

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 15TH DAY OF MAY 2019

PRESENT

THE HON'BLE MR.JUSTICE P.B.BAJANTHRI

AND

THE HON'BLE MR.JUSTICE P.G.M.PATIL

WRIT PETITION NO.201533/2018 (S-KAT)

Between:

Yellappa S/o Hanmanthappa Kolakar,
Aged about 61 years,
Occ. Government Servant,
R/o Plot No.80/80-2B,
Bhagya Laxmi Nagar (B.L.Nagar),
Sri Gurukrupa Nilaya,
Sai Mandir Back Side, Near Water Tank,
Kalaburagi – 585 102.

... Petitioner

(By Sri Ganesh Kalaburagi, Advocate
Sri Ameetkumar Deshpande, Advocate)

And:

1. The State of Karnataka
Represented by its Prl. Secretary
Department of Finance,



Vidhana Soudha,
Bengaluru – 560 001.

2. The Director,
Pension, Small Saving and
Asset and Liability,
Administration, Bengaluru.
3. Additional Director General of Police,
Civil Enforcement Directorate,
Bengaluru.

... Respondents

(By Sri K.M.Ghate, AGA for R1 and R2;
Sri C.Jagadish, Special Counsel for R3 – absent)

This petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the final order dated 14.03.2018 passed in Application No.3114/2017 by the Hon'ble Karnataka State Administrative Tribunal, at Bengaluru at Annexure-B, quash the order dated 25.05.2017 passed by the respondent No.2 in file No.PSTSAC(2) 8/2014-15, at Annexure-A19 and issue any other appropriate writ, order or direction as this Hon'ble Court may deem fit to grant in the circumstances of the case, especially to direct the respondents herein to settle and pay to the petitioner his pension, pensionary benefits and other pecuniary benefits arising from the services of the petitioner, forthwith.

This petition having been heard and reserved on 25.04.2019 and coming on for pronouncement of order this day, **P.B.BAJANTHRI, J.**, made the following:

ORDER

In the instant petition, petitioner has assailed the order of Karnataka State Administrative Tribunal, Bangalore (for brevity 'Tribunal') passed in Application No.3114/2017 dated 14.03.2018 and order of dismissal from services issued by the second respondent dated 25.05.2017 (Anneuxre-A19).

2. Brief facts of the case are that the petitioner belongs to Koli (Kolidhoor) caste, which is stated to fall under Schedule Tribe and was selected to the post of Clerk-cum-Typist under Schedule Tribe category by the Karnataka Public Service Commission. He was allotted to the Department of Small Savings and Karnataka State Lottery on 11.09.1985. He had earned promotion to the cadre of Assistant Development Officer and Development Officer on 01.04.1990 and 28.05.2007 respectively. State Government took a policy decision to waive off any action against such of those

Government Servants who have claimed appointment with reference to particular caste do not fall under Schedule Tribe category. In this regard Government order was issued on 11.03.2002 bearing No. SWD 713 SAD 93, in which Government Servants who were appointed against Government Servant post without valid Schedule Tribe Certificate holder were directed to surrender their caste certificate and get it cancelled to avoid disciplinary/criminal action. The petitioner had not acted upon in surrendering caste certificate dated 21.02.1984. Respondent No.3 issued notification on 06.04.2008 which was notified in Vijay Karnataka Daily News paper relating to action against such of those Government Servants who have obtained appointment by producing Schedule Tribe certificate which is not in accordance with law and action could be taken against such of those persons.

3. Pursuant to such notification petitioner surrendered his caste certificate before the concerned Tahasildar on 27.12.2008, Tahasildar, Vijayapur cancelled

the Schedule Tribe Caste Certificate issued to the petitioner. In this regard petitioner furnished a representation to the second respondent on 29.12.2008 to carryout necessary correction in the service book. Competent Authority proceeded to alter date of promotion and reverted the petitioner from the post of Development Officer to that of Assistant Development Officer and further monitory benefits which was availed by the petitioner sought to be recovered on 21.01.2011. When things stood thus, respondent No.3 stated to have rake up the issue relating to production of false caste certificate by the petitioner and proceeded to hold inquiry and in the inquiry it was held that petitioner produced false caste certificate. Such action of respondent No.3 is pursuant to the Government Circular dated 04.05.2013 that petitioner has not acted upon the Government Order dated 11.03.2002. Thus, the petitioner has delayed in surrendering the caste certificate for cancellation for about six years.

