

(2010) 10 MAD CK 0381

In the Madras High Court

Case No : Writ Petition No. 6917 of 2010 and M.P. No. 2 of 2010

R. Nataraj

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 144, 32, 320
Police Service (Pay) Amendment Rules, 2008 — Rule 3(1)(D)

Citation : (2010) 6 CTC 155 : (2011) 3 MLJ 1009

Hon'ble Judges : M.M. Sundresh, J; Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : A.L. Somayaji and N.S. Nandakumar, for the Appellant; P.S. Raman, General assisted by G. Sankaran, Pusupa Menon, Special Government Pleader, J. Ravindra, K. Sridhar, T. Girija and S. Ragunathan, for the Respondent

Final Decision : Allowed

Judgement

Ibrahim Kalifulla, J.—The Petitioner seeks for the issuance of a certiorarified mandamus to call for the records of the 9th Respondent in O.A. No. 245 of 2010 dated 8.3.2010 as well as the order of the 2nd Respondent relating to Police Note No. SC/3/2010 dated 8.1.2010, to quash the same and direct the first Respondent to follow the decision of the Hon'ble Supreme Court in the matter of Prakash Singh and Others Vs. Union of India (UOI) and Ors, and Note 2 of G.O. Ms. No. 1403 dated 16.10.2008 and G.O. (D) No. 99 dated 30.1.2009 and select the Director General of Police of the State, Head of the Police Force, from amongst the panel of three senior most Director Generals of Police eligible as on 8.1.2010 and consider the claim of the Petitioner for appointment to the said post.

2. When the writ petition was moved on 7.4.2010, the writ Petitioner prayed for an interim order in M.P. No. 2 of 2010 to stay the order passed by the 9th Respondent dated 8.3.2010 in O.A. No. 245 of 2010 and the order of the 2nd Respondent in Police Note No. SC/3/2010 dated 8.1.2010 pending disposal of the

writ petition. The said prayer was not however granted by this Court and an order came to be passed on 7.4.2010 holding as under:

3. We have considered the above submissions. On a perusal of the judgment of the Supreme Court in *Prakash Singh v. Union of India* (supra), we are of the considered view that the directions for filling up the post of Director General of Police of a State should be made only as per the empanelment of the candidates and from among the first three of such police officers in the panel. That procedure seems to have not been followed in the instant case. We are also informed that the present incumbent, K.P. Jain, IPS as Director General of Police is attaining the age of superannuation at the end of this month. Since Letika Saran, IPS has been appointed and as on today, she is functioning as Director General of Police, we are not inclined to grant interim order. However, we make it clear that her continuance shall abide by further orders in this petition.

3. While the learned Assistant Solicitor General Mr. J. Ravindran took notice on behalf of the 3rd Respondent, notice was directed to be served through Court as well as privately on the Respondents 4 to 8. On behalf of the 2nd Respondent, the learned Special Government Pleader took notice. The 9th Respondent being the Central Administrative Tribunal, a formal party, it is not represented by anyone. As far as the 4th Respondent UPSC is concerned, subsequently Mr. K. Sridhar, learned Standing counsel entered appearance. The 8th Respondent is now represented by S. Ragunathan and Shymala. The 7th Respondent is represented by his Advocate Ms. T. Girija. Though the 6th Respondent was duly served, there is no representation on his behalf either in person or through counsel. It is represented that the 6th Respondent has subsequently retired and is no longer in service.

4. Heard Mr. A.L. Somayaji, learned senior counsel for the Petitioner, the learned Advocate General Mr. P.S. Raman for the 1st and 2nd Respondents and other learned Counsel for the other Respondents.

5. The sheet anchor of the Petitioner's case is the judgment of the Hon'ble Supreme Court in *Prakash Singh v. Union of India* (supra), wherein among other posts, the Hon'ble Supreme Court dealt with the post of Director General of Police as the Head of the State Police and the manner in which the said post should be filled up in every State.

6. Before dealing with the core issue, the brief facts which are required to be stated are that the Petitioner, who was directly recruited to the Indian Police Service on 16.7.1975, was said to have been promoted as Inspector General of Police on 18.3.1996 and was subsequently promoted as Additional Director General of Police on 9.9.2001. He was promoted as Director General of Police on 10.9.2008.

7. The 8th Respondent was said to have been recruited to the Indian Police Service on 14.11.1976. She was said to have been promoted as Inspector General of Police on 28.11.1997 and thereafter promoted as Additional Director

General of Police on 10.6.2002. She was said to have been promoted to the rank of Director General of Police on 2.9.2009.

8. The 7th Respondent is also said to have belonged to 1975 batch like that of the Petitioner and empanelled as Director General of Police on 21.5.2009. By G.O.D. No. 1267, dated 29.11.2008, the Government of India, Ministry of Home Affairs, New Delhi in their communication dated .11.2008 approved the appointment of the 7th Respondent to the post of Director of Sardar Vallabai Patel National Police Academy, Hyderabad by temporarily downgrading the post of Director General of Police to Additional Director General of Police on deputation basis for the period upto 30.9.2012, i.e., the date of the 7th Respondent's superannuation or until further orders, whichever event takes place earlier and on usual terms and conditions of the deputation. He was also directed to be relieved immediately to enable him to take up his appointment on 1.12.2008 at Hyderabad.

9. The 5th Respondent, who was also in the rank of Director General of Police was appointed as Director General of Police (Law and Order), which according to the 1st Respondent is the post equivalent to the Director General of Police, Head of Police in Tamil Nadu by an order dated 31.8.2008. The 5th Respondent applied for 102 days leave i.e. from 18.1.2010 to 29.4.2010 with a request to prefix the holidays from 14.1.2010. He made such an application on 7.1.2010. By G.O. (Rt) No. 38 dated 8.1.2010, the 5th Respondent was granted Earned Leaver subject to eligibility for 102 days from 18.1.2010 to 29.4.2010 with permission to prefix the holidays from 14.1.2010 to 17.1.2010. It was also certified in the said letter that under Fundamental Rule 26(b)(b), the officer would have continued to act as Director General of Police, Tamil Nadu, Chennai but for his proceeding on leave. By yet another order dated 8.1.2010, in Police No. SC/3/2010, the 2nd Respondent passed an order of transfer and posting of the 8th Respondent as Director General of Police, Tamil Nadu, Chennai vice the 5th Respondent proceeding on leave.

10. On 13.1.2010, on the 5th Respondent proceeding on leave, the 8th Respondent was said to have taken charge from him. On 30.4.2010, after availing the leave sanctioned, the 5th Respondent was permitted to rejoin duty in the post of Director General of Police. Police Service Recruitment Board and was also permitted to retire on the same date.

11. The writ Petitioner moved the 9th Respondent challenging the appointment of the 8th Respondent in O.A. No. 245 of 2010. It was dismissed in limine by the 9th Respondent by an order dated 8.3.2010. Thereafter, the present Writ Petition was moved on 7.4.2010 challenging the order of the Tribunal dated 8.3.2010 as well as the order of the 2nd Respondent dated 8.1.2010 appointing the 8th Respondent as Director General of Police (Law and Order). As stated earlier, the 6th Respondent retired from service on superannuation on 31.8.2010.

12. Mr. A.L. Somayaji, learned senior counsel for the Petitioner took us through

the judgment of the Hon''ble Supreme Court *Prakash Singh v. Union of India* (supra), hereinafter referred to as *Prakash Singh v. Union of India* (supra) case, the subsequent developments that took place and also the orders passed by the Hon''ble Supreme Court at the instance of the 1st Respondent. The learned senior counsel also referred to the report of Justice K.T. Thomas, wherein he is said to have indicted the 1st Respondent, the State Government for its failure to respond to his letter dated 22.8.2009 and also a direction to take action against the 1st Respondent. The learned senior counsel submitted that in spite of the subsequent direction of the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra), case in regard to the selection and appointment of Head of the Police Force in the State, the State Government has failed to comply with the directions, while on the other hand, the 1st Respondent State Government in violation of the specific directions of the Hon''ble Supreme Court, proceeded to appoint the 8th Respondent, who was not even in the zone of consideration for being appointed to the post of Director General of Police/Head of the State.

