

(2012) 11 MAD CK 0064
In the Madras High Court
Case No : Writ Petition No. 31793 of 2012

M. Suresh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-11-2012

Acts Referred:

Constitution of India, 1950 — Article 141, 309, 32

Citation : (2013) 1 MLJ 547

Hon'ble Judges : V. Ramasubramanian, J; M.M. Sundresh, J

Bench : Division Bench

Advocate : G. Ethirajulu for T. Babu, for the Appellant; A. Navaneethakrishnan, Advocate General, P.H. Aravindh Pandian, Additional Advocate General assisted by V. Subbiah, Special Government Pleader and D. Vairamuthu, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The petitioner, who is a practicing Advocate and who claims to be carrying on social activities for the welfare of

the public at large, has come up with the above writ petition seeking issue of a writ of Quo Warranto questioning the authority of the sixth

respondent to hold the office of the Director General of Police in Tamil Nadu. We have heard Mr. G. Ethirajulu, learned counsel for the petitioner

and Mr. A. Navaneethakrishnan, Advocate General and Mr. P.H. Aravindh Pandian, learned Additional Advocate General for the State.

2. Before getting into the controversy raised in this writ petition, it is necessary to take note of certain facts, against the backdrop of which, the

issues raised herein may have to be considered. Therefore, they are recorded as follows:

(a) After 30 years of India attaining independence and after about 116 years of

the existence of an archaic law, in the form of the Indian Police

Act, 1861, the Government of India constituted a National Police Commission in November 1977, for the purpose of examining the role and

performance of the Police both as a law enforcing agency and as an institution to protect the rights of citizens under the Constitution.

(b) Though the Commission filed several reports during the period 1979 to 1981, they were just consigned to the cold storage. Therefore, in the

year 1996, one Mr. Prakash Singh and Another, both of whom belonged to the Indian Police Service, along with an organisation known as

Common Cause, filed a public interest writ petition under Article 32 of the Constitution before the Supreme Court in W.P. (Civil) No. 310 of

1996 seeking various directions, including a direction to the Government of India, to frame a new Police Act, in order to ensure that the police

force is made accountable primarily to the law of the land and the people of the country.

(c) After 10 years, the writ petition saw the light of the day and on 22.9.2006, the Supreme Court passed an order, issuing various directions. Two

directions are relevant for deciding the case on hand. They are (i) that all the State Governments shall constitute a State Security Commission as a

watchdog body on the models suggested by the NHRC or the Rebeiro Committee or the Sorabjee committee, to ensure that the State Police

force is insulated from unwarranted influence or pressure by the Government; and (ii) that 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 Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police

force.

(d) Direction numbers 1 and 2 issued by the Supreme Court require to be extracted, as some of the contentions raised in the writ petition revolve

around the same. Therefore, they are extracted as follows:

State Security Commission

(1) The State Government 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:

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.

(e) Despite the fact that a period of six years has elapsed from the date of issue of the above directions, only 12 State Governments have enacted

a law to comply with the directions of the Supreme Court in letter and spirit. The State of Tamil Nadu has not so far enacted any law.

(f) On 31.8.2008, one Mr. K.P. Jain, was appointed as the Director General of

Police (Law and Order). This post is actually the Head of the Police Force in Tamilnadu. When Mr. K.P. Jain went on leave from 18.1.2010, preparatory to his retirement in April 2010, one Ms. Letika Saran, an officer belonging to the 1976 batch, was appointed by the State Government as the Director General of Police. Challenging the appointment so made, a senior officer by name R. Nataraj, belonging to the 1975 batch, filed an application before the Central Administrative Tribunal, Chennai Bench in O.A. No. 245 of 2010. The said application was dismissed by the Central Administrative Tribunal, forcing the applicant Mr. R. Nataraj to come up with a writ petition before this Court in W.P. No. 6917 of 2010. In the said writ petition, a Division Bench of this Court found that direction No. 2 issued by the Supreme Court in Prakash Singh case had not been followed in the matter of appointment of Letika Saran. Therefore, a Division Bench of this Court, to which one of us (M.M. Sundresh, J) was a party, allowed the writ petition by an order dated 8.10.2010 and issued certain directions.

