

(2013) 04 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6359 of 2012 (O and M)

Voices for Freedom

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Citation : (2013) 4 SCT 631

Hon'ble Judges : A.K. Sikri, C.J.;Rakesh Kumar Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Sikri, C.J.—"Voices For Freedom" as the petitioner has filed this petition, stated it to be a Public interest Litigation, seeking a writ of certiorari for quashing the appointment of respondent No. 3 to the post of Director General of Police, Punjab and also a writ of mandamus for direction that enquiry against the concerned persons who have allegedly withheld material records of respondent No. 3 at the time of his appointment, be ordered. We would like to point out at the out set that in this petition notice of motion was issued on 17.04.2012 and the Division Bench issuing notice observed that the petition discloses matters of substantial public importance and therefore, it was a fit case for further consideration. After notice was issued, the respondents put in appearance and challenged the maintainability of the writ petition on the ground that not only the issue, which was a service matter, could be the subject matter of Public Interest Litigation, even the bona fides of the petitioner were questionable. Arguments were heard at length on the locus of the petitioner to raise such an issue on 16.10.2012 and detailed order was passed discarding the society as the petitioner but at the same time taking note of the observations contained in the order dated 17.04.2012 it was deemed proper to proceed with the issue and take up the same as suo-motu.

2. Mr. K.N. Balgopal, learned Senior Advocate was appointed as the Amicus-Curiae and Mr. Kuldeep Khandelwal, Advocate was appointed as the assisting

counsel to the Amicus. We have mentioned these proceedings in the beginning itself because of the reason that at the time of final hearing as well, it was staunchly argued by Mr. Ashok Aggarwal that such a PIL involving service matter should not be entertained.

3. The petition challenges the appointment of respondent No. 3 as the Director General of Police, Punjab, primarily on the ground that he is facing trial before the Central Bureau of Investigation (CBI) Court at New Delhi in a serious matter in which charges have been framed against him. On this ground, it is stated that the petitioner cannot be appointed to such a coveted post. It is mentioned that on the basis of the allegations that respondent No. 3 is involved in abduction and physical liquidation of three persons sometimes in the year 1994, this Court had referred the matter for investigation against respondent No. 3 to the C.B.I. which after detailed investigation filed a report confirming abduction and physical liquidation of three persons and accordingly charge-sheet was filed and sanction was accorded by the competent authorities. It is further submitted in the petition that due to certain factors, the aforesaid trial was transferred on the directions given by the Apex Court to the Central Bureau of Investigation at New Delhi wherein the respondent No. 3 is currently facing trial and even charges have been framed against him and he has been enlarged on bail.

4. It is pleaded that such a person could not have been given the senior most position of Director General of Police (DGP) in a State which is the top position in the police hierarchy.

5. The petitioner has pointed out the details of the criminal case as given by the Central Bureau of Investigation in its reply filed to this petition which inter-alia mention that the allegations are that Ashish Kumar son of Rattan Singh Walia was kept in illegal detention from 24.02.1994 to 02.03.1994 and thereafter, illegally kept in police custody despite the order of the Chief Judicial Magistrate, Ludhiana remanding him to judicial custody. It is alleged that Parmod Kumar (brother-in-law of Ashish Kumar), his servant Chhotu etc. were also being harassed by the police and were kept in illegal custody by Ludhiana Police. It is further alleged that Vinod Kumar (brother of Ashish Kumar), Mukhtiar Singh, driver, and Ashok Kumar (relative of Vinod Kumar) were also kidnapped by the police officials of District Ludhiana on 15.03.1994 from Chandigarh and Ludhiana respectively and the above three persons are untraced thereafter. After completion of investigation, Central Bureau of Investigation filed charge- sheet on 01.07.2000 in the Court of Chief Judicial Magistrate, Ambala against respondent No. 3 i.e. S.S. Saini, the then Senior Superintendent of Police (now D.G.P. Punjab); S.S. Sandhu, the then Superintendent of Police, City Ludhiana (now retired); Paramjit Singh, the then S.H.O. Police Station Focal Point, Ludhiana (now Deputy Superintendent of Police) and B.C. Tiwari, the then S.H.O., Police Station Kotwali, Ludhiana (now retired) for commission of criminal conspiracy and abduction of Vinod Kumar, Mukhtiar Singh and Ashok Kumar on 15.03.1994.

