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

+ W.P.(C) 11137/2016 & CM Nos.43522-23/2016

UNION OF INDIA AND ORS

..... Petitioners

Through: Mr. Kirtiman Singh, CGSC with Mr.
Pranav Agrawal, Advocate

versus

ASHWANI KUMAR AND ORS

..... Respondents

Through: Mr. Anand Nandan, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **25.11.2016**

The Union of India has filed the present writ petition, impugning the order dated 13.07.2016, 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, also record that the subject matter raised was clearly covered by the decision of the Delhi Principal Bench of the Tribunal in OA No. 4719/2015. The impugned order, in fact, does not contain any discussion on the contentions raised and the respective stand of the parties.

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)***.

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.

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.

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.

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.

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.

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.

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.

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 15.12.2016.

The writ petition is disposed of, with no order as to costs. Application pending also stands disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

NOVEMBER 25, 2016/b