(g) In accordance with the directions issued by the Division Bench of this Court, a panel of three names was forwarded and considered by the Union Public Service Commission and was sent to the State Government. From out of the names found in the panel, the State Government again chose and appointed Ms. Letika Saran as the Director General of Police (Law and Order) on 27.11.2010.

(h) The said appointment was again challenged by Mr. R. Nataraj in O.A. No. 81 of 2011 on the file of the Central Administrative Tribunal. The said application was allowed by the Central Administrative Tribunal, by an order dated 31.5.2011, setting aside the appointment of Ms. Letika Saran and directing the Union Public Service Commission and the State Government to act strictly in accordance with the guidelines issued by the Supreme Court in Prakash Singh case.

(i) But during the pendency of the application filed by Mr. R. Nataraj before the Central Administrative Tribunal, elections to the State Assembly were notified. Therefore, the controversy took an interesting and unexpected turn, when the Election Commission of India issued an order dated 19.3.2011 replacing Ms. Letika Saran with another senior IPS officer by name Mr. Bhola Nath as the Director General of Police.

(j) A smooth transition of power took place after the elections held in May 2011 and by coincidence, the Central Administrative Tribunal also

passed an order on 31.5.2011 setting aside the appointment of Ms. Letika Saran, But Ms. Letika Saran filed a writ petition in W.P. No. 13205 of

2011 before this Court challenging the order of the Tribunal.

(k) However, even while keeping her writ petition pending and despite the fact that she was entitled to continue as Director General of Police for 2

years (from 27-11-2010), Ms. Letika Saran gave a letter to the Government on 2.8.2011, agreeing to get posted to any post other than the post

of Director General of Police. In other words, by her letter dated 2.8.2011, Ms. Letika Saran abandoned her claim, despite having ahead of her, a

major portion of her tenure of 2 years.

(l) It is of interest to note that despite abandoning her claim, Ms. Letika Saran did not also withdraw her writ petition, challenging the order of the

Tribunal setting aside her appointment. On the contrary, arguments were advanced on her behalf and by an order dated 12.1.2012, a Division

Bench of this Court allowed her writ petition and set aside the order of the Central Administrative Tribunal. In other words, the appointment of

Ms. Letika Saran as Director General of Police on 27.11.2010 was upheld by the Division Bench of this Court by order dated 12.1.2012 passed

in W.P. No. 13205 of 2011. From the copy of the order made available to us, it is not clear whether the abandonment of her claim even on

2.8.2011 was brought to the notice of the Division Bench of this Court or not.

(m) In any case, the order passed by the Court was left as a product of an academic exercise, as Ms. Letika Saran did not seek to enforce her

rights that flowed out of the order dated 12.1.2012, passed by the Division Bench of this Court. On the contrary, when her date of superannuation

reached on 31.3.2012, she quietly went out of office, without asserting her rights to continue in the post of Director General of Police till

November 2012.

(n) After the retirement of Ms. Letika Saran on 31.3.2012, the State Government appears to have made a request to the Union Public Service

Commission on 24.5.2012, asking them to send a panel of three names as per the directions issued by the Supreme Court in Prakash Singh case.

From the copy of the said letter dated 24.5.2012 produced before us by the

learned Advocate General, it is seen that the names of three officers were sent to the Union Public Service Commission for consideration. Their names were arranged in the order of seniority as follows:

- (1) Thiru K. Vijayakumar, IPS, Director General, CRPF (1975 batch)
- (2) Thiru Bhola Nath, IPS, Director, Tamil Nadu Fire and Rescue Services (1976 batch)
- (3) Thiru K. Ramanujam, IPC, Director General of Police, Intelligence (1978 batch).

