

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA
PUBLIC INTEREST LITIGATION
WRIT PETITION (C) NO. OF 2020**

IN THE MATTER OF :

Prahlad Narayan Singh

....Petitioner

VERSUS

1. Union of India

Through Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi – 110001

2. State of Jharkhand through

Chief Secretary, 1st Floor,
Project Building, Dhurwa,
Ranchi – 834004 (Jharkhand)

3. Shri M. Vishnu Vardhan Rao

DG, Home Guards and Fire Services,
Additional Charge,
DGP, Jharkhand
Office at DGP Office Jharkhand,
Jharkhand Police Headquarters,
Dhurwa, Ranchi – 834004
(Jharkhand)

4. Union Public Service Commission,

Dholpur House, Shahjahan Road,
New Delhi – 110069

....Respondents

CIVIL WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR WRIT OF DECLARATION OR ANY OTHER WRIT OR ORDER TO PROTECT HIS FUNDAMENTAL RIGHT GUARANTEED BY ARTICLE 14 AND 16 IN THE MATTER OF APPOINTMENT OF DIRECTOR GENERAL OF POLICE BEFORE THE EXPIRY OF TWO YEARS PERIOD AS MANDATED BY LAW LAID DOWN IN PRAKASH SINGH VERSUS UNION OF INDIA (2006) 8 SCC 1 And Other Consequential Directions

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE
ABOVENAMED PETITIONERS

MOST RESPECTFULLY SHOWETH:-

1. That the present civil writ petition under article 32 of the Constitution of India for writ of declaration or any other writ or order to protect his fundamental right guaranteed by article 14 and 16 in the matter of appointment of director general of police before the expiry of two years period as mandated by law laid down in Prakash Singh versus Union of India (2006) 8 SCC 1 and other consequential directions.

ARRAY OF PARTIES

2. That this is a writ petition under Article 32 of the Constitution of India is a Public Interest Litigation filed by a resident of State of Jharkhand, a social activist and Public spirited person. The Petitioner is aggrieved by the blatant violation and disregard of the orders/Directives issued by this Hon'ble Court in the connected Writ Petition, so far the matter of appointment of "In-charge Director General of Police" in the State of Jharkhand is concerned which has been done by the JMM led Government of the State to satisfy their Political interest and by unlawfully transferring the regularly appointed DGP of the State to a non-works post as an Officer on Special Duty (OSD) to Police modernization division Camp in New Delhi although he had worked on the post for merely about Nine months and had contributed to the Police force of the state in all respects and particularly so far control of crime in the state is concerned. True copy of the Aadhar Card of the petitioner is annexed as **Annexure – P/1 at pages _____**

3. That the petitioner does not have any personal motive or interest or the present petition is not being filed for any other/reason. The petitioner has not been involved in any civil, criminal or revenue litigation which could have legal nexus with the issues involved in the present petition.
4. That the respondent number 1 is the Union of India, represented by the Ministry of Home Affairs, which is the appropriate Ministry dealing with the appointment of high ranking police officials in the country.
5. That the respondent number 2 is the State of Jharkhand represented by its Chief Secretary, the appropriate authority dealing with the appointment of high ranking police officials in the State of Jharkhand.
6. That the respondent number 3 is the official who has been unlawfully appointed in flagrant violation of the rule of law laid down by this Hon'ble Court.
7. That the respondent number 4 is the Union Public Service Commission who is responsible for the appointment of all officers of Indian Police Service Cadre in the entire nation.
8. That this Hon'ble Court has been pleased to pass more than one Orders and Directives in the connected Writ Petition

directing the States to ensure appointment of Director General of Police (hereinafter referred to as DGP) on the basis of merit, tenure of remaining service etc in a transparent manner.

9. That upon superannuation of Shri D. K. Pandey, the then Director General of Police, Jharkhand, the Government of Jharkhand initiated process of appointment of a new DGP as per the guidelines and Directions given by this Hon'ble Court in the connected Writ Petition. Sometime in the month of March-April, 2019 a panel of eligible senior high ranking police officers who also had sufficient left over service was referred to the UPSC as per the directives given by this Hon'ble Court and upon final recommendation and consideration of the judgment of this Hon'ble Court, Mr. Kamal Nayan Choubey, IPS was appointed as Director General of Police for the State of Jharkhand vide government notification as contained in memo no. 13/P1-8002/2013(Khand)-2835/Ranchi dated- 31/05/2019. True Copy of the Notification 13/P1-8002/2013(Khand)-2835/Ranchi dated- 31/05/2019 is annexed as **Annexure-P/3 at pages**