13. The learned senior counsel by making a reference to the G.O. passed by the State Government in G.O. Ms. No. 639 contended that the same does not deal with the post of Director General of Police as Head of State Police and therefore the State Government cannot be heard to state that it had complied with the directions of the Hon''ble Supreme Court. The learned senior counsel also brought to our notice a Bill introduced by the State Government known as Tamil Nadu Police Bill, 2008, which according to the learned senior counsel was in tune with the directions of the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case. According to the learned senior counsel, on 7.4.2010 at the time when this Court dealt with the Miscellaneous Petition for stay, it was claimed on behalf of the State that the 8th Respondent was only transferred and posted as Director General of Police and that the present stand of the 1st and 2nd Respondents that the 8th Respondent was duly appointed to the post of Director General of Police/Head of Police by way of selection cannot be true. He further contended that when the 5th Respondent had only gone on leave and the 8th Respondent was transferred and posted in that leave vacancy and when the 5th Respondent rejoined duty on 30.4.2010, i.e., on the last date of his service, the claim of the 1st Respondent that the 8th Respondent was appointed on a regular basis in the post of Director General of Police cannot be true. The learned senior counsel further contended that there could not have been a selection of 8th Respondent on 8.1.2010, inasmuch as on that date, there was no regular vacancy in the post of Director General of Police/Head of Police with the apex scale of pay and that admittedly, there was no selection made on or after the date of retirement of the 5th Respondent, namely 30.4.2010. It was also pointed out that since the 5th Respondent was on leave in the post of Director General of Police/Head of Police, he could not have rejoined on 30.4.2010 as Director General of Police (Training). According to the learned senior counsel, the statement of the Special Government Pleader on 7.4.2010 before this Court at the time when orders were passed in the Miscellaneous Petition that the 8th

Respondent was only transferred and posted as Director General of Police was not a correct statement. It was contended that since the direction of the Hon''ble Supreme Court in Prakash Singh v. Union of India (supra) case was not followed and since the application for modification as well as review was also dismissed by the Supreme Court, the only manner in which the post of Director General of Police/Head of Police could have been filled up was only by following the direction contained in para 32(ii)(i) of Prakash Singh v. Union of India (supra) case and the appointment of the 8th Respondent cannot be accepted as one made in compliance of the orders of the Hon''ble Supreme Court. The learned senior counsel therefore contended that the so-called appointment of the 8th Respondent in the post of Director General of Police/Head of Police cannot be allowed to stand and the same is liable to be set aside.

14. On behalf of the 7th Respondent, a counter affidavit and reply to the supplementary affidavit of the 2nd Respondent was filed. According to the 7th Respondent, he became the Additional Director General of Police in Tamil Nadu in September 2001, that he was promoted as Director General of Police (Training) in Tamil Nadu on 9.9.2008 and that he went on deputation as Director of Sardar Vallabai Patel National Police Academy, Hyderabad in November 2008, which post was temporarily downgraded from the level of Director General of Police to the level of Additional Director General of Police on deputation basis for a period upto 30.9.2012 or until further orders. According to him, when he was sent on deputation, the officers of his batch (1975) were only empanelled as Additional Director General of Police in the Central service and that was the reason why the post of Director of Sardar Vallabai Patel National Police Academy, Hyderabad was downgraded to the post of Additional Director General of Police to facilitate him to take charge as Director of that Institution. However, he would contend that subsequently, the Government by memo dated 21.5.2009 empanelled him as Director General of Police in the Government of India and from then onwards he is holding the post of Director General of Police even in Central Service. It is stated that thereafter the post of Director of National Police Academy, Hyderabad has also been upgraded to the original level of Director General of Police. He would further point out that he was in the level of Director General of Police in the State by 9.9.2008 itself and that his joining as Director of National Police Academy, Hyderabad by downgrading the post to the level of Additional Director General of Police in Central service did not have any effect or affect his status as Director General of Police in this State. He would further contend that he was one of the senior officers in the level of Director General of Police and was entitled to be considered in the matter of selection to the post of head of the Police in the State of Tamil Nadu, namely Director General of Police (Law and Order). He also expressed his categorical stand that he never stated that he was unwilling to serve in the State and the averment to the contrary was not true. According to him, if a selection had been made and he were to take charge of the post, the Central Government would revert him back from the central deputation to the State. He would also quote such an instance in the case of Director General of Police of

Tamil Nadu, who was recalled from the Central Government and posted in the year 2001. He would attribute mala fides on the part of the 2nd Respondent in having questioned the legality of his position to be considered for promotion to the post of Director General of Police/Head of Police. He would also point out that his pay was never affected even while downgrading the post to suit the Central service to the level of Additional Director General of Police. Lastly, he would contend that he was not aware whether he was considered for the post of Director General of Police and Head of Police force in the State and if it had not been done, that was in violation of the directions of the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case and the same cannot be sustained.

15. The 8th Respondent filed a counter affidavit dated 14.8.2010, a memo dated 27.8.2010 and an additional counter affidavit on 23.8.2010. While denying the averments of the Petitioner filed in support of the Writ Petition, 8th Respondent would contend that she is adopting the counter affidavit of the 2nd Respondent, that she was appointed as Director General of Police in the State of Tamil Nadu in accordance with law and that there were no infirmities in the said appointment. The 8th Respondent has specifically denied the allegations of the Petitioner that she started press briefing from 9.1.2010 onwards even before her appointment as Director General of Police on 13.1.2010. By referring to reports published in various Newspapers, the 8th Respondent contended that she gave press briefing only after assuming charge as Director General of Police in the Afternoon of 13.1.2010.

16. On behalf of the 1st and 2nd Respondents, the learned Advocate General Mr. P.S. Raman addressed arguments. At the outset, the learned Advocate General submitted that paragraph 15 in the Additional Reply affidavit dated 30.8.2010 can be taken as deleted. The learned Advocate General contended that even as per the counter affidavit of the 4th Respondent Union Public Service Commission, they have expressed their inability to comply with the directions of the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case and that they have filed an Interlocutory Application before the Hon''ble Supreme Court for finalisation of modalities to be followed for the empanelment for the post of Director General of Police and in the circumstances the State Government in compliance of the orders of the Hon''ble Supreme Court formulated a procedure and issued the same by way of a Government Order in G.O. Ms. No. 639 dated 26.4.2007.

17. According to the learned Advocate General, since the 7th Respondent opted for a Central Government post in December 2008, he had gone out of the zone of consideration in the process of selection for the post of Director General of Police. He would further contend that the 7th Respondent while opting to go on deputation, he knew fully well about the said position and that he also as a matter of fact undertook to serve in the deputed post for a minimum period of three years. According to the learned Advocate General, since the vacancy of

Director General of Police as Head of State Police had to be filled up expeditiously, there was no scope for considering his candidature.

18. The learned Advocate General placed before the Court the proceedings relating to the selection made for the post of Director General of Police, containing 7 sheets of paper and contended that the same was in compliance of the directions of the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case and except that the Union Public Service Commission was not involved, in other respects, it fully satisfied the directions of the Hon''ble Supreme Court.

19. According to the learned Advocate General, the procedure which was followed by the State Government has been set out in paragraph 5(a) of G.O. Ms. No. 639 dated 26.4.2007. Insofar as the post of Director General of Police (Law and Order) as Head of the State Police, that the proceedings placed before this Court would reveal that such a procedure has been scrupulously followed in the matter of selection of the 8th Respondent as Director General of Police and therefore no interference is called for. He would contend that the procedure prescribed in G.O. Ms. No. 639 is not inconsistent with the directions of the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case and such a prescription by way of an executive order is valid in law as held by the Supreme Court in *Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others*,

20. By referring to the directions contained in the *Prakash Singh v. Union of India* (supra) case, the learned Advocate General submitted that the first part of the direction, namely empanelment to be made by the UPSC was impossible of compliance, since UPSC was not inclined to carry out the said exercise. According to him, the 7th Respondent having not chosen to challenge the selection of the 8th Respondent cannot be permitted to have any grievance at any point of time.

21. The learned Advocate General would further contend that the post of Director General of Police as Head of Police in the State being a sensitive post, without in any manner affecting the directions contained in the *Prakash Singh v. Union of India* (supra) case, the head of the State Government should be given the fullest liberty to make the selection. He would rely on the decision of the Hon''ble Supreme Court in *State of West Bengal and Others Vs. Manas Kumar Chakrabarti and Others*, The learned Advocate General however fairly stated that though the 8th Respondent, who was promoted to the post of Director General of Police as Head of Police was not granted apex scale of pay because of the pendency of the writ petition, and that the 5th Respondent was drawing the apex scale of pay till 30.4.2010. The learned Advocate General also contended that since the process of selection for the post of Director General of Police was fairly made, any allegation of mala fides cannot stand. He would contend that the reliance placed upon by the Petitioner on the Bombay High Court judgment was a total misreading of the said judgment, inasmuch as that was a case where political mala fides were alleged and unlike the State of Tamil Nadu, where G.O. Ms. No.

639 was issued in pursuance of the Supreme Court judgment in Prakash Singh v. Union of India (supra) case, there was no such procedure laid down or followed by the State of Maharashtra.

22. The learned Advocate General also contended that no contention relating to the contents of the Note file can be entertained in the absence of any pleadings and that in regard to various credentials, all the candidates, who were considered in the course of selection will always have some grievance or other and that what is to be examined is as to whether the process of selection was made in a fair manner. The learned Advocate General would also contend that in any event non consideration of the 7th Respondent's candidature cannot be taken as a ground to challenge the appointment of the 8th Respondent at the instance of the Petitioner inasmuch as the 7th Respondent chose not to challenge the selection either before the Central Administrative Tribunal or in this Court.