(o) In response to the said request made by the State Government, the Union Public Service Commission appears to have sent a communication to the State Government, informing them that as per direction No. 2 issued in Prakash Singh case, Tmt. Letika Saran had a tenure up to 27.11.2012

and that before the expiry of the said tenure, it would not be permissible to send another panel of three names.

(p) The above stand of the Union Public Service Commission necessitated the Government of Tamil Nadu to move an interlocutory application

before the Supreme Court in I.A. No. 43 of 2012. In the said application, the Supreme Court issued two directions on 16.10.2012. The directions

are as follows:

(1) that the Union Public Service Commission could send a panel of three names in terms of the directions given in the decision in Prakash Singh,

within a period of two weeks; and

(2) that the State of Tamil Nadu will be at liberty to take steps to select the Director General of Police in the manner indicated in Prakash Singh.

(q) Thereafter, the Union Public Service Commission appears to have sent a communication dated 30.10.2012 to the State Government.

Thereafter, the State Government chose the sixth respondent and issued G.O. 2(D). No. 375, Home Department, dated 5.11.2012 appointing him

as Director General of Police with immediate effect.

(r) It is pertinent to note that the said Government Order appointing the sixth respondent did not speak about any tenure. As a matter of fact, the

6th respondent was actually on the verge of retirement at the time when his appointment order G.O.(2D). No. 375 was issued. He was in fact due

to retire on 30.11.2012. Yet, the Government order did not specifically say that he would have a tenure of 2 years as per Direction No. 2 issued in

Prakash Singh, The reason for this was that there existed an earlier order of the Government in G.O. Ms. No. 813, Home Department, dated

6.6.2007, to the effect that a Director General of Police shall have a minimum tenure of two years or till the date of his superannuation, whichever

is earlier. Though this order G.O. Ms. No. 813 (dated 6.6.2007) was contrary to Direction No. 2 issued in Prakash Singh (on 22.9.2006), the

Government did not take a chance, by prescribing a tenure of 2 years, in the order appointing the 6th respondent for the post.

(s) However, within a week of issue of G.O. 2(D). No. 375 dated 5.11.2012 appointing the sixth respondent without indicating any tenure, the

Government issued another order in G.O. Ms. No. 869, Home Department, dated 12.11.2012 amending G.O. Ms. No. 813. Paragraph 4 of the

said G.O. Ms. No. 869, by which an amendment was made to G.O. Ms. No. 813, reads as follows:

4. The Government, after careful examination of the matter, make the following amendment to the Government Order Ms. No. 813, Home (SC)

Department, dated 6.6.2007:

Amendment

In the said Government Order, for the expression ""The Director General of Police shall have a minimum tenure of two years or till the date of his

superannuation whichever is earlier"", the expression ""The Director General of Police shall have a minimum tenure of two years irrespective of the

date of his superannuation"" shall be substituted.

(t) Thus the gap left in the order of appointment was filled up and the 6th respondent became entitled to continue as Director General of Police for

2 years, irrespective of his date of superannuation, as per Direction No. 2 issued in Prakash Singh. Consequently, the 6th respondent continues to

hold office as on date.

(u) Upon coming to know of the move of the State Government, the petitioner herein moved the Supreme Court by way of a public interest writ

petition in W.P. (Civil) No. 469 of 2012. The prayer in the said writ petition was for the issue of a writ of mandamus calling for the records

pertaining to the empanelment list of police officers for the proposed appointment of Director General of Police for the State of Tamil Nadu along

with the existing seniority list available with the fifth respondent herein and

forwarded to the other respondents. This writ petition came up for hearing on 19.11.2012 before the Supreme Court. At that time, the petitioner appears to have sought permission to withdraw the writ petition with liberty to move the High Court. The order passed by the Supreme Court in the said writ petition on 19.11.2012 is extracted as follows:

Learned senior counsel appearing for the petitioner seeks permission to withdraw this petition to move the High Court. He may do so, if so

advised, on which we expressed no opinion. Permission to withdraw the petition is granted. The matter is accordingly dismissed as withdrawn.

