

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.11029 of 2014  
and  
M.P.No.1 of 2014

Union of India  
Bharat Sanchar Nigam Ltd.  
Govt of India Enterprise  
Rep by its Chief Engineer (Electrical)  
No.60, Ethiraj Salai  
Chennai ... Petitioner

Vs.

1. P.Shyamala  
2. The Registrar  
Central Administrative Tribunal  
Chennai Bench  
Chennai - 104 ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order issued by the Central Administrative Tribunal, Chennai Bench in O.A.No.1234/2009 dated 26.04.2011 and consequential order made in R.A.No.36 of 2012 dated 22.10.2013 and quash the same.

For Petitioner : Mr.M.S.Velusamy

For Respondents : Mr.AR.L.Sundaresan,  
Senior Counsel  
for Mr.M.Suresh Kumar (R1)

ORDER

S.MANIKUMAR, J.

Challenge in this writ petition is to an order made in O.A.No.1234 of 2009 dated 26.04.2011, allowing the same, and the consequential order made in R.A.No.36 of 2012 dated 22.10.2013, by which, the Central Administrative Tribunal, Chennai Bench, declined to review the same.

2. Before the Tribunal, the first respondent has challenged the proceedings dated 01.07.2009 of the Principal Chief Engineer (Electrical), Chennai, Bharat Sanchar Nigam Limited, Tamil Nadu Electrical Zone, Chennai, which is extracted hereunder:

" BHARAT SANCHAR NIGAM LIMITED  
A GOVERNMENT OF INDIA ENTERPRISES  
O/o PRINCIPAL CHIEF ENGINEER (Electrical)  
No.60, ETHIRAJ SALAI, EGMORE,  
CHENNAI - 600 008.

No.5(3)/2008/PCE(E)/Ch/Pt.I/449  
01.07.2009

Date:

MEMORANDUM

The undersigned propose to hold an inquiry against Smt.P.Shyamala, Junior Telecom, Officer (Electrical), O/o Executive Engineer (E) BSNL Admn. Building Project, Chennai under Rule 36 of BSNL CDA Rules, 2006. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of imputations of misconduct or misbehaviour in support of each article of charge is enclosed in Annexure II. A list of documents by which the articles of charges are proposed to be sustained are also enclosed (Annexure-III).

2. Smt. P.Shyamala, JTO(E) O/o EE(E) BSNL ABP., Chennai is directed to submit within 10 days of the receipt of this Memorandum a written statement of her defence and also state whether she desires to be heard in person.

3. She is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. She should, therefore, specifically admit or deny article of charge.

4. Smt. P.Shyamala, JTO(E) O/o EE(E) BSNL ABP., Chennai is further informed that if she does not submit her written statement of defence on or before the date specified in Para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with provisions of rule 36 of BSNL CDA Rules 2006, or the orders/directions issued in pursuance of the said rule, the Inquiring authority may hold the inquiry against her ex parte.

5. Attention of Smt.P.Shyamala, JTO(E) O/o EE(E) BSNL ABP., Chennai is invited to Rule 22 of the BSNL CDA Rules, 2006, under which no employee shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters

pertaining to her services in the company. If any representations is received on her behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Smt.P.Shyamala, JTO(E) O/o EE(E) BSNL ABP., Chennai is aware of such a representation and that it has been made at her instance and action will be taken against her for violation of Rule 22 of BSNL CDA Rules 2006.

6. The receipt of this Memorandum may be acknowledged.

Principal Chief Engineer (Elect.)  
BSNL TN Elect. Zone,  
Chennai.

To

Smt.P.Shyamala, Junior Telecom, Officer(E),  
O/o EE(E) BSNL ABP., Chennai (Thro' EE(E)  
BSNL ABP, Chennai)

Copy to

1.Shri R.A.Saikh, EE(E) BSNL ABP., Chennai for  
information.

The enclosed memorandum may be  
delivered to

Smt.P.Shyamala, JTO(E) and her dated  
acknowledgement

sent to this office in original

2.General Manager (Admn.,) O/o CGM BSNL TN Circle,  
Chennai

3.SE(E) BSNL EC-I, Chennai

4.Vigilance Officer, O/o CGM BSNL TN Circle,  
Chennai.

Annexure-I

Statement of articles of charge framed against  
Smt.P.Shyamala, JTO(E)

#### Article I

Smt.P.Shyamala, Junior Telecom Officer  
(Electrical), Chennai is alleged to have got  
recruited for the post of JTO(E) under ST quota by  
submitting an invalid community (ST) Certificate  
which was not issued by the competent authority who  
is empowered to issue the ST Certificate. Thus she  
has failed to maintain absolute integrity, thereby  
violating Rule-4(1)(a) of BSNL CDA Rules, 2006.

#### Article II

Smt P.Shyamala, Junior Telecom Officer  
(Electrical), Chennai, is alleged to have failed to  
produce fresh community certificate from the  
competent authority after repeated instructions and

even after the lapse of more than two and a half years. Thus she has failed to maintain absolute integrity, devotion to duty and has behaved in a manner unbecoming of a public servant, thereby violating Rule-4(1)(a)(b) and (c) of BSNL CDA Rules, 2006.

3. Statement of imputation of conduct or misbehaviour in respect of the articles of charges I and II framed against the first respondent, are as follows:

Article I

It is alleged that the said Smt. P. Shyamala, Junior Telecom Officer (Electrical), at the time of applying for the post of Junior Telecom Officer (Electrical) in BSNL during the year 1999 has produced a ST Community Certificate dated 5.7.1990, signed by the Tahsildar, Prasawalkma-Perambur Taluk, with an ulterior motive of getting appointment on priority basis bypassing the other candidates. Subsequently, District Collector, Chennai, vide his letter dated 1.8.2006 has intimated that the community certificate dated 5.7.1990 produced by Smt. P. Shyamala, was signed and issued on 5.7.1990 and that as per GO MS No.2137 AD&TW Dept dt.11.11.89, the RDOs of the District and Personal Assistant (General) to the Collector in Chennai District are the competent authority to issue ST certificates from 11.11.1989 and therefore, the community certificate furnished by Smt. P. Shyamala is not a valid one.

Smt. P. Shyamala, Junior Telecom Officer (Electrical), Chennai, has got her initial appointment based on the invalid ST Community Certificate. Thus she has failed to maintain absolute integrity, thereby violating Rule-4(1)(a) of BSNL CDA Rules, 2006.

Article II

It is alleged that after receipt of the letter from District Collector, Chennai, Smt. P. Shyamala was directed to furnish fresh community certificate from the competent authority. A number of reminders have also been sent to her, but Smt. P. Shyamala has failed to produce fresh community certificate from the competent authority, even after a lapse of more than two and half years, thus failing to comply with the orders of the superior officers.

Smt. P. Shyamala, Junior Telecom Officer (Electrical), Chennai, is alleged to have failed to produce fresh community certificate from the competent authority after repeated instructions and even after the lapse of more than two and a half years. Thus she has failed to maintain absolute integrity, devotion to duty and has behaved in a

manner unbecoming of a Public Servant, thereby violating Rule-4(1)(a), (b) and (c) of BSNL CDA Rules, 2006.

4. The first respondent submitted an explanation stating that she had obtained a Scheduled Tribe community certificate from the Tahsildar, Purasawalkam - Perambur Taluk on 05.07.1990. Applications for the post of Joint Telecom Officer were called for in 1998 and examination was held on 28.02.1999. She was selected and recruited on 18.02.2000, in the Department of Telecom. The department, with the prior knowledge about the competency or otherwise of the issuing authority, appointed the first respondent. The certificate could have been verified, at the time of recruitment in 1999 itself. She has not violated Rule 4(1)(a) of the BSNL CDA Rules, 2006. She had applied for a fresh certificate with the District Collector, Tiruvallur. She has diligently pursued her case for obtaining a fresh community certificate. She was not issued with a fresh community certificate. On 27.07.2009, the Principal Chief Engineer (Electrical), BSNL, Tamil Nadu Electrical Zone, Chennai, has appointed a Presenting Officer. Therefore, the first respondent filed O.A.No.1234/2009 before the Central Administrative Tribunal, Madras Bench, contending inter alia that the writ petitioner has no jurisdiction to initiate disciplinary proceedings, after nine years from the date of initial appointment. She has also contended that, if there was any doubt with regard to the genuineness of the community certificate, a separate committee has been constituted, as per the directions of the Hon'ble Supreme Court in Madhur Patil's case reported in AIR 1995 SC 94 and the said Committee alone has got powers to verify the genuineness of the said community certificate. She has further submitted that the Writ petitioner is estopped from entertaining any doubt over the community certificate, by placing reliance on the subsequent circular of the year 2006 and communication dated 09.01.2007.

5. On behalf of the Principal Chief Engineer (Electrical), BSNL, Chennai, the Executive Engineer (Electrical), BSNL, AB Project, Chennai, has contended that community certificate produced by the first respondent was issued by the Tahsildar, Purasawalkam - Perambur Taluk. Process of verification of the community certificate was initiated in response to the directions of the National Commission for Scheduled Tribes, New Delhi, vide correspondence dated 27.07.2005 and endorsed by the Ministry of Communication, Department of Telecom (SCT Cell), New Delhi-1.

6. The Collector of Chennai, vide letter dated 01.08.2006 intimated the department that the Scheduled Tribe community certificate furnished by Smt.P.Shyamala/respondent is not a valid certificate. Therefore, she was directed to submit a valid community certificate. After two and a half years, vide

order dated 01.07.2009, disciplinary proceedings were initiated under Rule 36 of BSNL CDA Rules, 2006. The Executive Engineer has further submitted that after 11.11.1989, Tahsildar is not empowered to issue ST certificate. Certificate issued by him is invalid and non-est, in the eye of law. Therefore, there is no case for verifying the genuineness of the community certificate. Writ petitioner has denied the contention of estoppel, as the first respondent had acquired a job, on the basis of a certificate issued by an incompetent authority. Placing reliance on the decision of the Hon'ble Supreme Court, further contention has been made that mere continuation in service for a long period would not confer any right over the post, as the same has been obtained with a certificate issued by an incompetent authority.

7. After considering G.O.Ms.No.2137 ADW Department dated 11.11.1989, decision of the Central Administrative Tribunal, Madras in O.A.No.1401/1994 dated 19.08.1997, Madhuri Patil's case reported in AIR 1995 SC 94, S.P.Sakthi Devi vs. Collector of Salem reported in Vol.98 Law Weekly 105, New India Assurance Co. Ltd., vs. R.Venkataraman reported in 2005(1) MLJ 72, order of this court in W.P.No.19697/2010 in Union of India and another vs. Registrar, CAT and L.Selvaraji, Bank of India and another vs. Avinash D.Mandlvikar and others reported in (2005) 7 SCC 690, Ramsaran vs. I.G. of Police, CRPF, and others reported in (2006) 2 SCC 541, R.Kandasamy vs. Chief Engineer, Madras Port Trust reported in (1997) 7 SCC 505 and circular of the Central Government dated 23.03.1995, pleadings, submissions and decisions relied on by both parties, and by observing that circular of the Central Government dated 23.02.1995, wherein it has been stated that the Revenue Divisional Officer is the competent authority to issue community certificates to Scheduled Tribes, will not have retrospective effect and by further observing that community certificate dated 05.07.1990 produced by the first respondent cannot be said to be an invalid certificate, the Central Administrative Tribunal, Madras Bench, vide order dated 26.04.2011 made in O.A.No.1234/2009, quashed the disciplinary proceedings dated 01.07.2009.

