

**(2013) 04 BOM CK 0186**

**Bombay High Court (Nagpur Bench)**

**Case No:** Writ Petition No's. 958 of 2009, 2760 of 2007 and 6347 of 2012

Ku. Archana Dadarao Pethkar

APPELLANT

Vs

Joint Commissioner and Vice  
Chairman and Head-Mistress,  
Mahila Vidyalaya <BR> Vijay  
Subhasrao Paunikar Vs The State  
of Maharashtra, Scheduled Tribe  
Caste Certificate Scrutiny  
Committee and University of  
Mumbai <BR> Chhaya Vs The  
State of Maharashtra, The  
Scheduled Tribe Certificate  
Scrutiny Committee, Joint  
Commissioner and Vice  
Chairman and Headmaster,  
F.E.S. Girls High School

RESPONDENT

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**Date of Decision:** April 5, 2013

**Acts Referred:**

- Constitution of India, 1950 - Article 141, 142, 226, 227
- Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 - Section 10

**Citation:** (2013) 3 ABR 743 : (2013) 4 ALLMR 807 : (2013) 5 BomCR 365 : (2013) 3 MhLj 764

**Hon'ble Judges:** B.P. Dharmadhikari, J; A.B. Chaudhari, J

**Bench:** Division Bench

**Advocate:** S.R. Narnaware and Mr. S.A. Marathe, for the Appellant; S.W. Deshpande and Mr. S.M. Puranik, Advocates for Respondent Scrutiny Committee and Mr. N.W. Sambre, Government Pleader for Respondent-State, for the Respondent

**Final Decision:** Dismissed

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B.P. Dharmadhikari, J.

By these petitions filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order of termination passed by their respective Employer as a consequence of invalidation of their caste claim. Though in the petitions as filed the orders passed by the Scheduled Tribe Certificate Scrutiny Committee, invalidating caste claims of the petitioners as belonging to Halba-Scheduled Tribe, have also been impugned, the petitioners only claim protection in employment and expressly restrict their challenge only to the order of termination and have given up the claim to the status as belonging to Halba-Scheduled Tribe. Right to challenge order invalidating caste certificate is given up with knowledge of the judgment dated 11.3.2013 delivered in Writ Petition No. 5569 of 2012 and of fact that Respondent-Employer, as also the Caste Scrutiny Committee are opposing the grant of protection. In Writ Petition No. 5569/2012, Shri Narnaware, only had assisted this Court on behalf of similarly placed petitioner who acquiesced in order passed by the Scheduled Tribe Certificate Scrutiny Committee, Nagpur Division, Nagpur invalidating his caste claim as belonging to Halba-Scheduled Tribe and had confined to seeking protection against the order of termination dated 03.11.2009, passed by Additional General Manager/Engineering LMD National Aviation Company of India Limited. The said relief has been denied and writ petition came to be dismissed by this Court on 11.3.2013. One of us (Justice B.P. Dharmadhikari) is, party to said judgment. Protection in service was being claimed on the basis of various judgments, particularly a judgment of the Hon'ble Apex Court in the case of [Kavita Solunke Vs. State of Maharashtra and Others](#), and judgments of Division Bench of this Bench dated 04.10.2012 in Writ Petition No. 2162/2012 (Devidas Vitthalral Bhonde vs. Divisional Controller MSRTC, Amravati) as also dated 08.10.2012 in Writ Petition No. 4013/2012 (Pramod Krushnarao Bayaskar vs. The Scheduled Tribe Caste Certificate Scrutiny Committee & Ors.), a judgment dated 03.10.2012 in Writ Petition No. 402/2012 Tarachand Fukirchand Ninave vrs. Joint Commissioner and Vice Chairman and others-(2013 (1) Mah. L.J. 747) was also pressed into service for said purpose. Expressing that he could not, at that juncture, point out some relevant precedents Shri Narnaware sought to re-agitate the issue only to show impact of these other judgments. Shri Marathe, learned Counsel has also towed same line. It is in this background, we have heard Shri S.R. Narnaware, learned Counsel for the Petitioner, Ms. S.W. Deshpande and Shri S.M. Puranik, learned Counsel appearing on behalf of Respondent Scrutiny Committee in respective matters and Shri N.W. Sambre, learned Government Pleader appearing on behalf of State Government. At the request of the Counsel for petitioners". Matters are taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. Shri Narnaware and Shri Marathe, respective learned Counsel appearing on behalf of the petitioners draw support from a judgment of Hon'ble Apex Court reported at [C.N. Rudramurthy Vs. K. Barkathulla Khan and Others](#), to submit that

last paragraph in Constitutional Bench judgment in case of [State of Maharashtra Vs. Milind and Others,](#) , also extends protection in employment. [Official Liquidator Vs. Dayanand and Others,](#) and others is pressed into service to urge that, it is not open to High Court to find out whether the said paragraph in Milind Katware's case is under Article 142 or under Article 141. Support is also taken from judgments reported at [Sub-Committee of Judicial Accountability Vs. Union of India and others,](#) , [Narinder Singh Vs. Surjit Singh,](#) , (2005) 2 SCC 73-Central Board of Dawoodi Bohra Community and another vrs. State of Maharashtra and an other, to show how the judgments delivered by the Hon"ble Apex Court need to be approached, appreciated and applied.