(v) Thereafter, the petitioner has come up with the above writ petition seeking the issue of a writ of Quo Warranto challenging the authority of the sixth respondent to hold the office.

3. Before proceeding to consider the contentions of the petitioner, we wish to take note of one thing that the petitioner did, before filing a writ

petition in the Supreme Court, but immediately after the Supreme Court passed the order dated 16.10.2012 permitting the Union Public Service

Commission to forward a panel and permitting the State Government to choose a person. The petitioner first sent a representation dated

25.10.2012 to the Secretary of the Union Public Service Commission, with copies to the Prime Minister, the Home Minister, Cabinet Secretary

and Home Secretary and then issued telegrams dated 29.10.2012 to the Union Home Secretary, Joint Secretary to Ministry of Home Affairs and

the Chairman and Secretary to Union Public Service Commission. By these, the petitioner actually requested them not to allow the State of Tamil

Nadu to go ahead with the appointment of the sixth respondent. The last paragraph of the representation dated 25.10.2012 made by the petitioner

to these authorities, is extracted as follows:

We have already addressed the President of India with copy to all competent authorities for immediate action in this regard to turn down the

proposal of TN Govt. and render justice. A copy is enclosed. We are also going to move an appropriate Writ in the Hon'ble Supreme Court. We

urge to kindly consider all these points so that the TN Govt. should not be able to manipulate and get further 2 years posting for Mr. Ramanujam

as DGP which will blatantly go against the spirit of the law and the Judgment of the honourable Supreme Court.

Yours sincerely,

(M. Suresh Kumar)

Advocate, DMK Advocates Wing

Member IAC (India Against Corruption).

4. In simple terms, the petitioner requested these authorities not to act in terms of the order passed by the Apex Court on 16.10.2012. We do not

know how anyone, especially an advocate, with the description as above mentioned, can dictate to any authority not to act as per the orders of the

Apex Court. In this background, let us now get back the issues raised herein.

5. Though several issues are raised in the affidavit in support of the writ petition, Mr. G. Ethirajulu, learned counsel for the petitioner confined his

submissions only to 3 legal issues. They can be summarised as follows:

(i) The State Government has not so far constituted a State Security Commission in tune with direction No. 1 issued by the Supreme Court in

Prakash Singh. Therefore, without the State Government complying with direction No. 1, the State Government is not entitled to fill up the post of

Director General of Police, in accordance with direction No. 2, for a period of two years;

(ii) Appointing a person as Director General of Police for a tenure of 2 years, when he is actually on the verge of retirement, would violate Rule

16(1) of the All India Services (Death cum Retirement Benefits) Rules, 1958; and

(iii) while the mandate of the Supreme Court is to forward a panel of three names, the respondents do not appear to have forwarded a panel of

three names. This is borne out by a communication received under the Right to Information Act on 26.11.2012, wherein, the Deputy Secretary to

the Union Public Service Commission has admitted that they had found only one officer fit for inclusion of the panel. Therefore, the appointment of

6th respondent without considering the names of three senior most officers is illegal.

6. Let us take up the above three contentions of the learned counsel for the petitioner one after another.

7. First contention:

As pointed out earlier, the first contention of the learned counsel for the petitioner is that without constituting a State Security Commission as per

direction No. 1 issued in Prakash Singh, the Government cannot appoint anyone in accordance with direction No. 2. It is contended that the

constitution of a State Security Commission was ordered by the Apex Court, to serve several purposes, one of which, is the removal from office of

a person appointed for a fixed tenure, if he is found unsuitable or guilty of any misconduct during the tenure. In the absence of a Commission, the

sixth respondent will become immune to any action and hence, the petitioner contends that the appointment without complying with the first

condition for the constitution of the Commission, is illegal.