23. Mr. Sridhar, learned Standing counsel for the 4th Respondent in his submissions contended that by virtue of Article 320 of the Constitution, wherein the functions of the Union Public Service Commission have been set out, the 4th Respondent has to follow well laid down procedure and for that reason the 4th Respondent has filed an Interlocutory Application before the Hon'ble Supreme Court seeking for the modalities to be followed while carrying out its directions in Prakash Singh v. Union of India (supra) case. He, however, stated that the State Government has not sent any names of the available officers along with their service particulars and therefore the 4th Respondent was not in a position to implement the order of the Hon'ble Supreme Court in the matter of appointment to the post of Director General of Police in this State. On behalf of the 4th Respondent, the learned Standing counsel stated that since they have filed the applications before the Hon'ble Supreme Court, it can only act based on any orders that may be passed in that application.

24. Having heard the learned Counsel for the respective parties, the affidavits filed in support of the writ petition, the counter affidavit of the second Respondent, reply, rejoinder, Sur-rejoinder, additional reply, supplementary affidavit, counter of the 7th and 8th Respondent as well as the written statement of the 4th Respondent Union Public Service Commission and having perused the various materials placed before the Court, at the outset, we want to make a detailed reference to the decision of the Hon'ble Supreme Court in Prakash Singh v. Union of India (supra). We say so since we find in the said judgment specific and pointed reference to various salient features which weighed with the Hon'ble Supreme Court before issuing specific directions to the Union as well as the State Governments for the appointment of the police officers at different levels. The following passages in the said judgment can be usefully referred to:

1.the Government of India, on 15.11.1977, appointed a National Police Commission (hereinafter referred to as the Commission). The Commission was appointed for fresh examination of the role and performance of the police both as a law enforcing agency and as an institution to protect the rights of the citizens

enshrined in the Constitution.

2..... The Commission was required to recommend measures and institutional arrangements to prevent misuse of powers by the police, by administrative or executive instructions, political or other pressures or oral orders of any type, which are contrary to law, for the quick and impartial inquiry of public complaints made against the police about any misuse of police powers.

... ..

5..... The report, inter alia, noticed the phenomenon of frequent and indiscriminate transfers ordered on political considerations as also other unhealthy influences and pressures brought to bear on police and, inter alia, recommended for the Chief of Police in a State, statutory tenure of office by including it in a specific provision in the Police Act itself and also recommended the preparation of a panel of IPS officers for posting as Chiefs of Police in the States....."

... ..

7..... This petition under Article 32 of the Constitution of India was filed about 10 years back, inter alia, praying for issue of directions to the Government of India to frame a new Police Act on the lines of the model Act drafted by the Commission in order to ensure that the police is made accountable essentially and primarily to the law of the land and the people.

... ..

11..... Since the misuse and abuse of police has reduced it to the status of a mere tool in the hands of unscrupulous masters and in the process, it has caused serious violations of the rights of the people, it is contended that there is immediate need to redefine the scope and functions of police, and provide for its accountability to the law of the land,..... The petition refers to a research paper Political and Administrative Manipulation of the Police published in 1979 by the Bureau of Police Research and Development, warning that excessive control of the political executive and its principal advisers over the police has the inherent danger of making the police a tool for subverting the process of law, promoting the growth of authoritarianism, and shaking the very foundations of democracy.

12. The commitment, devotion and accountability of the police has to be only to the rule of law..... Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the rule of law becomes a casualty, the guilty police officers are brought to book and appropriate action taken without any delay.

... ..

14..... None of the State Governments/Union Territories urged that any of the suggestions put forth by the Petitioners and the Solicitor General of India may

not be accepted.

... ..

19..... The Union Home Minister expressed the view that rising above narrow and partisan considerations, it is of great national importance to insulate the police from the growing tendency of partisan or political interference in the discharge of its lawful functions of prevention and control of crime including investigation of cases and maintenance of public order.

... ..

26.and (v) total uncertainty as to when police reforms would be introduced, we think that there cannot be any further wait, and the stage has come for issuing of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations..... Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions....."

... ..

29..... It is not possible or proper to leave this matter only with an expression of this hope and to await developments further. It is essential to lay down guidelines to be operative till the new legislation is enacted by the State Governments.

30. Article 32 read with Article 142 of the Constitution empowers this Court to issue such directions, as may be necessary for doing complete justice in any cause or matter. All authorities are mandated by Article 144 to act in aid of the orders passed by this Court. The decision in Vineet Narain case notes various decisions of this Court where guidelines and directions to be observed were issued in the absence of legislation and implemented till the legislatures pass appropriate legislation.

31. 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:

(1)

(2) Selection and minimum tenure of DGP: 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.

... ..

The aforesaid directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31.12.2006 so that the bodies aforesaid become 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 3.1.2007."

... ..

34. Further suggestion regarding monitoring of the aforesaid directions that have been issued either by the National Human Rights Commission or the Police Bureau would be considered on filing of compliance affidavits whereupon the matter shall be listed before the Court."

(Emphasis added)

25. The above decision of the Hon''ble Supreme Court while tracing back the long standing necessity to bring about radical transformation in the institution of police administration in the Country, in particular, the State police and after taking note of the available data and the manner of reformation that could be brought about, felt the imminent need to issue the necessary directions to the Central as well as the State Governments. In fact in paragraph 26, which has been extracted above, the Hon''ble Supreme Court has listed out such necessity in lucid terms. Further before issuing directions contained in paragraph 31, in paragraph 30, the Hon''ble Supreme Court highlighted the power vested in it by virtue of Article 32 read with Article 142 of the Constitution to issue such directions to do complete justice. While doing so, the Hon''ble Supreme Court also reminded all authorities as to the mandate provided under Article 144 of the Constitution to act in aid of the orders passed by the Hon''ble Supreme Court. The Hon''ble Supreme Court also made it clear that in the absence of any legislation and till the Legislature pass appropriate legislation, the guidelines and directions issued by the Hon''ble Supreme Court has to be carried out and observed in letter and spirit.

26. Keeping the above perception of the decision of the Hon''ble Supreme Court in mind, when we analyse the specific directions relating to the selection and appointment of the Director General of Police with a minimum guaranteed tenure as directed in paragraph 31(2) of the judgment the following points emerge:

(a) It will have to be kept in mind that the selection can be made by the State Government only from amongst the three senior most officers of the Department

whose names have been empanelled for promotion to that rank by the Union Public Services Commission.

(b) Such empanelment to be made by the Union Public Service Commission should be on the basis of their length of service, very good record and range of experience for heading the police force.

(c) Once such a person is selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation.

(d) Even such a person appointed can be relieved of his responsibilities by the State Government in consultation with the State Security Commission provided it can be resorted to;

(i) only if any action is taken against him under the All India Services (Discipline and Appeal) Rules; or

(ii) following his conviction in a Court of Law in a criminal offence or in a corruption case; or

(iii) if he is otherwise incapacitated from discharging his duties.

All the above prescription contained in paragraph 31(2) of the judgment, points (a), (b) and (c) are relevant in regard to the selection and promotion of a person to the post of Director General of Police as Head of the State Police.

27. In our considered opinion, there is no option left out for any of the State Governments to leave out any one of the above prescriptions in selecting a person for being promoted to the post of Director General of Police as Head of the State Police.

28. In the foremost, the above directions having been issued by the Hon''ble Supreme Court in exercise of its powers under Article 142 of the Constitution, it is imperative that such directions are scrupulously observed by the authorities who have been directed to carryout such directions. That having been a Constitutional mandate, if violation of any of the above directions is brought to the notice of this Court, it will have to be held that there will be no option left out for this Court but to examine such alleged violation and if such violation exist, set aside any such invalid exercise made in order to ensure that the directions of the Hon''ble Supreme Court are strictly carried out.

29. It is needless to state that the directions of the Hon''ble Supreme Court issued under Article 142 of the Constitution is the law of the land. Therefore, such directions are bound to be carried out when it comes to the question of selecting a person for promotion to the post of Director General of Police as Head of the State Police.

30. After the above judgment was delivered on 22.9.2006, by the Hon''ble Supreme Court, the first Respondent State Government filed an application on 29.12.2006, praying for clarification/modification and vary the directions. While

seeking for such clarification/modification on behalf of the State, the Chief Secretary filed an affidavit wherein it was submitted that the Government needs to have absolute freedom in selecting the most suitable officer for the post of Director General of Police and bringing the Union Public Service Commission into the empanelment process of officers of the State Cadre will neither be practical nor necessary. Further, it was stated in the said affidavit that the State Government is fully committed to introduce reforms in the Police Administration in conformity with the principles enunciated by the Hon"ble Supreme Court.