3. Judgment in case of Kavita Solunke vrs. State of Maharashtra & Ors. (supra), is relied upon with contention that in the background the Full Bench judgment of this Court in case of [Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others,](#) stands overruled in the said judgment of Hon"ble Apex Court. The judgment of one of us as Single Judge (By Justice A.B. Chaudhari) in Writ Petition No. 1561/2009 is also shown to this Court with contention that there this Court did not follow Ganesh Khalale and Letters Patent Appeal preferred by the employee-Raju Gadekar against it was allowed. The employee then went to Hon"ble Apex Court and the Hon"ble Apex Court allowed Raju Gadekar to approach this Court and his review petition is now pending in this Court. The judgment of the Single Judge of this Court in case of Raju Gadekar (supra), is looked into in paragraph no. 4 of the latter judgment of the Hon"ble Apex Court in case of Kavita Solunke.

4. Judgment delivered by the Division Bench at Nagpur and reported at [Prashant Khawas Vs. State of Maharashtra and Others,](#) . is relied upon to submit that there the Division Bench has found Section 10 of Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificates Act, (hereinafter referred as "the Act No. 23 of 2001" for short) prospective. Shri Narnaware, learned Counsel submits that this view was maintained by the Hon"ble Apex Court when it dismissed SLP (Civil) No. 24531/2008 against it on 30.03.2012.

5. Division Bench judgments delivered at 2013 (2) Mh. L.J. 419 -A.P. Ramtekkar and others vrs. Union of India and others and [Prabhakar Nandanwar Vs. Joint Commissioner and Vice-chairman Scheduled Tribe Certificate, Caste Scrutiny Committee, Gadchiroli, The Deputy Director, Vocational Education and Training, Regional Office, Civil Lines, Nagpur and The Principal, Indian Training Institute, Itapalli, Dist. Gadchiroli,](#) , Scheduled tribe Certificate and others are also relied upon by Shri Narnaware, with contention that there the Full Bench judgment in case in the matter of Ganesh Khalale is, looked into and the Division Bench has found that in the light of the judgment of Hon"ble Apex Court in case of Kavita Solunke, the Full Bench judgment has lost its binding effect. In the alternative, learned Counsel

submits that if this Court is not inclined to follow these later Division Bench judgments, a case for reference to Larger Bench is made out.

6. Mrs. S.W. Deshpande and Shri S.M. Puranik, learned Counsel appearing on behalf of the Scrutiny Committee submits that these later judgments do not look into the Full Bench judgment in case of Ganesh Khalale. In the light of the judgment reported at [Union of India \(UOI\) and Another Vs. Manik Lal Banerjee](#), they submit that these Division Bench judgments cannot be read as binding precedents. [Ku. Vijaya Deorao Nandanwar Vs. The State of Maharashtra, Tribal Development Department, Vice-Chairman and Joint Commissioner, Scheduled Tribe Caste Certificate Scrutiny Committee and Chief Officer, Municipal Council](#), and (2007) 14 SCC 481- State of Maharashtra and others vrs. Sanjay K. Nimje, are relied upon by them to urge that the provisions of Section 10 have to prevail and this Court cannot refuse to implement the same.

7. Shri N.W. Sambre, learned Government Pleader supports the submissions made by the learned Counsel appearing on behalf of the Scrutiny Committee and relies heavily on the judgment in case of State of Maharashtra vs. Sanjay K. Nimje (supra). He submits that the peculiar history pressed into service by Shri Narnaware, learned Counsel and noted by this Court in 1985 is not relevant due to subsequent developments and the controversy is covered by the view taken by this Court on 11.03.2013 while deciding Writ Petition No. 5569/2012.

8. We may mention here that the effort of petitioners is in the background of judgment delivered by the Division Bench of this Court on 11.03.2013 while deciding Writ Petition No. 5569/2012. Judgment reported at [Jagan Ganpatrao Taklikar Vs. Union of India, Ministry of Labour and Employment, Shramshakti Bhawan, New Delhi, The Chairman, Central Board of Workers Education, Mumbai and The Director, Central Board of Workers Education, North Ambazari Road, Nagpur](#), is by Division Bench of this Court and follow the same line as in previous judgments already referred to in this judgment dated 11.3.2013. Later judgment in Jagan Taklikar (supra) is by the same Hon"ble Judge and even there, attention of this Court was not drawn to the Full Bench view in Ganesh Khalale (supra). It is therefore not sufficient to hold that said Division Bench has found anything wrong with the Full Bench view and to persuade us to depart from view expressed on 11.03.2103 in Writ Petition No. 5569 of 2012. Same also applies to judgment reported at 2013(1) Mah. L.J. 156-Prabhakar Nandanwar vs. Joint Commissioner. Here also, it is not in dispute that the Full Bench view in Ganesh Khalale (supra) was not pressed and did not attract any consideration. This judgment in Writ Petition No. 900 of 2012 is dated 9.10.2012. On 1.11.2012, very same Bench has decided Writ Petition No. 5198 of 2009 and two more writ petitions and that judgment is reported in A.P. Ramtekkar vs. Union of India (supra). In A.P. Ramtekkar vs. Union of India, in paragraph 15 the Hon"ble Bench has mentioned the Full bench judgment in Ganesh Khalale (supra) but, then has observed that this Full Bench is already considered by it on 9.10.2012