8. Chief Engineer (Electrical), BSNL, Chennai has filed a Review Application No.36/2012 and the same has also been dismissed on 22.10.2013. Challenging the order dated 26.04.2011 made in O.A.No.1234 of 2009 and the order dated 22.10.2013, made in Review Application No.36 of 2012, instant writ petition has been filed.

9. Mr.M.S.Velusamy, learned Panel Counsel for the writ petitioner assailed the correctness of the order made in O.A.No.1234 of 2009 and R.A.No.36 of 2012 on the grounds that as per G.O.Ms.No.2137 dated 11.11.1989, Scheduled Tribe community certificate shall be issued only by a Revenue Divisional Officer and not by the Tahsildar and the said Government order is applicable when candidates seek for

appointment in State Government, Central Government or Corporation, as the case may be, and when that was the view expressed by the Hon'ble Apex Court in R.Kandasamy vs. Chief Engineer, Madras Port Trust reported in (1997) 7 SCC 505, the Tribunal erred in holding that the circular dated 23.02.1995 has prospective effect, and consequently, quashing the disciplinary proceedings. He further submitted that in any event, when the appointment was made in the year 2000, much later than the circular dated 23.02.1995, the employer is empowered to ascertain as to whether certificate issued by the Tahsildar, Purasawalkam-Perambur Taluk, was valid or not, and to proceed further.

10. He submitted that in response to the certificate verifications, the Collector, Chennai, vide letter dated 26.04.2011, has categorically informed the department that the community certificate dated 05.07.1990 produced by the first respondent was invalid. Hence, she was asked to produce a community certificate from the competent authority and despite reminders, she failed to do so. Therefore, disciplinary proceedings were initiated on 01.07.2009.

11. Mr.M.S.Velusamy, learned panel counsel for the petitioner further submitted that the employer has ascertained the competency of the authority, who issued the community certificate. He further submitted that the circular memorandum dated 23.02.1995 is only a clarification to G.O.Ms.No.2137 ADW Department dated 11.11.1989. According to him, when the Collector has sent a letter dated 01.08.2006 stating that the community certificate issued by the Tahsildar, Purasawalkam - Perambur Taluk dated 05.07.1990 is not valid, as it was issued by an incompetent authority, the Department was right in insisting for production of a fresh community certificate and based on the imputations, stated *supra*, proceed against her.

12. Inviting the attention of this court to the explanation of the first respondent dated 11.05.2009, learned panel counsel for the writ petitioner also pointed out that before appointment of the Presenting Officer, the respondent assured that she would produce community certificate, but failed to do so.

13. Placing reliance on the decision of Ramsaran vs. I.G. of Police, CRPF, and others reported in (2006) 2 SCC 541, he submitted that the charge memorandum dated 01.07.2009 ought not to have been quashed, as the same cannot be said to have been issued without jurisdiction.

14. Per contra, Mr.AR.L.Sundaresan, learned Senior Counsel representing Mr.M.Suresh Kumar, learned counsel on record for the first respondent submitted that the circular memorandum of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) dated 23.02.1995 has been rightly declared as prospective. Placing reliance on

a decision made in W.P.No.17223 of 2010 dated 24.08.2016, learned Senior Counsel, further submitted that the view expressed by the Tribunal has already been confirmed by a Hon'ble Division Bench of this court and therefore, the petitioner has no jurisdiction to initiate disciplinary proceedings.

15. Referring to a decision of the Hon'ble Division Bench in K.Viswanathan, President, Salem District, Konda Reddis Welfare Association and another vs. The Government of India, rep. by its Secretary to Government and 2 others reported in 1985 W.L.R. 18, Mr.AR.L.Sundaresan, learned Senior Counsel submitted that when the Central Government issued a circular dated 05.08.1975 empowering the Tahsildars to issue certificate for appointment in the Central Government Departments and when the State Government had issued G.O.Ms.No.1139 Social Welfare Department dated 23.03.1982 declaring that the Revenue Divisional Officer would be the competent authority to issue community certificate to Scheduled Tribes, a Hon'ble Division Bench of this Court held that both are exclusive of each other and so long as a competent authority is enjoined with an authority to issue a community certificate, the same can be acted upon.

16. Placing reliance on S.P. Sakthi Devi v. Collector of Salem, reported in 1984 Writ LR 535, Mr.AR.L.Sundaresan, learned Senior Counsel further submitted that the decision in K.Viswanathan's case reported in 1985 W.L.R. 18, has been reiterated and therefore, the certificate dated 05.07.1990 issued by the Tahsildar to the petitioner is a valid public document. Based on the same, appointment has been given.

17. Referring to the office memorandum dated 24.04.1990 issued by the Department of Personnel and Training, Government of India, Mr.AR.L.Sundaresan, learned Senior Counsel for the first respondent submitted that as per the said Office Memorandum, insofar as appointment to Central Government jobs against the vacancies earmarked for SCs/STs, it is suffice to produce certificates from Revenue Divisional Officer not below the rank of Tahsildar.

18. Learned Senior Counsel further submitted that only on 23.02.1995, Ministry of Personnel Grievances and Pensions, Government of India, have issued a letter stating that insofar as Scheduled Tribe community of Tamil Nadu is concerned, the certificate issued by the Revenue Divisional Officer instead of Tahsildar, should be accepted for the purpose of employment under the Government of India. He further submitted that it is an amendment issued for the first time and cannot be construed as clarificatory, even to the office memorandum dated 24.04.1990. According to him, the certificate dated 05.07.1990 issued by the Tahsildar is valid and there is no need for production of any further certificate from the Revenue Divisional Officer. The employer has no jurisdiction to frame

any charge for not producing a certificate from the Revenue Divisional Officer and therefore the proceeding issued is without jurisdiction.

19. Learned senior counsel also submitted that the only course open to the writ petitioner is to refer the case to the State Level Scrutiny Committee for verification of the caste of the first respondent, and not to initiate disciplinary proceedings by appointing a Presenting Officer.

20. Learned Senior Counsel further submitted that the first respondent has produced a valid community certificate dated 05.07.1990 issued by the Tahsildar, Purasawalkam - Perambur Taluk, and after taking the same on record, the department has appointed the respondent. He also submitted that there is a delay in initiating disciplinary proceedings. For the reasons stated supra, learned senior counsel submitted that the Tribunal, which has considered the previous order of this court, circular memorandum dated 23.02.1995 to quash the disciplinary proceedings, cannot be said to have committed any error, warranting interference.

21. Heard the learned counsel for the parties and perused the material available on record.

22. Community Certificate dated 05.07.1990 has been issued by the Tahsildar, Purasawalkam - Perambur Taluk stating that the respondent belongs to "Kondakappu", which is a Scheduled Tribe community. The case of the writ petitioner is that, taking note of the fact that many persons have secured employment on the basis of false community certificates, the National Commission for Scheduled Tribes, New Delhi, vide letter in D.O.No.Misc.10/Tribe Certi/05/ST/SSW dated 27.07.2005 has directed the respondents to take up matters for verification and action. The Director (SR) & Liaison Officer (SCT), Ministry of Communication, Department of Telecom (SCT Cell), vide letter No.10-3/2005-SCT dated 19.12.2005 has directed verification of appointments of SC candidates, in Government service by producing false certificate - furnishing of personal details along with the attested copies of SC certificates of the officials, recruited between 01.05.1995 and 30.04.2005. Respondent No.1, has been recruited between 01.05.1995 and 30.04.2005.

23. Material on record discloses that, when the Chief General Manager, Telecom, Tamil Nadu Circle, Chennai, vide letter dated 16.01.2006 requested verification of the community status of the first respondent, the Collector of Chennai, vide reply dated 01.08.2006, has stated that, as per G.O.Ms.No.2137 ADW Department dated 11.11.1989, Revenue Divisional Officers of the District and Personal Assistant (General) to the Collector in Chennai District alone are the competent authorities, to issue ST community certificate, with enclosures from 11.11.1989.

24. In the instant case, community certificate has been issued on 05.07.1990 by the Tahsildar, Purasawalkam - Perambur Taluk, Chennai. The community certificate produced by the first respondent has not been issued by a competent authority and therefore, prima facie, the same is not valid. Thereafter, vide letter dated 09.01.2007, the Sub Divisional Engineer (E), Office of the Chief Engineer (Electrical), BSNL, Chennai, by enclosing the letters of CGM, BSNL, TN Circle No.VIG/30-521/06 Part IV dated 21.12.2006 and PCE(E), BSNL, Ch.8 No.5(6) 2003/PCE (E)/CH/927 dated 28.12.2006 has directed the 1st respondent to obtain ST certificate from the competent authority, as per G.O.Ms.No.2137 ADW Department, dated 11.11.1989 immediately, for onward transmission to the authorities concerned. As she has failed to produce the same, disciplinary proceedings have been initiated on 01.07.2009 with the imputations, extracted supra.

25. In the explanation dated 11.05.2009, the first respondent has stated that when the Tahsildar, Purasawalkam - Perambur Taluk issued a certificate on 05.07.1990, he was aware of his responsibility and empowered to issue such certificate. The first respondent being the recipient, was not expected to question his competency. She has denied violation of Rule 4(1)(a) of BSNL CDA Rules, 2006. The first respondent, by explanation, dated 11.05.2009, has further submitted that she had applied for a fresh community certificate and though she had been diligently pursuing the same, she was not issued with the certificate. She has contended that initiation of the disciplinary proceedings, on the ground of delay is not proper, and further contended that if there was any doubt over the genuineness of the certificate, the State Level Scrutiny Committee constituted as per the decision in Madhuri Patil's case, alone has the power to verify and enquire into the same.

26. G.O.Ms.No.2137 Adhi Dravidar and Tribal Welfare Department dated 11.11.1989, reads as follows.

"GOVERNMENT OF TAMIL NADU

ABSTRACT

Scheduled Tribes - Issue of Community certificate to persons belonging to Scheduled Tribes - Authorising Revenue Divisional Officers instead of Tahsildars - Orders - issued.

ADI DRAVIDAR AND TRIBAL WELFARE DEPARTMENT

G.O.Ms.No.2137

Dated: 11.11.89

Read Again:-

1. G.O.Ms.No.1201, Social Welfare Department, dated 31.5.85.

2. G.O.Ms.No.877, Adi Dravidar and Tribal Welfare Department dt.6.6.89.

Read the following:

1. From the Collector, Madurai, D.O.No.2576/89 dt.27.7.89.
2. From the Special Commissioner and Commissioner of Revenue Administration, Madras, Lr.Q2/72319/89, dated 19.8.89.
3. From the Govt. of India, Ministry of Welfare, New Delhi, Lr.No.12017/5/89 SCD(R/Cell), dated 28.9.89.

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ORDER:

In the Government Orders read above, Government issued orders authorizing the Revenue Divisional Officers, instead of Tahsildars, to issue community certificates to the applicants belonging to Kondareddis, Malai-Vedan, Malaikuravan and Malai Pandaram communities included in the list of Scheduled Tribes, for the purpose of seeking employment under both the Central and the State Governments.

2. The Collector, Madurai has suggested that the Revenue Divisional Officers may be vested with the power to issue community certificates in respect of all communities included in the list of Scheduled Tribes, in order to avoid misuse of concessions by obtaining false certificates. The Special Commissioner and Commissioner of Revenue Administration has also supported the above suggestion.

3. The Government of India were addressed for their concurrence on the above proposal. They have no objection to implement the above proposal.

4. The Government direct that the community certificates in respect of all communities included in the list of Scheduled Tribes, for the purpose of appointments in Public Services under Central and State Governments, Public Sector Undertakings, Quasi Government, institutions, etc., shall hereafter, be issued only by the Revenue Divisional Officers.