10. That the petitioner has learnt that Mr. Kamal Nayan Choubey who basically belongs to the Jharkhand cadre of 1986 batch was on deputation with the Central Government for a considerable long time served on various capacities in different organization under the control of the Central Govt. including different Police/Paramilitary forces and he has contributed immensely and his performance was up to the mark.
11. That after being appointed as Director General of Police in the State of Jharkhand, Mr. Choubey again served to the best of his abilities and he performed well to control the naxalism and crime in the State.
12. That after the Assembly elections of December 2019, a new JMM led government has been formed in the State of Jharkhand and the new government any how wanted to bring one Mr. M.V.Rao, an officer fourth in seniority but their favorite on the post of Director General of Police anyhow.
13. That as per the knowledge of the Petitioner there was no complaint against Mr. Kamal Nayan Choubey and he also did not represent the government for his transfer / posting

elsewhere, therefore there was no occasion for the State Government to disturb his posting also on account of the fact that he was appointed upon fulfilment of all the conditions and after competition of the procedure as ordained by this Hon'ble Court.

14. That it is pertinent to state that for no valid reasons Mr. Kamal Nayan Choubey has been transferred from the post of Director General of Police to the post of Officer on Special Duty (OSD) to Police modernization Division Camp in New Delhi although he served for a tenure of about nine months only. To the said effect the State Government has issued notification vide memo no. 13/P1-8002/2013 (Khand)-1360/Ranchi dated 16.03.2020 which is in gross violation of the guidelines / directives given by this Hon'ble Court in W.P. (C) No. 310 of 1996 apropos to the appointment and tenure of DGP in every state. True Copy of the notification vide memo no. 13/P1-8002/2013 (Khand)-1360/Ranchi dated 16.03.2020 is annexed as **Annexure-P/4 at pages**
15. That by way of the said notification dated 16.03.2020 Mr. M. V. Rao, an IPS officer of 1987 batch has been surprisingly given additional charge of DGP for the state of

Jharkhand who is already serving as Director General (Fire services & Home Guard), State of Jharkhand.

16. At the outset, it is submitted that the state of Jharkhand was carved out from the state of Bihar on 15.11.2000 and comprises of total 24 districts. It is 15th largest state by area and 14th largest state by population in India having a population of approximately 4 crores.
17. That in India, naxalism is a big problem affecting many states of the country mainly state of Jharkhand, as its 14 districts out of total 24 districts are badly affected by active naxalite activity resulting in day to day casualties of our brave paramilitary forces, police personnel's and the innocent people of the state which requires as also mandated by this Hon'ble Court's various orders passed in W.P. (C) No. 310 of 1996 from time to time, directing every state to appoint a regular Director General of Police (hereinafter referred to as DGP) of the state who 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 not an acting DGP who is not fitting in the post of a regular DGP to head the state police team. Reliance is placed on judgment of this Hon'ble Court in (2019) 4 SCC 1.

18. That the applicant knows that in the year 1996, an IPS officer namely Mr. Prakash Singh preferred the connected writ petition before this Hon'ble Court being W.P. (C) No. 310 of 1996 seeking that Union of India be directed to redefine the role and functions of the police and frame a new Police Act on the lines of the model Act drafted by the National Police Commission in order to ensure that the police is made accountable essentially and primarily to the law of the land and the people. Directions were also sought against the Union of India and State Governments to constitute various Commissions and Boards laying down the policies and ensuring that police perform their duties and functions free from any pressure and also for separation of investigation work from that of law and order.
19. That this Hon'ble court has passed an order dated 22.09.2006 in W.P. (C) No. 310 of 1996 reported in (2006) 8

SCC 1, whereby and where under it laid down the guidelines qua the functioning of the state police at various hierarchies. The relevant portion of direction issued in the aforementioned order qua the appointment of the DGP in a state has been reproduced herein 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 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.”

20. That subsequently only few states enacted the Police Act, 2007 in their respective states namely Himachal Pradesh, Uttarakhand, Tripura, Assam, Punjab, Haryana and Chattisgarh. Even few states carried out further amendments in their respective Police Acts. However, all such amendments did not wholly follow the dictum laid down by this Hon’ble court in abovementioned writ. 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 however for the purposes of this application the said aspect is not very relevant.
21. That an Interlocutory Application was filed before this Hon’ble Court being I.A. No. 25307 of 2018 for clarification of the directions contained in the order dated 22nd September, 2006 passed in Writ Petition No.310 of 1996 wherein the Ld. Attorney General for India made certain statements which are as follows:

“.....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....”

