

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
WRIT PETITION (CIVIL) NO. 310 OF 1996

IN THE MATTER OF:

PRAKASH SINGH & ORS.

...Petitioner

VERSUS

UNION OF INDIA

...Respondents

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*An application for directions on behalf of
Amicus Curiae*

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SETTLED BY:

FILED BY:

RAJU RAMACHANDRAN
SR. ADV

ARCHANA PATHAK DAVE
AOR

FILED ON: 06.07.2020
PLACE: NEW DELHI

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
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An application for directions on behalf of Amicus Curiae

To,

The Hon'ble Chief Justice of India

And his Companion Judges of

the Hon'ble Supreme Court Of India

The Humble application of
the applicant abovenamed

MOST RESPECTFULLY SHEWETH:

1. The present application is being filed by the Amicus Curiae (Raju Ramachandran, Senior Advocate through his Co-Amicus Ms. Archana Pathak Dave), in order to formally place on record the suggestions orally made by him and recorded by this Hon'ble Court in its order dated 12 June 2020 passed in Interlocutory Application No. 49907/2020 in the above writ petition.
2. The present application does not make any contentious averments which would require factual responses from the

parties, it would only require responses on the suggestions made hereinafter.

PURPOSE OF THIS APPLICATION

3. At the outset, it is necessary to indicate the purpose of the suggestions being made in the application. These are:
 - (a) To ensure speedy and effective implementation of the directions given in the judgment of this Hon'ble Court in its judgement dated 22 September 2006 in *Prakash Singh vs Union of India* (2006 8 SCC 1) by entrusting the task of ensuring implementation of the directions passed by this Hon'ble Court to the respective High Courts and ;
 - (b) To eliminate the need for frequent applications to this Hon'ble Court in State-specific situations.
4. The instant application will also indicate the matters which will still need to be adjudicated by this Hon'ble Court.

FACTS AND BACKGROUND IN BRIEF

5. A detailed chronology of events since the delivery of the judgment till now is consciously not being given in the present application since they are too numerous, and are not required for the purpose of the suggestions being made herein.
6. The directions given in the judgment dated 22 September 2006 in *Prakash Singh vs Union of India* (2006 8 SCC 1) are extracted below:

“ With the assistance of learned counsel for the parties, we have perused the various reports. In discharge of our constitutional

duties and obligations having regard to the aforementioned position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations :

State Security Commission

(1) The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee, which are as under:

NHRC

Ribeiro Committee

Sorabjee Committee

1. Chief Minister/HM as Chairman.

1. Minister i/c Police as Chairman

1. Minister i/c Police (ex- officio Chairperson)

2. Lok Ayukta or, in his absence, a retired Judge of High Court to be nominated by Chief Justice or a Member of State Human Rights Commission.

2. *Leader of Opposition.*
2. *Leader of Opposition.*
3. *A sitting or retired Judge nominated by Chief Justice of High Court.*
3. *Judge, sitting or retired, nominated by Chief Justice of High Court.*
3. *Chief Secretary*
4. *Chief Secretary*
4. *Chief Secretary*
4. *DGP (ex-officio Secretary)*
5. *Leader of Opposition in Lower House.*
5. *Three non-political citizens of proven merit and integrity.*
5. *Five independent Members.*
6. *DGP as ex-officio Secretary.*
6. *DG Police as Secretary.*

The recommendations of this Commission shall be binding on the State Government.

The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing a report thereon for being placed before the State legislature.

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 senior-most 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.

Minimum Tenure of I.G. of Police & other officers:

(3) Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.

Separation of Investigation:

(4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people.

It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.

Police Establishment Board:

(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

Police Complaints Authority:

(6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to

the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of

authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.

National Security Commission:

(7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary. The aforesaid directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31st December, 2006 so that the bodies afore-noted became operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3rd January, 2007. "

7. This Hon'ble Court took up the matter again on January 11, 2007 and on finding that most of the States had not implemented the directions, extended the time for implementing the directions upto 31 March 2007. Various review petitions filed by different States were dismissed on 23 August 2007.
8. By an order dated 16 May 2008, this Hon'ble Court set up a Committee headed by Justice K.T. Thomas (retired) to monitor the implementation of its directives. The said Committee submitted four interim reports and its final report in August 2010. The Committee visited four States viz. Maharashtra, U.P., West Bengal and Karnataka and found them to be non-compliant. As for the remaining States, the Committee was of the view that "*it is for the Supreme Court to decide on the course and modalities of such verification, to assess the exact level of compliance of the directives by them, before deciding on the action to be taken by them.*"
9. In the years that have intervened, the question of implementation of the Court's judgment has formed the subject matter of numerous contempt petitions. On the other hand, several applications have been filed over the years, by, *inter alia*, State Governments seeking the intervention of this Hon'ble Court in specific situations.