8. But, the above contention is something that the petitioner can advance only before the Apex Court and not before us. When the Supreme Court

passed an order on 16.10.2012 permitting the State to go ahead, the Court was conscious of this issue. This is borne out by the very order dated

16.10.2012 passed in LA. No. 43 of 2012 where the Apex Court observed that except 12 States, no other State including the State of Tamil

Nadu, enacted a law for implementing the directions of the Supreme Court in letter and spirit. Therefore, when the Apex Court had specifically

permitted the State to fill up the post, despite the State not having constituted the State Security Commission, it is not open to the petitioner or to

us to find fault with the State.

9. It is contended by Mr. G. Ethirajulu, learned counsel for the petitioner that the direction issued by the Supreme Court on 16.10.2012 has to be

read in tune with the directions contained in Prakash Singh. According to the learned counsel for the petitioner, the liberty given by the Supreme

Court by its order dated 16.10.2012 cannot be taken to be a liberty to violate the directions issued in Prakash Singh. In other words, his

contention is that after the Supreme Court granted liberty on 16.10.2012, the State Government ought to have first constituted a State Security

Commission and then exercised the said liberty.

10. But the above argument is far fetched. The Supreme Court did not say in its order dated 16.10.2012 that the State should first constitute a

Commission and thereafter proceed to recommend a panel of names. It is common knowledge that the Constitution of such Commissions, cannot

be done overnight. Yet, the Apex Court fixed a time limit of two weeks for the Union Public Service Commission to forward the panel. Therefore,

it is clear that the Supreme Court did not make the constitution of the Commission, a pre condition for appointment, at least insofar as the present case is concerned. Hence, the first contention is rejected.

11. Second contention:

Since the second contention revolves around Rule 16(1) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, it is extracted as

follows:

16. Superannuation gratuity of pension. -(1) A member of the Service shall retire from the service with effect from the afternoon of the last day of

the month in which he attains the age sixty years:

Provided that member of the Service whose date of birth is the first day of a month shall retire from service on the afternoon of the last of the

preceding month or attaining the age of sixty years:

Provided further that a member of the Service dealing with budget work or working as a full-time member of a committee which is to be wind up

within a short period may be given extension of service for a period not exceeding three months in public interest, with the prior approval of the

Central Government.

(a) for an aggregate period no exceeding six months-

(i) by the state Government, if the officer is working in connection with the affairs of the State Government; and

(ii) by the Central Government, if the officer is working in connection with the affairs of the Union or a State other than the State on whose cadre

he is borne;

(b) for any period beyond six months -

(i) by the State Government with the prior sanction of the Central government, if the officer is working in connection with the affairs of the State;

and

(ii) by the Central Government, if the officer is working in connection with the affairs of the Union or a State other than the State on whose cadre

he is borne.

Provided further that a member of the Service shall not be retained in service whose the age of 60 years except in very special circumstances.

12. The above rule is almost similar to Fundamental Rule 56, which deals with the age of retirement of servants of the State Government and

servants of the Central Government other than those who belong to the All India Services.

13. The contention of the learned counsel for the petitioner in this regard is that if a person is appointed as a Director General of Police for a tenure

of two years, as per direction No. 2 of Prakash Singh, without reference to his date of superannuation and if the tenure of two years happen to fall

beyond the normal age of superannuation prescribed by Rule 16(1), the appointment would be violative of Rule 16(1). In simple terms, the

contention of the learned counsel for the petitioner is that no appointment can be made to a post to last for a tenure beyond the normal tenure fixed

statutorily by the rules framed in exercise of the power conferred by the proviso to Article 309 of the Constitution. Since the sixth respondent

actually reached the age of superannuation in the month of November 2012, he was due to retire on the last day of the month, namely,

30.11.2012. His appointment as a Director General of Police was made on 5.11.2012 without indicating a tenure. Subsequently, by another order

dated 12.11.2012, the tenure was fixed for two years for a Director General of Police. Therefore, it is contended by Mr. G. Ethirajulu, learned

counsel for the petitioner that the order of appointment issued to the sixth respondent is actually contrary to Rule 16(1) of the All India Services

(Death-cum-Retirement Benefits) Rules, 1958 and that therefore, such an appointment contrary to statutory rules cannot receive the seal of

approval from this Court.

