
(2000) 09 RAJ CK 0051
In the Rajasthan High Court
Case No : .S.A. (Writ) No. 310 of 2000

Punjab National Bank and Others

APPELLANT

Vs

Surendra Nath

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Citation : (2001) 1 LLJ 79 : (2001) 1 RLW 23 : (2001) 1 WLC 352 : (2001) 1 WLN 359

Hon'ble Judges : Ar. Lakshmanan, C.J.;Rajesh Balia, J

Bench : Division Bench

Advocate : V.D. Vyas, for the Appellant; M. Mridul and S. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Dr. AR. Lakshmanan, C.J.—Punjab National Bank, New Delhi and two others are the appellants in this Special Appeal. This Special Appeal was filed by the Bank against the judgment passed by the learned single Judge on February 16, 2000 in S.B. Civil Writ Petition No. 824/1992, quashing the punishment orders and granting of consequential benefits to the respondent herein, petitioner in the Writ Petition.

2. The writ petition was filed to quash the order dated September 26, 1990 (Annexure 13), of the disciplinary authority and that the order dated November 11, 1991 (Annexure 17), passed by the appellate authority imposing punishment of removal of the respondent herein from service and other consequential reliefs.

3. According to the respondent, he belongs to Rawal community, which is a Scheduled caste and that the said community follows Nath sect. He made an application to the Executive Magistrate (Tehsildar), Pali, the authority competent to grant certificate certifying that the respondent belongs to Scheduled caste. The Executive Magistrate issued a certificate dated July 6, 1976 (Annexure 1). The Sarpanch of Gram Panchayat Auwa, Tehsil Kharchi issued a certificate that

the respondent is Rawal by caste and belongs to a Scheduled Caste. Punjab National Bank invited applications for the post of Clerks. The respondent applied for the said post and attached a copy of the certificate. He was appointed as Clerk on August 4, 1977 after being subjected to selection (Annexure 3). He was then promoted to Officers cadre w.e.f. May 27, 1985 and since then he was working as Officer (Accountant) till his removal from service. A preliminary enquiry was initiated on the basis of some anonymous complaint to ascertain the caste of the respondent and in this process, the respondent was called upon to furnish proof about his caste. The respondent submitted the following documents in his support that he is by caste Rawal:

"(i) Caste Certificate of the petitioner showing that he is Rawal.

(ii) Caste Certificate of Shri Augad Rawal, son of Shri Lakha Rawal to whom, the petitioner went in adoption in 1958 showing that he was Rawal by caste.

(iii) Caste Certificate of Shri Pukha Rawal son of Shri Nena Rawal who is father-in-law of the petitioner showing that he is Rawal by caste.

(iv) Verified copy of adoption deed by Shri Om Prakash Soni, Advocate, Rajasthan High Court, Jodhpur".

The respondent has also produced copies of the caste certificate, the adoption deed duly verified and the caste certificate of Pukha Rawal and those documents are marked as Annexures-4 to 6 respectively.

4. During the course of preliminary enquiry, the statements of Inder Singh Sisodia, Head Master, Prabhu Solanki, Clerk and Misri Lal Dave, Assistant Head Master were recorded and they were reported to have said that the respondent belongs to Nath community. According to the respondent, these statements were recorded at the back of the respondent. A chargesheet was served upon the respondent on April 19, 1989 alleging that he does not belong to Scheduled Caste and that he falsely represented that he belongs to Scheduled caste and on this basis obtained relaxation in age limit which was otherwise not available to the respondent. The respondent submitted a reply to the charge sheet (Annexure 8). In the reply, he has specifically stated that the: proceedings initiated is not within the jurisdiction of the enquiry officer to go into the question as to whether the respondent belongs to Scheduled Caste. The respondent filed S.B. Civil Writ Petition No. 3290/1989, seeking relief of quashing the enquiry proceedings. As no stay was granted, the enquiry was proceeded and punishment of removal from service was imposed. In view of this, the respondent chose to withdraw the Writ Petition with liberty to file fresh one which was allowed to be done and earlier writ petition was withdrawn with liberty to file fresh writ petition. The respondent also produced genealogical table from Bhat Bahi testifying that the respondent belongs to Rawal community. He also produced other certificates in support of his contention. He also filed written statement on July 2, 1990 (Annexure 12). The enquiry officer submitted his findings to the disciplinary authority which were not made available to the respondent. The disciplinary