10. It is pertinent to point out that the Justice J.S.Verma Committee which was constituted in the wake of the brutal gang-rape in Delhi in December 2012 had, in its comprehensive report dated 23.1.2013, bemoaned the fact that the directions of this Hon'ble Court in the present case remain to be implemented by all the Governments and that action on that front brooked no further delay. In Chapter XII of the Report which dealt with the subject of 'Police Reforms', the Committee emphasised that *"Ensuring full compliance with this judgment across all of India is of utmost priority to national welfare...."* And further observed *"We believe that if the Supreme Court's directions in Prakash Singh are implemented, there will be a crucial modernization of the police to be service-oriented for the citizenry in a manner which is efficient, scientific and consistent with human dignity"*.
11. Thereafter orders dated 03rd July 2018 and 13/3/2019 were passed in W.P.(C) No. 310/1996 and certain significant clarifications/directions were issued by this Hon'ble Court in respect of Direction No.2 passed in the main judgment dated 22 September 2006 in *Prakash Singh vs Union of India* (2006 8 SCC 1) . A copy of the Order dated 3/7/2018 passed in W.P.(C) No. 310/1996 by this Hon'ble Court is attached hereto as **Annexure P/1 (Pg 15-24)**
- A copy of the Order dated 13/3/2019 passed in W.P.(C) No. 310/1996 by this Hon'ble Court is attached hereto as **Annexure P/2 (Pg 25 to 37)**.
12. As far as implementation of the directions through executive orders is concerned, it has been the petitioner's

case that the Court's directions in the judgment are unimplemented/not fully implemented. A final determination by this Hon'ble Court with regard to compliance with the directions contained in the main judgment is yet to take place. A chart giving the status of compliance/non-compliance as per the petitioner has been filed by him along with Contempt Petition No 534/2019 filed by him, which is pending before this Hon'ble Court.

13. It is also relevant to state that this Hon'ble Court, in its judgment in *Prakash Singh vs Union of India*, made it clear that its directions were "for compliance till framing of appropriate legislations". As on date there are seventeen (17) state legislations which have since been passed. However, the validity of the said new state legislations is under consideration by this Hon'ble Court in Writ Petition (Civil) No. 286 of 2013 moved by Shri Harish Salve, Senior Advocate and Amicus Curiae. In the said petitions, this Hon'ble Court is considering the issue of whether the said legislations conform to the essential principles laid down in its judgment in the *Prakash Singh* case. In addition to the above legislations, a recent legislation has been enacted by the State of Telengana dealing with the limited aspect of appointment of the DGP. The Telengana Police [Selection and Appointment of Director General of Police (Head of Police Force)] Act, 2018 provides for direct appointment of the DGP without empanelment by the UPSC and the tenure of two years is made contingent upon superannuation.

14. Another aspect which requires to be placed before this Hon'ble Court is that the Government of India, by notification dated 28 January 2014 issued the IPS (Cadre) Amendment Rules 2014, which, by constituting a Civil Services Board re the IPS, went, according to the Petitioner, contrary to the directions of this Hon'ble Court regarding the setting up of a Police Establishment Board. On a contempt petition moved by the Petitioner (Contempt Petition No 235/2014) this Hon'ble Court has directed that Rule 7 of the said Rules which provides for the setting up of a Civil Services Board be not acted upon pending reconsideration by the Union of India. The Court recorded its prima facie view that the said Rule is not in consonance with the judgment in Prakash Singh's Case. This Hon'ble Court vide order dated 6.5. 2014 observed as under:

"Learned Solicitor General appearing on behalf of the Union of India represented that the Union of India is considering the question of amending the Rule 7 of the Indian Police service(Cadre) Amendment Rules, 2014 to bring the rule in consonance with the judgment passed by this Court in Prakash Singh and Others Vs. Union of India and Others 2006(8) SCC 1. It appears prima facie that rule, as it exists on the statute book today, pursuant to an amendment made on 28th January, 2014 insofar as it pertains to the cadre of Indian Police Service does not appear to be in consonance with the earlier judgments of this Court(supra). In such circumstances, pending consideration by the Government of India about the amendment of the Rule, we direct the Government of India as well as all the State

Governments not to take any proceedings in pursuance of the rules referred to above. This order be communicated to Chief Secretaries of all the States and the Cabinet Secretary. -2- List the matter in the second week of July, 2014."