31. The said application was rejected by the Hon"ble Supreme Court by its order dated 11.1.2007. The Hon"ble Supreme Court in the said order held as under:

. It is pertinent to note that notice of the petition was given to all the State Governments/Union Territories. When the arguments were heard, none of the State Governments/Union Territories made any submissions or suggestion that the suggestions given in the reports either by the National Human Rights Commission or in Rebeiro Committee or Sorabjee Committee or in the Police Commission be not accepted.

After perusing various reports, directions were issued to the Central Government, State Governments and Union Territories for compliance thereof on or before 31.12.2006 so that the bodies directed to be constituted become operational on the on-set of the new year. The top bureaucrats in the Central Government/State Governments/Union Territories were directed to file affidavits of compliance by 3.1.2007 Some of the State Governments have complied with some directions but none, except State of Sikkim, has complied with all the directions.

(Emphasis added)

... ..

Though directions ought to have been complied within the time frame already granted but now prayer has been made for grant of further time. At the outset, we wish to make it clear that by indirect method or in the garb of filing affidavits or I.A. No. 16 filed by the State of Jharkhand and other applications filed by other States seeking modification, we cannot permit review of our judgment and order dated 22.9.2006.... In this view, we would only consider the prayer for grant of further time to comply with such of the directions for which steps may have to be taken by the Central Government/State Governments/Union Territories.

(Emphasis added)

Direction No. 2 relates to the selection and minimum tenure of the Director General of Police. Insofar as these three directions are concerned, they are self-executory and no question of grant of further time, therefore, arises. Whatever steps have to be taken should be taken forthwith and, in any case, not later than four weeks from today.

(underlining is ours)

.. In view of the aforesaid orders, the time is, accordingly, allowed and insofar as other reliefs are concerned, the applications are dismissed since we have already noted that review of a judgment cannot be ordered in the grab of modification of the order. We direct the same officers, as mentioned in paragraph (31) of the judgment dated 22.9.2006 to file the requisite affidavits of compliance by 10.4.2007. (underlining is ours)

32. Thereafter, on 5.4.2007, the first Respondent State Government filed an application for review once again. The Chief Secretary filed an affidavit and submission was made to the effect that bringing the Union Public Service Commission into empanelment process of Officers of the State Cadre will neither be practical nor necessary particularly as Police is a State subject falling under Entry 2 of List II of the VII Schedule of the Constitution and that it will seriously prejudice the autonomy of the State under the scheme of the Constitution, therefore it needs clarification. The State Government also prayed for extension of time by six more months. By an order dated 23.8.2007, the Hon"ble Supreme Court dismissed the first Respondent's application for review in Review Petition (Civil)441 of 2007.

33. In the meantime, the State Government passed a G.O. in G.O. Ms. No. 639, dated 26.4.2007. By referring to the orders of the Hon"ble Supreme Court dated 22.9.2006 and 11.1.2007, in paragraph 5(a) of the said G.O. it has been stated as under:

5. The following system shall be followed for transfers, promotions and postings of Additional Director General of Police and Director General of Police:

(a) The proposal for the posting of the Director General of Police, Law and Order, Tamil Nadu, shall be initiated by the Secretary to Government, Home Department and routed through the Chief Secretary, Government of Tamil Nadu, and orders of the Hon"ble Chief Minister and His Excellency the Governor of Tamil Nadu shall be obtained.

34. Another G.O. in G.O. Ms. No. 813 came to be passed on 6.6.2007, wherein once again after referring to the very same orders of the Hon"ble Supreme Court, it was stated as under:

"The Director General of Police shall have a minimum tenure of two years or till the date of his superannuation whichever is earlier."

35. Hear and now, it will have to be stated that the said prescription found in the said G.O. is contrary to what the Hon"ble Supreme Court has directed in para 31(2) of Prakash Singh v. Union of India (supra) case, wherein the Hon"ble Supreme Court held that the Director General of Police should have a minimum tenure of two years irrespective of the date of superannuation.

36. In fact, before issuance of the said G.O. dated 6.6.2007, while filing an

affidavit in the Hon''ble Supreme Court in the affidavit dated 21.4.2006, the Chief Secretary on behalf of the first Respondent State specifically stated that suitable orders incorporating the principles laid down by the Hon''ble Supreme Court regarding tenure of Director General of Police would be issued.

37. The first Respondent State also prepared a Bill called The Tamil Nadu Police Bill, 2008. At page 7 of the said Bill, in paragraph 31(2), it was provided that the Director General of Police appointed under Sub-section (1) shall hold the post for a minimum period of two years, or till the date of his superannuation whichever is earlier.

38. In fact, the said prescription is also not in conformity with the directions of the Hon''ble Supreme Court contained in paragraph 31(2).

39. The Statement of Objects and Reasons for the introduction of the said Bill however inter alia referred to the judgment in Prakash Singh v. Union of India (supra) case and the direction of the Hon''ble Supreme Court for enacting the new Police Act.

40. The Government of India in G.S.R. No. 692(E), issued the Indian Police Service (Pay) Amendment, Rules, 2008, which was re-published by the first Respondent State by G.O. Ms. No. 1403, dated 16.10.2008. As per Rule 3(1)(D) (iii), it is provided as under:

Apex Scale: ` 80,000 (fixed), Grade Pay: nil (by upgradation of one existing post of Director General of Police as head of police force in the each State cadre); (with effect from the date of issue of notification of the Indian Police Service (Pay) Amendment Rules, 2008);"

Note 2 under Rule 3 specifically provided as under:

"The post of Director General of Police in the apex scale shall be filled by selection from amongst the officers holding the post of Director General of Police in the State cadre in the HAG+ scale of Rs. 75,500-(annual increment @3%-80000).

41. After the introduction of the above said rule, the then Director General of Police pointed out that one of the post of DGP in the State cadre should be placed in the Apex scale of Rs. 80,000 (fixed) and designated as Head of Police Force and that such post in the apex scale should be filled up by selection from amongst the officers holding the post of DGP in the HAG + scale of Rs. 75,500/- (annual increment @3%)-80,000/-.

42. A proposal was circulated at the behest of the Special Secretary, Principal Secretary and the Chief Secretary to the Hon''ble Chief Minister for orders as to notifying the then DGP who was acting as such even prior to the date of the Notification dated 27.9.2008, and whether he can be notified in the apex scale of Rs. 80,000/- w.e.f 27.9.2008. After the assent of the Hon''ble Chief Minister, proceedings were issued in G.O.D. No. 99, dated 30.1.2009, directing that the

name of Thiru. K.P. Jain, IPS, Director General of Police, Tamil Nadu should be placed in the apex scale of Rs. 80,000/-w.e.f 27.9.2008, the date of Notification of the Indian Police Service (Pay) Amendment Rules, 2008.

43. Be that as it may, the 5th Respondent herein viz., the then Director General of Police applied for sanction of 102 days of eligible leave from 18.1.2010 to 29.4.2010 by prefixing holidays from 14.1.2010 to 17.1.2010 to the earned leave. He wanted to proceed on leave from the AN of 13.1.2010.

44. By G.O. Rt. No. 38, dated 8.1.2010, the 5th Respondent was granted earned leave for 102 days from 18.1.2010 to 29.4.2010 with permission to prefix the holidays on 14th, 15th, 16th and 17.1.2010. It was also certified that under FR 26(b)(b) the officer would have continued to act as Director General of Police, Tamil Nadu, Chennai but for his proceeding on leave.

45. By Police Note No. SC/3/2010, dated 8.1.2010, the 8th Respondent was transferred and posted as Director General of Police. Tamil Nadu vice the 5th Respondent proceeding on leave. On 13.1.2010, the 5th Respondent was relieved and the 8th Respondent took charge as Director General of Police as Head of State Police.

46. The proceedings relating to the issuance of Police Note No. SC/3/2010, dated 8.1.2010, was placed before this Court containing eight sheets of paper with one blank sheet and those records were allowed to be perused by the counsel appearing for the parties. At page No. 3, an annexure called "Annexure-A" has been placed. On the 13th page, the proceedings containing the signatures of the Principal Secretary (Home), the Chief Secretary, the Hon"ble Chief Minister and His Excellency The Governor of Tamil Nadu is placed. In the said proceedings, after noting the desire of the then Director General of Police who was proceeding on leave for 102 days and that he was also holding additional charge as Chairman, Tamil Nadu Uniformed Services Recruitment Board, it was pointed out that being the Head of the Police Force in the State, it would not be advisable to keep the post vacant or in additional charge for such a long period and orders were therefore sought as to whether leave may be granted to him subject to eligibility of 102 days from 18.1.2010 to 29.4.2010, whether another officer may be posted as Director General of Police and if approved, a suitable officer may be selected from the list included as "Annexure-A" consisting of Officers at the rank of Director General of Police working in the State.

47. Apparently, such orders were sought for by the Principal Secretary (Home) and the Chief Secretary from the Hon"ble Chief Minister and who has recorded as under:

(Smt. Lathika Saran can be appointed as D.G.P.)