authority by order dated September 26, 1990, while concurring with the findings of the enquiry officer, has imposed punishment of removal from service which shall not be a disqualification for future employment, upon the respondent. This order of the disciplinary authority with a copy of the enquiry report was sent to the respondent and marked as Annexures 13 and 14 respectively.

5. The respondent filed an appeal against the order of the disciplinary authority and the appellate authority rejected the appeal vide order dated, November 11 1991. The respondent, who is son of one Jagannath who also belongs to Rawal community, was given in adoption to Augad Rawal in his early age when he was hardly of 8 years and this adoption , was as per customs of the area. The respondent also filed a suit in the Court of District Judge, Pali in Civil Suit No. 6/1989 which was decided on May 25, 1989 and the respondent was declared to be the adoptive son of Shri Augad Rawal and his wife Smt. Meena Devi. This document was placed before the enquiry officer, but the enquiry officer did not accept this judicial pronouncement on the plea that was an ex parte one.

6. In the aforesaid circumstances, the respondent preferred the above writ petition for the reliefs claimed. The writ petition was admitted on February 13, 1992 and interim order was granted which continued till the disposal of the writ petition. No reply was filed by the Bank in the writ petition. pALSHIKAR J. allowed the writ petition filed by the respondent herein. The learned Judge has observed in Paras 3 and 4 of the order as under:

"The learned counsel appearing for the petitioner submitted that the controversy involved in this petition are squarely covered by the judgment of this Court. In Writ Petition No. 1737/1980 decided on March 9, 1989, a Division Bench of this Court has held that once a certificate issued by the competent authority regarding declaration of caste or an individual is accepted by the authority, it cannot be the question subsequent in disciplinary proceedings for the purpose of veracity of such certificate and proceedings on the basis of such averments cannot continue. It is then submitted that there is along another judgment of this Court in Sampat Ram v. Babu Lal Bairwa, Election Petition No. 3/1980, wherein it is held that Rawla caste of the Sant Nath belong to Rawla is Scheduled Caste, as contemplated by the constitutional order of scheduled caste. The third contention raised by the learned counsel was that the principles of natural justice have been grossly violated in conducting the inquiry, no opportunity was given to the petitioner to establish his claim that his caste is included in the scheduled caste as mentioned in the constitutional order. Taking into consideration the decision of this Court and the submissions relying thereof, I see that the disciplinary proceedings are liable to be quashed for the reason that the certificate of the competent authority was properly considered and accepted by the appointing authority.

In the result, the petition succeeds and the impugned orders are quashed. The petitioner throughout is entitled for all the consequential benefits."

7. Aggrieved by the above judgment, the Bank has filed the present Special Appeal.

8. We have heard Mr. V.D. Vyas, learned counsel for the appellants and Shri M. Mridul, Senior advocate with Shri S. Mehta for the respondent. Mr. V.D. Vyas submitted the following contentions at the time of hearing:

i) The disciplinary authority and the appellate authority have concurrently found on facts that the respondent does not belong to Scheduled Caste. There is no apparent error in these concurrent findings, which may call for any interference by this Court.

ii) The certificates issued by the respondent are not correct and the same had been obtained by deliberate fraudulent misrepresentation.

iii) The learned single Judge grossly erred in law in holding that the caste certificate issued by the Executive Magistrate cannot be questioned by the Bank in disciplinary proceedings.

iv) The learned Judge based his findings on an unreported judgment which is not proper.

v) The respondent belongs to Nath community as proved at the enquiry by the disciplinary authority and also by the appellate authority.

vi) There is no violation of the principles of natural justice in any manner.

vii) The disciplinary authority had the power and jurisdiction to enquire about the correctness of the certificate in order to judge as to whether the respondent had fraudulently shown himself as member of the Scheduled Caste.

viii) The Apex Court has held that the question as to what caste the petitioner belongs, is a question of fact and this fact had thoroughly been enquired into by the disciplinary authority and after holding proper and detailed enquiry. The caste certificate has been dishonestly procured in order to seek relaxation in maximum age.

ix) The Supreme Court has clearly held that the admission obtained and appointment granted on the basis of social status certificate is a fraud on Constitution and the person who takes or gives false certificate are liable to be prosecuted in law JT 1995 (3) SC 1506.