SUGGESTIONS BY AMICUS

15. It is suggested by the Amicus-Applicant that:

(a) The jurisdictional High Courts constitute dedicated Benches to determine the extent to which compliance by executive orders has been made by the concerned States/UTs. For this purpose, the High Courts would have to take the assistance of an Amicus Curiae and also appoint Expert Committees to verify compliance at the ground level. The High Courts may be requested to complete the exercise of determining compliance within a period of six months.

(b) Individual applications pertaining to the States/UTs concerned may be dealt with by the said Benches in keeping with the letter and spirit of the directions given by this Hon'ble Court in its judgment dated 22.9.2006.

16. It is further respectfully submitted that this Hon'ble Court be pleased to fix an early and actual date of hearing for the adjudication by itself of:

(a) Writ Petition no. 286/2013 in which the question of the constitutional validity of the concerned State legislations is involved, and

- (b) Contempt Petition No. 235/2014 in the present Writ Petition in which the validity of the relevant provisions of the IPS (Cadre) Amendment Rules 2014 is involved.

PRAYER

17. It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Consider and pass orders in the light of the suggestions made in paras 14 and 15 above; AND
- b) Dispense with the filing of an affidavit in support of this application; AND/OR
- c) Pass such other orders as may be deemed fit in the interests of justice.

SETTLED BY:

FILED BY:

RAJU RAMACHANDRAN
Sr. Adv. (Amicus Curiae)

ARCHANA PATHAK DAVE
AOR (Co Amicus Curiae)

FILED ON: 06/07/2020
PLACE: NEW DELHI

ITEM NO.1

COURT NO.1

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSWrit Petition(s)(Civil) No(s).310/1996

PRAKASH SINGH & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

I.A.No.25307/2018 - Clarification/direction
 I.A.No.130514/2017 -Clarification/direction
 I.A.No.47/2015 - Exemption from filing O.t.
 I.A.No.46/2015 - Intervention application
 I.A.No.60411/2017 - Permission to appear and argue in person
 WITH
 CONMT.PET.(C) No.92/2007 In W.P.(C) No.310/1996 (PIL-W)
 CONMT.PET.(C) No.240/2007 In W.P.(C) No.310/1996 (PIL-W)
 W.P.(C) No.417/2010 (PIL-W)
 W.P.(C)No.42/2011({PIL-W)
 W.P.(C) No.317/2013 (PIL-W)
 (FOR ON IA 80193/2013
 FOR ON IA 21241/2014)
 W.P.(C) No.286/2013 (PIL-W)
 W.P.(C) No.335/2013 (PIL-W)
 CONMT.PET.(C) No.235/2014 In W.P.(C) No. 310/1996 (PIL-W)
 (and FOR PERMISSION TO APPEAR AND ARGUE IN PERSON ON IA 2/2015
 FOR ON IA 3/2015 FOR ON IA 4/2015 FOR ON IA 5/2016
 FOR PERMISSION TO APPEAR AND ARGUE IN PERSON ON IA 6/2016)
 CONMT.PET.(C) No.177/2015 In W.P.(C) No.310/1996 (PIL-W)
 T.C.(C) No.75/2015 (XVI-A)
 T.C.(C) No.76/2015 (XVI-A)
 CONMT.PET.(C) No.1037/2018 in W.P.(C) No.310/1996 (PIL-W)
 (FOR ADMISSION and IA No.57958/2018-EXEMPTION FROM FILING O.T.
 [TO BE TAKEN UP ALONGWITH ITEM NO. 1 I.E. W.P.(C)NO.310/1996])

Date : 03-07-2018 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
 HON'BLE MR. JUSTICE A.M. KHANWILKAR
 HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

Signature Not Verified
 Digitally signed by
 SATISH KUMAR YADAV
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UPON hearing the counsel the Court made the following
O R D E R

I.A.No.25307 of 2018

Heard Mr.K.K.Venugopal, learned Attorney General for Union of India along with Mr.Maninder Singh, learned Additional Solicitor General, Mr.Prashant Bhushan, learned counsel for the petitioner and Mr.Gopal Sankaranarayanan, learned counsel for the intervenor.