Sd/- / (08/01/2010),

Hon"ble Chief Minister.

below the said signature, the signature of His Excellency the Governor of Tamil Nadu has been affixed.

48. The other documents contained therein were the letter dated 7.1.2010 of the 5th Respondent praying for sanction of leave, Police Note and Copy of Police Note No. SC/3/2010, dated 8.1.2010, the very same order issued to the 5th Respondent and the 8th Respondent and two TX Report.

49. A perusal of the above records disclose that the directions of the Hon''ble Supreme Court contained in paragraph 31(2) were not followed in the matter of selection of the 8th Respondent as Director General of Police as Head of the State Police. Further, there is nothing in the file which would indicate the consideration of the relative merits and demerits of the officers concerned except a typed note prepared by some unknown official. The file also did not disclose any proper selection process that had taken place. Further, there is no reason assigned anywhere in the file about the choice of selection for the preference over others. Even the service records of the eligible officers have not been placed while selecting the 8th Respondent.

50. Keeping the above material documents in mind, when we examine the stand of the first Respondent as put forth in the counter, rejoinder, additional reply and the supplementary affidavit and also from what was submitted by the learned Advocate General on behalf of the first and second Respondent the stand was that short of the empanelment to be made by the Union Public Service Commission, other directions of the Hon''ble Supreme Court contained in paragraph 31(2) of the Prakash Singh v. Union of India (supra) case was complied with.

51. Having extensively noted the judgment of the Hon''ble Supreme Court in Prakash Singh v. Union of India (supra) case and the subsequent orders, we are constrained to state that this Court is not in a position to accept the stand of the first and second Respondent in stating that except empanelment by Union Public Service Commission what has been directed by the Hon''ble Supreme Court in paragraph 31(2) was followed in making the selection and promotion of the 8th Respondent as Director General of Police/Head of State Police.

52. The submissions of the learned Advocate General that the Union Public Service Commission itself has moved the Hon''ble Supreme Court seeking for the modalities to be followed to carry out the directions contained in paragraph 31(2) and therefore, it was not in a position to seek for any such empanelment, in our considered opinion, cannot be a valid or acceptable reason for violating the directions of the Hon''ble Supreme Court made in Prakash Singh v. Union of India (supra) case.

53. In fact, when we posed a question to the learned standing counsel for the Union Public Service Commission as to whether there would have been any difficulty for the Union Public Service Commission to prepare a panel of three senior most Director General of Police to enable the first Respondent State

Government to make the selection from amongst them, the learned standing counsel fairly stated that if the first Respondent State Government had furnished the service dockets of eligible officers in the cadre of Director General of Police, the Union Public Services Commission would not have hesitated to prepare a panel and forwarded it to the first Respondent State Government for making the selection.

54. It is also relevant to state that though it is claimed that the first Respondent State has never approached the 4th Respondent Union Public Services Commission for preparing the panel, it was claimed that a letter was addressed to the Central Government seeking for guidance and that no reply was received from the Central Government. When as per the directions of the Hon''ble Supreme Court in paragraph 31(2), the empanlement was to be made by the Union Public Services Commission, we are at a loss to understand as to why the first Respondent State should approach the Central Government or it should fail in its action in not approaching the 4th Respondent Union Public Service Commission with the service particulars of the available eligible Director Generals of Police for being considered for promotion. It can only be stated that there was a total inaction on the part of the first Respondent State to carryout the directions of the Hon''ble Supreme Court in letter and spirit. On the contrary, in spite of the Hon''ble Supreme Court having directed all the State Governments including the first Respondent to comply with its directions before 31.12.2006, in its judgment dated 22.9.2006, and thereafter, extension of time was granted in its order dated 11.1.2007 viz. not later than four weeks from the date of the said order, the directions were not duly carried out. In fact in the order dated 11.1.2007, while making a specific reference to the directions contained in paragraph 31(2), the Hon''ble Supreme Court has made it clear that the said directions are self-executory and therefore the question of grant of further time did not arise. Therefore, in our considered opinion, the stand of the first Respondent State that G.O. Ms. No. 639, dated 26.4.2007, was in substantial compliance of the directions of the Hon''ble Supreme Court has to be stated only to be rejected.

55. When we perused G.O. Ms. No. 639, dated 26.4.2007, in paragraph 5(a), it is provided that the proposal for posting of the Director General of Police (Law and Order), Tamil Nadu, should be initiated by the Secretary to Government, Home Department and routed through the Chief Secretary to the Government of Tamil Nadu and the orders of the Hon''ble Chief Minister and His Excellency The Governor of Tamil Nadu should be obtained.

56. We are not in a position to read such a prescription contained in para 5(a) of the said G.O. to be taken as either compliance of the directions of the Hon''ble Supreme Court or even substantial compliance of the directions in *Prakash Singh v. Union of India* (supra) case. At the risk of repetition, we have to point out that the Hon''ble Supreme Court directed that when a panel should be prepared by the Union Public Service Commission consisting of three senior most officers

from amongst the eligible Director Generals of Police, such preparation of panel by the Union Public Service Commission has to be made based on the length of service, very good record, range of experience for heading the police force and only from amongst those three senior most officers the option was left to the State Government to make the selection. None of the prescriptions contained in paragraph 5(a) of G.O. Ms. No. 639, dated 26.4.2007, can even come near to any of the directions contained in paragraph 31(2) in *Prakash Singh v. Union of India* (supra) case, but on the contrary are against them.

57. The learned Advocate General by relying upon the Constitutional Bench decision of the Hon''ble Supreme Court in *Lalit Mohan v. Union of India* (supra) contended that when the directions contained in G.O. Ms. No. 639, dated 26.4.2007, are not inconsistent with the order of the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case and in the absence of any statutory rules or regulations, there is nothing wrong on the part of the first Respondent State in issuing the said G.O. and follow the prescription contained therein for appointing a person to the post of Director General of Police as Head of State Police. In paragraph 9 of the above referred to decision, the Hon''ble Supreme Court has held that when there are no statutory rules regulating the selection to a post, there is no bar to the administration for giving instructions regarding promotion to the higher grade, as long as such instructions are not inconsistent with any rule on the subject. The Hon''ble Supreme Court further held that it was competent for the Government to issue administrative instructions as long as those instructions are not inconsistent with the rules already framed. The Hon''ble Supreme Court made a stress on the point that in the absence of any statutory rule, there will be no bar for issuing any administrative instructions by the State.

58. Such a proposition can have no application to the case on hand, where the first Respondent State is bound by the directions of the Hon''ble Supreme Court in *Prakash Singh v.*

Union of India (supra) case. As far as the appointment to the post of Director General of Police as Head of State Police is concerned, the directions contained in paragraph 31(2) in *Prakash Singh v. Union of India* (supra) case is the law of the land. It will be relevant to note the decision of the Hon''ble Supreme Court in *N. Kannadasan v. Ajoy Kosh and Ors.* (2009) 7 SCC 1 : (2009) 4 MLJ 343 at paragraph 60 the Hon''ble Supreme Court has held as under at p. 359 of MLJ:

60. In our constitutional scheme, the judge-made law becomes a part of the Constitution.....

59. Therefore, it cannot lie in the mouth of the first Respondent to state that ignoring such a law laid down by the Hon''ble Supreme Court, it is open to it to issue any other administrative directions and contend that it had every liberty to follow such administrative instructions in derogation of the directions of the Hon''ble Supreme Court.

60. In fact, whatever hurdles or other pitfalls which the first Respondent State was anticipating in implementing the directions of the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case, were placed before the Hon''ble Supreme Court more than once and the Hon''ble Supreme Court rejected the stand of the first Respondent by its subsequent orders dated 11.1.2007 and 23.8.2007. Therefore, the reliance placed upon the decision in *Lalit Mohan v. Union of India* (supra) is of no assistance to the first Respondent State.

61. The learned Advocate General then relied upon the decision of the Hon''ble Supreme Court in *State of West Bengal v. Manas Kumar Chakraborty and Ors.* (supra). By referring to paragraph 17 of the said decision, the learned Advocate General contended that the post of Director General of Police being a post of very sensitive nature can only be filled by an incumbent in whom the State Government has the highest confidence and that it must play a predominant role in the selection of any incumbent to such a post.

62. When we consider the said submission of the learned Advocate General, at the risk of repetition, we are bound to state that in the foremost, the State Government has to only follow the directions of the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case as contained in paragraph 31(2) therein. The said direction pertains to the manner in which the selection and appointment of an officer to the post of Director General of Police as Head of the State Police has to be made. The said decision is subsequent in point of time and in the said judgment the procedure to be followed in making the appointment has been set out. Therefore, the State Government has no other option but to scrupulously follow the directions in making the appointment to the post of Director General of Police as Head of State Police, with apex scale of pay. In fact, the directions have been issued by the Hon''ble Apex Court only by taking into consideration of all the sensitivity of the post.