9. Concluding his argument, Mr. V.D. Vyas submitted that the learned single Judge did not consider the detailed findings of the disciplinary authority as also the appellate authority and that the learned single Judge cannot sit as an appellate Court while passing the impugned judgment and that the learned single Judge has exceeded the jurisdiction as settled by law.

10. Per contra, it was argued by the learned counsel for the respondent that as the certificate was issued by the authority duly authorised by the Government in this behalf, the concerned authority in the Bank ought to have enquired from the

prescribed authority and only on such enquiry, if the certificate was found to be incorrect, the legal proceedings should have been initiated before such a competent authority to withdraw/quash or set aside the caste certificate. In this case, no such verification was made by the competent authority and the enquiry officer considered the evidence of only the prosecution witnesses based on non-testified evidence as the basis for arriving at the findings which are not tenable in law. The respondent was also not given an opportunity to rebut the findings arrived at by the enquiry officer so as to enable disciplinary authority to examine those grounds and to apply his mind to decide the case. Non-observance of the same is violative of the principles of natural justice. The order of the disciplinary authority imposing penalty is also a non-speaking one. The appellate authority has not considered so many grounds raised in the appeal filed by the respondent and the appellate authority has nowhere dealt with the objections raised by the appellant in his appeal except that they have only been mentioned in the appellate order.

11. We have perused the entire pleadings and the annexures filed on the grounds of appeal. We have also given our anxious consideration to the arguments advanced by the counsel appearing on behalf of either side.

12. The question that arises for consideration in this case is that once a certificate issued by the competent authority regarding declaration of caste of an individual and is accepted by the appointing authority, can the said question be a subject matter of; disciplinary proceedings later by the appointing authority for the purpose of veracity of such certificate and disciplinary proceedings on the basis of such averments can continue? The learned Judge allowed the writ petition following a Division Bench judgment of this Court in Writ Petition No. 1737/1980 dated, March 9, 1989 holding that the dispute cannot be subject matter of a disciplinary proceedings to test the veracity of the certificate and that it is only for the authority who issued the certificate can cancel the same on a reference being made by the appointing authority. In our opinion, the procedure adopted by the Bank in initiating the disciplinary proceedings is not correct. With reference to the disciplinary proceedings initiated against the respondent, the following charge was framed against him:

"ARTICLE: Shri Surendra Nath, officer 80 Balotra obtained appointment in Bank by, availing relaxation in age limit available to Schedule Caste Candidate by misrepresenting to the Bank that he belongs to Schedule Caste category. His appointment, therefore, is ab initio void.

His above act of misrepresentation is breach of Regulation 3(1) of PNB Officer Employees (Conduct) Regulations, 1977 and is good and sufficient reason to impose upon him penalty in terms of Regulation 4 of PNB Officer Employees D & A) Regulations, 1977."

13. The respondent submitted reply as Annexure 8 the charge as follows:

(i) It is denied that I am not a member of Schedule Caste i.e. Rawal merely

because I have been writing Nath my name. Rawat is a community to which I belong and Rawal's also write "Nath" after their names.

ii) That Sarpanch Gram Panchayat Auwa Tehsil Kharchi had issued a certificate in my favour that my caste was "Rawal" and I belong to Scheduled Caste. On the basis of this certificate and my application supported by affidavit the Executive Magistrate (Tehsildar, Pali) was satisfied that I am "Rawal" by caste which is entered at entry No. 46 as Scheduled Caste in the Presidential order classifying Scheduled Castes. A photostat copy of this certificate has already been placed on record and one more photostat copy is enclosed herewith as Annexure 1 in which my father's name is also mentioned as Jagannath as a resident of Auwa Tehsil Kharchi District Pali.

iii) In the brochure on reservation for Scheduled Castes and Scheduled Tribes in services V edition published under the authority of the Government of India Department of Personnel and Administrative Reforms, Ministry of Home Affairs Part I chapter 14, verification of the claims of Scheduled Castes and Scheduled Tribes para 14.1. page lays down as under:

14.1. Any of the following Certificate may be accepted by the appointing authority as sufficient proof in support of a candidates' claim as belonging to Scheduled Caste or Scheduled Tribe:

(i) Matriculation or School leaving certificate or the birth certificate giving the caste or community of the candidate and place of residence.

(ii) A certificate in the form given in Appendix 14 issued by one of the authorities listed in Appendix 15."

14. The list of authorities empowered to issue certificate of verification have been enumerated under Appendix 15 of Part-II of this Brochure.

15. The Executive Magistrate and Tehsildar is a competent authority empowered to issue the certificate as to whether a particular person belongs to Scheduled Caste or not. In the instant case, the certificate was issued to the respondent that he belongs to Scheduled Caste. It is settled law that once a certificate has been issued by the competent authority such certificate has to be taken by the employer as a sufficient proof that the holder of such certificate is a member of Scheduled Caste because it is that authority alone which is competent to decide as to whether the person concerned belongs to the Scheduled Caste or not and the employer of its own cannot sit in judgment over the certificate issued by the competent authority nor the employer can, embark upon an enquiry as to whether such certificate has been issued rightly or otherwise.

16. The Rajasthan High Court Bench at Jaipur in D.B. Civil Writ Petition No. 1373/1980, Dinesh Chandra v. State of Rajasthan, has held as follows:

"Appendix 15 - the list of authorities empowered to issue certificate also include District Magistrate and therefore, Collector and District Magistrate was competent

authority to have issued a certificate with regard to Scheduled Caste and which could be accepted and relied by the appointing authority as a sufficient proof of the petitioner being a member of Scheduled Caste."

17. The very same view was taken by a Division Bench of the Madras High Court comprising dr. AR. IAKSHMANAN and P. THANGAVEL, JJ. in the case of A. Manamohan v. Secretary to Govt. of India, Ministry of Shipping & Transport, New Delhi and others reported in 1998 Lab.LC. 66. Speaking for the Bench one of us has observed as follows:

"It is settled law that a caste-community certificate issued by an empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority, the contents in the certificate are to be treated as correct and every public authority, undertakings, bodies, institutions etc., which are bound by instructions relating to such certificates are bound to act upon them, so long as they are not cancelled. It is also well settled by many decisions of our High Court and also by the Apex Court that in no disciplinary proceedings, the genuineness or correctness of their contents can be gone into. It is open to the Department or employer or organisation, to ask the issuing authority or District Collector, as the case may be, to verify whether the certificate as issued could be still valid on materials, which have since come to their knowledge. They can appeal in the verification enquiry and place the materials. If the certificate is cancelled, then disciplinary proceedings can be initiated for having furnished false information. Appointing Authorities have the right to verify the genuineness of the certificates by approaching the District Magistrate or Collector of the District or such other constituted authority and once the report is received that the certificate is genuine, thereafter the certificate-holder cannot be further harassed to prove his caste/community in any other manner. In the instant case, the Caste Community Certificate was not cancelled by competent authorities but the employer, Port Trust authorities themselves conducted enquiry and cancelled the certificate and on the basis thereof dismissed appellant employee from service. However, in view of fact that appellant had already retired, a settlement was amicably arrived at between both the parties and Port Trust authorities were directed to settle claim as agreed to between the parties".

