

ITEM NO.2

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. Nos. 182273/2018, 174012/2018, 168309/2018, 144172/2018 and
125544/2018 in Writ Petition (Civil) No. 310/1996

PRAKASH SINGH & ORS.

Petitioners

VERSUS

UNION OF INDIA

Respondent

(FOR APPROPRIATE ORDERS/DIRECTIONS and MODIFICATION OF COURT ORDER)

Date : 16-01-2019 This matter was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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For Respondent/
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UPON hearing the counsel the Court made the following
O R D E R

I.A. No. 144172/2018 filed on behalf of the State of Punjab for modification of the order of this Court, dated 3.7.2018 is being taken up, as the order passed therein would cover the similar prayers made in the interlocutory applications filed on behalf of States of Haryana, West Bengal, Kerala and Bihar.

"The commitment, devotion and accountability of the police has to be only to the rule of law. The supervision and control has to be such that it ensures that the police serves the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the rule of law becomes a casualty, the guilty police officers are brought to book and appropriate action taken without any delay."

(Para 12 of *Prakash Singh & Ors. vs. Union of India & Ors.*)¹

This is the approach that this Court had adopted while seeking to resolve the issue of insulation of the police machinery from political/executive interference in *Prakash Singh (supra)*.

After an in-depth consideration of the matter, this Court had issued several directions in exercise of the jurisdiction under Article 142 of the Constitution of India, which had been set out in paragraph 31 of the report in *Prakash Singh (supra)*. For the present case, the Court would be concerned with direction number 31(2), which deals with "selection and minimum tenure of DGP", which direction is extracted below:-

"Selection and minimum tenure of DGP.

(2) The Director General of Police of the State shall be selected by the State Government from amongst the three seniormost officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties."

Subsequent to the decision of this Court in *Prakash Singh (supra)*, the State of Punjab enacted the Punjab Police Act, 2007. Section 6 of the said Act is in the following terms:-

"6. Selection and term of office of Director General of Police.

(1) The State Government shall select the Director General of Police from amongst Indian Police Service officers borne on the State cadre, who are in the rank of Director General or are eligible to hold this rank for appointment as Director General of Police.

(2) The Director General of Police so appointed, shall have tenure of not less than two years, unless he attains the age of superannuation :

Provided that the State Government may, transfer the Director General of Police before completion of two years of his tenure, if he is -

(a) conviction by a court of law in a criminal case or where charges have been framed against him by a court in a case

involving corruption or moral turpitude;
or

(b) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions as the Director General of Police; or

(c) promotion to a higher post under either the State or the Central Government :

Provided further that the State Government may also transfer the Director General of Police before the completion of two years' tenure, for special reasons, to be recorded in writing. "

The validity of the Punjab Police Act, 2007 came to be challenged before this Court in a writ petition being W.P.(C) No. 286/2013, which is presently pending before this Court.

In an interlocutory application filed by the Union of India for modification of the said direction made in *Prakash Singh (supra)*, this Court by an order dated 3.7.2018 had disposed of the application with the following directions:-

"(a) All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time at least three months prior to the date of retirement of the incumbent on the post of Director General of Police;

(b) The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in *Prakash Singh's* case(*supra*) and intimate to the States;

(c) The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;

(d) None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in *Prakash Singh's* case(*supra*);

(e) An endeavour has to be made by all concerned to see that the person who was selected and appointed as the Director General of Police continues despite his date of superannuation. However, the extended term beyond the date of superannuation should be a reasonable period. We say so as it has been brought to our notice that some of the States have adopted a practice to appoint the Director General of Police on the last date of retirement as a consequence of which the person continues for two years after his date of superannuation. Such a practice will not be in conformity with the spirit of the direction.

(f) Our direction No.(c) should be considered by the Union Public Service Commission to mean that the persons are to be empanelled, as far as practicable, from amongst the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage.

(g) Any legislation/rule framed by any of the States or the Central Government running counter to the direction shall remain in abeyance to the aforesaid extent. "

Thereafter, it appears that the Punjab Police Act, 2007 was amended on 21.9.2018 and Section 6 of the original Act (i.e. the Punjab Police Act, 2007) extracted above, has been substituted as follows:-

"6. Selection and term of office of Director General of Police.

(1) The State Government shall select the Director General of Police from amongst the Indian Police Service officers from a panel of at least three eligible officers borne on the cadre of the State of Punjab or any other State cadre, who are in the rank of Director General or are eligible to hold this rank for appointment as Director General of Police, based on their service record and range of experience, having a reasonable period of remainder service left, which shall in no case be less than twelve (12) months as on the date of appointment:

Provided that such a panel shall be prepared by a committee comprising of the Chief Secretary, the Principal Secretary to Government of Punjab, Department of Home Affairs and Justice

and outgoing Director General of Police, Punjab or an expert in internal security matters as may be set up by the State Government.

