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

+ **W.P.(C) 8311/2016**

Date of decision: 21st December, 2016

UNION OF INDIA AND ORS Petitioner
Through Mr. Kirtiman Singh and Mr. Pranav
Agrawal, Advocates.

versus

AMIT RATHEE AND ORS Respondent
Through Mr. Saurabh Chadda, Advocate for
Mr. Ajesh Luthra, Advocate.

W.P.(C) 8330/2016

UOI AND ORS Petitioner
Through Mr. Kirtiman Singh and Mr. Pranav
Agrawal, Advocates.

versus

GOVIND AND ORS Respondent
Through Mr. Saurabh Chadda, Advocate for
Mr. Ajesh Luthra, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

The Union of India has filed the present writ petition, impugning the order dated 8.4.2016, whereby the OA filed by the respondents was allowed, based on the decision rendered by the Ahmedabad Bench of the Tribunal in OA No.478/2015 titled *Kaustubha Devang Pandya & 7 Ors. Versus Union of India & Ors.* The impugned order, in fact, does not contain any discussion on the contentions raised and the respective stand of

the parties, except for quoting the operative portion of the decision of the Ahmedabad Bench of the Tribunal in OA No.478/2015.

2. The Gujarat High Court, by its judgment dated 16.8.2016, has set aside the order passed by the Ahmedabad Bench of the Tribunal in ***Kaustubha Devang Pandya (supra)***.

3. The order of the Gujarat High Court has been challenged in the Special Leave to Appeal (C) No. 30550/2016, Monu Tomar Vs. Union of India vide order dated 28.10.2016 leave to appeal has been granted. The Supreme Court noticed 652 posts of Postal Assistant and Sorting Assistant were required to be filled-up. 196 appellants were before the Supreme Court and in the said circumstances, the Supreme Court had permitted the authorities to fill-up the aforementioned posts, subject to the condition that they shall not fill-up 196 posts.

4. Learned Counsel for the respondents, on instructions, has made a statement that the impugned order passed by the Tribunal may be set aside, with an order of remand. He submits that the case of the respondents is factually different and many of the said respondents had participated in the examinations conducted outside the State of Gujarat. In some cases, the examination papers and the dates, on which the examinations were held, were different.

5. Learned counsel for the petitioners, however, contests the said statement asserting dis-similarity and submits that the decision of the

Gujarat High Court would fully and squarely apply to the case of the respondents also. He also states that some of the respondents had, in fact, participated in the examination conducted in the State of Gujarat.

6. We would not like to examine the factual issue in each case/each candidate and consequently whether or not, the matter would be fully covered by the decision of the Gujarat High Court. Further, leave to appeal has been granted against the said judgment, which is pending before the Supreme Court. We have passed the order of remit, for even if the judgment of the Gujarat High Court is upheld, the contention raised by the respondents may have to be considered.

7. In the given facts, we would accept the statement made by the learned counsel for the respondents that the impugned order may be set aside with an order of remand. Accordingly, the impugned order is set aside, with an order on remand, without expressing any opinion on merits.

8. Learned counsel for the respondents states that the interim protection, in terms of the order of the Supreme Court, should also be granted till the matter is first heard by the Tribunal. Learned counsel for the Petitioners opposes the said prayer. He states that the respondents are not parties to the special leave to appeal before the Supreme Court. He further states that 652 posts of Postal Assistant and Sorting Assistant, mentioned in the order of the Supreme Court, relate to the State of Gujarat.

9. We are inclined to repeat the order granted by the Supreme Court in

the present writ petition also, for the simple reason that the case of the respondents regarding interim protection cannot be differentiated from the case of the candidates before the Supreme Court. This interim order, as noticed above, will continue till the matter is first listed before the Tribunal and thereafter the Tribunal can pass appropriate orders.

10. The Tribunal will examine the contention of the petitioners that some of the respondents had appeared in the examination conducted in the State of Gujarat and also whether the decision of the High Court would be squarely applicable to the candidates, who had appeared in the other states. All contentions are left open.

Parties are directed to appear before the Tribunal on 19.1.2017.

The writ petition is disposed of, with no order as to costs. Pending applications are also disposed of.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

DECEMBER 21, 2016

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