

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.285 OF 2015

DISTRICT : MUMBAI

Yashpal Dhanraj Lohi.)
Residing at B-264/3, Government Colony,))
Bandra (E), Mumbai 400 051.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Law & Judiciary Department,)
Mantralaya, Mumbai - 400 032.)
2. Establishment Officer.)
Office of the Govt. Pleader,)
High Court, Original Side,)
Mumbai 400 032.)...Respondents

**Shri C.K. Bhangoji holding for R.K. Mendadkar, Advocate
for Applicant.**

Ms. N.G. Gohad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 01.04.2016


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PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) calls into question the order whereby the Applicant having been appointed in the year 1998 as Clerk-cum-Typist came to be terminated with immediate effect because the Scheduled Tribe Certificate Scrutiny Committee, Nagpur Division, Nagpur in exercise of powers under Section 6 of the Maharashtra Act No.XXIII of 2001 held that the Applicant did not belong to 'Dhangad Scheduled Tribe' and his claim was held invalid and the certificate cancelled and confiscated.
2. We have perused the record and proceedings and heard Mr. C.K. Bhangoji holding for Mr. R.K. Mendadkar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.
3. Be it noted at the outset that for all practical purposes, the matter relating to the validity of the order of the Scrutiny Committee has been conclusively and finally decided by the Hon'ble Bombay High Court in a Writ Petition and a Review thereagainst was also dismissed. In the meanwhile, the Applicant had moved an SLP which was withdrawn. The Applicant had filed **Writ Petition**

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No.5196/2013 (Yashpal D. Lohi Vs. State of Maharashtra and others). The same came to be decided by a Division Bench of the Hon'ble Bombay High Court on 29th November, 2013 along with several other Writ Petitions. The first Paragraph of the order of the Hon'ble High Court itself would make it very clear that the issue before Their Lordships was in essence and substance the same that it raised in this particular OA. This judgment of the Hon'ble High Court has since been reported in 2014(2) Maharashtra Law Journal 779. In Paragraphs 12, 52, 56 and 63 thereof, the case of the Applicant has been considered and in the final order Clause (d), the Writ Petition of the Applicant was ordered to be dismissed though the ad-interim relief till then in force was extended for three months quite clearly for the Applicant to consider his position.

4. The matter was carried by the Applicant to the Hon'ble Supreme Court by way of **Special Leave to Appeal (c) 5711/2015 (Yashpal D. Lohi Vs. State of Maharashtra and others)**. On 9.3.2015 upon a prayer on behalf of the Applicant, he was allowed to withdraw the said SLP and it was closed as withdrawn. It was thereafter that a Review Petition Stamp No.7870/2015 in the disposed of Writ Petition No.5196/2013 was moved and

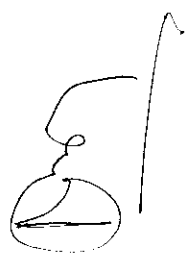


the same was decided on 20th April, 2015 by the Hon'ble High Court. Paragraph 2 thereof needs to be quoted.

“2. Only contention raised in this Review Petition is that the said Judgment and Order dated 22nd November, 2013 has been overruled in view of the decision of the Full Bench in the case of Arun s/o Vishwanath Sonone Vs. State of Maharashtra and others. That is no ground for review. Review Petition is rejected.”

5. Very pertinently, in the Review, Their Lordships were told that, in view of the judgment rendered by the Full Bench of the Hon'ble Chief Justice (Nagpur Bench) in **Arun Vs. State of Maharashtra, 2015 (1) Maharashtra Law Journal 457**. Their Lordships were told in the Review Application that in view of **Arun's** case, the earlier judgment on Applicant's Writ Petition stood overruled. Thereupon, the order above extracted was made by Their Lordships. Mr. Bhangoji, the learned Advocate for the Applicant who we must commend regardless of ultimate outcome hereof did his brilliant best to salvage the case of his client, referred us to Arun's case itself with particular reference to the observations of the Full Bench which according to him make it possible for him to maintain this

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OA before this Tribunal despite the earlier judgments of the Hon'ble High Court.

