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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5583/2018 and CM Nos.21742-43/2018**

DINESH KUMAR & ORS

..... Petitioners

Through: Dr.K.S.Chauhan, Mr.Ajit Kumar
Ekka, Mr.R.S.M.Kalky & Mr.Chand
Kiran, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Jagjit Singh, Mr.Narayan Dev
Parashar & Mr.Preet Singh,
Advocates for Railways

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

23.05.2018

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1. The petitioners, who happened to be respondents in O.A. No.2128/2014 filed by the respondents No.4 to10 herein, are aggrieved by a common judgment dated 22.01.2018, passed by the Central Administrative Tribunal, wherein the issue relating to reservation in promotion was raised. In the impugned judgment, the Tribunal had relied on the directions issued by the Supreme Court in the case of M. Nagaraj & Ors. Vs. Union of India & Others reported as (2006) 8 SCC 212, particularly, in paras 3 and 4 thereof and held that in view of the categorical findings recorded in the aforesaid judgment and another decision of the Supreme Court in the case of Suresh Chand Gautam Vs. State of Uttar Pradesh and Others reported as AIR 2016 SC 1321, wherein it has been held that the State is not bound to make reservations for SCs/STs in matters of promotion and if the State wishes to exercise the discretion to make such provision, it must collect quantifiable data showing backwardness of the Class and inadequacy of the

representation of that Class in public employment in addition to compliance with Article 335 of the Constitution of India. Noting that the respondents herein have not conducted the exercise as directed by the Constitution Bench in the case of M Nagaraj (supra) and without such an exercise being conducted, no State/Authority can apply the rule of reservation in promotion, the Tribunal has disposed of the original application with directions issued to the respondents to make compliances of the judgment in M. Nagaraj (supra), by collecting the quantifiable data for giving effect to the rules of reservation in promotions.

2. Dr.K.S.Chauhan, learned counsel for the petitioners submits that the Tribunal failed to appreciate that in a recent order dated 14.11.2017, passed by the Supreme Court in Civil Appeals No.4562-4564 of 2017 entitled State of Tripura & Ors. vs. Jayanta Chakraborty & Ors., it was opined that the case requires to be heard by a Bench as per the constitutional mandate under Article 145(3) of the Constitution of India, for consideration including a relook, if necessary, at the judgment of M. Nagaraj (supra).

3. On perusing the order dated 14.11.2017, we find that the counsel for the petitioners therein had pressed for an interim relief, which was declined by the Supreme Court with an express view that even interim relief needs to be considered by the Constitution Bench and liberty was granted to the parties to mention the urgency before the Hon'ble Chief Justice of India.

4. This being the position, we are not inclined to interfere in the impugned judgment or entertain the present petition, which is disposed of alongwith the pending applications with liberty granted to the petitioner to approach the Supreme Court for appropriate relief.

HIMA KOHLI, J.

PRATIBHA RANI, J.

MAY 23, 2018/‘pg’