18. Another Division Bench of the Madras High Court in S.P. Sakthi Devi v. The Collector of Salem and others 1985 (98) MLW 108, M.N. CHANDURKAR, C.J. and SATHIADEV, J. held that the caste certificate issued by the competent authority to a Konda Reddi is binding on the Government and Public Sector Undertakings. In that case, a writ petition was filed challenging the proceedings of the authorities including the Indian Airlines Management against the petitioner stating that she does not belong to the Konda Reddi community and proposing to take disciplinary action. The Bench held as under:

"The Central Government after considerable care had chosen only responsible authorities, on whom the concerned Governments have disciplinary control to

issue such certificates and further more, an enablement having been provided in such of those cases where a verification is necessary, to ascertain the correctness of the certificate, no prejudice is caused to recruiting bodies in acting upon such authorised caste certificates. Further more, if after remand had been made, circumstances warrant a verification to be made and if it is proved that the candidate's claim is false, then he may be terminated "in accordance with the relevant rules/ orders. This being sufficient safeguard provided to act upon caste certificate, the concerned employer cannot insist upon taking a decision regarding the correctness of the caste certificates in disciplinary proceedings.

When the Central Government had issued directives, as to how these caste certificates are to be issued and acted upon, and particularly relating to Scheduled Castes and Scheduled Tribes, the policy of the Government is not to cause undue hardship to them. In proving their caste, it is just and proper to hold that, unless and until a caste certificate is cancelled, it is binding on all concerned authorities/institutions/ bodies/undertakings etc."

19. The following general direction has also been given by the Division Bench for all Courts and authorities:

" 1. A caste/community certificate issued by an empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority.

2. Their contents are to be treated as correct and every public authority, undertakings, bodies, institutions, etc. which are bound by instructions relating to such certificates, are bound to act upon them, so long as they are not cancelled.

3. In no disciplinary proceedings, their genuineness or correctness of their contents can be gone into. It is open to the department or employer or organisation to ask the issuing authority or District Collector, as the case may be, to verify whether the certificate as issued could be still valid, on materials which have since come to their knowledge. They can appear in the verification enquiry and place the materials.

4. If the certificate is cancelled, then disciplinary proceedings can be initiated for having furnished false information.

5. Appointing authority have the right to verify the genuineness of the certificate approaching the District Magistrate-Collector of the District or such other constituted authority and once the report is received that the certificate is genuine, thereafter the certificate holder cannot be further harassed to prove his caste/community in any other manner.

6. In causing verification, the Collector is bound to follow the procedure laid down in letter dated July 7, 1983 of Government of Tamil Nadu.

7. In view of what is stated in Chapter 14 of Brochure on Reservation for

Scheduled Castes and Scheduled Tribes, in services, 6th edition (1982), the instructions issued by Central Government from time to time relating to Scheduled Castes and Scheduled Tribes, pertaining to issue of caste certificates are binding upon public sector undertakings, statutory and semi-Government bodies and voluntary agencies receiving grant-in-aid from the Central Government, as provided therein."

20. It is thus, seen from the above judgment that the empowered authority who had brought into existence the lawful and valid caste certificate and his higher authority alone could cancel the caste certificates and unless and until it is done, all public authorities in Central Government and Public Sector Undertakings, bodies etc. which are under its control, are bound to treat the contents of such certificate as correct and, if the empowered authority, on enquiry cancels the certificate, undoubtedly, on the basis of such report, the disciplinary action could be taken to terminate service of the certificate holder.

21. Another Division Bench of Madras High Court comprising of K. A. SWAMI, C.J. and KANAKARAJ, J., in D. Illamamn v. Government of India 1996 WLR 482, held as under:

"Whenever the question arises, as to whether a person belongs to a particular community recognised 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, in the instant case the petitioner."

22. A learned single Judge of the Madras High Court, P. SATHASIVAM, J., in R. Gurusamy v. The District Collector, Coimbatore and Ors. 1999-I-LLJ-1129 (Mad) held that it is open to the Issuing Authority or the District Collector, as the case may be, to verify whether the certificate as issued could be still valid. Likewise, the appointing authorities have the right to verify the genuineness of the certificate by approaching the District Collector or such other constituted authority. Except the above mentioned categories of persons, it is not open to the authorities to verify the community status of the person concerned merely on the basis of complaints received from third parties.