14. We have a great deal of difficulty in accepting the aforesaid contention. We have already extracted direction Nos. 1 and 2 laid down by the

Supreme Court in Prakash Singh. In direction No. 2, the Supreme Court had made it clear that once a person has been selected for the job, he

should have a minimum tenure of at least two years "irrespective of his date of superannuation". This indicates that the Supreme Court was

conscious of the age of retirement of persons belonging to All India Services and that the Court still chose to issue such a direction. For us to say

that the appointment of the sixth respondent would be contrary to Rule 16(1), would indirectly tantamount to saying that direction No. 2 issued by

the Supreme Court was also contrary to statutory rules. This is impermissible as we are bound by the directions issued by the Apex Court in terms of Article 141.

15. Mr. G. Ethirajulu, learned counsel for the petitioner relied upon a judgment of the High Court of Bombay in *R.R. Tripathi v. Union of India*

dated 14.2.2008, in support of his contention that no one can be allowed to continue in office beyond the age of superannuation fixed under Rule

16(1). It is his contention that the extension of services granted to a few officers of the Indian Police Service by the State of Maharashtra was set

aside by the Division Bench of the Bombay High Court in the said case, after taking note of the directions issued in *Prakash Singh* and that

therefore, there is no impediment for this Court to test the correctness of the appointment of the sixth respondent on the touchstone of Rule 16(1).

16. But, a careful perusal of the decision of the Division Bench of the Bombay High Court would show that what was under challenge therein, was

actually the extension of services granted to a few police officers, not only in violation of statutory rules, but also ignoring the incriminating materials

against those officers, that had become the subject matter of an enquiry. The facts out of which the said decision arose, do not indicate whether it

concerned the appointment of the Head of the Police Force of the State of Maharashtra in accordance with the directions issued in *Prakash Singh*.

On the contrary, the facts would show that one of the officers involved in the case was a Commissioner of Police and the other, the Director

General. They were due to retire on 30.11.2007. The State of Maharashtra simply sent a proposal to the Ministry of Home Affairs for the

extension of the services of these two officers, beyond the period of their superannuation. Therefore, the Division Bench of the Bombay High

Court set aside the extension of services on the ground that they were granted contrary to rules and against public interest.

17. In other words, the case before the Division Bench of the Bombay High Court did not arise out of appointment of the Head of the Police

Force for the State, in accordance with the directions issued in *Prakash Singh*. The case actually concerned the mere extension of services of two

officers, for periods beyond those stipulated in Rule 16(1). The cases of these officers were never forwarded to the Union Public Service

Commission for selection as the Head of the Police Force. One of the two officers was only the Commissioner of Police. Therefore, the said

decision cannot be taken to be one explaining or interpreting the decision in Prakash Singh in a particular manner, as projected by the petitioner.

18. We should also take note of one important aspect against the petitioner. The petitioner is a practicing advocate, who has exhibited a thorough

knowledge of the entire background. This is why he has referred to, in his affidavit in support of the writ petition, the previous litigation between

Ms. Letika Saran and Another officer in detail. The appointment of Ms. Letika Saran also suffered from the very same vices that the petitioner is

now alleging against the appointment of the sixth respondent. Her appointment was also made without constituting a State Security Commission

and her appointment for a period of two years from November 2010 could also have lasted beyond her date of superannuation, namely,

31.3.2012. But, the petitioner has had no grievance about the same. More than that, the petitioner has actually sympathised, if not shed tears, for

Ms. Letika Saran, in the following words in the last line of paragraph 8 of the affidavit in support of the present writ petition:

The petitioner states that Ms. Letika Saran, IPS, was sent out most unceremoniously as per the wishes of the ruling party.