63. As far as the decision in *State of West Bengal v. Manas Kumar Chakraborty and Ors.* (supra) is concerned, that was a case where the appointment made to the post of DG & IGP as Head of the State Police was under challenge before the State Tribunal as well as in the High Court. The challenge was with reference to the relative merits of the contestants. That apart the distinctive feature in the case in *State of West Bengal v. Manas Kumar Chakraborty and Ors.* (supra) are that in that case from among the DG Ps when appointment to the post of DG & IGP was to be made, question arose as to whether a person not holding a substantive rank of DGP can be posted as DG & IGP. While dealing with the said issue, the Hon''ble Supreme Court has held that the Supreme Court never laid down as a matter of law that the officer not in the cadre of DGP is ineligible to be posted as DG & IGP. After clarifying the said position in the facts relating to the said case, the Hon''ble Supreme Court went on to consider the question as to whether the post of DG & IGP was a promotional post as held by the High Court. The Hon''ble Supreme Court also noted that there was neither any rule nor regulations that eligibility to hold the post of DG & IGP could be related only to

the officers already in the cadre of DG & IGP. Keeping the above factors in mind and while examining the correctness of the view expressed by the Central Administrative Tribunal and the High Court, the Hon''ble Supreme Court expressed the view that the post of DG & IGP being a post of very sensitive in nature it can only be filled by an incumbent in whom the State Government must necessarily have the highest confidence and it must play a predominant role in the selection of an incumbent to such a post.

64. In the case on hand, as stated by us, by virtue of the law laid down by the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case, it is no longer open to any one, much less, the first Respondent State to contend that there is no rule relating to the appointment to the post of Director General of Police as Head of the State Police.

65. That apart, the Hon''ble Supreme Court has already repelled any possible contention of any State Government in claiming that it should have a predominant right to make the selection to the post of Director General of Police as Head of State Police. In paragraph No. 31(2) of its judgment in *Prakash Singh v. Union of India* (supra) case, the Hon''ble Supreme Court has also invested with the first Respondent State to make a selection from amongst the three senior most officers who are empaneled by the Union Public Service Commission for being appointed to the post of Director General of Police as Head of State Police. Therefore, only to that extent, the discretion has been left to be exercised by the first Respondent State and beyond that there is no scope for the State Government to claim any other right in the matter of selection to the post of Director General of Police as Head of State Police.

66. One other relevant factor to be noted is that while issuing directions in paragraph 31(2) the Hon''ble Supreme Court made it clear that the post of Director General of Police as Head of State Police will be carrying the highest scale of pay, which scale is higher than the scale of pay applicable to all other DG Ps. In fact, in the Indian Police Service (Pay) Amendment Rules, 2008, which has been notified by the first Respondent State in G.O. Ms. No. 1403, dated 16.10.2008, under Rule 3(1)(D)(iii) while fixing the apex scale of Rs. 80,000/- it is specifically stated that it is by way of upgradation of one existing post of Director General of Police as Head of Police Force in each State cadre.

67. Therefore, we are not in a position to accept the stand of the first Respondent State that the compliance with the prescriptions contained in G.O. Ms. No. 639, dated 26.4.2007, while appointing the 8th Respondent to the post of Director General of Police as Head of the State Police, the first Respondent has substantially complied with the directions of the Hon''ble Supreme Court. As pointed out by us earlier, the procedure prescribed in paragraph 5(a) of the said G.O. invest the whole authority in making the appointment to the post of Director General of Police as the Head of the State Police with the Hon''ble Chief Minister. Such a prescription is directly in conflict with what has been directed by the Hon''ble Supreme Court in paragraph 11 of its judgment, wherein, the

Hon"ble Supreme Court made a specific reference to the research paper published in 1979 by the Bureau of Police Research and Development, which specifically warned that excessive control of the political executive and its principal advisers over the police has the inherent danger of making the police a tool for subverting the process of law, promoting the growth of authoritarianism, and shaking the very foundations of democracy. After taking note of the above warning, ultimately directions were issued by the Hon"ble Supreme Court in paragraph 31(2) specifically directing the empanelment to be made by the Union Public Service Commission of three senior most officers of the Department for being considered for selection to the post of Director General of Police as Head of the State Police. Further, there is absolutely no consultative process that had been indicated in the above said Government Order for the selection to the post of Director General of Police (Law & Order). The authorities merely complied with the Government Order which does not prescribe any selection process providing for the evaluation on the merits of the officers concerned.

68. As compared to the above directions of the Hon"ble Supreme Court, when the prescription contained in paragraph 5(a) is considered, it will have to be stated that the same is in total violation of the said direction of the Hon"ble Supreme Court.

69. In fact, the learned Advocate General in his submissions stated that the Head of the State Government should be given the fullest liberty to make the selection for the post of Director General of Police on the footing that the said post is a substantive post. With all due respect to the learned Advocate General, it will have to be stated that such a contention would directly hit the very basic and the weighted reasons which weighed with the Hon"ble Supreme Court while issuing the directions in paragraph 31(2) of its judgment in *Prakash Singh v. Union of India* (supra) Case.

70. In this respect, it will also be appropriate for us to refer to certain contentions made on behalf of the Petitioner and the reply made by the learned Advocate General as regards Annexure "A" which contains the names of five officers who were said to have been considered while making the selection and appointment of the 8th Respondent by an order dated 8.1.2010. The learned senior counsel for the Petitioner referred to the note related to the Petitioner contained in Annexure-A and certain adverse remarks made therein based on certain indictments made by the Election Commission of India for eulogising the then Chief Minister on Women"s Day and his removal from the post by the Election Commission as well as certain other deficiencies in his services. The learned senior counsel for the Petitioner wanted to contend that even in the case of the 8th Respondent there was a serious indictment made by this Court in the *Chennai Corporation Election Case in All India Anna Dravida Munnetra Kazhagam v. State Election Commissioner*, rep. by D. Chandrasekaran, *State Election Commissioner* (2007) 2 MLJ 129 : 2007 (1) CTC 705 (DB). The learned senior counsel by making specific reference to such indictments found in paragraphs

164, 172, 173, 238 and 250 of the judgment contended that such serious deficiency in the service of the 8th Respondent does not seem to have even been noted while making the selection and appointment of the 8th Respondent for the post of Director General of Police as Head of State Police.

71. We are not inclined to delve deep into such contentions made on behalf of the Petitioner for more than one reason. In the first place, we find that at the very outset, the manner of selection itself which was stated to have been made as per G.O. Ms. No. 639, dated 26.4.2007, is not in consonance with the directions of the Hon'ble Supreme Court. There is therefore, in that view of the matter, no necessity for us to examine the contentions based on deficiency in the process of selection made by the first and second Respondents. In any event, in this respect, the contention of the learned Advocate General that in every selection the candidates will have some grievance or other and what is to be examined is as to whether the process of selection was made in a fair manner has some force. Therefore, in our considered view, the said contention made on behalf of the Petitioner on the merits of the candidates need not be dilated further for reaching our conclusion on this issue, more so keeping in view of the availability of the power of the judicial review.

72. One other contention made on behalf of the Petitioner was that the 8th Respondent, as per the seniority, would not have come within the zone of consideration, as she was far below in rank in the seniority. According to the Petitioner, since the senior most three officers were available which consists of the Petitioner, the 5th Respondent, the 6th Respondent and the 7th Respondent. The 8th Respondent could not have come within the zone of consideration.

73. Before advertng to the said contention, we wish to state that going by the directions of the Hon'ble Supreme Court as contained in paragraph 31(2) in Prakash Singh v. Union of India (supra) case when it is for the Union Public Service Commission to empanel the three senior most officers of the department on the basis of the length of service, very good record and length of experience for heading the police force, we feel that such an empanelment can be made by the Union Public Service Commission by considering the merits and demerits of such of those officers who could be considered for making such empanelment from amongst the Director Generals of Police.

74. In this context, it will be worthwhile to refer to the power of Judicial Review and the extent to which it can be exercised as stated by the Hon'ble Supreme Court in the decision in N. Kannadasan v. Ajoy Kosh and Ors. (supra). In paragraph 137, the Hon'ble Supreme Court has held as under at p. 377 of MLJ:

137. While exercising the power of judicial review in a case of this nature, the Court would not be concerned with the merits of the decision but with the decision-making process. If it is found that the decision-making process has not been adhered to, indisputably, judicial review would lie.

75. Therefore, we are not inclined to express any opinion as regards the said

contention in as much as we want to leave it to the Union Public Service Commission to decide as to who should be considered for the inclusion in the panel and how the panel should be prepared based on the service records of the officers eligible for consideration. Moreover, as per the Indian Police Service (Pay) Amendment Rules-2008, the empanelment can be from amongst those DG Ps in the cadre of HAG + scale of Rs. 75,500/- (and increment @ 3%)- Rs. 80,000.