5. The Collectors are requested to issue suitable Instructions in this regard, to all concerned.

6. The receipt of this Government Order may be acknowledged.

(BY ORDER OF THE GOVERNOR)

Sd/- xxx

Secretary to Government

To  
The Special Commissioner &  
Commissioner of Revenue Administration,  
Madras-6

All Collectors,  
x x x x  
x x x x

/true copy/

Sd/- xxx  
Section Officer"

27. Perusal of Government Order, makes it clear that before issuing the said Government Order, Government of Tamil Nadu, have considered the earlier Government orders issued in G.O.Ms.No.1201, Social Welfare Department, dated 31.05.1985 and G.O.Ms.No.877, Adi Dravidar and Tribal Welfare Department dated 06.06.1989, authorising the Revenue Divisional Officers, instead of Tahsildars, to issue community certificate to the communities included in the list of Schedule Tribes, for the purpose of seeking employment under the Central and State Governments. The Collector of Madurai has suggested that Revenue Divisional Officers, may be vested with the power to issue community certificates, in respect of all the communities included in the Scheduled Tribes, in order to avoid misuse of concessions by obtaining false certificates. The Special Commissioner and Commissioner of Revenue Administration has supported the above suggestion. Government of India have been addressed for their concurrence on the above proposal, and Government of India, Ministry of Social Welfare, New Delhi, vide letter No.12017/5/89 SCD (R/Cell) dated 28.09.1989, have no objection, to implement the proposal. Though earlier Revenue Divisional Officers were empowered to issue certificates only in respect of Kondareddis, Malai Vedan, Malaikuravan and Malai Pandaram included, in the list of Scheduled Tribe communities, for the purpose of seeking employment, in Central and State Governments, etc. with the concurrence of Government of India, Ministry of Welfare, New Delhi, orders have been issued by the State Government in G.O.Ms.No.2137 Adi Dravidar and Tribal Welfare Department dated 11.11.1989.

28. Thus in G.O.Ms.2137 Adi Dravidar and Tribal Welfare Department dated 11.11.1989, Government of Tamil Nadu, have directed that community certificates, in respect of all communities included in the list of Scheduled Tribes, for the purpose of appointments in Public Services, under Central and State Governments, Public Sector Undertakings, Quasi Government, institutions, etc., shall hereafter, be issued only by the Revenue Divisional Officers. At this juncture, this Court deems it fit to consider the meaning of the word, "concurrence".

29. As per Corpus juris secundum, "Concurrence" means, "Agreement, agreement in mind or opinion, a meeting of minds, approbation, approval, concurrence in opinion, consent, to come together in opinion or action; assent. The term implies something more than a mere acquiescence or silent submission.

30. As per Words and Phrases, Permanent Edition, the word "Concurrence", as used in statute means concurrence in opinion, agreement; meeting of minds; consent; approbation; approval; to come together in opinion or action.

31. "Consent", as a substantive, is a synonym of "assent", "acquiescence", "concurrence", and means an agreement or harmony of opinion or sentiment. It does not imply any manifestation or expression of such concurrence, though this may sometimes be inferred from the connection in which the word is used.

32. Circular dated 24.04.1990 of Government of India, Department of Personnel and Training OM No.36012/6/88-Estt (SCT) dated 24.04.90, reads thus:

Department of Personnel and Training OM  
No.36012/6/88-Estt (SCT) dated the 24-4-90  
Subject:- Verification/acceptance of castes  
certificates produced by candidates

It has been brought to the notice of the government that there are cases in which candidates have produced false caste certificates as belonging to Scheduled Castes/Scheduled Tribes and secured Central Government jobs against vacancies reserved for SCs/STs. Instructions already exist which provide that the services of the candidates claiming to be belonging to SC/ST would be terminated, if their claims are found to be false on subsequent verification through District Magistrates.

2. At present, the following certificates can be accepted by the appointing authorities as sufficient proof in support of candidate's claim as belonging to SC/STs.

Matriculation or school leaving certificate or birth certificate giving the caste/community of the candidate and the place of his residence.

3. It has now been decided that henceforth the certificates as mentioned in para 2 above should not be accepted as proof of caste at the time of initial appointment. The Caste/Tribe certificates issued by the following authorities in the prescribed form in Appendix 14 of the Brochure on Reservation for Scheduled Castes/Scheduled Tribes (Seventh Edition) will only be accepted.

(1) District Magistrate/Additional District Magistrate/Collector Deputy Commissioner/Additional Deputy Commissioner/Deputy Collector/1st Class Stipendary Magistrate/Sub Divisional Magistrate/Taluka Magistrate/Executive Magistrate/Extra Assistant Commissioner.

(2) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate

(3) Revenue officer not below the rank of Tahsildar, and

(4) Sub-Divisional Office of the area where the candidate and/or his family normally resides.

4. It has also been decided that henceforth the appointing authorities should, in the offer of appointment to be candidates claiming to be belonging to Scheduled Castes/Scheduled Tribes, include a clause as follows:

" The appointment is provisional and is subject to the castes/tribe certificates being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste/Scheduled Tribe, as the case may be, is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificates".

5. Ministries/Departments are requested to note for strict compliance."

33. From the above, it could be deduced that, when circular dated 24.04.1990, was issued, Department of Personnel and Training, New Delhi, Government of India, was fully aware of the fact that, by producing false community certificates, candidates have secured appointment, against vacancies, earmarked for Scheduled Tribes, and that is why, Government of India have directed the employers to include a clause in the appointment order, that it is provisional and subject to the caste/tribe certificates being verified through the proper channels and if verification reveals that the claim to belong to Scheduled Caste/Scheduled Tribe, as the case may be, is false, the services will be terminated forthwith, without assigning any further reasons and without prejudice to such further action as may be, taken under the provisions of the Indian Penal Code for production of false certificates. Thus, it could be deduced that Government of India, had decided not only to terminate the services of those, who had obtained employment, by making false claims, but also decided to prosecute them.

34. Circular dated 23.02.1995 of the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), reads thus:

No.36019/2/94-Estt. (SCT)  
Government of India  
Ministry of Personnel, Public Grievances and  
Pensions  
(Department of Personnel & Training)

\*\*\*\*\*

New Delhi, the 23 Feb., 1995.

OFFICE MEMORANDUM

Subject:- Verification/acceptance of Caste  
Certificates  
produced by the candidates.

\*\*\*\*\*

The undersigned is directed to refer to this Department's O.M.No.36014/6/88-Estt.(SCT) dated 24.4.90 on the above subject wherein it was indicated inter alia that the castes/tribes certificates issued by the Revenue Officer and not below the rank of Tahsildar should be accepted for the purpose of employment in Central Government. The Government of Tamil Nadu vide their GOMS No.2137 dated 11.11.89 had issued instructions that the community certificate in respect of communities included in the list of Scheduled Tribes for the purpose of appointment in public services under the Central Government/State Government etc shall be issued only by the Revenue Divisional Officer. The above said orders were issued in consultation with the Ministry of Welfare vide their letter NO.12017/5/89-SCD (R Cell) dated 28.9.89.

2. It is hereby clarified that in so far as the Scheduled Tribes community of Tamil Nadu is concerned, the certificate given by the Revenue Divisional Officer instead of Tahsildar should only be accepted for the purpose of employment under the Government of India.

(M.VENKATARAMAN)

Under Secretary to the Govt. of

India

To

- 1.All Ministries/Departments of the Govt. of India
- 2.Staff Selection Commission with reference to their D.O.letter No.1/27/92-P&P dated 3.1.1995
- 3.Union Public Service Commission (Shri.Ram Avtar, Under Secretary) Dholpur House, New Delhi
- 4.Department of Public Enterprises
- 5.Department of Economic Affairs (Banking Division)
- 6.Department of Economic Affairs (Insurance Division)
- 7.Ministry of Welfare w.r.t. their file No.12017/6/09-CGO

(SC Cell)

35. It is the submission of Mr.A.R.L.Sundaresan, learned senior counsel for the first respondent that office memorandum dated 23.02.1995 has been properly interpreted by the Tribunal, to be prospective in nature, and supporting the same, relied on a judgment of a Hon'ble Division Bench of this court in W.P.No.17223/2010 dated 24.08.2016 and contended that the writ petitioner has no authority to direct the first respondent, to obtain a fresh community certificate from the Revenue Divisional Officer to prove that she belongs to Scheduled Tribe community, and that failure to do so, disciplinary proceedings cannot be taken.

36. Government order No.2137 Adhi Dravidar and Tribal Welfare Department dated 11.11.1989 has been issued with the concurrence of the Ministry of Welfare, vide letter, dated 28.09.1989 and in circular dated 23.02.1995, Government of India, have only clarified that insofar as the Scheduled Tribe community of Tamil Nadu is concerned, certificates given by the Revenue Divisional Officers instead of Tahsildars, alone are only to be accepted for the purpose of employment under Government of India. There is nothing new, in the circular dated 23.02.1995 of Government of India, to contend that only from 23.02.1995 onwards, certificates issued by the Revenue Divisional Officers should be accepted, and whatever certificates, issued earlier by an incompetent authority, can also be accepted.

37. The Tribunal, while quashing the disciplinary proceedings dated 01.07.2009, has proceeded on the footing that only from the date of issuance of circular dated 23.02.1995, departments coming under the control of Government of India, are empowered to insist for production of community certificate, issued by the Revenue Divisional Officer/Personal Assistant to the Collector, as the case may be, and not earlier. The said conclusion appears to have been made, on the basis of a decision in O.A.No.1401/1994 dated 19.08.1997. The said decision in O.A.No.1401/1994 dated 19.08.1997, has been made considering a Hon'ble Division Bench judgment of this court in K.Viswanathan vs. Govt. of India and others reported in 1985 W.L.R. 69, wherein, this court had an occasion to consider the scope of the Government Orders, issued by the State and Office Memorandum, issued by the Central Government.

38. Going through the judgment in O.A.No.1401/1994 dated 19.08.1997, we are of the considered view that with reference to circular dated 23.02.1995, the Tribunal, has made a bald observation stating that "it is settled law that it cannot have any retrospective effect, as the case on hand was about the selection made in 1994". The said conclusion, made in O.A.No.1401/1994 dated 19.08.1997, seemed to have weighed in the mind of the Central Administrative Tribunal, Madras, while passing orders in O.A.No.1234/2009 dated 26.04.2011, wherein, the Tribunal, at paragraph 9 of the order, has reiterated that

the said circular cannot have retrospective operation. Question as to whether circular dated 23.02.1995 was prospective or retrospective was not raised or argued, but the Tribunal in O.A.No.1401/1994 dated 19.08.1997, has observed that it is not in dispute, that the circular dated 23.02.1995 is prospective in nature. Such a conclusion, on the circular dated 23.02.1995, without any issue, as to whether it is prospective or retrospective in nature, in our considered opinion, is without any reason. Reasons are the heart beat of any decision. On the said aspect, we wish to consider a decision in in Kranti Associates Private Limited and another vs Masood Ahamed Khan and Others) reported in (2010) 9 SCC 496, wherein, the Supreme Court has considered a catena of decisions, which are extracted hereunder:

12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262].

13. In Keshav Mills Co. Ltd. v. Union of India [(1973) 1 SCC 380], this Court approvingly referred to the opinion of Lord Denning in R. v. Gaming Board for Great Britain, ex p Benaim [(1970) 2 QB 417] and quoted him as saying "that heresy was scotched in Ridge v. Baldwin [1974 AC 40]".

14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

16. In Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala [AIR 1961 SC 1669], the question of recording reasons came up for consideration in the context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111(3) of

the Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the Company and directed the Company to register the transfer. However, in passing the said order, the Government did not give any reason. The Company challenged the said decision before this Court.