19. Therefore, it is clear that neither the petitioner nor anyone else took exception to the appointment of Ms. Letika Saran, either on the ground

that a State Security Commission was not constituted, or on the ground that it was in violation of Rule 16(1). On the contrary, her appointment

was upheld by a Division Bench of this Court in W.P. No. 13205 of 2011, after overturning the decision of the Central Administrative Tribunal.

For doing so, the Division Bench relied upon the decision of the Supreme Court in Citizens for Justice and Peace Vs. State of Gujarat and Others,

of which, the Supreme Court observed as follows:

An appointment of a government servant is the prerogative of the particular Government, particularly, when it is a sensitive appointment of the

Director General of Police. We, under the doctrine of "judicial review", would not extend our hands to upset such an appointment, more

particularly, in the factual panorama which is available today. We hold that the present writ petition has become redundant and we dispose of it as

such. As for any disciplinary action against Shri Pandey, it is for the Government concerned. We will not enter the fact-finding exercise.

20. Therefore, it is not possible for us to accept the second contention of the petitioner, particularly when the Supreme Court has used the phrase

irrespective of the date of superannuation"" in Prakash Singh. Hence, the second contention is also rejected.

21. Third contention:

The third contention revolves around an information received by the petitioner under the Right to Information Act. It would be useful to extract the

question raised by the petitioner and the reply given by the Deputy Secretary cum Central Public Information Officer of the Union Public Service

Commission, to understand the reach of the third contention advanced by the learned counsel for the petitioner. Therefore, it is extracted as

follows:

22. In the information furnished in response to the first question, the Information Officer had stated that the meeting of the Empanelment Committee

for preparation of a panel for appointment of Director General of Police was held on 30.10.2012 in compliance with the directions issued by the

Supreme Court. The State Government informed the Union Public Service Commission that three officers by name Messers K. Vijayakumar,

Bhola Nath and K. Ramanujam were eligible for consideration. The State Government also informed Union Public Service Commission that Thiru

K. Vijayakumar had retired from service on 30.9.2012. Therefore, the Information Officer had stated in response to the first question that the

Committee examined the Service Records of the Officers and included only the name of Thiru K. Ramanujam in the panel for appointment, as they

found only one Officer fit for inclusion.

23. Taking clue from the last line of the response given by the Central Public Information Officer (for question No. 1), it is contended by Mr. G.

Ethirajulu, learned counsel for the petitioner that when the specific mandate of the Supreme Court is to have a panel of three names, the approval

of a panel comprising of lesser number of persons, be it one or two, would not be strictly in accordance with the law laid down by the Supreme

Court.

24. There are two difficulties in accepting the above contention. The first

difficulty is in law and the second difficulty is on facts. Let us first take the factual one. The learned Advocate General and the learned Additional Advocate General produced the file relating to this appointment before us.

It shows that the State Government was actually non committal in their recommendation to the Union Public Service Commission insofar as the performance appraisal and insofar as the assessment of service records of all the three officers were concerned. Some of the records submitted by the State Government to the Union Public Service Commission, as seen from the communication of the State Government dated 28.10.2012, are as follows:

- (i) bio-data of the three officers in the zone of consideration;
- (ii) the statement indicating the position of ACRs of all the eligible officers for the last ten years; and
- (iii) integrity certificate in respect of eligible officers duly signed by the Chief Secretary.