4. The respondent No.3 recommended for dismissal of the petitioner from service vide order dated 24.06.2014. In

this regard, show cause notice was issued to the petitioner for which petitioner had submitted his explanation appraising the fact that he noticed the information for surrendering caste certificate for cancellation only when it was advertised and notified on 06.04.2008 in "Vijaya Karnataka Daily News Paper". Respondent No.3 had initiated criminal proceedings by filing first information report with reference to Crime No.177/2009, which was subject matter of litigation before this court in Criminal Petition No.8626/2010. Wherein first information report had been set aside on 18.02.2010 and it has attained finality. Further it was pointed out that after surrendering and cancellation of caste certificate, department has taken necessary action to revise the date of promotion and reverted him and so also recovered the difference of salary paid to the petitioner. If proposal for dismissal of petitioner is confirmed it would amount to double jeopardy since petitioner had already punished by reverting him and ordering of recovery of difference of salary and further proposal to dismiss from service is incorrect.

5. Respondent No.3 in its order dated 24.05.2016 recommended for imposing penalty of dismissal from service since penalty or action against the petitioner by the department is not commensurate. In this background second respondent proceeded to dismiss the petitioner from service on the sole ground that petitioner did not act upon the Government Order dated 11.03.2002 in not surrendering the caste certificate in order to over come the hurdle of holding departmental inquiry and criminal proceedings by which order there is an exemption. Further, petitioner took six years to surrender the caste certificate for its cancellation from 11.03.2002. Second respondent dismissed the petitioner from service under sub-Rule (viii) of Rule 8 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (for brevity the 'Rules, 1957') on 25.05.2017 (Annexure-A19).

6. Petitioner feeling aggrieved by the order of dismissal preferred application before the Tribunal. On 14.03.2018 petitioner's Application No.3114/2017 was dismissed (Annexure-B). Hence, the present petition.

7. Learned counsel for the petitioner submitted that Government Order dated 11.03.2002 was not noticed by the petitioner so as to enable him to surrender the caste certificate for its cancellation and avoiding disciplinary/criminal proceedings. As and when it was reiterated and notified in Vijay Karnataka News paper at Page No.9 issued on 06.04.2008 by the Respondent No.3, petitioner immediately acted upon in surrendering caste certificate for its cancellation and it was cancelled. Thereafter, Disciplinary Authority reverted the petitioner from the post of Development Officer to that of Assistant Development Officer and monitory benefits which have been extended were ordered to be recovered. Thus, matter was concluded by the petitioner's parent department. At the behest of respondent No.3 matter was reopened for taking further action to dismiss him from service in terms of the Government order dated 04.05.2013 and proceeded to hold inquiry by the respondent No.3 and in the inquiry it was held that the petitioner obtained order of appointment by producing false caste

certificate based on the report of third respondent dismissal order has been passed. Holding of inquiry by the Respondent No.3 is with reference to a non-existing Caste Certificate in the year 2014, since Caste Certificate was surrendered and it was cancelled in the year 2008 and Department has already punished in reverting and ordering recovery of excess pay. Therefore, dismissal order amounts to double jeopardy. It was also contended that dismissal from service order is without jurisdiction and contrary to Reservation Act and Rules, disciplinary and allied rules governing Government Servants.

8. It was further contended that pursuant to the Government order dated 11.03.2002 no action is required to be taken if the caste certificate is surrendered whereas in the petitioner's case even though he has surrendered and he has been penalized by reverting from the promoted post and further recovery of difference of pay has been ordered. The same has not been appreciated by the Disciplinary Authority nor Tribunal. Dismissal of the petitioner is at the fag end of his service and further Tribunal has failed to take note of

decision of the Coordinate Bench of this court in the case of *Sri K.M.Malagali vs. The State of Karnataka and others* dated 25.11.2013 passed in Writ Petition No.64888/2012 (S-KAT). Tribunal proceeded to upheld the order of dismissal. With reference to Supreme Court decision in the case of ***Chairman and Managing Director, FCI and Ors vs. Jagdish Balaram Bahira and others*** reported in **AIR 2017 SC 3271**, Tribunal has not appreciated the factual and legal aspects of the present case read with the Supreme Court decision.