17. The other question which arose in Harinagar was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

18. Even though in Harinagar the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (AIR pp. 1678-79, para 23).

19. Again in Bhagat Raja v. Union of India [AIR 1967 SC 1606] the Constitution Bench of this Court examined the question whether the Central Government was bound to pass a speaking order while dismissing a revision and confirming the order of the State Government in the context of the Mines and Minerals (Development and Regulation) Act, 1957, and having regard to the provision of Rule 55 of the Mineral Concession Rules. The Constitution Bench held that in exercising its power of revision under the aforesaid Rule the Central Government acts in a quasi-judicial capacity (see AIR p. 1610, para 8). Where the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying any reason, this Court, exercising its jurisdiction under Article 136, may find it difficult to ascertain which are the grounds on which the Central Government upheld the order of the State Government (see AIR p. 1610, para 9). Therefore, this Court insisted on reasons being given for the order.

20. In Mahabir Prasad Santosh Kumar v. State of U.P. [(1970) 1 SCC 764], while dealing with the U.P. Sugar Dealers' Licensing Order under which the licence was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking one. This Court further held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to

appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. (See SCC p. 768, para 7 : AIR p. 1304, para 7.)

21. In *Travancore Rayon Ltd. v. Union of India* [(1969) 3 SCC 868], the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excises and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (see SCC p. 874, para 11 : AIR pp. 865-66, para 11).

22. In *Woolcombers of India Ltd. v. Workers Union* [(1974) 3 SCC 318] this Court while considering an award under Section 11 of the Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong (see SCC pp. 320-21, para 5 : AIR p. 2761, para 5).

23. In *Union of India v. Mohan Lal Capoor* [(1973) 2 SCC 836] this Court while dealing with the question of selection under the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations held that the expression "reasons for the proposed supersession" should not be mere rubber-stamp reasons. Such reasons must disclose how mind was applied to the subject-matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in

such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (see SCC pp. 853-54, paras 27-28 : AIR pp. 97-98, paras 27-28).

24. In *Siemens Engg. and Mfg. Co. of India Ltd. v. Union of India* [(1976) 2 SCC 981], this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (see SCC p. 986, para 6 : AIR p. 1789, para 6).

25. In *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248], which is a decision of great jurisprudential significance in our constitutional law, Beg, C.J. in a concurring but different opinion held that an order impounding a passport is a quasi-judicial decision (SCC p. 311, para 34 : AIR p. 612, para 34). The learned Chief Justice also held, when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.

26. Y.V. Chandrachud, J. (as His Lordship then was) in a concurring but a separate opinion in *Maneka Gandhi* also held that refusal to disclose reasons for impounding a passport is an exercise of an exceptional nature and is to be done very sparingly and only when it is fully justified by the exigencies of an uncommon situation. The learned Judge further held that law cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny. (See SCC p. 317, para 39 : AIR p. 613, para 39.)

27. In *Rama Varma Bharathan Thampuram v. State of Kerala* [(1979) 4 SCC 782] V.R. Krishna Iyer, J. speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see

SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In *Gurdial Singh Fijji v. State of Punjab* [(1979) 2 SCC 368] this Court, dealing with a service matter, relying on the ratio in *Capoor*, held that "rubber-stamp reason" is not enough and virtually quoted the observation in *Capoor* to the extent that: (*Capoor* case, SCC p. 854, para 28)

"28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

29. In a Constitution Bench decision of this Court in *H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt.* [(1979) 4 SCC 642], while giving the majority judgment *Y.V. Chandrachud, C.J.* referred to (SCC p. 658, para 29) *Broom's Legal Maxims* (1939 Edn., p. 97) where the principle in Latin runs as follows: "Cessante ratione legis cessat ipsa lex."

30. The English version of the said principle given by the Chief Justice is that: (*H.H. Shri Swamiji* case, SCC p. 658, para 29)

"29. ... 'reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'." (See AIR p. 11, para 29.)

31. In *Bombay Oil Industries (P) Ltd. v. Union of India* [(1984) 1 SCC 141], this Court held that while disposing of applications under the Monopolies and Restrictive Trade Practices Act the duty of the Government is to give reasons for its order. This Court made it very clear that the faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well-considered orders. In saying so, this Court relied on its previous decisions in *Capoor* and *Siemens Engg.* discussed above.

32. In *Ram Chander v. Union of India* [(1986) 3 SCC 103], this Court was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rules. This Court held that the word "consider" occurring in Rule 22 (2) must mean that the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasised that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision (SCC pp. 106-07, para 4 : AIR p. 1176, para 4).

33. In *Star Enterprises v. City and Industrial Development Corpn. of Maharashtra Ltd.* [(1990) 3 SCC

280] a three-Judge Bench of this Court held that in the present day set-up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various fields of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justifications for not doing so (see SCC pp. 284-85, para 10).

34. In Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi [(1991) 2 SCC 716], this Court held that even in domestic enquiry if the facts are not in dispute non-recording of reason may not be violative of the principles of natural justice but where facts are disputed necessarily the authority or the enquiry officer, on consideration of the materials on record, should record reasons in support of the conclusion reached (see SCC pp. 738-39, para 22).

35. In M.L. Jaggi v. MTNL [(1996) 3 SCC 119], this Court dealt with an award under Section 7 of the Telegraph Act and held that since the said award affects public interest, reasons must be recorded in the award. It was also held that such reasons are to be recorded so that it enables the High Court to exercise its power of judicial review on the validity of the award. (See SCC p. 123, para 8.)

36. In Charan Singh v. Healing Touch Hospital [(2000) 7 SCC 668] a three-Judge Bench of this Court, dealing with a grievance under the CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasising". (See SCC p. 673, para 11 : AIR p. 3141, para 11 of the Report.)

37. Only in cases of Court Martial, this Court struck a different note in two of its Constitution Bench decisions, the first of which was rendered in

Som Datt Datta v. Union of India [AIR 1969 SC 414] where Ramaswami, J. delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do not require an order confirming proceedings of Court Martial to be supported by reasons. This Court held that an order confirming such proceedings does not become illegal if it does not record reasons. (AIR pp. 421-22, para 10 of the Report.)

38. About two decades thereafter, a similar question cropped up before this Court in S.N. Mukherjee v. Union of India [(1990) 4 SCC 594]. A unanimous Constitution Bench speaking through S.C. Agrawal, J. confirmed its earlier decision in Som Datt in S.N. Mukherjee case, SCC p. 619, para 47 : AIR para 47 at p. 2000 of the Report and held that reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial.

39. It must be remembered in this connection that the court martial as a proceeding is sui generis in nature and the Court of Court Martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. About the nature of Court Martial and its proceedings the observations of Winthrop in Military Law and Precedents are very pertinent and are extracted hereinbelow:

"Not belonging to the judicial branch of the Government, it follows that Courts Martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilised under his orders or those of his authorised military representatives."

40. Our Constitution also deals with court-martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution.

41. In England there was no common law duty of recording of reasons. In Stefan v. General Medical Council [(1999) 1 WLR 1293 (PC)] it has been held: (WLR p. 1300)

the established position of the common law is that there is no general duty imposed on our decision makers to record reasons.

It has been acknowledged in the Justice Report, Administration Under Law (1971) at p. 23 that:

"No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

42. Even then in R. v. Civil Service Appeal

Board, ex p Cunningham [(1991) 4 All ER 310 (CA), Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said: (All ER p. 317)

"... '... it is a corollary of the discretion conferred upon the Board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane, C.J.'s observations [in R. v. Immigration Appeal Tribunal, ex p Khan (Mahmud) [1983 (2) ALL ER 420 (CA)] All ER at p. 423, QB at pp. 794-95], the reasons for the lower amount is not obvious. Mr Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the Board were addressing their mind in arriving at their conclusion. It must be obvious to the Board that Mr Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them).'"

43. The learned Master of Rolls further clarified by saying: (Civil Service Appeal Board case [(1991) 4 All. ER 310 (Ca), All ER p. 317)

"... '... Thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this Board to give succinct reasons, if only to put the mind of Mr Cunningham at rest. I would therefore allow this application.'" "

44. But, however, the present trend of the law has been towards an increasing recognition of the duty of court to give reasons (see North Range Shipping Ltd. v. Seatrans Shipping Corpn. [(2002) 1 WLR 2397). It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration.

45. In English v. Emery Reimbold and Strick Ltd. [(2002) 1 WLR 2409]. It has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in Cullen v. Chief Constable of the Royal Ulster Constabulary [(2003) 1 WLR 1763], Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held: (WLR p. 1769, para 7)

"7. ... First, they impose a discipline ... which may contribute to such refusals being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the courts in performing their supervisory function if judicial review proceedings are launched."

indicated by this Court in S.N. Mukherjee in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In S.N. Mukherjee this Court relied on the decisions of the US Court in Securities and Exchange Commission v. Chenery Corp. [87 L Ed. 626] and Dunlop v. Bachowski [44 L Ed 2d 377] in support of its opinion discussed above.

47. Summarising the above discussion, the Hon'ble Supreme Court held as hereunder:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for

both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

39. In O.A.No.1401/1994 dated 19.08.1997, no issue has been raised or argued as to whether the Office Memorandum dated 23.02.1995, is prospective or retrospective. No reasons have been assigned by the Tribunal in O.A.No.1401/1994, to arrive at the conclusion that, "it is settled law that office memorandum dated 23.02.1995, cannot have any retrospective effect. In which case, either the High Court, or the Hon'ble Apex Court, has decided that office memorandum dated 23.02.1995, is prospective, has not been quoted. But the Tribunal in O.A.No.1401/1994 dated 19.08.1997 has observed that "it is settled law that it cannot have any retrospective effect. Whether such an observation, without any issue being raised or argued by the parties, and without reasons, can be considered to be a binding precedent and whether this Court is bound to simply follow the said decision, with our eyes closed, we wish to consider what the Hon'ble Supreme Court has directed the Courts subordinate to follow. We are bound to follow the same.