25. Despite the retirement of one Mr. K. Vijayakumar, the appraisal report and Annual Confidential Reports of the said officer were also sent by

the State Government to the Union Public Service Commission. In this background, the Empanelment Committee comprising of the following

officers, namely, (i) the Chairman of the Union Public Service Commission, (ii) the Chief Secretary to the Government of Tamil Nadu, (iii)

Secretary, Border Management of the Ministry of Home Affairs, New Delhi; and (iv) the Director General of Central Industrial Security Force,

New Delhi, met on 30.10.2012. After a great deal of deliberations, they forwarded their recommendation to the State Government. In the

Empanelment Committee, except one member, namely the Chief Secretary to the Government of Tamil Nadu, the other three officers are not from

the State. The Committee had gone into the records of all the three officers. It was this Empanelment Committee which took note of the fact that

Thiru K. Vijayakumar had retired on 30.9.2010 on superannuation. Thereafter, the Empanelment Committee recommended the inclusion of the

name of the sixth respondent in the panel for appointment to the post, based on the parameters which they had taken into account.

26. Once it is found on facts that the names of three officers were forwarded by the State Government with all the connected records, the

information furnished by the Central Public Information Officer to the effect that only one officer was found suitable for inclusion in the panel,

cannot be taken to be an accurate reflection of the state of affairs. Therefore, the third contention is factually incorrect.

27. It is contended by Mr. G. Ethirajulu, learned counsel for the petitioner that at the time when the Empanelment Committee met on 30.10.2012,

Thiru K. Vijayakumar had already retired on 30.9.2012. Therefore, he contends that either the Empanelment Committee should have asked the

State Government to send the name of one more officer or the State Government itself ought to have sent the name of another officer, so that there

was a panel of three names. A selection, according to the learned counsel for the petitioner, if made from a panel of less than three names, would

not be in accordance with the directions issued in Prakash Singh.

28. But, in raising the above contention, the counsel for the petitioner has lost sight of one important fact, namely, that he is arguing a public interest

litigation in respect of a service matter. This is why the petitioner has chosen to file a writ of Quo Warranto and not a writ of Certiorari. Even in

respect of a writ of Quo Warranto, the scope of judicial review is limited, as laid down by the Supreme Court in Mahesh Chandra Gupta Vs.

Union of India (UOI) and Others,

29. Once the records produced disclose that three officers were actually empanelled and the Union Public Service Commission chose to drop the

name of one officer on the ground that he had already retired, the panel cannot be said to be truncated or defective. As a matter of fact, such an

argument could have been acceptable only at the instance of the next man in the seniority list. Perhaps, in a writ of Certiorari filed by an officer who

stood a chance of being included in the panel by virtue of seniority, after the retirement of Mr. K. Vijayakumar, this Court might have considered

such an argument. But, this is a writ petition filed by a third party by way of Quo Warranto. In such a writ petition, this Court will not scrutinise

minute details, such as the size of the panel, who retired on what date, when the panel ought to have been sent, when it ought to have been

approved, etc. Therefore, the third contention of the petitioner does not merit acceptance, especially at his instance in a writ of Quo Warranto.

30. Finally, it is not the case of the petitioner that the sixth respondent is not

qualified or disqualified in any manner from being appointed to the post. Therefore, when a person fully qualified to be appointed to a post, is so appointed, in accordance with the directions contained in Prakash Singh, especially after the State Government obtained directions from the Supreme Court, the validity of such an appointment can be tested only on limited considerations. None of such considerations can be found in this case.

31. As a matter of fact, without realising the limited scope of jurisdiction that he had invoked, the petitioner had also given in paragraph 18 of the affidavit, a list of officers, who according to him had lost the opportunity to become the Director General of Police, on account of the appointment of the sixth respondent. But, none of those officers has chosen to come to Court and it is not for the petitioner to take cudgels for them. This is why, the learned counsel for the petitioner did not extend his arguments beyond the three that we have chosen to deal with. In fine, we find no merits in the writ petition and accordingly, this writ petition is dismissed. However, there shall be no order as to costs. Consequently, M.P. Nos. 1 and 2 are also dismissed.