23. In the above case, the employer did not send any request for verification of the community certificate. In such circumstances, the Court held that the verification and the enquiry initiated by the employer merely on the basis of a complaint made by a third party, co-worker, cannot be sustained. Accordingly, the learned Judge, quashed the entire proceedings initiated by the employer on the basis of the complaint of a co-worker without any request or requisition from the employer.

24. Thus, from the above rulings rendered by this Court and also of the Madras High Court it is clearly seen that the employer has not followed the procedure by approaching the authority who issued the certificate, instead, the employer has initiated disciplinary action against the employee and cancelled the certificate without adopting the settled procedure by various judgments referred to above. Under such circumstances, the entire disciplinary proceedings initiated by the Bank and removing the respondent from service on the basis of such enquiry is wholly bad and against the law. In our opinion, the learned single Judge has rightly quashed the entire disciplinary proceedings on two grounds: (a) that the certificate of the competent authority was properly considered and accepted by the appointing authority and (b) the appointing authority once accepted a certificate issued by the competent authority regarding declaration of caste of its employee, the same cannot be questioned or put in issue in a disciplinary proceedings for verifying the correctness or veracity of such certificate. In our opinion, the judgment impugned in this appeal is correct and not liable to be interfered with as contended by the learned counsel for the appellant-Bank.

25. In the instant case, the respondent has been, in service of the Bank since 1977 and that at no point of time any complaint was made against him and the disciplinary action has been initiated on the basis of an anonymous complaint made by a third party.

26. It is settled law that once a certificate has been issued by the competent authority, such certificate has to be taken by the employer as a sufficient proof that the holder of such certificate is a member of Schedule Caste because it is that authority alone which is competent to decide as to whether the person concerned belongs to the Scheduled Caste or not and the employer of its own cannot sit in judgment over the certificate issued by such competent authority nor the employer can embark upon an inquiry as to whether such certificate has been issued rightly or otherwise.

27. Thus, in our opinion, the entire disciplinary proceedings are not competent at the instance of the employer and, therefore, the entire disciplinary proceedings are liable to be quashed. We do so accordingly. The punishment imposed by the appellant Bank is set aside and we make it clear that dismissal of this appeal shall not stand in the way of the appellant Bank approaching the authority concerned who issued the certificate to enquire as to whether the certificate issued by the said authority in favour of the respondent is genuine or not and proceed further depending upon the out come of such enquiry in regard to the genuineness of the certificate issued.

28. Mr. Vyas, cited the decisions reported in *Laxman Siddappa Naik Vs. Kattimani Chaniappa Jamappanna and Others*, and *Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another*, The case of *L. Siddappa* (supra) was cited for the proposition that the caste, of a candidate is a question of fact and, therefore, the findings rendered by the disciplinary authority and affirmed by the appellate authority cannot be interfered with by

the High Court and that the findings cannot be re-appraised by the High Court. In this case, the question of re-appreciation of findings rendered by both the authorities does not arise since as held by us, the entire disciplinary proceedings initiated by the employer to remove the respondent from service on the basis of the enquiry that the certificate produced by the respondent is false certificate, is void ab initio goes to the root of the entire disciplinary proceedings.

29. In the case of Director of Tribal Welfare, Government of Andhra Pradesh (supra), the Supreme Court has evolved a procedure of issuance of a certificate, their scrutiny and their approval. In the said judgment, the Supreme Court has also observed that the orders passed by the issuing authorities are the result of the enquiry by the Scrutiny Committee and their approval. In the said judgment, the Supreme Court has also observed that the order passed by the issuing authorities are the result of the enquiry by the Scrutiny Committee is subject to the proceedings under Article 226 of the Constitution of India and in case the certificate obtained or social status claimed is found to be false, the parent/guardian/candidate should be prosecuted for making claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or office under the State or the Union or elections to any local body, legislature or parliament. The Supreme Court also observed that the question of cancelling the admission or the appointment will arise only after holding that the certificate obtained was false. This, judgment, in our opinion, will not be of any assistance to the appellant Bank since procedure for cancellation of a certificate has not been followed in the instant case.