76. Though it was claimed that the minimum tenure to be provided for the Director General of Police was complied with by the issuance of a G.O. in G.O. Ms. No. 813, dated 6.6.2007, as pointed out by us earlier, even the said G.O. is not in conformity with what has been directed by the Hon''ble Supreme Court relating to minimum tenure. In paragraph 31(2) in Prakash Singh v. Union of India (supra) case, the Hon''ble Supreme Court made it clear that the minimum tenure of at least two years irrespective of the date of superannuation should be maintained. Whereas, G.O. Ms. No. 813, dated 6.6.2007, is quite contrary to the directions of the Hon''ble Supreme Court. In the said G.O. it is provided that such minimum tenure of 2 years or till the date of superannuation whichever is earlier would prevail. Therefore, if the date of superannuation falls earlier to the minimum period of two years, such person selected and appointed as Director General of Police as Head of the State Police would be allowed to retire. The said stand of the first Respondent is therefore not in conformity with the directions of the Hon''ble Supreme Court.

77. Having noted the subsequent orders of the Hon''ble Supreme Court, wherein the Hon''ble Supreme Court made it extremely clear that by indirect method or in the garb of filing affidavit or other application by the State seeking for modification, the Hon''ble Supreme Court cannot permit review of its judgment and order dated 29.12.2006, we are constrained to state that the present action of the first Respondent State Government in having not followed the directions of the Hon''ble Supreme Court by itself would render its action in having passed the order dated 8.1.2010 as devoid of merits.

78. When we analyse the said order in a different angle, viz., as to whether there was any scope at all for the first Respondent State to resort to pass such an order on 8.1.2010, we find that on 7.1.2010, the 5th Respondent applied for 102 days of earned leave and such leave was granted on 8.1.2010. The proposals of appointing the 8th Respondent was apparently only in the leave vacancy. In fact in paragraph 3 of the G.O. Rt. No. 38, dated 8.1.2010, viz., the order granting leave to the 5th Respondent it has been certified that under Fundamental Rule 26(b)(b), the officer would have continued to act as Director General of Police, Tamil Nadu, Chennai but for his proceeding on leave. Therefore, it cannot be accepted that any substantive vacancy in the post of Director General of Police as Head of the State Police was available for being considered to be filled up as on that date. The leave granted to the 5th Respondent extended upto 29.4.2010. Only on 30.4.2010, after availing the leave sanctioned, the 5th Respondent was permitted to rejoin duty in the post of Director General of Police/Chairman, Tamil

Nadu Uniformed Services Recruitment Board, and was also permitted to retire on the same date.

79. One other relevant factor to be noted is that the 5th Respondent was granted the apex scale of pay by G.O.D. No. 99, dated 30.1.2009, which he continued to avail till the date of his retirement viz., 30.4.2010. Though, it was claimed that the 8th Respondent was appointed in the substantive post of Director General of Police as Head of the State Police, as early as on 8.1.2010, admittedly she was not granted the said apex scale of pay. The stand of the first Respondent State that the grant of such pay was kept in abeyance considering the pendency of this writ petition cannot be accepted, inasmuch as this writ petition came to be filed only on 7.4.2010. The Indian Police Service (Pay) Amendment Rules, 2008 which came to be re-published by the first Respondent State Government in G.O. Ms. No. 1403, dated 16.10.2008 and the Rule 3(1)(D)(iii) read along with Note 2 specifically stipulate that such scale is meant for Director General of Police as Head of the State Police and the 5th Respondent as the incumbent of the said post was granted the said apex scale taking note of the post held by him. It is therefore highly doubtful as to whether the present stand of the first Respondent State that the same was not granted to the 8th Respondent citing the pendency of the writ petition can be true. Hence, the above said contention of the first Respondent cannot be accepted.

80. If the stand of the first Respondent State that the 8th Respondent was appointed in the substantial post of Director General of Police as Head of the State police as early as on 8.1.2010, is true then there was no reason why the apex scale was withheld for her till 7.4.2010 and as to why the 5th Respondent who according to the first Respondent State ceased to hold the office of Director General of Police as Head of the State Police from 8.1.2010, was continued to be granted the very same apex scale which was exclusively meant for the post of Director General of Police as Head of State Police and he was allowed to retire only on 30.4.2010, in the said scale of pay i.e. apex scale of pay. Therefore, the said explanation offered on behalf of the first Respondent State also does not satisfactorily explained its action. If such a stand of the first Respondent State is to be accepted, then it would mean that as between 8.1.2010 and 30.4.2010, there were two Director Generals of Police at the level of Head of State Police (one on leave with apex scale of pay and the other one in service without apex scale of pay) and such a stand of the first Respondent will be contrary to Indian Police Service (Pay) Amendment Rules, 2008 and is highly incongruous.

81. As far as the 7th Respondent is concerned, it is not in dispute that he is in the State Cadre of Director General of Police and that he has gone only on deputation in the Government of India Service and was relieved from 1.12.2008. He also belong to 1975 batch like that of the Petitioner and both the Petitioner and the 7th Respondent promoted as Director General of Police on 10.9.2008, while the 8th Respondent was promoted to the said post only on 2.9.2009 and she belonged to 1976 batch.

82. According to the first Respondent State, while selecting the 8th Respondent, the Petitioner, the 6th Respondent and one Thiru R. Bholanath, I.P.S., were considered. It is also the specific stand of the first Respondent State that the 7th Respondent was not considered since he was on deputation. The said stand relating to the 7th Respondent was subsequently sought to be improved by stating that at the time of his deputation his status was downgraded from the post of Director General of Police to Additional Director General of Police in the Central Service and therefore his entitlement for consideration itself was doubtful. It was also stated that the 7th Respondent was not willing to serve in the State of Tamil Nadu since his deputation as Director of National Police Academy was to remain till he reach the age of superannuation. The said stand of the first Respondent was stated in so many terms in their rejoinder dated 23.8.2010, as well as the supplementary affidavit dated 2.9.2010.

83. The 7th Respondent filed his counter affidavit dated 31.8.2010 and reply to the supplementary affidavit dated 5.9.2010. The 7th Respondent in his counter affidavit claimed that he is one of the three senior most officers in the rank of Director General of Police in Tamil Nadu Cadre coming within the zone of consideration for selection as Director General of Police as Head of the State Police as per the judgment of the Hon"ble Supreme Court in Prakash Singh v. Union of India (supra) case.

84. In reply to the supplementary affidavit, he pointed out that when he went on deputation in November, 2008, and the officers in his batch in the Central Service were only empanelled as Additional Director General of Police and since the post of Director, National Police Academy is in the level of Director General of Police in the Centre, he was downgraded to the rank of Additional Director General of Police to facilitate his assumption of office as Director of National Police Academy. He also pointed out that subsequently by Memo No. I-21019/07/2009, dated 21.5.2009, of Government of India, Ministry of Home Affairs, he was empanelled as Director General of Police in the Central Service also and from then onwards, he is holding the post of Director General of Police in the Government of India Service.

85. He would vehemently contend that since such a procedure is a common feature and as per the rule of empanelment in the Government of India vis-a-vis States, the second Respondent's indictment of the 7th Respondent as though he was downgraded to the post of Additional Director General of Police in the said cadre and thereby consideration of his name itself was doubtful lacks bona fides.

86. He would assert in his reply to the supplementary affidavit that right from 9.9.2008 onwards he is holding the post of Director General of Police in the State of Tamil Nadu and when it comes to the question of selection of officers in the said cadre to the post of Director General of Police as Head of Police Force of the State, he had every right to be considered for the said post. He also took a categorical stand that he never stated that he was unwilling to serve in the State and that if such a promotion is given, the Central Government would always

extend its option to the Officer to get reverted to their parent State. He also quoted an earlier instance in 2001, when a Director General of Police of Tamil Nadu was recalled from the Centre and posted.

87. The 7th Respondent also pointed out that his pay as Director General of Police continue to be maintained and that his pay was never downgraded to the level of Additional Director General of Police.

88. The status of the 7th Respondent as Director General of Police in the first Respondent State as from 9.9.2008, is not in dispute. The fact that he was senior to the 8th Respondent in the post of Director General of Police is also not in dispute, though it was attempted on behalf of the State to contend as though the 7th Respondent was out of the zone of consideration by virtue of his deputation as Director of National Police Academy, it will have to be stated that such an attempt cannot be countenanced. It is the settled legal position that deputation does not disrupt the services of the deputationist from his parent State. It is also well settled that irrespective of the deputationist working with a foreign department all his rights and lien continue to remain in the parent department and he will be entitled for the benefits available in the parent service by virtue of the seniority in the matter of promotion and other emoluments which would continue to accrue and would be extended in the deputed post.