This is an application for modification of the judgment in Prakash Singh and others vs. Union of India & others, (2006) 8 SCC 1. In the said judgment the Court has prescribed a minimum tenure for Director General of Police. Direction No.2 given in the said judgment, which is relevant for the present purpose, reads thus:

"(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."

It is submitted by Mr.K.K.Venugopal, learned Attorney General, that out of 29 States, only 5 States, namely, the States of Karnataka, Tamil Nadu, Telangana, Andhra Pradesh and Rajasthan have approached the Union Public Service Commission for

empanelment. The other States have not followed the direction. It is further urged by him that some of the States are adopting a method of appointing acting Director Generals of Police whereas such a concept is not perceptible from an analysis of the decision in Prakash Singh's case(supra). We have also been apprised by Mr.Venugopal that some Director Generals of Police are initially appointed on acting basis and thereafter, they are made permanent just before the date of their superannuation as a consequence of which they continue till the age of 62 years.

Mr.Prashant Bhushan, learned counsel appearing for the petitioner would contend that the whole approach of the States is absolutely unacceptable. He further submits that this Court has directed that the Director General of Police will continue for at least two years irrespective of the date of superannuation.

Mr.Gopal Sankaranarayanan, learned counsel for the intervenor would submit that the Union Public Service Commission should act as per the directions of this Court and it is the duty of the Union Public Service Commission and the States to see that the candidates who come within the zone of consideration have two years to go so that there will be a fair competition.

Having heard learned counsel for the parties, we pass 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.

The present directions shall be followed scrupulously by the Union of India and all the States/Union Territories. If any State Government/Union Territory has a grievance with regard to these directions, liberty is granted to them to approach this Court for modification of the instant order.

I.A.stands disposed of accordingly.

Rest of the matters

List after two weeks.

(Chetan Kumar)
AR-cum-PS

(H.S.Parasher)
Assistant Registrar

True Copy

ITEM NO.1501

COURT NO.1

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGSI.A. Nos. 24616/2019, 115064/2018, 20735/2019 and 11484/2019 in
Writ Petition (Civil) No. 310/1996

PRAKASH SINGH & ORS.

Petitioner(s)/
Applicant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(I.A. No. 24616/2019 - CLARIFICATION/DIRECTION, I.A. No. 115064/2018 - CLARIFICATION/DIRECTION,, I.A. No. 20735/2019 - MODIFICATION and I.A. No. 11484/2019 - RECALLING THE COURT'S ORDER)

Date : 13-03-2019 This matter was called on for pronouncement of judgment today.

For Petitioner(s)/
Applicant(s)

Mr. Prashant Bhushan, AOR

For Respondent(s)/
Applicant(s)

UoI

Ms. Pinky Anand, ASG
Ms. Saudamini Sharma, Adv.
Mr. Sumit Teterwal, Adv.
Mr. Hemant Arya, Adv.
Ms. Kirti Dua, Adv.
Mr. C. Papta, Adv.
Ms. Snidha Mehra, Adv.
Ms. Tanisha Samanta, Adv.
Mr. B.V. Balaram Das, AOR

for UPSC

Mr. Naresh Kaushik, Adv.
Mr. Vardhman Kaushik, Adv.
Mr. B. Purushothama Reddy, Adv.
Mr. Manoj Joshi, Adv.
Mr. Omung Raj Gupta, Adv.
Mr. Devik Singh, Adv.
Mr. Rahul Sharma, Adv.
Mr. Rebecca Dais, Adv.
Mr. Siddhant Manral, Adv.
Ms. Lalitha Kaushik, Adv. (AOR)

Signature Not Verified

State of Chhattisgarh
Digitally signed by
DEEPA G. SINGH
Date: 2019.03.13
16:54:33 IST
Reason: IMr. Sumeer Sodhi, Adv. (AOR)
Mr. Aman Nandrajog, Adv.
Mr. Ashish Tiwari, Adv.
Mr. Surya Kamal Mishra, Adv.

State of U.P.