while deciding Writ Petition No. 900 of 2012-Nandanwar vs. Joint Commissioner (supra). The parties did not invite the attention of the Court to the fact that this position was not correct. With that impression, the order of other Division Bench dismissing Letters Patent Appeal No. 34/2012 in motion was found not relevant. Thus, the Division Bench which consistently took a view contrary to Full Bench in Ganesh Khalale, in effect, was never called upon by any of the parties to consider the impact of judgment of Hon"ble Apex Court in Kavita Solunke (supra) on merits on the Full bench view in Ganesh Khalale (supra).

9. Judgment of the Hon"ble Supreme Court in State of Maharashtra vs. Sanjay K. Nimje (supra) relied upon by Shri Sambre, learned Government Pleader to show that it considers Section 10 of Act no. 23 of 2001 already finds consideration in judgment pronounced on 11.03.2103. Smt. Deshpande and Shri Puranik, learned Counsel have filed list of 22 judgments where the protection has not been extended and few of the same are already looked into by this Court on 11.03.2103.

10. The Division Benches of this Court extending protection in the light of Kavita Solunke (supra) were not required to find out whether protection being extended by the Hon"ble Apex Court is under Article 141 or Article 142 of the Constitution of India. None of these judgments hold that law laid down in Ganesh Khalale (supra) by the Full bench of this Court has been over-ruled or modified and that consequences of Section 10 of Act no. 23 of 2001 can be overlooked by High Court. In judgment dated 11.3.2013 this Court has noted that in case of [L.I.C. of India Vs. Sushil](#) , Hon"ble Two Judges of the Apex Court find that filing of the undertaking was not to be treated as the ratio of the judgment of the Constitution Bench in State of Maharashtra vs. Milind Katware (supra). Also precedents on binding effect are already considered therein. It is therefore, not necessary to refer to various judgments cited by parties on binding effect of precedents or judicial discipline. Specific answer given by the Full Bench remains still valid and binding. No effort has been made by present petitioners to urge that findings recorded therein are incorrect and require re-consideration. He has urged that when the Constitutional Bench of Hon"ble Apex Court delivered its judgment in case of Milind Katware (supra), State enactment i.e. Act no. 23 of 2001 or then Section 10 was not in force. This position is actually to the disadvantage of present petitioners. There is also no challenge to validity of said provision. There is no attempt to demonstrate that in present situation, High Court can ignore the legislative mandate. Full Bench of this Court in Ganesh Khalale (supra), has not applied law as laid down in Prashant Khawas (supra). Section 10 of Act No. 23 of 2010 only recognizes legal consequence which always ensued even in its absence. Judgment of Hon"ble Apex Court in Union of India vrs. Manilk Lal Banerjee (supra), also shows that judgments delivered by this Court without considering Section 10 can not be accepted as binding precedents. Hence, in the light of discussion in judgment dated 11.03.2103 delivered at Nagpur, we do not find that Full Bench verdict in Ganesh Khalale (supra) is over-ruled by Hon"ble Apex Court in Kavita Solunke.

11. Shri Narnaware, learned Counsel has invited attention to peculiar plight of Halba Koshti petitioners by pointing out the observations of Hon''ble Apex Court in Kavita Solunke (supra) and also other judgments of Apex Court looked into therein. It needs to be noted that the Division Bench of this Court which decided the case of [Milind Katware alongwith intervenors Vs. State of Maharashtra alongwith intervenors](#), had applied the doctrine of stare-decisis because of the special features only but then the same was overruled by the Constitution Bench of Hon''ble Apex Court in State of Maharashtra vs. Milind Katware (supra) where, in last paragraph, it extended protection to education or admission of Milind. Hence, the peculiar features noted by the Hon''ble Apex Court or by this Court can not, by itself enable this Court to discard the Full Bench judgment in Ganesh Khalale (supra). We, therefore, can not overlook the mandate of Section 10 of Act no. 23 of 2001. We have to follow the Full Bench judgment of this Court in Ganesh Khalale (supra) and various other judgments of co-ordinate benches of this Court already pointed out above. Later judgments relied upon by Shri Narnawre, learned Counsel are, therefore, not decisive. In this situation, we find that claim of the petitioners before this Court for protection on the strength of these later judgments of the Hon''ble Apex Court or of the Division Benches of this Court is misconceived. No case is made out warranting grant of protection. However, order of this Court dated 21.03.2013 saddling costs of Rs. Five Thousand only on Scrutiny Committee is recalled as on said date its learned Counsel had no notice that matters would be taken up for final hearing. In the result, Writ Petitions are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.