

SUPREME COURT OF INDIA

Prakash Singh

Vs.

Union of India

WP(Civil)No.310 of 1996

(Ranjan Gogoi,CJI., L.Nageshwara Rao and Sanjiv Khanna,JJ.,)

13.03.2019

JUDGMENT

Ranjan Gogoi,CJI .,

I.A. NO.24616 OF 2019

1. On an earlier occasion, this Court had the occasion to deal with another application for clarification of this Court's order dated 3rd July, 2018 [i.e. I.A. No.144172 of 2018] though a different context. While passing the order on the said I.A. on 16.1.2019, this Court referring to the principles underlying the judgment of this Court in *Prakash Singh & Ors. vs. Union of India & Ors*¹. had specifically noticed the relevant directions issued under Article 142 of the Constitution of India, which are in the following terms:

“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.”

2. Thereafter this Court took note of the fact that different States have enacted their respective Police Acts and/or have carried out further amendments in their respective Police Acts. However, all such amendments did not wholly follow the dictum laid down by this court in *Prakash Singh* (supra). This had led to filing of writ petition (i.e. Writ Petition

(Civil) No.286 of 2013 challenging the validity of the provisions of Police Acts enacted by different States.

3. Primary ground of challenge in Writ Petition (Civil) No.286 of 2013 is that the enactments are not in tune or rather negate the directions of this Court in Prakash Singh (supra).

4. The present application (I.A. No.24616 of 2019) has been filed by the applicants/petitioners for adequate clarification of the directions contained in the order dated 3rd July, 2018, (passed in I.A. No.25307 of 2018 in Writ Petition No.310 of 1996) which are extracted below. Specifically, the directions in clauses (e) and (f) have been argued to be necessary to be clarified by this Court.

“(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.”

[emphasis supplied)

5. The grievance raised by the applicants/petitions is two-fold. To do away with the practice of States appointing the Director General of Police on the last date of the normal tenure of an incumbent “so as to ensure that such incumbents get extended term of two years in view of the directions of this Court contained in Prakash Singh (supra)” clarifications were issued by this court by order dated 3rd July, 2018 in paragraph (e) and (f), quoted above. The said directions do not seem to have ended the controversy inasmuch as it is now the grievance of the applicants/petitioners that the Union Public Service Commission while empanelling officers for consideration for appointment to the post of Director General of Police is considering the minimum residual tenure required to be taken into account as two years. In the process, according to the applicant, many suitable and eligible officers are being left out.

6. Having read and considered the decision of this court in Prakash Singh (supra) we are of the view that what was emphasized in Prakash Singh (supra) is a minimum tenure of two years for an incumbent once he is appointed as the Director General of Police. The direction issued by this Court neither contemplated the appointment of a Director General of Police on the eve of his retirement nor the practice now adopted by the Union Public Service Commission in making the empanelment, i.e. empanelling officers who have at least two years of tenure.

7. Neither of the aforesaid practice, in our considered view, can further the directions of this Court in Prakash Singh (supra) or give impetus to what this Court had in mind in issuing the directions in Prakash Singh (supra), namely, that the appointment of a Director General of Police in a State should be purely on the basis of merit and to insulate the said office from all kinds of influences and pressures, once appointed the incumbent should get a minimum tenure of two years of service irrespective of his date of superannuation.

8. Neither this Court had contemplated recommendation for appointment of officers who are on the verge of retirement or appointment of officers who have a minimum residual tenure of two years. The emphasis was to select the best and to ensure a minimum tenure of two years' service of such officer who is to be selected and appointed. The Police Acts enacted also do not contemplate any fixed residual tenure for an officer to be recommended for appointment as the Director General of Police of a State. In the above conspectus the object in issuing the directions in Prakash Singh (supra), in our considered view, can best be achieved if the residual tenure of an officer i.e. remaining period of service till normal retirement, is fixed on a reasonable basis, which, in our considered view, should be a period of six months.

9. This will take care of any possible action on the part of the State Government which can be viewed by any quarter as an act of favouritism. Recommendations for appointment of the Director General of Police on the eve of retirement of the incumbent or of the Union Public Service Commission in embarking upon a course of action which may have the effect of overlooking efficient and eligible officers will stand obviated by the above direction which we had deemed to be fit and proper to issue.

10. We, therefore, clarify the order of this Court dated 3rd July, 2018 passed in I.A.

No.25307 of 2018 in Writ Petition No.310 of 1996 to mean that recommendation for appointment to the post of Director General of Police by the Union Public Service Commission and preparation of panel should be purely on the basis of merit from officers who have a minimum residual tenure of six months i.e. officers who have at least six months of service prior to the retirement.

11. The above direction, naturally, will hold the field until the validity of the Police Acts in force which provides to the contrary are examined and dealt with by this Court in Writ Petition (Civil) No.286 of 2013.

12. All the Interlocutory Applications are disposed of in terms of the above.

Judgment Referred.

¹(2006) 8 SCC 0001