In the present case also, the state of Jharkhand has been given additional charge of DGP who is already serving as Director General (Fire services & Home Guard), State of Jharkhand instead of following the Orders/Directives issued

by this Hon'ble Court. The said order is reported in (2019) 4 SCC 1.

22. That this Hon'ble Court on 03.07.2018 also passed further directions reported in (2019) 4 SCC 13 which has been reproduced herein below:

- “(a) All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time atleast 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 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 weight age.

(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.”

23. That an application was preferred before this Hon’ble Court being I.A. No. 24616 of 2019 in W.P. (C) No. 310 of 1996 seeking 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) and this Hon’ble Court has passed an order dated 13.03.2019 in I.A. No. 24616 of 2019 in W.P. (C) No. 310 of 1996, reported in (2019) 4 SCC 1, specially directions in Clauses (e) and (f) of the abovementioned order. This Hon’ble Court made certain observations and directions pursuant to the Interlocutory application filed and the relevant portion has been reproduced herein below:

“...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. xxxxxxxxxxxxxxxx

“...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.”

24. That It will be not out of the place to mention that as per the official website of the Jharkhand Police i.e. jhpolicen.gov.in, the civil list 2019 for Indian Police Service (IPS) the present “In-charge DGP” of the State of Jharkhand, Mr. M.V. Rao is at serial no. 4 in the seniority and obviously the procedure as directed by this Hon’ble Court as well as his suitability qua the other available officers have not been considered, thus his appointment on the post of DGP in the name of “In-charge DGP” is out and out unlawful, in teeth of the orders passed by this Hon’ble Court and rather in gross violation of the principles/Directions laid down by this Hon’ble Court in Prakash Singh’s Case. This act of the State of Jharkhand is contemptuous. A copy of the printout of the civil list 2019 for Indian Police Service (IPS) from the website of Jharkhand Police is annexed herewith and marked as **ANNEXURE P/5** at page to

25. That Mr. Kamal Nayan Choubey, the earlier DGP, Jharkhand was an officer of Indian Police Service of 1986 batch and was appointed on the basis of his seniority, merit and eligibility as well as upon competition of due process as prescribed and directed by this Hon’ble Court in the

connected writ petition, the notification being memo no. 13/P1-8002/2013(Khand)- 2835/Ranchi dated- 31/05/2019 issued by the state of Jharkhand.

26. That Mr. Kamal Nayan Choubey, the regular DGP of the State of Jharkhand has been transferred without any valid reasons or grounds and he has been posted as Officer on Special Duty (OSD) Police Modernization Division Camp, New Delhi in just nine months just to accommodate Mr. M.V. Rao who is otherwise not eligible but a favorite of the JMM led government of the State. Mr. M.V. Rao has been unlawfully appointed as In-charge DGP, Jharkhand vide notification no. 13/P1-8002/2013 (Khand)-1360/Ranchi dated 16.03.2020 which is in gross violation of the directives and guidelines given by this Hon'ble Court in W.P. (C) No. 310 of 1996 apropos to the appointment and tenure of DGP in every state.
27. That due to the aforesaid unlawful act of the State Government the entire state of Jharkhand is suffering. As per the news reported by ANINEWS dated 11.05.2020 (after the additional charge given to the present acting DGP, State of Jharkhand), the incidents of Naxal-linked arson and

murder during March end to April this year have been higher than the last corresponding period.

28. That during March end to April this year although there had been a lockdown due to COVID-19 pandemic, Naxals carried out 33 major acts of violence, killing and injuring several people, nine murders and eight cases of arson, as per the data provided by the Jharkhand Police. If the said date is compared with the same period of the previous year there was a better control. During the tenure of Mr. Kamal Nayan Choubey the number of incidents of violence had been comparatively very low and Jharkhand recorded 134 violence cases, 30 civilian casualties, 30 acts of arson and 14 police casualties in the year 2019.

29. That this Hon'ble Court has, therefore in the connected Writ petition made observation for seeking to resolve the issue of insulation of the police machinery from political/executive interference in Prakash Singh Case by observing:

"...12. 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, whereon 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.”