9. It was further contended that the petitioner is a Government Servant based on the report of third respondent that petitioner had produced false Caste Certificate while obtaining an order of appointment was a preliminary issue and for invoking sub-rule (viii) of Rule 8 of Rules 1957, inquiry should have been held under Rule 11 read with Article 311 of the Constitution of India whereas Disciplinary Authority proceeded to impose penalty of dismissal from service based on the report of respondent No.3 read with Government letter. Hence order of dismissal dated

25.05.2017 and Tribunal order dated 14.03.2018 are liable to be set-aside on the ground of double jeopardy, Government Circular bearing No.SWD 105 SAD 2013 dated 04.05.2013 is not attracted in the petitioner's case for the reason that he had surrendered the caste certificate pursuant to the notification dated 06.04.2008 of respondent No.3. Thereafter, department had punished the petitioner on 21.01.2011 in reverting and order of recovery and petitioner has been dismissed from service without resorting to Rule 11 of Rules 1957 read with Rule 20 of the General Recruitment Rules, 1977 (for brevity the 'Rules 1977') so also Reservation Act and Rules, 1990 and 1992 respectively has not been adhered for the purpose of holding enquiry and punishment.

10. Per contra learned counsel for the State resisted the petitioner's contention while supporting the order of dismissal dated 25.07.2017 and order of Tribunal dated 14.03.2018. It was submitted that respondent No.3 proceeded to hold inquiry in respect of production of false Caste Certificate by the petitioner in obtaining order of appointment

in the second respondent department it was concluded in proving the alleged charge of production of false Caste Certificate. Such holding of inquiry by the respondent No.3 is with reference to 11.03.2002, 06.04.2008 (AnnexureA7) read with 04.05.2013 Government Circular. Hence, there is no infirmity in holding inquiry and proceeded to dismiss the petition from service.

11. It was further submitted Rule 7 of Rules 1957 and Rule 20 of Rules 1977 are not attracted having regard to the allegations relating to producing false caste certificate and obtaining order of appointment to the post of Clerk-cum-Typist. For the purpose of finding out whether Government Servant had furnished false Caste certificate in obtaining order of appointment, powers have been delegated to respondent No.3. Therefore, Rule 11 of Rules 1957, Rule 20 of Rules, 1977 and Reservation Act and Rules cited by the learned counsel for the petitioner has not application. Thus, petitioner has not made out a case so as to interfere in respect of order of dismissal and order of Tribunal.

12. Heard the learned counsel for the parties.

13. Learned counsel for the petitioner contended that the petitioner had not noticed the Government Order dated 11.03.2002 so as to act on the said order in surrendering the Caste Certificate. He had noticed on 06.04.2008 as and when respondent No.3 notified in Vijaya Karnataka Daily News Paper. Consequently, he proceeded to surrender his Caste Certificate and get it cancelled for which he was penalized in reverting and ordering recovery of excess salary drawn by him. This has not been appreciated and the impugned order of dismissal is in pursuant to the Government Order dated 04.05.2013. As on 04.05.2013 petitioner had already surrendered his Caste Certificate and get it cancelled. Therefore, Government Order dated 04.05.2013 has no application.

14. It is true that respondent No.3 reopened the issue relating to examination of production of Caste Certificate at the time of petitioner's appointment. However, he has not

appreciated in respect of surrendering of Caste Certificate and get it cancelled and he has been punished. Respondent No.3 is of the view that imposition of penalty of reversion and order of recovery is not commensurate. Therefore, he proceeded to hold inquiry in the year 2014, pursuant to the Government Order dated 04.05.2013. Government Order dated 04.05.2013 has no retrospective effect consequently initiation of inquiry by the respondent No.3 on the Caste Certificate in the year 2014 is belated and without authority of law and so also it is to be noted that as on the date of inquiry of Caste Certificate obtained by the petitioner on 21.02.1984 is not existing in the eye of law as it has been cancelled in the month of December 2008.

