

conclusion that the Petitioner does not belong to “Dhangad” community but belongs to “Dhangar” community, which is a nomadic tribe, falling under category NT(C). It is an admitted position that both - “Dhangad” as well as “Dhangar” communities are entitled to get the protection of service, and also entitled to be appointed under that category. However, since Caste Scrutiny Committee invalidated claim of the Petitioner as belonging to “Dhangad”, the Petitioner approached the High Court by filing a petition. After the Petitioner was heard alongwith petitioners in other connected matters, the Division Bench of this Court was pleased to dismiss the petitions and did not grant protection of service to the Petitioner, as per the Government Resolution dated 15.6.1995 and the judgment of the Apex Court in the case of - **Kavita Salunke & Ors. Vs. State of Maharashtra & Ors.** [2012(5) Mh.L.J. 921]. Being aggrieved by an order passed by the Division Bench, the Petitioner approached the Apex Court challenging the said order. However, upon a statement being made by the Petitioner that he will file review petition in the High Court, the Apex Court permitted him to withdraw the SLP. The review petition was dismissed on the ground that review court could

not review its order on the basis of subsequent judgment of the Apex Court, which was in favour of the Petitioner.

2. The Petitioner's services were terminated, and therefore, he approached the Maharashtra Administrative Tribunal (for short the "Tribunal). The Petitioner placed reliance on the decision of the Apex Court in the case of *Kavita Solunke* (supra). The Tribunal, however, expressed its inability to give protection to the Petitioner in view of the decision of the Division Bench of this Court in the review petition. Against this order dated 1.4.2016, passed in the original application, Petitioner has approached this Court by filing the present petition.

3. Mr. Kumbhakni, learned senior counsel has invited our attention to the judgment of the Full Bench of this Court in the case of - *Arun Vishwanath Sonone Vs. State of Maharashtra & Ors.* [2015 (1) Mh.L.J. 457]. He submitted that in view of this judgment, it is being held that *res judicata* would not apply in such a case, and hence, the Petitioner be given protection in this writ petition.

4. We have perused the said judgment. We are afraid that it will not be possible for us to take a view, contrary to the view taken by

the Division Bench of this Court in the earlier round of litigation. It is true that 2 judgments, in the cases of - (i) *Kavita Solunke (supra)*, and (ii) judgment in the case of *Arun Sonone (supra)*, are in favour of the Petitioner.

5 The Full Bench of this Court in the case of *Arun (supra)* has framed following questions :

- “(i) *Whether the relief of protection of service after invalidation of the caste claim can be granted by the High Court on the basis of the judgment of the Hon'ble Supreme Court in Kavita Solunke vs. State of Maharashtra & Ors. 2012(5) Mh.L.J. (S.C.) 921 = 2012(8) SCC 430?*
- (ii) *If the answer to question No. 1 is in the affirmative, can such relief of protection of service can be granted by the High Court in a case where the same relief has been earlier refused by the High Court?”*

The Full Bench of this Court while deciding the second question in paragraph 76 of the above judgment has observed as under:

“76. *On the question No. 2 framed for the decision by the Full Bench, we must express that the question of res judicata, including the constructive res judicata, may involve adjudication of facts and law both. Merely because*

a petition was filed claiming the relief of protection and that was either withdrawn or dismissed by the Court, that by itself would not follow that the subsequent petition claiming the same relief would be barred by the principle of res judicata. Similarly, in spite of invalidation of the caste claim by the Scrutiny Committee, there may not be occasion to claim protection in employment in a petition challenging the order of the Scrutiny Committee, if by the time the petition is decided, no action is taken by the employer to terminate the services on the basis of the order of the Scrutiny Committee. In such a situation, claiming the relief of setting aside the termination would be premature and the bar of constructive res judicata may not come in the way. It, therefore, depends upon several factors, like the fresh cause of action arising because of intervening events requiring either to review the earlier decision rendered or to adjudicate the controversy or prematurely claiming the relief of protection, etc. We do not think that any further opinion need to be expressed by the Full Bench on this aspect. We leave this point to be open and decided by the appropriate Division Bench, keeping in view the facts and circumstances of each case. The question No. 2 is, therefore, answered accordingly.”

6. In the present case, the services of the Petitioner were

already terminated. The Division Bench of this Court has already dismissed the petition, and also the review petition.

7. It is no doubt true that the Petitioner's services would be otherwise protected in view of the judgment of the (i) Apex Court in the case of *Kavita Solanki (supra)*; and (ii) Full Bench of this Court in the case of *Arun (supra)*. The Petitioner has relied upon his caste certificate which stated that he belongs to “Dhangad” community, which is a Scheduled Tribe. The Caste Scrutiny Committee held that he belongs to “Dhangar” community, which falls under the NT(C) category, and as such, therefore, his services ought to have been protected by virtue of the G. R. dated 15.6.1995 read with subsequent G. Rs.

8. In the said G. R., it has been observed that services between 15.6.1995 to 17.10.2001 could be protected if the candidate is not belonging to one Schedule Tribe category, but to another Scheduled Tribe category. We are afraid that we would not be in a position to entertain / accept the request made by the Petitioner, certainly on the ground of propriety. The Division Bench of this Court having come to the conclusion that the Petitioner's service is not

protected though at the relevant time the Division Bench of this Court did not have the benefit of the following judgment of– (i) *the Apex Court in the case of Kavita (Supra)*, and (ii) *the Full Bench of this Court in the case of Arun (supra)*. But the fact remains that the review petition, which was filed thereafter was also dismissed.

9. It is true that the ambit and scope of the review petition is very restricted and the review court cannot travel beyond the conditions, which are imposed on it by virtue of Order 47, Rule 1 of the Civil Procedure Code, 1908 which is a settled position in law. Secondly, since the SLP having been withdrawn by the Petitioner, it would not be proper for this Court to again decide this petition, and the proper course of action for the Petitioner would be to approach the Apex Court. As the Apex Court alone has the powers under Article 136 and 142 of the Constitution of India to pass an appropriate orders in the interest of justice. It is not in dispute that the Petitioner is otherwise entitled to get protection of service, in view of the judgment of (i) the Apex Court in the case of *Kavita (supra)*, and (ii) the Full Bench Judgment of this Court in the case of *Arun (supra)*, and the G. R. which has been issued by the State Government granting

protection to employees, who have been appointed between 15.6.1995 and 17.10.2001. In view of above, our hands are tied in granting protection, which is sought by the Petitioner. The only course of action for the Petitioner is to approach the Apex Court and seek such protection. Writ petition is disposed of in the aforesaid terms.

Sd/-
[M. S. SONAK, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath