

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.582 OF 2018
IN
REVIEW PETITION (L) NO.94 OF 2018
IN
WRIT PETITION NO.1164 OF 2012

The Board of Trustees of the Port of Mumbai
& Chairman, Mumbai Port Trust ... Applicants

In the matter between :

The Board of Trustees of Mumbai Port Trust
and Anr. ... Petitioners

Versus
Mumbai Port Trust Non SC/ST Employees
Association and Ors. ... Respondents

WITH
REVIEW PETITION (L) NO.94 OF 2018
IN
WRIT PETITION NO.1164 OF 2012

The Board of Trustees of Mumbai Port Trustees
and Anr. ... Petitioners

Versus
Mumbai Port Trust Non SC/ST Employees
Association and Ors. ... Respondents

Mr.R.S.Pai a/w Mr.Anand R. Pai, Ms.Sneha
Pandey i/b Motiwalla & Co. for the
Petitioners.

Mr.V.Y.Sanglikar for Respondent Nos.1
and 2.

CORAM :- S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

DATE :- JULY 26, 2019

P.C. :-

1. We have heard Mr.Pai in support of the Notice of Motion seeking condonation of delay in filing the review petition.
2. Without getting into a technical issue of the number of days by which this application is delayed, in the larger interest of justice and finding that there is sufficient cause to condone the delay, the Notice of Motion is made absolute in terms of prayer clause (a). There would be no order as to costs.
3. By consent, the review petition is heard for admission forthwith.
4. The ground for review is that the initial judgment (order under review) in Writ Petition No.1164 of 2012 was delivered on 1st December, 2016 on the premise that the issue raised in the petition is squarely covered by a judgment of the Hon'ble Supreme Court in the case of *M.Nagaraj and Ors. vs. Union of India and Ors. reported in (2008) 8 SCC 212*.
5. However, now that judgment was considered again by the Hon'ble Supreme Court in the case of *Jarnail Singh and Ors. vs. Lachhmi Narain Gupta and Ors.*¹ and the Hon'ble Supreme Court has not endorsed the view in M.Nagraj's case.

¹ (2018) 10 SCC 396

6. We see much substance in the objection raised by Mr.Sanglikar to the attempt made in seeking a review of the initial judgment and order.

7. Section 114 of the Code of Civil Procedure, 1908, which is also guiding us while deciding a review petition seeking review of the judgment and order delivered on a petition under Article 226 of the Constitution of India, reads thus :

“114.Review.- Subject as aforesaid, any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

8. From a perusal of this provision, it is evident that, the review is permissible when the parameters set out in Order XLVII Rule 1 of the Civil Procedure Code, 1908 are attracted.

9. The parameters are set out in Order XLVII Rule 1 which read as under :-

1.Application for review of judgment.-(1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation.-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

10. By the explanation which has been inserted by Act 104 of 1976 in Order XLVII Rule 1, it is evident that the initial decision of this Court was deciding a question of law. That the said decision deciding the question of law was based on the judgment of M.Nagaraj's case (supra) and the judgment in M.Nagaraj's case

has been reversed or modified subsequently by the superior Court is no ground for review of the judgment under review.

11. If this course is permitted, then, allegedly erroneous judgment and order under review can be corrected by the very same Court. That would mean that there is no discipline and certainty, but only confusion and chaos. Advisedly, therefore, this cannot be a ground to seek review of the initial decision. That apart, Mr.Sanglikar argued that M.Nagaraj's case (supra) has not been reversed as is contended. There are two aspects. There is a quantification of the reservation and the other is adequacy of reservation. However, according to Mr.Sanglikar, insofar as reservation in promotion is concerned, there has to be adequate material to arrive at the conclusion that the representation to those classes in promotion is founded on they being unrepresented or being given inadequate representation. Once there was no such data, then, the reservation in promotion was found to be unconstitutional and struck down.

12. Mr.Pai does not accept this position and says that on both counts, M.Nagaraj's case (supra) stands reversed in Jarnail Singh (supra). Precisely, therefore, this is a decision subsequent to the judgment under review and that is the foundation for the reliefs sought in this review petition. That cannot be granted and if the

findings and conclusions are erroneous, they could have been challenged in the higher Court. We cannot entertain a review petition now.

13. The review petition is entirely misconceived and is, therefore, dismissed.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)