15. Petitioner contended that order of dismissal read with the reversion order and order of recovery of excess salary amounts to double jeopardy on the same allegation/issue. Therefore, imposition of penalty of dismissal is impermissible. Once the Disciplinary Authority has taken a decision to impose penalty of reversion from Development Officer to that

of Assistant Development Officer and further ordered for recovery of excess salary drawn by the petitioner, which are penalties under Rule 8 of Rules, 1957, in such circumstances there is no provision of law to punish an employee on twice on a misconduct.

16. Government order dated 11.03.2002 do not provide for taking either disciplinary or criminal proceedings and there is no outer limit that even a particular date of Caste Certificate is to be surrendered and no material has been produced that it was a gazetted. Petitioner had surrendered Caste Certificate pursuant to the notification issued by respondent No.3 on 06.04.2008 in Vijaya Karnataka News Paper. Pursuant to the same petitioner surrendered the Caste Certificate and got it cancelled and he has been punished for delay in surrendering the Caste Certificate and get it cancelled. Sufficiency of the penalty was not satisfied by respondent No.3, therefore, he has rake up the issue afresh and held inquiry which has resulted in imposition of penalty

of dismissal from service, which is without application of mind.

17. In the process, Reservation Act and Rules, 1957 and allied rules have not been followed as contended by the learned counsel for the petitioner is required to be examined. Undisputedly petitioner had been penalized under sub-rule (viii) of Rule 8 of Rules 1957. The said provision can be invoked unless and until Rule 11 of Rules 1957 is operated in initiating inquiry since the petitioner was Government servant. There is no waiver of holding of departmental inquiry under Rules 1957 in the case of alleged misconduct of production of Caste Certificate and obtaining order of appointment. Hence, Disciplinary Authority invoking sub-rule (viii) of Rule 8 of Rules 1957 is in correct as Disciplinary Authority has not complied Rule 11. Unless Compliance to Rule 11, Disciplinary Authority cannot invoke sub-rule (viii) of Rule 8 of Rules, 1957. Even Disciplinary Authority has not taken note of Rule 20 of the General Recruitment Rules 1977.

18. Provisions of the Karnataka Schedule Caste and Schedule Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 (for brevity the 'Act 1990') and amendment of 1994 read with Rules 1992 (for brevity the 'Rules 1992') have not been taken into consideration. Like referring the matter to Committee consisting of Deputy Commissioner of the concern District and other Members to examine the validity of the Caste Certificate issued for the purpose of appointment. Extract of certain provisions of the Reservation Act and Rules cited supra has been side tracked in the matter. Aforesaid Act 1990 and Rules, 1992 reads as under :-

Section 4-C. Verification of Caste Certificate and Income and Caste Certificate—

- (1) The State Government shall constitute one or more verification committees for each district consisting of such person or persons as may be prescribed for verification of caste certificate and income and caste certificate issued under Section 4-A or Section 4-B.

(2) Any person who has obtained a caste certificate or an income and caste certificate under Section 4-A or A-B or the Appointing Authority or any authority making admission to a course of study in the University or any Educational Institution may make an application to the verification committee in such form and in such manner as may be prescribed for issue of a validity certificate.

(3) The verification committee may after holding such inquiry as it deems fit within thirty days from the date of the application either grant a validity certificate in a prescribed form or reject the application.

Section 5-A. Penalties for obtaining false Caste Certificate or Income and Caste Certificate – Whoever has obtained a Caste Certificate or Income and Caste Certificate by:-

- (a) furnishing false information; or
- (b) filing a false statement; or
- (c) any other fraudulent means.

shall on conviction be punishable with rigorous imprisonment for a term which shall not be less six months but which may extend up to two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees;

Provided that the Court may, for adequate and special reasons to be recorded, impose a sentence of imprisonment for a lesser term or lesser fine.

Section 6-D. Act to override other laws. – The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time-being in force.

Section 6-E. Act to override the applicability of decided specific cases in any of the courts. – The provisions of this Act shall have effect, notwithstanding anything contained in any of the decided cases by any of the Courts.

Rule 3-C. Validity of the Certificate issued by the Tahasildar. –

- (1) The Caste Certificate issued under Section 4-A shall be valid until it is cancelled.

- (2) The Income Certificate issued under Section 4-A shall be valid for a period of five years.