30. The case of Air India Ltd. v. M. Yogeshwar Raj, AIR 2000 SC 1681 : 2000 xi LLJ 250 was also cited by the learned counsel for the Bank. The respondent, in the above case, filed a writ petition by which the High Court of Bombay issued a rule and granted interim relief on the writ application. The subject matter of challenge in the writ application was a show cause notice dated, August 30, 1999 issued by Air India Ltd. to the writ petitioner. It was alleged in the notice that the employee had been given appointment by the Management in 1976 on the basis of his claim that he belonged to a Scheduled Tribe against a post reserved for Scheduled Caste/Scheduled Tribe. As the caste certificate was not in prescribed form from the competent authority, the employee had been called upon to submit a proper certificate. Pursuant to this, a certificate had been submitted. It was alleged in the notice that the certificate so produced was a forged document. It was also alleged that the employee was not a person who could be retained in service. The employee was charged with breach of Clause 19 (2) (viii) of the Certified Standing Orders. The employee was called upon to submit an explanation, failing which disciplinary action would be initiated against him. In spite of extension of time being granted, the employee has not submitted any explanation. The enquiry proceedings were commenced on February 12, 1999 to enquire into the charges framed against the employee. The Enquiry Committee came to the conclusion that the caste certificate dated, February 4, 1998 had

turned out to be a bogus certificate. The Enquiry Committee found the respondent not guilty of the charges framed. It was in this back-ground, the show cause notice impugned by the employee before the High Court was issued by the disciplinary authority. The disciplinary authority concluded by saying that the act of misconduct levelled against the employee has been established and tend to hold him guilty of the acts of misconduct and further before coming to such conclusion, an opportunity to submit his reply as to why he should not be held guilty of above charges within three days of communicating the said letter to the respondent, in case he fails to submit any satisfactory explanation within stipulated time. The disciplinary authority proposed to award the punishment of dismissal from service without retirement benefits.; According to the Management, Air India, the challenge to the proceedings was premature and the High Court should not have entertained writ application as disputed questions of fact were involved. Since the High Court by order under appeal has issued a Rule Nisi, the Supreme Court has observed that it will be open to the Management to raise this and other contentions in their answer to the rule. The Supreme Court has also observed that the employee has not questioned the jurisdiction of the disciplinary authority to issue the impugned show cause notice. Under such circumstances, the Supreme Court has observed that since the disciplinary proceedings were initiated against the employee because of production of bogus certificate and that the employee had also participated in the enquiry without protest, allowed the appeal filed by the Management and set aside the order passed by the Bombay High Court in so far as it stayed the operation of the show cause notice.

31. The above cited case will have no application to the facts and circumstances of the case in hand.

32. In the above case, the employee had participated in the enquiry without protest. He approached the Bombay High Court challenging the show cause notice issued by the Management questioning the claim of the employee that he belonged to a Scheduled Tribe. In the instant case, the respondent employee has specifically questioned the jurisdiction of the Management in conducting disciplinary proceedings in his reply to the Article of Charges issued against him. He not only denied the charge and allegations made against him, but also submitted that the authority empowered to issue the certificate of verification has issued the certificate that he belonged to the Scheduled Caste and that once a certificate had been issued by the competent authority, such certificate has to be taken by the employer as a sufficient proof that the holder of such certificate is a member of the Scheduled Caste, because, it is that authority alone which is competent to decide as to whether the person concerned belonged to the Scheduled Caste or not and the employer of its own cannot sit in judgment over the certificate issued by such competent authority nor the employer can embark upon an enquiry as to whether such certificate had been issued rightly or otherwise. It is, thus, clear that the respondent has clearly questioned the authority, jurisdiction and competence of the Management in initiating the

disciplinary action without resorting to the procedure contemplated for cancellation of such certificate.

33. In view of our findings in regard to the maintainability of the disciplinary proceedings, we are not going into the merits of other submissions made by both the parties for and against the procedure followed in the disciplinary proceeding and the findings thereon.

34. Consequently, the Writ Appeal fails and is dismissed.