30. That unfortunately the stand taken by the State of Jharkhand has completely negated the above mentioned approach taken by this Hon’ble Court.
31. That the act of the State of Jharkhand clearly demonstrate that the removal of the earlier DGP, State of Jharkhand, who was an efficient and competent officer and also amongst three senior most IPS officer of the state, is a political and whimsical and a good officer has been made a victim of some Political vendetta.
32. That it is high time for the Govt. of Jharkhand to act in a lawful manner and follow the directives issued by this Hon’ble court in Prakash Singh case and this Hon’ble Court

may pass necessary directions so that the ad-hoc or interim arrangements may not be allowed to continue.

33. That the appointment of the acting DGP by the state of Jharkhand is in gross violation of the specially Direction no. (d) issued in order dated 03.07.2018 passed in the abovementioned connected matter which is quoted herein below:

“(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);”

34. That the Government of Jharkhand has flouted and violated the directions given by this Hon’ble Court given in the Writ petitions and they have set an example for the entire counter by way of transferring a regular appointed DGP of the State as Officer on Special Duty by making a non-recommended junior person as In-charge of the highest Police post in the State.
35. The present petition is made bona-fide & in the interest of justice.

36. That hence as the State Authorities has completely failed to give justice to the petitioner, the petitioner in the light of the Judgment rendered by this Hon'ble Court in is bound to approach this Hon'ble Court by Filing the present Writ Petition on the following grounds:

GROUND

- A. Because the impugned appointment of Respondent No. to the post of DGP is in the teeth of various judgments passed by this Hon'ble Court in Prakash Singh's case.
- B. Because the Respondent No. 2 with the aid and help of the Respondent No. 1 has illegally removed a senior IPS Officer from the post of DGP within 9 months from the date of appointment.
- C. Because the State Government has appointed the Respondent No. 3 against the law laid down by this Hon'ble Court.
- D. Because from the acts of the Respondent No. 2 State it is evident that they have not followed neither in letter nor in spirit, the judgments passed by this Hon'ble Court.
- E. Because it is unfathomable as to how a the State Government flout the law laid down by this Hon'ble Court so

openly and in complete defiance by turning a blind eye to the law laid down by this Hon'ble Court.

- F. Because the appointment of Respondent No. 3 is e-facie illegal and against the law laid down by this Hon'ble Court.
- G. Because the State Government could not have transferred the incumbent officer namely Shri Chaubey from the post of DGP within a short span of nine months from the date of his appointment.
- H. Because the State Government cannot be given a free hand to appoint a high Ranking Police official as per their whims and fancies.
- I. Because the high handedness of the State Government has to be nipped in the bud before they succeed in their unlawful motives and dictate appointments of high ranking officials as per their whims and fancies.
- J. Because an IPS officer who is ranked 4th in number cannot be appointed to the post of DGP by any State Government.

That the petitioners have not filed any other or similar petition under Article 226 or Article 32 of Constitution of India for the

same or similar relief on the aforesaid grounds to any other High Court or Hon'ble Supreme Court of India.

PRAYER

In the light of the facts and the circumstances submitted above, Your Lordship of this Hon'ble Court may graciously be pleased to issue the writ in the nature of declaration or any other appropriate writs/ order/ directions:-

- A. Issue a Writ, Order or direction in the nature of mandamus directing the respondent number 1, 2 & 4 to comply with the law laid down by this Hon'ble Court in *Praksah Singh & Others versus Union of India*, (2006) 8 SCC 1 to be binding upon the respondents.
- B. Issue a Writ, Order or direction in the nature of mandamus directing the state of Jharkhand to end up with the ad-hoc / interim arrangements of continuing with Respondent No. 3 as non-regularly appointed DGP in the State and reinstate Shri Kamal Narain Chaubey to the post of DGP with immediate effect;
- C. Issue a Writ, Order or direction in the nature of certiorari quashing the notification 13/P1-8002/2013(Khand)-2835/Ranchi dated- 31/05/2019 and notification vide

memo no. 13/P1-8002/2013 (Khand)-1360/Ranchi dated
16.03.2020.

- D. Pass any other or further writ(s), order(s) or Direction which
this Hon'ble Court may deem fit and proper in the facts and
circumstances of the case in the interest of Justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS
AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY

FILED BY:

Dr Sandeep Singh,

SANCHIT GARGA

ADVOCATE

ADVOCATE

Drawn on: 11.07.2020
Filed on: 15.07.2020
New Delhi