned order.

35. In a recent judgment of the Supreme Court in the case of *State Bank of India v. K.P.Narayana Kutty* AIR 2003 SCW 634, it has been held that if the disciplinary authority disagreed with the findings of the enquiry officer, an opportunity of hearing to the delinquent officer should be provided. In the said decision, it was held as follows;

"... After referring to various decisions including the decisions relied on behalf of the Bank, this Court has clearly held that where the disciplinary authority disagrees with the report of the enquiring authority in regard to certain charges, providing an opportunity is necessary to satisfy the principles of natural justice, xxxx

... The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Enquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

36. For the above discussion, and taking into consideration of the judgments of the Supreme Court in the case of *State of M.P. (supra)*, and of the Madras High Court in the case of *V.S. Ramanarayana (supra)*, *C.N. Ramaswamy (supra)*, *Krishnan (supra)*, it has to be held that the initiation of the enquiry after 9 years and concluding the said enquiry after 13 years is bad and illegal. Further non-mention of reasons for disagreeing the enquiry officer and non-inviting the objections of the petitioner before passing the impugned order of discharge in view of the judgments of the Supreme Court in the case of *Ram Kishan (supra)*, *Punjab National Bank (supra)*, it has to be held that the departmental proceedings are liable to be quashed on the ground of violation of principles of natural justice.

37. To decide the second point, i.e., whether the impugned order of cancellation

of the caste certificate of the petitioner by the fourth respondent is vitiated on the ground of violation of principles of natural justice, the following factors have to be taken into consideration.

38. Respondents 1 to 3 addressed a letter in the year 1989 seeking clarification about the caste of the petitioner with the District Collector, Vizianagaram. On such letter, the Joint Collector, Vizianagaram directed the Mandal Revenue Officer, Ramabhadrapuram to enquire into the matter and to submit his report. It seems that the Mandal Revenue Officer, Visakhapatnam was also directed to conduct enquiry about the genuineness of the caste of the petitioner and submit his report. The Joint Collector in the impugned order of cancellation of the caste certificate of the petitioner dated 4.5.1993 mainly relied on the report of the Mandal Revenue Officer, Visakhapatnam dated 29.9.1989. The Mandal Revenue Officer, Visakhapatnam has stated that he enquired into the social status of the petitioner by making surprise visit to the house of the individual and his discreet and confidential enquiries reveal that the individual is practising Christianity and the petitioner, his wife and his children are all living in Christian faith. The basis for reaching such a conclusion by the Mandal Revenue Officer, Visakhapatnam is on the information collected by him in his discreet enquiries.

39. The learned Counsel for the petitioner submits that the Mandal Revenue Officer after adducing the evidence of certain individuals and also by replying on the transfer certificates given to the petitioner and after taking into consideration of the genological information furnished by the petitioner, has come to the conclusion that the petitioner belongs to SC Mala and the community and caste certificate issued by the then Tahsildar of Salur are genuine one.

40. The learned Counsel for the petitioner submits that the fourth respondent while passing the impugned order has not given credence to the report of the Mandal Revenue Officer, Ramabhadrapuram dated 11.4.1991 and also has not furnished any reasons for discarding such valuable document and he has given importance to the information collected by the Mandal Revenue Officer, Visakhapatnam in his discrete enquires. The Mandal Revenue Officer, Visakhapatnam has not chosen to examine the individuals who belongs to the place of the forefathers of the petitioner. Hence, the Joint Collector erred in giving much importance to the report of the Mandal Revenue Officer, Visakhapatnam ignoring the report of the Mandal Revenue Officer, Ramabhadrapuram.

41. The learned Government Pleader submits that the Joint Collector, Vizianagaram directed the Mandal Revenue Officer, Visakhapatnam to conduct enquiry into the caste of the petitioner and basing on the report of the said Mandal Revenue Officer, who conducted discrete enquires, the Joint Collector, Visakhapatnam has passed the impugned .order cancelling the caste certificate of the petitioner and hence the order of the Joint Collector suffers with no illegality or irregularity.

42. it is pertinent to note that the Mandal Revenue Officer, Visakhapatnam has come to the conclusion that the petitioner does not belong to SC Community basing on his discrete enquires. Basing on the said report, the Joint Collector, Vizianagaram in the impugned order has observed as follows:

"The Mandal Revenue Officer, Visakhapatnam in his D.Dis. 1906/89 dated 29.9.1989 submitted a report to the Collector, Visakhapatnam stating that he enquired into the social status of Sri Bhaktavatsalu Sukumar who is residing at Door No. 23-1-23 that his surprise visit to the house of the individual, discreet and confidential enquires reveal that the individual is out and out a Christian, that he and his family members i.e., wife and children (minor) are all living in Christian faith....."

43. Thus, it is clear that the Mandal Revenue Officer, Visakhapatnam did not enquire the persons in the locality where the petitioner has been residing, he did not examine any documents and he did not provide any opportunity to prove his caste. He came to the such conclusion basing on his discrete enquires. Whereas, the Mandal Revenue Officer, Ramabhadrapuram has conducted a detailed enquiry, also examined the Member of Legislative Assembly and also perused the documents produced by the petitioner and has come to the conclusion that the petitioner belongs to SC Community.