(i) In C.I.T. v. Sun Engg. Works (P) Ltd., reported in AIR 1993 SC 43 : 1992 (4) SCC 363, the Hon'ble Apex Court observed:

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

(ii) In Government of Karnataka and Others v. Gowramma and Others AIR 2008 SC 863, with reference to precedential value of decisions:

"Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority

for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Others AIR 1968 SC 647 and Union of India and Others v. Dhanwanti Devi and Others (1996) 6 SCC 44. A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn v. Leathern (1901) AC 495 (H.L.), EARL OF HALSBURY LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

(iii) Words of LORD DENNING, in the matter of applying precedents, have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases. One should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

.. ..  
Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

(emphasis supplied)

40. In W.P.No.19042/2007, correctness of the order made in O.A.No.953 of 2006 on the file of the Central Administrative Tribunal, Madras Bench, Chennai has been tested. On the basis of a Community certificate dated 26.12.1998 issued by the Assistant Collector, Dharmapuri, stating that the respondent therein, belonged to Kattunayakan community, appointment was sought for. The Chief Personnel Officer, Southern Railway, respondent therein, insisted for a community certificate, from the Revenue Divisional Officer. For non-selection, the respondent therein, preferred an application, before the Tribunal. Railway Board filed a reply statement stating that memorandum dated 23.02.1995 of the Ministry of Personnel, Public Grievances and Pension, stipulated a condition insofar as Scheduled Tribe community of Tamil Nadu is concerned, certificate issued by the Revenue Divisional Officer alone would be accepted, for the purpose of employment. The Tribunal, after hearing the parties, allowed the original application, against which, W.P.No.19042/2007 has been filed. During the course of hearing of W.P.No.19042 of 2007, vide order dated 05.07.2007, a Hon'ble Division of this court, directed the Revenue Divisional Officer, Dharmapuri, to issue community certificate to the respondent therein, on his filing an application, in the prescribed format. Like in the present case, before us, the respondent therein, vide representation dated 27.11.2006, undertook to produce a community certificate from the Revenue Divisional Officer by 27.12.2006. But, did not produce. On the contrary, he approached the Tribunal. Holding that after 11.11.1989, Revenue Divisional Officer alone is the competent authority to issue a community certificate for a Scheduled Tribe, vide order dated 27.07.2009 in W.P.No.19042/2007, a Hon'ble

Division Bench of this court, set aside the order of the Tribunal, thereby, making it clear that the Chief Personnel Officer, Southern Railway, was right in insisting a community certificate to be produced from the Revenue Divisional Officer. At paragraph 9 of the order in W.P.No.19042/2007, the Hon'ble Division Bench held as follows:

"9. It is not disputed that even as per the Tamil Nadu Government, subsequent to issuance of G.O. Ms. No. 2137 dated 11.11.1989, insofar as the Scheduled Tribe community of Tamil Nadu is concerned, the certificate given by the Revenue Divisional Officer only should be accepted for the purpose of employment under Government of India. Therefore, it is clear that on and after 11.11.1989, the Tahsildar has no jurisdiction to issue community certificate to Scheduled Tribe Candidates in the State of Tamil Nadu. Admittedly, in the present case, the community certificate produced by the second respondent was dated 28.12.1998, ie., after the Government Order, and, therefore, on and after the said date, the Revenue Divisional Officer alone is the competent authority and as such, the certificate relied on by the second respondent can only be stated to have been issued by an incompetent authority. Therefore, we are of the view that the second respondent is bound to produce the community certificate from the Revenue Divisional Officer and the petitioner Department is justified in insisting upon production of certificate from the competent authority. But the Tribunal failed to see that the community certificate produced by the second respondent was not issued by the competent authority."

41. Though in W.P.No.19042/2007 dated 27.07.2009, the Hon'ble Division Bench has not specifically dealt with the scope of the Office Memorandum dated 23.02.1995, as to whether, it is prospective or retrospective, the binding effect of the judgment is that from 11.11.1989 onwards, the Tahsildar is an incompetent authority, to issue community certificate to a Scheduled Tribe candidate and the categorical decision, by a Hon'ble Division Bench of this Court, cannot be ignored by the Tribunal. There is a clear conclusion in the said judgment in W.P.No.19042 of 2007, dated 27.07.2007 that the applicant seeking for employment, is bound to produce a community certificate from the Revenue Divisional Officer, and the department was justified in insisting upon production of certificate from the competent authority.

42. Order of the Hon'ble Division Bench of this court, made in W.P.No.17223/2010 dated 24.08.2016, and strongly relied on by the respondent also does not consider, as to whether the office memorandum dated 23.02.1995, is clarificatory or not. As observed earlier, whatever has been

decided in the year 1989, by the State Government, was with the concurrence of Government of India, Ministry of Welfare, dated 28.09.1989, and that the same has been reiterated, in circular dated 23.02.1995, by issuing a clarificatory memorandum.

43. With reference to the contention of Mr.M.S.Velusamy, learned counsel for the writ petitioner, in the explanation dated 11.05.2009, the respondent has submitted that she would produce a fresh community certificate by the competent authority and that, she failed to do so, it is relevant to consider the observations of the Hon'ble Division Bench at paragraph 12 of the judgment in W.P.No.30262 of 2014 dated 13.10.2015, in similar circumstances.

" 12 Incontrovertibly, the petitioner sought appointment against the reserved seat of scheduled tribe on misrepresentation that he belongs to scheduled tribe community. In normal course, a candidate, seeking employment, is required to submit the certificate. In the case on hand, the petitioner was granted time to obtain the certificate and to produce the same. The fact that the petitioner does not belong to scheduled tribe community was raised by the NLC ST Employees Welfare Association, which was referred to the Revenue Divisional Officer. The Revenue Divisional Officer examined the fact and came to the conclusion that the petitioner does not belong to scheduled tribe community. The matter was also examined by the State Level Scrutiny Committee, the final competent authority to verify the community certificate of a person, which has come to the conclusion that the petitioner does not belong to Konda Reddy scheduled tribe community. "

44. Dehors the question, as to whether, the department, after verification with the District Collector, Chennai, who had confirmed that the certificate produced by the respondent, had been issued by an incompetent authority, and under such circumstances, the department can direct the respondent to produce community certificate from a competent authority, when the respondent in her explanation has admitted that she would produce fresh community certificate and if the respondent really belongs to Kondakappu community and stated to have made an application, for issuance of a certificate, to that effect, we are unable to understand, as to why she had not produced the certificate so far, before the authority, Tribunal or this court. If she had applied for a fresh community certificate from a competent authority, and if there is a failure on his part, to discharge his statutory duty, what prevented the petitioner from approaching the higher authorities or this court, as the case may be, to seek for a direction to the said authority, to pass orders on her application, to issue community certificate. There is absolutely no bonafide effort by the petitioner, to pursue the representation. Reason as to

why, he did not diligently prosecuted and pursued the representation, is absent.

45. It is also to be noted that when reliance was made on the decision of a Hon'ble Division Bench of this court, in W.P.No.17223/2010 dated 24.08.2016, confirming the order of the Tribunal, made in O.A.No.698 of 2008 dated 30.03.2010, the Hon'ble Division Bench has observed that the Central Administrative Tribunal, Madras Bench, without knowing the power of the writ petitioner/employer, has erroneously observed that the writ petitioner/employer is estopped from questioning the community of the first respondent/applicant and while affirming the power of the employer, this court has said that the observation in that regard, made by the Central Administrative Tribunal, is not legally correct. However, while doing so, this Court held that if there is any doubt with regard to the community certificate, the same can be referred to the State Level Scrutiny Committee. At this juncture, in the case on hand, it is to be noted that the very certificate dated 5.7.1990 produced by the respondent has been issued by an incompetent authority.

46. In R.Kandasamy vs. Chief Engineer, Madras Port Trust reported in (1997) 7 SCC 505, the appellant therein, obtained a community certificate dated 10.03.1987 issued by the Tahsildar, Mambalam, for the purpose of obtaining appointment as Muzdor in Madras Port Trust. That certificate was not accepted by Port Trust and on 20.11.1995, Port Trust, directed the appellant to produce the latest original certificate from the Revenue Divisional Officer. He did not produce the certificate on or before 30.12.1995, but moved the High Court. Referring to G.O.Ms.No.2137 ADW Department dated 11.11.1989 and by holding that the certificate issued by the Tahsildar was not a valid certificate, a learned single Judge dismissed the writ petition. Appeal was also dismissed. When correctness of the order was tested, by observing that prior to 11.11.1989 Tahsildar was competent to issue community certificate to Scheduled Tribe candidates and therefore, the authorities cannot decline to take into consideration and insist upon fresh certificate from Revenue Divisional Officer, the Hon'ble Apex Court, allowed the appeal. While doing so, at paragraph No.8, the Apex Court clarified that, what was dealt was only the legal aspect of the matter and the court has not pronounced upon the genuineness and the correctness of the community certificate, for which if there is any doubt, though none appear to have been raised in the High Court and none was projected before the court, either the respondent, shall have to hold a proper enquiry, but till that certificate is not cancelled, the certificate shall be treated as a valid certificate issued by the competent authority. In the reported judgment insisting for a fresh certificate was not permitted, because in 1987, the Tahsildar was competent to issue a certificate and that the Hon'ble Apex Court has also taken note of a letter of the Joint Secretary dated 03.04.1991

informing all the Collectors of various districts in Tamil Nadu that community certificates issued to Scheduled Tribes by the Tahsildar up to 11.11.1989 would be valid.

47. In W.P.No.17223/2010 correctness of the order made in O.A.No.698/2008 dated 30.03.2010, of the Tribunal, has been tested. In the said case, the respondent joined service in 1993, as Junior Stenographer under the quota reserved for Scheduled Tribes. At the time of joining, she produced community certificate from Excise Supervisory Officer, TASMAL, Madras Central. Vide letter, dated 15.9.2008, she was directed to produce a community certificate from the competent authority. She did not produce. She challenged the same before the Tribunal in O.A.No.698/2008. Contention has been made by the respondent therein that as per G.O.(2D) No.108, Adi Dravidar and Tribal Welfare Department (CV1) dated 12.09.1997, community certificate has to be issued only by the Revenue Divisional Officer. Case of the department was not accepted and hence W.P.No.17223 of 2010, was filed.

48. Based on the earlier order in O.A.No.1401/1994 dated 19.08.1997, the Tribunal in O.A.No.698/2008 dated 30.03.2010 has also observed that, "it is not in dispute that the said circular (23.02.1995) is having only prospective operation". The Tribunal has further observed that the Hon'ble Division Bench of this Court in K.Viswanathan vs. Govt. of India and others reported in 1985 W.L.R. 69, has considered the scope of the Office Memorandum dated 5.8.75 of the Central Government and G.O.Ms.No.1139, dated 23.03.1982. At this juncture, it is to be noted that office memorandum dated 23.02.1995, has been subsequently issued.

49. When reliance was placed on the order of the Hon'ble Division Bench of this court in W.P.No.19042/2007 dated 27.07.2009, the Tribunal in O.A.No.698/2008 dated 30.03.2010 has observed that the scope of the circular dated 23.02.1995 of the Government of India as well as G.O.Ms.No.2137 ADW Department dated 11.11.1989, were not, the subject matter in W.P.No.19042/2007 and therefore, there should have been a specific issue raised, argued, as to whether, O.M., dated 23.02.1995, is prospective or retrospective, a decision, with reasons. But the Tribunal has mainly relied on the judgment of this court in K.Viswanathan's case reported in 1985 WL6 69, which considered the scope of Central Government circular, dated 05.08.1975. Both in O.A.No.1401/1994 and in O.A.No.698/2010, the Tribunal has not considered, under what circumstances, the Hon'ble Division Bench in K.Viswanathan's case concluded, as stated supra.

50. In the reported judgment, Government of Tamil Nadu issued G.O.Ms.No.1139 dated 23.03.1982, conferring powers on the Revenue Divisional Officers to issue Konda Reddy community certificates, picking out of large number other communities, falling under Scheduled Tribes, on the grounds that another

competing forward community "Reddiar", taking advantage of the privileges given to Scheduled Tribes, Konda Reddis. Therefore, said order was challenged by Tamil Nadu Konda Reddis Welfare Association in a representative capacity and by others, on the grounds that the said GO is discriminatory and violative of Article 14 of the Constitution of India. Contention has also been made that when Tahsildars were empowered to issue community certificate to other communities, falling under the Scheduled Tribe category, Kondareddis alone cannot be directed to obtain certificates from the Revenue Divisional Officers. Attention of the Hon'ble Division Bench was also invited to the communication of the Government of India, Department of Personnel and Administrative Reforms, New Delhi dated 05.08.1975, addressed to all the Chief Secretaries of all State Governments and Administrators of all Union Territories prescribing the authorities competent to issue certificates to those belonging to Scheduled Castes and Scheduled Tribes, seeking employment to posts/services under the Central Government. Communication of Government of India, Department of Personnel and Administrative Reforms, dated 05.08.1975 is extracted hereunder:

New Delhi - 110 001 Dt. 5th August 1975.

To  
The Chief Secretaries of All State Governments and  
Union Territory Admn.

Sub: Verification of claims of candidates belonging  
to Scheduled Castes and Scheduled Tribes - Form of  
Caste certificate -Amendments To.

...