Rule-4. Caste Verification Committee. –

(1) There shall be a committee called the Caste Verification Committee for each district to verify the caste certificate issued in respect of the persons belonging to Scheduled Castes and Scheduled Tribes. The committee shall consist of the following members namely. –

- (1) The Deputy Commissioner of the District who shall be the Chairman;
- (2) The Deputy Secretary (Administration) of the Zilla Panchayat;
- (3) The Tahsildar of Taluk;
- (4) The District Social Officer who shall be the Member Secretary:

[Provided that the State Government may constitute an Additional Caste Verification Committee for any District to verify the Caste Certificate issued in respect of the persons belonging to Scheduled Castes or Schedules Tribes which shall consist of the following members, namely –

- (i) An Officer not below the rank of Chairman Special Deputy Commissioner appointed by the State Government
- (ii) The Assistant Commissioner of Member the Sub-Division
- (iii) The Tahsildar of the Taluk Member
- (iv) The District Social Welfare Member Officer

Rule 5. Caste and Income Verification Committee. –

There shall be a committee called a Caste and Income Verification Committee in respect of each district to verify the caste and income certificate issued in respect of the Other Backward Classes. The committee shall consists of the following members, namely.

- (i) The Deputy Commissioner of the District who shall be the Chairman;
- (ii) The Deputy Secretary (Administration) of the Zilla Panchayat;
- (iii) The concerned Tahasildar of the Taluk;
- (iv) The District Backward Classes and Minorities Officer who shall be the member secretary:]

[Provided that the State Government may constitute an Additional Caste and Income Verification Committee for any district to verify the Income and Caste Certificate, issued in respect of persons belonging to Other Backward Classes, which shall consist of the following members, namely. –

- (i) An Officer not below the rank of Chairman Special Deputy Commissioner appointed by the State Government
- (ii) The Assistant Commissioner of the Member Sub-Division
- (iii) The Tahsildar of the Taluk Member
- (iv) The District Backward Classes and Minorities Officer Member-Secretary.]

Rule 11 and 14 of Rules 1957 which reads as under ;-

11. Procedure for imposing major penalties. –

(1) No order imposing any of the penalties specified in clauses (v) to (viii) of Rule 8 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 11-A.

14. Special procedure in certain cases: -

- Notwithstanding anything contained in (Rules 11 to 13)-

- (i) where a penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) where the officer concerned has absconded, or where the officer concerned does not take part in the inquiry or where for any reasons to be recorded in writing it is impracticable to communicate with him, or where the Disciplinary Authority, for reasons to be recorded in writing, is, satisfied that it is not reasonably practicable to follow the procedure prescribed in the said rules; or
- (iii) where the Governor is satisfied that in the interest of the security of the State it is not expedient to follow such procedure. The Disciplinary Authority may (xxxx) pass such orders thereon as it deems fit:

Provided that the Commission shall be consulted before passing such an order in any case for which such consultation is necessary:)

The aforesaid provisions have not been complied by the competent authority like Caste Verification Committee and Disciplinary Authority. Judicial review of administrative action by De-Smith, Wolf and Jowell (5th edition) which is as follows:

“The rule against delegation

A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well known principle of law when a power has been confided to a person in circumstances indicating that trust is a being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another”.

Administrative law, by H.R. Wade and C.F. FORSYTH (9th edition), chapter-10 as follows:

“Inalienable discretionary power;

An element which is essential to the lawful exercise by the authority upon whom it is conferred and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees or delegates. However, expressed authority by the authority endowed with the power”.

Hon’ble Supreme Court in the following cases held as under:

“(a) In the case of **Dhanajaya Reddy vs. State of Karnataka** reported in (2001) 4 SCC 9, in para No.23 held as under:-

“23. It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. This Court in *State of U.P. v. Singhara Singh*, AIR 1964 SC 358 (AIR p. 361, para 8) held:-

“A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down.”

(b) Supreme Court in the case of **Director General, ESI and another vs. T. Abdul Razak** reported in (1996) 4 SCC 708 in para no.14 held as under:-

“14. The law is well settled that in accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication.”