Ms. Swarupama Chaturvedi, Adv. (AOR)

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State of Gujarat	Ms. Hemantika Wahi, AOR Ms. Puja Singh, Adv.
State of Meghalaya	Mr. Ranjan Mukherjee, AOR Mr. Upendra Mishra, Adv. Mr. K.V. Kharlyngdoh, Adv.
State of Jharkhand	Mr. Jayesh Gaurav, Adv. Mr. Gopal Prasad, AOR
State of Mizoram	Mr. Siddhesh Kotwal, Adv. Ms. Bansuri Swaraj, Adv. Mr. Raghunatha Sethupathy, Adv. Mr. P. Venkat Reddy, Adv. Mr. Prashtan Tyagi, Adv. M/s. Venkat Palwai Law Associates, AOR
State of T.N.	Mr. Balaji Srinivasan, AAG, T.N. Mr. M. Yogesh Kanna, AOR Mr. S. Partha Sarathi, Adv.
State of Haryana	Mr. Anil Grover, AAG, Haryana Mr. Satish Kumar, Adv. Mr. Sanjay Kumar Visen, Adv.
State of Assam	Mr. Shuvodeep Roy, AOR Mr. Rijuk Sarkar, Adv.
State of Tripura	Mr. Shuvodeep Roy, Adv. Mr. Kabir Shankar Bose, Adv. Mr. Rijuk Sarkar, Adv.
State of Bihar	Mr. Gopal Singh, AOR Mr. Manish Kumar, Adv. Mr. Shivam Singh, Adv. Mr. Aditya Raina, Adv. Mr. Kumar Milind, Adv.

Mr. Udian Sharma, Adv.
Mr. Shreyas Jain, Adv.

State of J&K

Mr. M. Shoeb Alam, AOR
Mr. Ujjwal Singh, Adv.
Mr. Gautam Prabhakar, Adv.
Mr. Mojahid Karim Khan, Adv.

State of West Bengal

Mr. Suhaan Mukerji, Adv.
Ms. Astha Sharma, Adv.
Mr. Amit Verma, Adv.
Mr. Abhishek Manchanda, Adv.
Ms. Dimple Nagpal, Adv.
M/s. PLR Chambers And Co., AOR

Mr. Prasanth P., Adv. (AOR)

State of Kerala

Mr. G. Prakash, AOR
Mr. Jishnu M.L., Adv.
Mrs. Priyanka Prakash, Adv.
Mrs. Beena Prakash, Adv.

State of Punjab

Ms. Uttara Babbar, AOR
Mr. Manan Bansal, Adv.

Ms. Kaveeta Wadia, AOR
Mr. P.V. Dinesh, AOR
Mrs. Anil Katiyar, AOR
Mr. Gunnam Venkateswara Rao, AOR
Mr. P. Parmeswaran, AOR
M/s. S. Narain & Co., AOR
Mr. Kamendra Mishra, AOR
Mr. P.V. Yogeswaran, AOR
Mr. T.V. George, AOR
Mr. Rajesh Srivastava, AOR
Ms. Sumita Hazarika, AOR
Mr. Dharmendra Kumar Sinha, AOR
Mr. Ashok Mathur, AOR
Mr. B. Balaji, AOR
Mr. Tara Chandra Sharma, AOR
Mr. Radha Shyam Jena, AOR
Mr. Mohanprasad Meharia, AOR
Mr. Kuldip Singh, AOR

Mr. Anip Sachthey, AOR
Mr. Anuvrat Sharma, AOR
Mr. Lakshmi Raman Singh, AOR
Ms. Anitha Shenoy, AOR
Mr. Aniruddha P. Mayee, AOR
Mr. C.K. Sasi, AOR
Mr. T. Harish Kumar, AOR
Mr. R. Ayyam Perumal, AOR
Mr. Anil Shrivastav, AOR
Mr. Merusagar Samantaray, AOR
Mr. Abhishek, AOR
Ms. Abha R. Sharma, AOR

Hon'ble the Chief Justice pronounced the judgment of the Bench comprising His Lordship, Hon'ble Mr. Justice L. Nageswara Rao and Hon'ble Mr. Justice Sanjiv Khanna.

In terms of the signed non-reportable judgment, the applications are disposed of.

(Deepak Guglani)	(Anand Prakash)
Court Master	Court Master
(signed non-reportable judgment is placed on the file)	

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO.24616 OF 2019

IN

WRIT PETITION (CIVIL) NO.310 OF 1996

PRAKASH SINGH & ORS.

**...PETITIONER(S)/
APPLICANT(S)**

VERSUS

UNION OF INDIA & ORS.

... RESPONDENT(S)

WITH

**I.A.NO. 115064/2018, I.A.NO. 20735/2019,
I.A.NO.11484/2019**

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 in 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

¹ (2006) 8 SCC 1

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.

....., CJI
[RANJAN GOGOI]

....., J
[L. NAGESWARA RAO]

....., J
[SANJIV KHANNA]

NEW DELHI
MARCH 13, 2019

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