Sir, I am directed to say that candidates belonging to Scheduled Castes and Scheduled Tribes seeking employment to posts / services under the Central Government are required to produce a certificate in the prescribed form from one of the prescribed authorities in support of their claim. A list of the prescribed authorities in this regard is enclosed for information. The form of caste certificate has now been slightly revised. The revised form of caste certificate may please be brought to the notice of the authorities under the State Government who are empowered to issue such certificates.

Sd. J. S. Abluwalla Under Secretary to the  
Government of India List of authorities empowered to  
issue certificates of verification:

1. District Magistrate/ Additional District  
Magistrate/Collector Deputy Commissioner/ Additional  
Deputy Commissioner/ Deputy Collector/Ist Class  
Stipendiary Magistrate/ City Magistra0Sub-Divisional  
Magistrate -Taluk Magistrate/Executive Magistrate/  
Extra Assistant Commissioner.

2. Chief Presidency Magistrate/ Additional Chief Presidency Magistrate/Presidency Magistrates.

3. Revenue Officers not below the rank of Tahsildar.

4. Sub-Divisional Officer of the area where the candidate and/or his family normally resides.

5. Administrator/Secretary to Administrator/Development Officer (Lakshadeep Islands).

51. In the reported judgment, the first ground of attack was discretion. The second ground of challenge was when Government of India, have nominated different officers, including the Tahsildar, by communication dated 5.8.1975, the State Government does not have the power to depart from the communication of the Government of India. While rejecting the case of the Association and others that the impugned Government order was not discriminatory, and violative of Article 14 of the Constitution of India, the Hon'ble Division Bench sustained the validity of GO. However, considering the constitutional provisions, on the scope of the Government order issued by the State Government and the Office memorandum of Government of India, dated 05.08.1975 at paragraph 34 of the judgment in K.Viswanathan's case held as follows:

"so long as the communication dated 5th Aug, 1975, stands, the Officers named therein will be bound to issue the certificates, unless the State Government is in a position to persuade the Central Government to amend the list of authorities to issue the certificates by the communication dated 5th Aug, 1975."

52. Thus it could be seen from K.Viswanathan's case that the Hon'ble Division Bench has broadly indicated, as to what, the State Government has to do, if the Revenue Divisional Officer, to be the competent authority, to issue community certificates, for Scheduled Tribes, when they seek appointment in Central Governemnt. Decision in K.Viswanathan's case has been rendered on 25.07.1984.

53. While considering the issue, as to whether the State Government could issue a Government Order, imposing an obligation on the Central Government to accept only the certificates of the Revenue Divisional Officers, when the communication dated 5.8.75 was in force, the Hon'ble Division Bench in K.Viswanathan's case, held as stated supra.

54. Union of India, was not a party in K.Viswanathan's case. In the said case, there was no issue relating to prospective or retrospective nature of any office memorandum issued by the Central Government. Therefore, the said judgment, with due respect, cannot be made applicable for rendering any decision on the pertinent issue i.e. prospective or retrospective effect, of a circular.

55. Now in the light of observation in paragraph 34 of the judgment in K.Viswanathan's case, we have to consider, as to whether Government of Tamil Nadu have persuaded the Central Government, to have uniformity in the matter of nomination of the competent authority to issue community certificates in respect of all the communities included in the lists of Scheduled Tribes, for the purpose of appointments in Central Governments, and State Governments, Public Sector Undertakings, Quasi Government institutions etc. Government of India, Ministry of Welfare, New Delhi, in Letter No.12017/5/89 SCD (R/Cell) dated 28.9.1989, have no objection to implement the above proposal. In the light of concurrence given by Government of India, it cannot be contended that the position which prevailed at the time when K.Viswanathan's case was decided, continue to exist. Once Government of India have given concurrence, then it is not open to the respondent to contend that G.O.Ms.No.2137 ADW Department dated 11.11.1989, would not have any effect and Scheduled Tribe certificate issued by the Tahsildar, even after 11.11.1989, would be valid, and that the Tahsildar was competent to do so. That submission runs contra to the decision in W.P.No.14092/07, dated 27.07.2009.

56. In S.P.Sakthidevi's case (cited supra), a Hon'ble Division Bench of this court held as follows:

4. In W.A.No.783 of 1982, this Court held that G.O.Ms.No.1139, Social Welfare, dated 23.3.1982 issued by the Government of Tamil Nadu would be applicable only in respect of caste certificates required for its purposes and not in respect of caste certificates required to be produced for posts in the Central Government. A contention is raised to the effect that the fourth respondent and similarly placed Public Sector Undertakings, Nationalised banks and other instrumentalities or agencies of the Central Government have the right to decide, whether the caste certificates issued by the authorities alone could be acted upon, irrespective of whatever be the directives of the Central Government as found in its letter dated 5.8.1975, read with earlier instructions. In Chapter XIX of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services, 6th Edition (1982) at Page 286 (hereinafter referred as the Brochure) it is stated thus:

19.1 The various instructions given in this Brochure relate to reservations for Scheduled Castes and Scheduled Tribes in posts/services under the Government. The Public Sector Undertakings, Statutory and Semi-Government Bodies etc, under the control of the Government, have also been asked to make reservation for Scheduled Castes and Scheduled

Tribes in their services on the lines of the reservations in services under Government by separate instructions as mentioned in the following paragraphs.

Paragraph 19.2 deals with the directives forwarded by the Bureau of Public Enterprises to the administrative Ministries for issue to the Public Undertakings. One of the innumerable instructions given in the Brochure relates to how and in what manner caste certificates are to be obtained, and as to which of the authorities are authorised to issue them. A Presidency Magistrate is one such authority. When instructions issued by the Central Government relating to Scheduled Castes and Scheduled Tribes are binding on its Public Sector Undertakings and even voluntary agencies receiving grants-in-aid from the Central Government, the plea raised by more than one Counsel appearing on behalf of Nationalised Banks and their Recruitment Board, Indian Airlines and like institutions that they are not bound by the instructions issued by the Central Government in this regard, has to be necessarily rejected. They have no right to make a choice and claim that they would accept the certificate issued only by one of the prescribed authorities or any authority other than what have been prescribed by the Central Government.

5. The next contention is that, a caste certificate is not a public document and it is only a communication reflecting the statement of facts and hence, irrespective of whether the issuing authority or the Collector/District Magistrate in the District had cancelled it or not, it is open to the employer to hold an enquiry and decide about the correctness of the certificate, and further pursue with the disciplinary proceedings against the concerned personnel. The caste certificate is issued by a public authority authorised to issue it, after holding an enquiry, as circumstances may warrant. It is a public duty to be discharged by a public servant, or authority conferred upon him to issue such a certificate. The contention on behalf of the fourth respondent and by the Central Government Standing Counsel is that, a caste certificate is not conclusive of what is contained therein, and the employer has the jurisdiction to decide upon the correctness of the claim made therein, by calling upon the certificate-holder to adduce evidence in support of the contents of the certificate, and failing which, suitable action could be taken against the certificate-holder. In support of the claim that it is not a public document, it is stated

that when a certified copy could not be secured of the records relating to issue of caste certificate, it would not come within the definition of "public document" under section 74 of the Evidence Act. This contention lacks strength because section 76 of the Evidence Act takes care of the nature of documents in respect of which alone certified copies could be obtained. Hence, this aspect cannot be a determinative factor to hold as to whether a caste certificate is a public document or not. What is paramount is to find out whether in the course of discharge of public duties, the concerned public authority is enjoined to discharge the public duty, and if so, then the document which comes into existence consequent to such public duties, issued with seal and authority of his Office would be a public document. Once a caste certificate comes into existence in this form any other public functionary is duty bound to act upon the same. On being issued, it is a lawful and valid document. So long as, it is not cancelled in the eye of law, it being a valid document, the holder of it, could rely upon it to establish his caste. Except the prescribed authority, no other authority or public bodies or undertakings etc. having been conferred with powers to issue caste certificates, he cannot choose to declare in any proceeding, that the valid caste certificate contains false particulars. Further, in G.O.Ms.No.9, Social Welfare dated 3.1.1983, instruction were given that records of local enquiry must be maintained as a permanent record for verification in future, which is also indicative of the fact that caste certificate is a public document. Hence, it is held that a caste certificate is a public document.

57. In Sakthi Devi, S.P. v. The Collector of Salem, Salem, etc., reported in 1984 Writ. L.R. 535, a Hon'ble Division Bench was posed with two questions, viz., (i) whether the employers have a right to make a choice and claim that they would accept the certificate, issued only by one of the prescribed authorities or any authority, other than prescribed by the Central Government and (ii) whether the cost certificate is a document or not.

58. Sakthi Devi's case (cited supra), has been rendered, prior to issuance to G.O.M.s.No.2137, ADW Department, dated 11.11.1989. The said Government Order has been issued, with the concurrence of the Central Government, we are of the considered view that the decisions rendered, prior to the issuance of G.O.M.s.No.2137, ADW Department, dated 11.11.1989, and relied on would not lend any support to the case of the respondent.

59. Perusal of the judgment in W.P.No.17223/2010 dated 24.08.2016, against O.A.No.698/2008 dated 30.03.2010 shows that there is no specific averment or issue, as to whether office memorandum dated 23.02.1995 was prospective or retrospective. Based on G.O.(2D) No.108, Adi Dravidar and Tribal Welfare Department (CV1) dated 12.09.1997, the Union of India, Railways, have contended that the community certificate issued by the Excise Supervisory Office, TASMACH, Chennai Central, is not valid and only the Revenue Divisional Officer is competent to issue the certificate. After extracting paragraph 7 and 8 of the order in O.A.No.698 of 2010 dated 30.03.2010, a Hon'ble Division Bench in W.P.No.17223/2010 dated 24.08.2016 at paragraph Nos.7 and 8, ordered as hereunder:

"7. As rightly pointed out on the side of the first respondent/applicant, if there is any doubt with regard to the community of a particular Government servant, the same can be referred to the State Level Caste Scrutiny Committee. But the writ petitioner/respondent has not chosen to refer the case of the first respondent/applicant to the State Level Caste Scrutiny Committee and erroneously issued the letter dated 15.09.2008. Under the said circumstances, the letter dated 15.09.2008 is liable to be set aside and the Central Administrative Tribunal has rightly done the same. However, the Central Administrative Tribunal, without knowing the power of the writ petitioner/employer, has erroneously observed that the writ petitioner/employer is estopped from questioning the community of the first respondent/applicant and the said observation made by the Central Administrative Tribunal, is not legally correct and the same is set aside.

8. It has already been pointed out that the relief sought in O.A.No.698 of 2008 can easily be granted and the Central Administrative Tribunal, Madras Bench, has rightly granted the same and therefore, the present writ petition is liable to be dismissed subject to the following observation:

In fine, this writ petition is dismissed without cost. The order passed in O.A.No.698 of 2008, by the Central Administrative Tribunal, Madras Bench, is confirmed. However, the writ petitioner/respondent is at liberty to refer the issue in question to the State Level Caste Scrutiny Committee to make proper verification of the caste of the first respondent/applicant."

60. The Hon'ble Division Bench which decided W.P.No.17223/2010 on 24.08.2016, has not raised any specific issue, as to whether Official Memorandum dated 23.02.1995 is prospective or retrospective and with due respect, it has only

extracted the order of the Tribunal in O.A.No.1401/1994 and the order in O.A.No.698/2008 dated 30.03.2010. Question we pose to ourselves is whether a judgment, in which the court has not raised any issue, as to the nature of the circular issued by Government of India, as to whether it is prospective or retrospective, and when no arguments have been made by the parties on that aspect, and the decision rendered thereon, without any specific issue framed, is binding on us, and whether any reference to a larger bench is called for? On this aspect, we deem it fit to consider, decisions of the Hon'ble Apex Court, as to when a decision should be taken as a binding precedent, and in particular, on the doctrine of sub silentio.