(c) Supreme Court in the case of **Chairman-cum-Managing Director, Coal India Limited and others vs. Ananta Saha**

and others, reported in (2011) 5 Supreme Court Cases, 142, in para nos. 32 and 33 held as under:-

“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In *Badrinath v. Govt. of Tamil Nadu & Ors.*, AIR 2000 SC 3243, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.”

(d) Supreme Court in the case of **M.P. Wakf Board vs. Subhan Shah (Dead) by LRs and another**, reported in (2006) 10 Supreme Court Cases 696, in para nos. 27 to 29 read as under:-

“27. The Wakf Act is a self-contained code. Section 32 of the 1995 Act provides for powers and functions of the Board.

Sub-section (2) of Section 32 of the 1995 Act enumerates the functions of the Board without prejudice to the generality of the power contained in sub-section (1) thereof. Clauses (d) and (e) of sub-section (2) of Section 32 of the 1995 Act read as under:

"32. (2)(d) to settle schemes of management for a wakf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct-

(i) the utilisation of the surplus income of a wakf consistent with the objects of a wakf;

(ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original

object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation-For the purposes of this clause, the powers of the Board shall be exercised -

- (i) in the case of a Sunni wakf, by the Sunni members of the Board only; and
- (ii) in the case of a Shia wakf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;"

28. The Tribunal had been constituted for the purposes mentioned in Section 83 of the 1995 Act. It is an adjudicatory body. Its decision is final and binding but then it could not usurp the jurisdiction of the Board. Our attention has not been drawn to any provision which empowers the Tribunal to frame a scheme. In absence of any power vested in the Tribunal, the Tribunal ought to have left the said function to the Board which is statutorily empowered therefor. Where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise the functions within the four corners of the statute.

29. It is trite that when a procedure has been laid down the authority must act strictly in terms thereof. (See *Taylor V Taylor*, (1875) 1 Ch D 426 : 45 LJ Ch 373).”

(e) Supreme Court in the case of **Sidhartha Sarawgi Vs. Board of Trustees for the Port of Kolkata and others** reported in (2014) 16 SCC 248, in para nos. 4, 9 and 10 held as under:-

“4. There is a subtle distinction between delegation of legislative powers and delegation of nonlegislative/administrative powers. As far as delegation of power to legislate is concerned, the law is well-settled: the said power cannot be sub-delegated. The legislature cannot

delegate essential legislative functions which consist in the determination or choosing of the legislative policy and formally enacting that policy into a binding rule of conduct. Subordinate legislation which is generally in the realm of rules and regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.

9. The Constitution confers power and imposes duty on the legislature to make laws and the said functions cannot be delegated by the legislature to the executive. The legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the legislature and laying the guiding policy, the legislature may delegate to the executive or administrative authority, any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing

the scope and extent of delegated power, the difference between the essential and non-essential functions of the delegate should also be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate.

10. Sometimes, in the plenary legislation itself, the lawmakers may provide for such sub-delegation. That is what we see under Sections 21 and 34 of the Major Port Trusts Act, 1963, which we shall be discussing in more detail at a later part of this judgment.”

(f) Supreme Court in the case of **Captain Sube Singh and others vs. Lt. Governor of Delhi and others**, reported in (2004) 6 Supreme Court Cases, 440, in para no. 29 held as under:-

“29. In CIT vs. Anjum M.H. Ghaswala, (2002) 1 SCC 633, a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection

Dhanajay Reddy vs. State of Karnataka, (2001) 4 SCC

9). The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1) (d) read with sub-clause (i) thereof.”

19. In view of the above discussion and actions of Respondent No.3 and disciplinary authority are inconsistency and contrary to statutory provisions like Reservation Act, 1990, Rule 1992 read with Rules, 1957.

20. Petitioner contended that Tribunal failed to take note of the decision of the Coordinate Bench in the case of **Sri K.M.Malagali vs. The State of Karnataka and others** in W.P.No.64888/2012 (S-KAT) dated 25.11.2013 and relied upon the decision reported in the case of **Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bhaira and Others** (AIR 2017 SC 3271).