6. In the above background, statement of only a few relevant facts would suffice. The Applicant came to be granted Caste Certificate as belonging to 'Dhangad Scheduled Tribe'. On 29.6.1998, he came to be appointed through MPSC as Clerk-cum-Typist and was apparently assigned to the office of the Government Pleader, High Court, Original Side. His Tribe Certificate was referred to the Scrutiny Committee in 2004. Shorn of avoidable details, the said Certificate was invalidated as already discussed above. It was apparently held by the Scrutiny Committee that it appeared that the paternal relatives of the Applicant were 'Dhangar' and not 'Dhangad'. Aggrieved thereby, he moved the Hon'ble High Court with Writ Petition above discussed and the details of the orders made on the Writ Petition, Review and SLP have already been set out hereinabove. It is absolutely impossible for us to comment on the facts of the case of the Applicant which have been concluded by the orders of the Hon'ble High Court. The learned Advocate for the Applicant did make submissions with regard to the various judgments in the field rendered by the Hon'ble Supreme Court and the Hon'ble High Court. Now, as far as the present matter is

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concerned and the controversy that is being raised here, it is fully concluded by the judgment of the Hon'ble High Court although Mr. Bhangoji, the learned Advocate might not agree with us in this behalf. The point of moment is that we do not agree with him. Even if in this OA, the Applicant is challenging the order of termination of service, the cause of the said order is invalidation of his Tribe claim and that issue has been decided by the Hon'ble High Court against him. If that be so, then a further finding on this OA will be axiomatic, some kind of a ritual because after-all, the OA has been instituted in this Tribunal and it must be decided. It is not at all necessary to emphasize the fact that all the judicial foras in the State of Maharashtra will be bound by the adjudication of the claim by the Hon'ble High Court, and therefore, as we have hinted above, we do not have to make our own observations or findings on any issue that is thrown up for determination by the Applicant herein. Mr. Bhangoji invited our attention to Para 75 of **Arun's** case (supra). We have perused it quite carefully. Further, in Para 76 of **Arun's** case was also relied upon by Mr. Bhangoji which according to him holds that the bar of res judicata of any nature whatsoever would not apply and merely because a Petition was filed claiming the relief of protection which was either withdrawn or dismissed by the Court that by itself would not follow that the subsequent

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Petition for the same relief would be barred by the principles of res judicata. Now, in our opinion, the present facts throw-up for consideration not so much, the res judicata aspect of the matter, as they do the binding nature of the judgment of the Hon'ble High Court. There is reference to the word, 'court' in Paras 75 and 76 of **Arun's** case. But, read **Arun's** case in any manner that Mr. Bhagoji, the learned Advocate would have us read and it nowhere lays down that matters concluded by the determination made by the higher Court could be reopened before the subordinate forum.

7. In this connection, when Mr. Bhagoji referred us to unreported judgment of the Nagpur Bench of the Hon'ble Bombay High Court in **Writ Petition No.602/2015 (Prakash V. Sonkusare Vs. State of Maharashtra & 1 anr., dated 31st July, 2015)**, it is clear that there the later proceeding was also a Writ Petition like the earlier one filed before the Hon'ble High Court and **Arun's** case was considered by the Hon'ble High Court. Here, if we were to go along with the Applicant, what we will have done at least as a fall out would be to reconsider the issues that have been concluded by the judgment of the Hon'ble High Court. That reconsideration per-se and ipso-facto is impermissible in a civilized judicial system,

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regardless of the final order that might be made. The Applicant himself has filed Review Application before the Hon'ble High Court. The order therein has already been reproduced above. What was held was that it was not a subject matter for review. May be, the Applicant could have considered his position with regard to any other proceedings, but we in this Tribunal and in this OA cannot grant any relief to him. The Original Application is accordingly dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
01.04.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
01.04.2016

Mumbai

Date : 01.04.2016

Dictation taken by :

S.K. Wamanse.

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