61. In State of Orissa vs Sudhansu Sekhar Misra and Ors reported in 1968 AIR 647, the Hon'ble Apex Court held as follows:

What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.

On this topic this is what Earl of Halsbury L.C. said in Quinn v. Leatham(2):

"Now before discussing the case of Allen v. Flood [1898] A.C. 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can (1) [1967] 1 S.C.R. 454. (2) [1901] A.C.

495. be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

62. In Yeshbai and another v. Ganpat and another reported in AIR 1975 Bombay 20, a Hon'ble Division Bench of the Bombay High Court held as follows:

37. ....we may at this stage refer to a passage from Halsbury's Laws of England, Third Edition, Volume 22, paragraph 1682 on page 796. It is as follows:

"1982. Ratio decided. The enunciation of the reasons or principle on which a question before a court has been decided is alone binding as a

precedent. This underlying principle is often termed the ratio decidendi, that is to say, the general reasons given for the decision or the general grounds on which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding; but, if it is not clear, it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment all are taken as forming the ratio decidendi".

63. In *State of Karnataka vs. Ranganatha Reddy* (AIR 1978 SC 215), the Hon'ble Apex Court held what was under consideration was not a statute or a legislation, but a decision of the Court. A decision ordinarily was a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case, which came up for discussion subsequently. Hence, while applying the decision to later case, the Court, which was dealing with it, should carefully try and ascertain the true principle laid down by the previous decision. The decision often takes its colour from the question involved in the case in which it was rendered. The scope and authority of the precedent never be expanded unnecessarily beyond the needs of a given situation. The Hon'ble Supreme Court in the above case further observed that the expressions like 'virtually overruled' or 'in substance overruled' were expressions of inexactitude. In such circumstances, it was the duty of the Court to consider the effect of the precedent in question to read it over again and to form its own opinion instead of wholly relying upon the gloss placed on it in some other decisions.

64. 'Salmond's Jurisprudence' on sub silentio is as follows:

"The rule that a precedent sub silentio is not authoritative goes back at least to 1661, when counsel said: "An hundred precedents sub silentio are not material"; and Twisden, J., agreed: "Precedents sub silentio and without argument are of no moment". This rule has ever since been followed. But the Court before whom the precedent is cited may be reluctant to hold that its predecessor failed to consider a point directly raised in the case before

it, and this reluctance will be particularly pronounced if the sub silentio attack is levelled against not one case but a series.

We now turn to the wider question whether a precedent is deprived of its authoritative force by the fact that it was not argued, or not fully argued, by the losing party. If one looks at this question merely with the eye of common sense, the answer to it is clear. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. Where a judgment is given without the losing party having been represented, there is no assurance that all the relevant considerations have been brought to the notice of the Court, and consequently the decision ought not to be regarded as possessing absolute authority, even if it does not fall within the sub silentio rule."

65. In Delhi Municipal Corporation Vs. Gurnam Kaur ( AIR 1989 Supreme Court 38,) it has been held that:-

" it is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Quotability as 'law' applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. Professor P.J.Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn., explains the concept of sub silentio at p.153 in these words; "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically

involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

66. In *Krishena Kumar Vs. Union of India and Others* (AIR 1990 Supreme Court 1782,) it has been held as follows:-

19. In other words, the enunciation of the reason or principle upon which a question before a Court has been decided is alone as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a preexisting rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it. In the words of Halsbury, 4th Edn., Vol.26, Para 573:

"The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."

67. In *State of UP v. Synthetics & Chemicals Ltd.* (1991) 4 SCC 139, para 41. it was observed by the Hon'ble Supreme Court as under :

"Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law

involved in the decision is not perceived by the court or present to its mind. (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd, (1941) 1 KB 675, the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority?. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur, (1989)1 SCC 101. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry, AIR 1967 SC 1480, it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law." (emphasis supplied)

68. In CIT V. B.R. Constructions reported in [1993] 202 ITR 222 the Hon'ble Andhra Pradesh High Court states that a precedent ceases to have a binding force in the following situations:-

- (i) if it is reversed or overruled by a higher court;
- (ii) when it is affirmed or reversed on a different ground;
- (iii) when it is inconsistent with the earlier decisions of the same rank;
- (iv) when it is sub silentio (Latin term for "under silence". Here it means non-speaking judgment)
- (v) when it is rendered per incuriam.

69. In Commissioner of Income Tax Vs. M/s.Sun Engineering Works (P) Ltd ( AIR 1993 Supreme Court 43) it has been held as follows:

".....It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings.

70. In Union of India and others vs. Dhanwanti Devi and others reported in (1996) 6 SCC 44, the Hon'ble Apex Court held as follows:

Before advertng to and considering whither solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Kishan Khosla's case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and per se per incuriam. It is not everything said by a Judge who giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contain three basic postulates - [i] findings of material facts, is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be

found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

71. In the said case, the Hon'ble Supreme Court at page 52 held as follows :

"According to the well-settled theory of precedents, every decision contains three basic postulates : (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone

binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi." (emphasis supplied)

72. In *Government of India v. Workmen of State Trading Corporation* (1997) 11 SCC 641, the Hon'ble Apex Court held that:

"The decision of this Court is virtually a non-speaking order which does not set out the facts and the circumstances in which the direction came to be issued against the Government.

On the aspect, as to when a judgment of the Hon'ble Apex Court is binding, it is said by the Apex Court, that

"We need say no more as it is obvious from the decision relied on that it does not set out the facts or the reason for the conclusion or direction given. It can, therefore, not be treated as a binding precedent."

73. In *Ramcharan Atma Ram Sonkar vs Radheshyam Dukhram Pandey* reported in 1998 (2) MLPL 173, Hon'ble Madhya Pradesh High Court held as follows:

14. Thus, it was in this case that a Division Bench of this Court was directly faced with the questions and the question was actually mooted and argued before the court.... 15. When a legal point is not specifically argued and discussed in a judgment and is not decided, the judgment cannot be a precedent on that point the mere assertion that the question could have been raised and was not raised and so must be deemed to have been decided in a particular manner.

74. In *Arnit Das v. State of Bihar*, (2000) 5 SCC 488 the Hon'ble Supreme Court observed in paragraph 20 as under :

"A decision not expressed, not accompanied by reasons and not proceeding on a conscious

consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined.

It has been further observed in the said judgment as follows:

"When a particular point of law is not consciously determined by the Court, that does not form part of ratio decidendi and is not binding."

75. In *Prakash Amichand Shah vs. State of Gujarat & Ors* reported in 1986 AIR 468 : 1985 SCR Supl. (3) 1025, the Hon'ble Apex Court held if a contention is raised that a particular judgment is an obiter dicta or not specifically over rules, then it shall be the duty of the court to consider the effect of the precedent in question to read it over again and form an opinion, instead of relying upon the gloss placed on it in some other decision.

76. Taking assistance from the above judgments, as to what judgment could be taken as binding precedents, we have given our due consideration to the Tribunal in O.A.No.1401/1994, dated 19.08.1997 and O.A.No.698/2010, dated 30.08.2010 and whether this court in W.P.No.17223 of 2010, dated 24.08.2016, considered the laws of the land.

77. In all the decisions, stated supra, there is no specific question, as to whether, Circular, dated 23.02.1995, was prospective or retrospective, argued and decided with reasons. Exposition of law and ratio decidendi, to be accepted as a binding precedent, should be based on issues raised and argued by both sides. A mere observation without reasons, is distinguishable, from a ratio decidendi. Judgment in W.P.No.17223 of 2010, dated 24.08.2016, is "sub silentio", and we take support from the decisions considered.

78. In *A-One Granites vs. State of U.P. and others* reported in (2001) 3 SCC 537, the Hon'ble Apex Court held as follows:

"11. This question was considered by the Court of Appeal in *Lancaster Motor Co. (London) Ltd. vs. Bremith Ltd.*, (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment. Following the said decision, this Court in the case of *Municipal Corporation of Delhi vs. Gurnam Kaur*, 1989 (1) SCC 101 observed thus:-

In *Gerard v. Worth of Paris Ltd.(k)*, (1936) 2 All ER 903 (CA), the only point argued was on the

question of priority of the claimants debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd., (1941) 1 KB 675, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided without argument, without reference to the crucial words of the rule, and without any citation of authority, it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed.

12. In State of U.P. & Anr. vs. Synthetics and Chemicals Ltd. & Anr., (1991) 4 SCC 139, reiterating the same view, this Court laid down that such a decision cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India and observed thus:

A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.

13. In the case of Arnit Das vs. State of Bihar, 2000 (5) SCC 488, while examining the binding effect of such a decision, this Court observed thus:-

A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined.

14. Thus we have no difficulty in holding that as the question regarding applicability of rule 72 of the Rules having not been even referred to, much less considered by this Court in the earlier appeals, it cannot be said that the point is concluded by the same and no longer res integra

and accordingly this Court is called upon to decide the same.

79. In Director of Settlements, A.P. and others vs. M.R.Apparao and another reported in (2002) 4 SCC 638, the Hon'ble Apex Court held as follows:

10. The next case relied upon is the case of State of U.P. and another vs. Synthetics and Chemicals Ltd. and another (1991) 4 Supreme Court Cases, 139,. Hon'ble Justice Sahai in his concurring judgment held that a decision which is not expressed and is not founded on reasons, nor it proceeded on consideration of issue, cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141. The learned Judge further observed that any declaration or conclusion arrived at without application of mind or proceeded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. We are afraid, that the aforesaid observations cannot be held to be applicable to the case in hand when before the Court the constitutionality of the Act was directly under consideration and, notwithstanding the concession of the counsel appearing for the party, the Court independently on examining the amendments in question held the same to be constitutionally valid, and further it went on to hold the period for which interim payment would be payable.

11. A recent decision of this Court in ArnitDas vs. State of Bihar 2000 (5) Supreme Court Cases, 488, was also pressed into service by Mr. Rao. In the aforesaid case this Court had observed that a decision not expressed and accompanied by reasons and not proceeded on a conscious consideration of issue cannot be deemed to be a law declared to have a binding effect as contemplated under Article 141 of the Constitution. Applying the test to the case in hand is it possible for us to hold that the question of constitutionality of the Amendment Act of 1970 was not an issue before this Court in Civil Appeal No. 398 of 1972 or that the conclusion of the Court was not of a conscious consideration and the answer would be in the negative. In our considered opinion, therefore, the aforesaid decision is of no assistance to support Mr. Rao's contention.

80. In Bengal Club Ltd. v. Susanta Kumar Chowdhury reported in AIR 2003 CALCUTTA 96, Kolkata High Court held as follows:

33. From these text books it is clear that the said expression is used to explain the mode of traversing pleading of the opponent and it has been stated that if such pleading is to be so traversed, the party traversing it is to deny the allegation of the other party, not only in its general effect but in the exact manner and form in which it is made. Therefore the proper meaning of the said expression can only be appreciated in the context of traversing the pleading and not while accepting it. But unfortunately the said expression, the way it has been used in paragraph 6 in *Muktakeshi*, AIR 1988 Cal 25, does not convey that meaning. Be that as it may, since the observations in paragraph 6 in *Muktakeshi*, quoted above are without any argument and without reason, they do not form part of the ratio and are to be regarded as passing 'sub-silentio'. The Apex Court in *Delhi Municipal Corporation v. Gurnam Kaur*, AIR 1989 SC 38 held:

"Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however, eminent, can be treated as an ex cathedra statement, having the weight of authority".

81. In *State of U.P. and others vs. Jeet S. Bisht and Another* reported in (2007) 6 SCC 586, the Hon'ble Apex Court held as follows:

18....The meaning of a judgment sub silentio has been explained by this Court in *Municipal Corporation of Delhi Vs. Gurnam Kaur* (1989) 1 SCC 101 (vide paras 11 and 12) as follows :-

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

In *General v. Worth of Paris Ltd. (k)* (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the

question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 KB 675, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed."

19. The principle of sub silentio has been thereafter followed by this Court in State of U.P. & Anr. Vs. Synthetics & Chemicals Ltd. & Anr. (1991) 4 SCC 139, Arnit Das Vs. State of Bihar (2000) 5 SCC 488, A-One Granites Vs. State of U.P. & Ors. (2001) 3 SCC 537, Divisional Controller, KSRTC Vs. Mahadeva Shetty & Anr. (2003) 7 SCC 197 and State of Punjab & Anr. Vs. Devans Modern Breweries Ltd. & Anr. (2004) 11 SCC 26.

20. The direction to increase the age of superannuation is really the function of the legislature or executive. It has been held in several decisions of this Court that the Court cannot fix the age of superannuation e.g. T.P. George Vs. State of Kerala, 1992 Supp. (3) SCC 191 (vide para 6).

21. It is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent.

22. In Municipal Committee, Amritsar vs. Hazara Singh, AIR 1975 SC 1087, the Supreme Court observed that only a statement of law in a decision is binding. In State of Punjab vs. Baldev Singh, 1999 (6) SCC 172, this Court observed that everything in a decision is not a precedent. In Delhi Administration vs. Manoharlal, AIR 2002 SC 3088, the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In Divisional Controller, KSRTC vs. Mahadeva Shetty (2003 (7) SCC 197, this Court observed as follows:

"..The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle, upon which the case was decided"

82. In State of Haryana vs. Ranbir reported in (2006) 5 SCC 167, the Hon'ble Apex Court held that a decision is an authority for what it decided and not what could logically be deduced therefrom; that the distinction between a dicta and obiter was well known; Obiter dicta was more or less presumably unnecessary to the decision. It might be an expression of a viewpoint or sentiments, which has no binding effect. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it, but not arising in such manner as to require a decision. Such a obiter may not have a binding precedent. But it could not be denied that it is of considerable weight.

83. For the purpose of determining, as to whether, the letter, dated 23.02.1995, is prospective or retrospective, the question to be considered is whether the information contained in the letter dated 23.02.1995 is determinative of an existing fact or not. Normally, when there is a clear provision to the effect it is retrospective or if such retrospectively cannot be implied, by necessary implication or interactment, it can be argued that it is prospective. We find that there is a clear provision that the letter is clarificatory. It does not substantially change the existing position that from 11.11.1989, community certificate for Scheduled Tribes should be issued only by a Revenue Divisional Officer. While construing the letter as clarificatory, court is bound to consider the purpose for which the government have issued G.O.Ms.No.2137 ADW Department dated 11.11.1989, with the concurrence of the Ministry of Social Welfare, dated 28.09.1989, which has also been note of while issuing the letter dated 23.2.1995. It has also to be borne in mind that the government intended to have a uniform procedure in the matter of issuance of community certificate for scheduled tribes and to avoid false claims. Letter dated 23.2.1995 is only reiterating the position prevalent from 11.11.1989 onwards and it is not a new procedure introduced from 23.2.1995.

84. The Tribunal has not discussed anything as to why it came to the conclusion that the letter dated 23.02.1995 is prospective in nature. Executive orders are issued by the State Government in exercise of powers conferred under

Article 162 of the Constitution of India. But in the case on hand, the same has been done with the concurrence of Government of India, when the matter pertains to issue of community certificate for scheduled tribes for the purpose of employment in State/Central/Quasi-Government etc., and the Tribunal has failed to consider that the effect of the Government Order dated 11.11.1989 and not only to have uniformity in appointments in State/Central, etc. services, but also to prevent false claims. When the language of the letter dated 23.02.1995 reads as clarificatory, the same has to be treated as retrospective, otherwise, it would unsettle the procedure followed, in the matter of appointments in Central/Public Sector Undertakings, etc. intended to be followed.

85. Letter dated 23.02.1995 does not set out a new procedure nor create a legal right to contend that only after 23.2.1995, a certificate for Scheduled Tribes is required to be obtained from a Revenue Divisional Officer, and not earlier. The authority, who is competent to issue certificate for scheduled tribes has been declared on 11.11.1989 itself, with the concurrence of the Government of India, Ministry of Welfare dated 28.9.1995, and the same cannot be annulled by interpreting the letter dated 23.2.1995 as prospective, which would have the effect that insofar as Central/Government/Public Sector Undertakings owned and controlled by Central Government, Tahsildars would be competent authority to issue community certificate to scheduled tribes up to 23.2.1995. At thus juncture, at the risk of repetition, Government Order dated 11.11.1989 is reproduced.

"3. The Government of India were addressed for their concurrence on the above proposal. They have no objection to implement the above proposal.

4. The Government direct that the community certificates in respect of all communities included in the list of Scheduled Tribes, for the purpose of appointments in Public Services under Central and State Governments, Public Sector Undertakings, Quasi Government, institutions, etc., shall hereafter, be issued only by the Revenue Divisional Officers."

86. If an existing provision or procedure is reiterated, by a further executive instructions, the letter cannot be construed as prospective. Giving prospective effect to the letter would produce anomaly and different situations in the matter of appointment in States/Central Government, insofar scheduled tribe candidates are concerned, and in such circumstances, the intention of the Government, in issuing Government Order dated 11.11.1989, would be negated. Letter dated 23.2.1995, cannot be interpreted to have effect of invalidating the prescription of a specific authority, that from 11.11.1989 onwards, insofar as scheduled tribe certificate is concerned, it is the Revenue Divisional Officer, who is competent to issue the certificate. There is

no substantive change in the procedure, but the existing procedure has only been reiterated, and therefore letter dated 23.02.1995, has to be interpreted only as retrospective and not prospective. What is primarily and distinctively meant by the Government Order dated 11.11.1989, cannot be whittled down or undone by giving prospective effect to the letter dated 23.02.1995, as it would have the effect of changing the obligation of a candidate to produce a certificate from the Revenue Divisional Officer, instead of Tahsildar. If the interpretation of the Tribunal or this court with due respect is accepted, then a different consideration, in respect of certificates issued by the Tahsildar and Revenue Divisional Officers, would arise. The object of issuing Government Order dated 11.11.1989 and the essential purpose, would be defeated.

87. When Government of India, by letter dated 28.09.1989, have given concurrence for the proposal of Government of Tamil Nadu that for the purpose of appointments in Public Services under the Central and State Governments, Public Sector Undertakings, Quasi Government, Institutions etc. Community certificate, shall hereafter, be issued only by the Revenue Divisional Officers, the contention of the petitioner that the Tahsildar, Purasawalkam - Perambur Taluk, was competent to issue community certificate to a Scheduled Tribe dated after 11.11.1989, cannot be accepted.

88. In Union of India v. Kunisetty Satyanarayana, reported in AIR 2007 SC 906, the Hon'ble Apex Court, at paragraphs 13, 14 and 16, held as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh and Ors. [JT 1995 (8) SC 33], Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. [AIR 2004 SC 1467], Ulagaappa and Ors. v. Divisional Commissioner, Mysore and Ors. [2001(10) SCC 639], State of U.P. v. Brahm Datt Sharma and Anr. [AIR 1987 SC 943] etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the

charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

(emphasis supplied)

89. When the respondent has secured employment by producing a community certificate from an incompetent authority, it cannot be said that the employer has no right to insist her to produce a certificate from a competent authority and failure to do so, is not empowered to proceed departmentally on the ground of lack of jurisdiction. As observed earlier, the Hon'ble Division Bench in W.P.No.17223/2010 dated 24.08.2016 accepting the right and authority of the employer, has set aside the observation of the Tribunal. In the light of our discussion, there is no need to refer the matter to the State Level Scrutiny Committee.

90. In light of the above discussion and decisions, we are of the view that circular memorandum dated 23.02.1995 cannot be said to have prospective effect. Circular memorandum dated 23.02.1995 has to be read along with G.O.Ms.No.2137 ADW Department dated 11.11.1989 and it has retrospective effect.

91. Order of the Central Administrative Tribunal, Chennai Bench in O.A.No.1234/2009 dated 26.04.2011 and consequential order made in R.A.No.36 of 2012 dated 22.10.2013 are liable to be set aside and accordingly set aside.

Writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. The Appellant is directed to complete the enquiry initiated vide proceedings dated 01.07.2009, within three months from the date of receipt of a copy of this order, in accordance with the procedure contemplated in BSNL CDA Rules, 2006.

Sd/-  
Assistant Registrar(CO)

//True Copy//

To

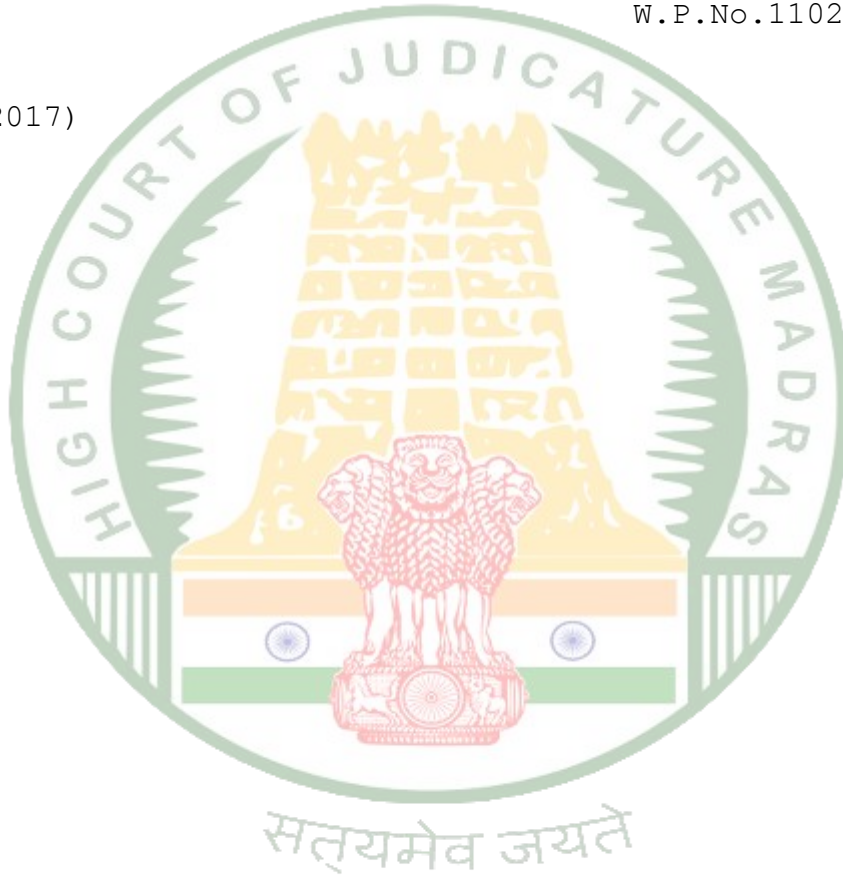
The Registrar,  
Central Administrative Tribunal,  
Chennai Bench,  
Chennai - 104.

+lcc to Mr.S.Velusamy, Advocate, S.R.No.5201

+lcc to Mr.M.Suresh Kumar, Advocate, S.R.No.5691

W.P.No.11029 of 2014

AD(CO)  
CA(10/02/2017)



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