44. It is also pertinent to note that the impugned order of the Joint Collector, Vizianagaram does not show that he has supplied the copies of the reports of the Mandal Revenue Officer, Visakhapatnam calling his explanation before passing the impugned order when the said report goes against the petitioner. By non-supplying the copy of the said report of the Mandal Revenue Officer, Visakhapatnam to the petitioner particularly when the Joint Collector, Vizianagaram is relying on it, it would amounts to violation of principles of natural justice.

45. When the competent authority which has to enquire into the matter has directed his subordinate to conduct enquiry, the competent authority has to furnish the report of the Enquiry Officer to the delinquent by inviting his objections. A Division Bench of the Madras High Court in the case of D. Illamaran v. Government of India, 1996 WLR 482, it has been held that as follows:

"Whenever the question arises, as to whether a person belongs to a particular community recognized as the Scheduled Tribe or Scheduled Caste, a decision has to be taken by the Collector, of the District, after holding due enquiry and in such case, he may himself hold an enquiry or direct the Revenue Divisional Officer to hold an enquiry and submit a report. In the event the Collector adopts the latter course, he has to make available a copy of the report submitted by the Revenue Divisional Officer to the concerned person and give him an opportunity to file his objections and adduce evidence, if any and then decide the matter after hearing the aggrieved person,...."

46. In this case, the Joint Collector instead of enquiring into the matter, he

directed the Mandal Revenue Officer, Ramabhadrapuram and he submitted his report after conducting due enquiry stating that the petitioner belongs to Scheduled Caste Community. Again, the Mandal Revenue Officer, Visakhapatnam was directed to conduct enquiry and he submitted his report basing on his discrete enquires stating that the petitioner does not belong to SC Community. In such a case, the Joint Collector ought to have furnished those reports to the petitioner herein and should have provided an opportunity to file his objections and adduced evidence. As seen from the record, the Joint Collector did not adopt such a procedure and hence the impugned order of the fourth respondent in cancelling the caste certificate of the petitioner is illegal and arbitrary.

47. The above judgment of the Madras High Court in the case of D. Illamaran (supra) has been followed by a Division Bench of the Rajasthan High Court in the case of Punjab National Bank and Others Vs. Surendra Nath,

48. Thus, it has to be held that when the enquiry authority relying on a document which goes against the interest of delinquent, the enquiry authority has to furnish such a document to the delinquent to offer his remarks and non-supplying of such copy would amounts to violation of principles of natural justice and such a report has to be set aside on the ground of violation of principles of natural justice.

49. It is also to be seen that in the impugned order. Joint Collector did not assign any reasons for differing with the findings of the Mandal Revenue Officer, Ramabhadrapuram. The petitioner also filed the report of the Mandal Revenue Officer, Ramabhadrapuram dated 11.4.1991. The said report clearly shows that he examined 8 individuals and also perused the certificates of the petitioner. The Mandal Revenue Officer also stated that he examined Member of Legislative Assembly, Salur (ST) and other individuals who know about the parents of the petitioner and their caste. The Joint Collector, Vizianagaram has discarded such a valuable report without giving any reasons and he has given importance to the report of the Mandal Revenue Officer, Visakhapatnam, which is based on the discreet enquires. Thus, the Joint Collector has not followed the principles of natural justice and has committed irregularity in passing the impugned order cancelling the caste certificate of the petitioner.

50. The learned Counsel for the petitioner submits that when the fourth respondent obtained two conflicting enquiry reports i.e., one from the Mandal Revenue Officer, Ramabhadrapuram and the other from the Mandal Revenue Officer, Visakhapatnam, he should have furnished those reports to the petitioner and should have provided an opportunity to submit his explanation. Due to non-furnishing of such reports to the petitioner, the enquiry conducted by the Joint Collector has been vitiated on the ground of violation of principles of natural justice and taking into consideration of the judgment of the Madras High Court in the case of D. Illamaran (supra), the impugned cancellation order dated 4.5.1993 is liable to be set aside and accordingly set aside.

51. However, taking into consideration of the fact that the impugned cancellation of the caste certificate of the petitioner has been passed by the fourth respondent by violating the principles of natural justice and in view of non-supplying of the two conflicting reports of the Mandal Revenue Officers, Ramabhadrapuram and Visakhapatnam to the petitioner inviting his explanation, the matter is remanded back to the competent authority to take a decision as per the provisions contained in AP (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificate Act, 1993 after affording an opportunity of hearing to the petitioner as expeditiously as possible.

52. Under the above circumstances and considering the fact that the petitioner has been continued in service till 25.6.2002 even after cancellation of the caste certificate of the petitioner in 1993 and also considering the fact that respondents 1 to 3, being disciplinary authorities, did not call for any remarks while they are differing with the report of the enquiry officer and also considering the judgments of the Supreme Court cited supra and in view of the setting aside of the order of the fourth respondent dated 4.5.1993 and remanding the matter to the competent authority for fresh enquiry, the respondents 1 to 3 are directed to reinstate the petitioner into service forthwith. However, the petitioner is not entitled for the back wages for the period he is out of service. Further, it is made clear that the period during which the petitioner is out of service shall be counted for the purpose of pension, if any, and for seniority.

53. In the result, the writ petition is allowed. No costs.