89. For that proposition, reference can be made to the following decisions of the Hon''ble Supreme Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, Balkrishna Pandey Vs. State of Bihar and others, and Block Development Officers Assn and Ors. v. State of M.P. and Ors., (1996) 7 SCC 260

90. In the decision in Rajasthan State Electricity Board v. Mohan Lal (supra) the Hon''ble Supreme Court made it clear that when an employee was sent on deputation, he continue to retain his lien with the parent department and that such an employee was entitled to be considered for promotion on the basis of equality with other employees in the parent department.

91. In the decision in Balakrishna Pandey v. State of Bihar (supra) the Hon''ble Supreme Court has again held that a deputationist who was continuing in the foreign service must be deemed to have continued to hold lien in the parent department with all his rights to promotions, if any, in the parent department according to Rules.

92. In the decision in Block Development Officers'' Assn. v. State of M.P. (supra) the Hon''ble Supreme Court once again made it clear that during the period of deputation, when persons junior to the deputationist in the parent department had been promoted to the higher cadres without considering the case of the deputationist, the State is bound to consider the deputationist and on that ground issued directions to consider the deputationist for promotion from the dates when the juniors were promoted.

93. Therefore, merely because the 7th Respondent went on deputation to the

Central Service, it cannot be held that he is ceased of all his rights to be considered when it comes to the question of selection to the post of Director General of Police as Head of the State Police. The contention that he expressed his unwillingness to serve in the State has been specifically denied by the 7th Respondent. In support of the stand of the first Respondent, that the 7th Respondent expressed his unwillingness, no materials were placed before this Court. Merely because the 7th Respondent went on deputation to the post of Director, National Police Academy and serve, as such, till he reach the age of superannuation, it cannot be taken to mean that on that basis, it should be inferred that he expressed his unwillingness to be considered for the post of Head of State Police.

94. Moreover, as rightly contended by the 7th Respondent, officers who have gone on deputation to the Central Government can always opt to revert back to the State Service at times of need either at the instance of the State Government or by the officer himself. In fact, since the lien would always be retained in the parent department, without scope for any contradiction, it can be held that the State Government in the event of selecting the 7th Respondent to the post of Director General of Police as Head of State Police, can always withdraw the services of the 7th Respondent from his deputation for serving the first Respondent State.

95. In any event, since the 7th Respondent has explicitly stated that he was always willing to serve the first Respondent State as its Head of the Police, it would have been well in order for the first Respondent State to have considered him and included him in the zone of consideration. The contention that the 7th Respondent did not challenge the appointment of the 8th Respondent cannot be a ground, inasmuch as, we have held that the said appointment is contrary to the Hon''ble Supreme Court direction in Prakash Singh v. Union of India (supra) case.

96. We are therefore convinced that having regard to the status of the 7th Respondent in the rank of Director General of Police by virtue of his induction into the said service as from the year 1975 and his present status as Director General of Police in the State as from 9.9.2008, on par with the Petitioner and above the 8th Respondent in the said post, his name ought to have been considered for the post of Director General of Police as Head of the State Police. Since admittedly his name was omitted to be considered as revealed from the proceedings placed before this Court, on this ground as well, it will have to be held that the claim of the first Respondent as regards the selection of the 8th Respondent for the post of Director General of Police as Head of the State Police by order dated 8.1.2010, cannot be sustained.

97. In the decision i Union of India (UOI) and Others Vs. Sangram Keshari Nayak, , the Hon''ble Supreme Court has held as under:

11. Promotion is not a fundamental right. Right to be considered for promotion,

however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor.....

(Emphasis added)

98. In the decision in *Chairman, All India Railway Rec. Board and Another Vs. K. Shyam Kumar and Others*, the Hon''ble Supreme Court has stated the extent of Judicial review in such matters. Paragraph 22 is relevant for our purpose, wherein the Hon''ble Supreme Court has held as under:

22..... In *Council of Civil Service Unions v. Minister for Civil Service* (GCHQ case) the House of Lords rationalised the grounds of judicial review and ruled that the basis of judicial review could be highlighted under three principal heads, namely, illegality, procedural impropriety and irrationality. Illegality as a ground of judicial review means that the decision-maker must understand correctly the law that regulates his decision-making powers and must give effect to it.....

99. Keeping the above prescriptions in mind, we proceed to examine the correctness of the order of the 9th Respondent Tribunal passed in O.A. No. 245 of 2010, dated 8.3.2010. The Tribunal merely held without proper application of mind and the law laid down by the Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case proceeded to hold that since the Petitioner has also been posted in the cadre of Director General of Police, he cannot have any grievance in the matter of appointment of the 8th Respondent. According to the Tribunal, the claim of the Petitioner is not maintainable as there was no violation of rules on the part of the Respondents 1 to 4 therein in filling up the post of Director General of Police as Head of State Police. The Tribunal also held that since the Petitioner and the other senior police officers were drawing the same scale of pay and holding the same rank and that it was pointed out that no senior officer to the 8th Respondent was holding a post inferior to that of the Director General of Police post, no relief can be granted.

100. The learned Advocate General fairly submitted before us that he wish to make his submissions as regards the appointment of the 8th Respondent to the post of Director General of Police as Head of State Police without reference to the order of the Tribunal. In other words, since the order of the Tribunal on the face of it lacks proper reasons both on law as well as on the facts, the learned Advocate General thought it fit to resist the challenge relating to the appointment of the 8th Respondent in the order dated 8.1.2010, independently without reference to the order of the Tribunal. The order of the Tribunal, as stated by us earlier, has miserably failed to deal with the issue in the proper prospective and has not considered any of the relevant issues and the said order is liable to be set aside instantly. It has also failed to appreciate the basic principle that the law laid down by the Hon''ble Supreme Court is binding on all Subordinate Courts under Article 141 of the Constitution of India and the judicial decorum and

discipline would require proper compliance of the same.

101. We therefore have no hesitation in setting aside the impugned order of the Tribunal dated 8.3.2010, made in O.A. No. 245 of 2010. For the various reasons set out in this judgment, we also set aside the order of the first Respondent dated 8.1.2010, in appointing the 8th Respondent to the post of Director General of Police as Head of State Police.

102. The Hon''ble Supreme Court in *Prakash Singh v. Union of India* (supra) case has held that its direction should be complied with on or before 31.12.2006 and compliance report should be filed on 3.1.2007. Unfortunately, except one State the other States did not comply with the directions of the Hon''ble Supreme Court. When applications were filed for review/ modification/clarification while rejecting those applications, the Hon''ble Supreme Court extended the time upto four weeks by an order dated 11.1.2007.

103. It is unfortunate that in spite of such indulgence shown by the Hon''ble Supreme Court by extending the time, the directions were not followed, instead, it is now claimed by the first Respondent State that to the extent possible, the directions were fulfilled.

104. In this context, it will be appropriate to refer to the recent decision of the Hon''ble Supreme Court in *Commissioner, Karnataka Housing Board v. C. Muddaiah* (2007) 6 SC 97. Paragraph 31 is relevant, which reads as under:

31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

(Emphasis added)

105. When it has come to the knowledge of this Court that the directions of the Hon''ble Supreme Court has not been adhered to, we feel that it is our duty and responsibility to ensure that the order of the Hon''ble Supreme Court is scrupulously followed and the directions are complied with without any deviation. Hence, we issue the following directions in as much as, as on date we do not wish to leave the said post vacant in public interest:

(i) The first Respondent is directed to forward the names of all the eligible officers in the rank of Director General of Police in the cadre of HAG + scale of Rs. 75,000 (and increment @3%) - Rs. 80,000, as on date with all their service

records to the 4th Respondent Union Public Service Commission with necessary requisition for preparing a panel as directed by the Hon''ble Supreme Court in paragraph 31(2) of Prakash Singh v. Union of India (supra) case. The first Respondent should ensure that the forwarding of the above particulars should reach the office of the 4th Respondent Union Public Service Commission on or before 26.10.2010. It is made clear that this Court has not expressed any opinion on the merits or demerits of the parties to the writ petition.

(ii) If the 4th Respondent needs any further clarifications or particulars as regards the names forwarded by the first Respondent State, the same should be clarified as expeditiously as possible, if necessary, through a special messenger within 15 days thereafter i.e. on or before 12.11.2010.

(iii) The Union Public Service Commission should thereafter prepare a panel as directed by the Hon''ble Supreme Court in paragraph 31(2) in Prakash Singh v. Union of India (supra) case and forward the same to the first Respondent State on or before 26.11.2010.

(iv) On such panel being forwarded to the first Respondent State, the first Respondent State should make the selection from amongst the officers in the panel forwarded by the 4th Respondent Union Public Service Commission and make the appointment positively on or before 7.12.2010.

(v) Till such time, the above process for appointment of the officer to the post of Director General of Police as Head of State Police is made, the 8th Respondent shall be allowed to discharge the functions of the Director General of Police (Law and Order).

(vi) The first Respondent is also directed to file a compliance report by 14.12.2010.

106. The writ petition stands allowed with the above directions. Consequently, the connected miscellaneous petition is closed. There will be no orders as to costs.