(2) The Director General of Police so appointed, shall have tenure of not less than two years irrespective of his date of superannuation.

(3) Notwithstanding anything contained in sub-section (2), the Director General of Police may be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules, 1969 or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.”.

The validity of the amendment Act has not been put to challenge before this Court either by an amendment to the W.P.(C) No. 286/2013 or by means of any fresh petition. It is in the above circumstances, that the State of Punjab has filed the present application seeking modification of the order dated 3.7.2018 to the following extent:-

“(i) Exempt the Applicant State and its legislation The Punjab Police (Second Amendment) Act, 2018, duly assented to by the Governor of Punjab from the ambit and operation of Order dated 03.07.2018.

(ii) Permit the Applicant State of Punjab to implement the Punjab Police Act, 2007, as amended;

(iii) Permit the applicant to appoint its Director General of Police in accordance with the Punjab Police Act, 2007 as amended.”

We have heard learned counsels for the parties and we have considered the matter including the decision rendered in *Prakash Singh (supra)* and the provisions of the Punjab Police Act, 2007 as originally enacted and as amended in the year 2018.

Shri K.K. Venugopal, learned Attorney General, in

the course of his arguments, has led stress on Entry 70 List I to contend that All India Services being within the exclusive jurisdiction of the Union, the appointment of the D.G.P. by selection made by the State authorities would be of doubtful legal validity. However, the learned Attorney General has added that in deference to the federal structure under the Constitution, the Union had suggested that a composite committee consisting of representatives of the Union Government and the State Government concerned should decide the matter.

Learned counsels for the States - Mr. P. Chidambaram (for the State of Punjab), Mr. Ranjit Kumar (for the State of Bihar), Mr. Vijay Hansaria (for the State of Kerala), Mr. Anand Grover (for the State of West Bengal) and Mr. Ajay Bansal (for the State of Haryana) have led emphasis on the provisions contained in Entry 2 of List II to contend that police being exclusive State subject, the choice of the D.G.P. should be left to the State.

In reply, Mr. Raju Ramachandran, learned amicus curiae and Mr. Prashant Bhusan and Mr. Gopal Sankaranarayanan, learned counsels have submitted that having regard to the spirit behind the decision in *Prakash Singh (supra)* and the objectives sought to be achieved, the second direction is wholesome and the provisions of the original Act, as enacted, as well as, the amending Act being contrary to the said direction, would be required to be appropriately dealt with by the Court and hence, the interim directions of this Court, dated 3.7.2018, would not require any interference.

The provisions of the original Act (i.e. the Punjab Police Act, 2007) including Section 6 thereof, as already noticed above, is under challenge in W.P.(C)

No. 286/2013. While it is true that provisions of the amending Act are yet to be specifically challenged, we are told at the Bar that such a challenge may be in the offing. A contention has been advanced that both Sections 6 of the original Act, as well as, the amending Act are contrary to the directions in *Prakash Singh (supra)*, an issue which will require some consideration. The contentions advanced on behalf of the Union and the States also touch upon the validity of the original Section 6 of the Punjab Police Act, 2007, and also, the amending Act, which can only be matters of final consideration in W.P.(C) No. 286/2013. Any expression of opinion of this Court on the contentions raised may have the effect of pre-judging the issues arising in W.P.(C) No. 286/2013. As against the above, what has to be seen is the purport and effect of the second direction in *Prakash Singh (supra)* and the follow up of the said direction in the subsequent directions of this Court in the order dated 3.7.2018.

On an in-depth consideration, we are left with no doubt that the said directions, keeping in mind the spirit in which the Court has proceeded to issue the same, as set out in paragraph 12 of the judgment in *Prakash Singh (supra)* (already extracted), are wholesome and if the same are implemented, it will subserve public interest until such time that the matter is heard finally. In this regard, we had taken note of the submissions made by Mr. Rakesh Kumar Gupta, Secretary, Union Public Service Commission (U.P.S.C.), who has appeared personally on the request of the Court made yesterday (15.1.2019). Mr. Gupta has stated before the Court that after the judgment was rendered in *Prakash Singh (supra)*, a panel of eligible officers

in the rank of D.G.P. or the Additional D.G.P. had been drawn up by a committee of the U.P.S.C., in as many as 12 States and further that the said committee consisted of representatives of the U.P.S.C., the Central Government and the State Governments concerned. Mr. Gupta further submitted that subsequent to the directions of this Court, dated 3.7.2018, similar panels have been drawn up for two States and at present, proposals have been received from two more States for the purpose of drawing up such panels.

The above practice which has been followed further fortifies our view that, for the present, the directions in *Prakash Singh (supra)* read with the order of this Court, dated 3.7.2018, would not require any correction or modification.

All the applications are dismissed accordingly.

(Deepak Guglani)
Court Master

(Anand Prakash)
Court Master