Supreme Court decision relied upon by the Tribunal is distinguishable having regard to the facts of the case read with the statutory provisions like Rules 1957 and 1977 read with the Reservation Act and Rules cited supra. In this regard Apex Court in the case of **Nair Service Society vs. Dr.T.Beermasthan and others**, reported in **(2009) 5 Supreme Court Cases 545**, in Para No.48 held as under :-

“**48.** Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Government can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.” (Emphasis supplied)

Therefore, on factual and legal aspects of the case on hand is distinguishable to that of the decision in the case of ***Chairman of Managing Director, Food Corporation of India's case.***

21. The contention of learned Additional Government Advocate that petitioner had been penalized in dismissing from service as he has disobeyed the Government order dated 11.03.2002. Therefore, rightly respondent No.3 on the advice of the parent department of the petitioner proceeded to hold inquiry whether Caste Certificate obtained by the petitioner was genuine or not? To that extent a report has been furnished that it was not a genuine. Hence, there is no infirmity in the order of dismissal as well as order of the Tribunal, which cannot be accepted for the reason that respondent No.3 notified on 06.04.2008 with reference to Government order dated 11.03.2002. Further, with reference to the aforesaid orders petitioner was permitted to surrender the Caste Certificate and it was acted upon by the

Disciplinary Authority in imposing penalty of reversion and ordering for recovery of excess salary paid. That apart action to be taken pursuant to Government order dated 04.05.2013 would be prospective, whereas petitioner had surrendered his Caste Certificate in the year 2008 and it has attained finality in the year 2011 while taking away certain service benefits like reverting from the post of Development Officer to that of Assistant Development Officer and further recovery of excess salary. That apart, petitioner was about to retire in the year 2017 before few months to his retirement order of dismissal has been passed. Respondent No.3 initiated action against the petitioner in filing first information report which was the subject matter of the criminal petition before this Court and it was set aside. Further, respondent No.3 has not proceeded to question the validity of order passed in the criminal petition and it has attained finality. This issue has not been appraised by the respondent No.3 to the Disciplinary Authority and Tribunal. That apart in respect of validity of income and caste certificate in the case of **BHARATI REDDY vs STATE**

OF KARNATAKA reported in (2018)6 SCC 162 in para 43, it is held as under:

“43. Accordingly, we allow this appeal and set aside the decisions of the learned Single Judge and the Division Bench of the High Court which are impugned in the present appeal. We, however, dispose of the writ petition filed by Respondents 6 to 9 being Writ Petition No.106417 of 2016 only by directing the Caste Verification Committee to expedite the enquiry regarding the validity of the income and caste certificate issued to the appellant by Respondent 5 and conclude the same preferably within two months and also intimate its final decision to the appellant within the same time. Needless to observe that the Caste Scrutiny Committee will decide the matter on its own merit and without being influenced whatsoever by any observations made in the impugned judgments but in accordance with law. Besides, it shall deal with every contention raised before it by recording tangible reasons”.

22. Reading of the aforesaid decision, it is crystal clear that the validity of the income and caste certificate has to be examined by the Caste Verification Committee alone under Reservation Act,1990 and Rules,1992 cited supra and not by respondent No.3. Consequently, order of dismissal based on the report of respondent no.3 is without authority of law so also Disciplinary Authority's action in dismissing the

petitioner, since Rule 11 of Rules, 1957 have not been adhered in the matter.

23. In view of the preceding analysis of facts and legal issues and number of lacunas in the proceeding against the petitioner like in not following the statutory Act and Rules cited supra order of dismissal dated 25.05.2017 (Annexure-19) passed by second respondent and order of the Tribunal dated 14.03.2018 (Annexure-B) are set-aside.

24. Matter could have been remitted back to disciplinary authority to take necessary proceedings under Reservation Act, 1990, Rules 1992 read with Rules 1957, since Petitioner has attained the age of superannuation and retired from service as per Rule 214 (2) (b) of Karnataka Civil Service Rules, 1957 which prohibits for taking any disciplinary action in respect of any event which took place more than four years before such institution. Hence at this distance of time, question of remanding the matter to disciplinary authority would not serve any purpose.

25. Concerned respondent is hereby directed to settle the petitioner's arrears of salary from the date of dismissal till date of retirement and retiral benefits along with interest on retiral benefits in terms of Government Orders issued from time to time, within a reasonable period of three months from the date of receipt of copy of this order.

Writ petition stands allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Sn/brn