

Court No. - 29

Case :- SPECIAL APPEAL No. - 168 of 2024

Appellant :- Archana Taliyan

Respondent :- State Of Up And 7 Others

Counsel for Appellant :- Prabhakar Awasthi,Raj Kumar Singh,Rajat Aren,Rishi Shrivastava

Counsel for Respondent :- A.S.G.I.,Archana Singh,C.S.C.,Saumitra Singh

Connected with

Case :- SPECIAL APPEAL No. - 282 of 2024

Appellant :- Sharda Lodhi And Another

Respondent :- Union Of India And 6 Others

Counsel for Appellant :- Prabhakar Awasthi,Raj Kumar Singh,Rajat Aren,Rishi Shrivastava

Counsel for Respondent :- A.S.G.I.,Archana Singh,C.S.C.,Pramod Kumar Singh

With

Case :- SPECIAL APPEAL No. - 283 of 2024

Appellant :- Preeti Gautam

Respondent :- Union Of India And 7 Others

Counsel for Appellant :- Raj Kumar Singh,Rajat Aren,Rishi Shrivastava

Counsel for Respondent :- A.S.G.I.,Archana Singh,C.S.C.,Saumitra Singh

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Praveen Kumar Giri,J.

1. Heard Shri Rajat Aren alongwith Raj Kumar Singh, learned counsel for the appellants/petitioners and Shri Abhishek Srivastava, learned counsel for the State authorities.

2. While entertaining the leading Special Appeal No. 168 of 2024 following order was passed on 29.02.2024:-

"1. In terms of the policy framed by the State Government, the appellant was transferred from Amethi to Bulandshahar. The transfer was merit based. For the

purposes of calculating the merit, marks were also awarded to the appellant-petitioner in the category where the spouse is an employee of Central Government. Admittedly appellant's husband was serving in Delhi Police. The authorities, therefore, opined that services of Delhi Police being a State service did not qualify for being awarded preferential marks in the category meant for Central Government employees and, therefore, the appellant was not permitted to join at Bulandshahar. Later her transfer has also been cancelled. The writ petition filed against such order has been rejected.

2. Learned counsel for the appellant places reliance upon the Constitution Bench judgment of Supreme Court in *Government of NCT of Delhi vs. Union of India* (2023) 9 SCR 493, wherein the issue relating to status of Delhi Police working in the National Capital Territory of Delhi fell for consideration. Considering the fact that the entry police and public order fell in list I, the Court observed as under in para 159 and 160 of the judgment:-

"159. But, in our context, we may not be able to read Entry 41 in relation to NCTD in the widest possible sense because all entries in List II (including Entry 41) need to be harmonized with the limitation laid down in Article 239AA(3)(a) on NCTD's legislative and executive power by excluding matters related to 'public order', 'police', and 'land'.

160. The legislative and executive power of NCTD over Entry 41 shall not extend over to services related to 'public order', 'police', and 'land'. However, legislative and executive power over services such as Indian Administrative Services, or Joint Cadre services, which are relevant for the implementation of policies and vision of NCTD in terms of day-to-day administration of the region shall lie with NCTD. Officers thereunder may be serving in NCTD, even if they were not recruited by NCTD. In such a scenario, it would be relevant to refer, as an example, to some of the Rules, which clearly demarcate the control of All India or Joint-Cadre services between the Union and the States. NCTD, similar to other States, also represents the representative form of government. The involvement of the Union of India in the administration of NCTD is limited by constitutional provisions, and any further expansion would be contrary to the constitutional scheme of governance."

3. On the strength of the above observations, it is contended that award of marks to the appellant on the ground that her spouse is a Central Government employee was correct.

4. Matter requires consideration.

5. Notice on behalf of opposite parties is accepted by Ms. Archana Singh. She prays for and is allowed four weeks time to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

6. List thereafter.

7. Till the next date of listing, the effect and operation of the order passed by learned Single Judge as well as the order impugned in the writ are stayed. The appellant shall be allowed to join at Bulandshahar and shall be paid her salary, subject to ultimate orders to be passed in this appeal."

3. Respondents appear to have challenged the aforesaid order before Hon'ble Supreme Court by filing Special Leave to Appeal (Civil) No.8506 of 2024, which came to be disposed of with the observation that the appeal itself be heard and decided as expeditiously as possible. No interference, however, was made with the order dated 29.02.2024.

4. Learned counsel for the appellants has placed reliance upon a Constitution Bench Judgment in the case of NCT of Delhi vs. Union of India, 2023) 9 SCR 493. Para 160 has again been highlighted, as per which, the police would continue to be governed by the Union Government in respect of National Capital Territory of Delhi. Article 239-AA of the Constitution of India is specifically applicable in the context of the controversy raised, as per which, the power of State Legislature to make laws for the whole or any part of National Capital Territory with respect of any of the matters enumerated in the State List or in the Concurrent List insofar as it is applicable to Union Territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that list insofar as it relates to said Entries 1, 2 and 18. Police is Entry 2 of the State List Entries.

5. Since the power of legislative assembly to make laws in respect of Entry 2 stands excluded and the jurisdiction to make laws in that regard vests exclusively with the Union Government and it is otherwise settled that legislative and executive powers are extensive by virtue of Article 73 read with Article 162 of the Constitution of India, as such, we have no difficulty in holding that the employees of Delhi Police would be treated to be employees of Union Government. This conclusion of ours is derived from the judgment of the Supreme Court in the case of NCT of Delhi (supra).

6. Once that be so, we have no difficulty in holding that employees of Delhi Police would be treated to be employees of Union Government and contrary interpretation adopted by the respondents cannot be sustained. The view taken by learned Single Judge in the impugned judgment that since police personnel have jurisdiction limited to Delhi, as such, they would be treated employees of the State and not of the Union Government, is clearly contradictory to the constitution scheme.

7. In that view of the matter, these appeals succeed and is allowed. The judgment and order of learned Single Judge, dated 11.01.2024, is set aside. The order passed by the District Basic Education Officer, Bulandshahr, dated 15.07.2023, treating spouses of the appellants to be employees of the State Government and thereby denying them marks under the transfer policy for being spouses of the employees of Union Government cannot be sustained and is set aside. Consequential order dated 17.10.2023 is also set aside.

8. Since spouses of appellants are employed in Delhi Police, as

such the appellants would be treated to be spouses of employees of Union Government and would be accorded requisite marks as per the transfer policy. The placement of appellants in Bulandshahr and other districts, as the case be, shall be restored and all the appellants are entitled to continue pursuant to the previous order of transfer in their favour and they would also be entitled to their salary. The appellants, herein, would be treated to have continued at their transferred place of posting, treating them to be spouses of employees of Union Government and would be entitled to all service benefits, including arrears of salary. A fresh order in that regard would be passed by the authority concerned, keeping in view the observations made above, within a period of six weeks from the date of presentation of certified copy of this order.

Order Date :- 22.5.2025

Ashok Kr.