6. C.B.I. has further stated that the Court of Additional Sessions Judge, New Delhi has framed charges against the respondent No. 3 and the prosecution evidence is in progress. The status of the case had been informed to the Punjab Police and the Government of Punjab from time to time by the C.B.I. and it is upto them to decide suitability or otherwise of an officer who is facing the trial.

7. Mr. Bal Gopal, learned Senior Counsel and Amicus-Curiae appointed in this case submitted that it is the State of Punjab which had granted sanction for prosecution of respondent No. 3 and this sanction encompasses alleged offence committed u/s 365 of the Indian Penal Code as well which means on the charge of abduction. Therefore, it is not open to the State Government not to turn around and prompt such a person to the post of Director General of Police. He referred to the judgment of the Apex Court in case State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, Another submission of Mr. Bal Gopal, was that in terms of Circular dated 27.02.1998 issued by the Government of India, wherever departmental proceedings or criminal case is pending against an officer, employer is bound to follow sealed cover procedure and not to give effect to the recommendations of D.P.C. during the pendency of such proceedings. Such a sealed cover procedure could be opened and acted upon only when the departmental and/or criminal proceedings result in acquittal of the concerned employee. However, in the instant case, that is not done even when admittedly criminal proceedings are pending against respondent No. 3 that too of serious charge.

8. Mr. Bal Gopal further argued that even as per Section 6(2) of the Punjab Police Act, 2007, respondent No. 3 could not have been appointed to the post of Director General of Police if he was facing trial with a charge which constituted moral turpitude. His submission was that the charge against the petitioner clearly constituted moral turpitude.

9. Another submission of Mr. Bal Gopal, learned Senior Counsel was predicated on the principle of "institutional integrity" as propounded by the Supreme Court in the case of Centre for PIL and Another Vs. Union of India (UOI) and Another, Recent Apex Judgments (R.A.J.) 261 : 2011(2) Law Herald 1471 : AIR 2011 Supreme Court 1267, wherein the Court had denounced the appointment of a person to the post of Central Vigilance Commissioner (C.V.C.). In that case, the person who was appointed as C.V.C. was facing criminal case pursuant to an F.I.R. registered against him under the Prevention of Corruption Act, 1988 which case pertains to import of 30000 MTS of Palmolein Oil without conforming to the adequate safeguards overlooking global tenders in the year 1991. The Court held that the person who is accused in a corruption case should not be made head of the C.V.C. which Commission is introduced with the task of conducting vigilance enquiries into the conduct of public servants. In that case, the Supreme Court had found that the relevant material was not produced before the High Powered Committee at the time when his appointment to the post of C.V.C. was under consideration.

10. Mr. Ashok Aggarwal, learned Advocate General, Punjab appeared for respondents No. 1 and 2 and Mr. Rupinder Khosla, Advocate appeared for respondent No. 3 and both the counsel countered the aforesaid submissions of Mr. Bal Gopal.

11. With all vehemence by his command, Mr. Aggarwal submitted that the present PIL was totally motivated with aim to tarnish the image of an honest and bold police officer who had performed his duties with conviction and without any fear in tackling the extremists and terrorists in the State of Punjab. He specifically questioned the bona fides of the petitioner ("Voices for Freedom") and the antecedents of the founder of this organization. Because of his bold steps, in the interest of integrity of the country, respondent No. 3 had incurred the wrath of such persons who were now targeting him in all possible manners. Referring to the details given in the counter affidavit in this behalf, Mr. Aggarwal specifically pointed out the averments alleging the systematic manner in which respondent No. 3 has been targeted both by attempts to kill him and by attempts to abuse the judicial process is self-evident. Davinder Pal Singh Bhullar was an accused in the assassination case on respondent No. 3 in 1991. Under the patronage of Shri Simranjit Singh Mann and others, respondent No. 3 was targeted in well planned judicial proceedings. Now, inspite of the severe strictures by the Supreme Court, it is obvious that another attempt is being made to abuse the process of law by Shri Mann's close associate Prof. Jagmohan Singh @ Tony and others to target respondent No. 3.

12. Mr. Aggarwal also submitted that respondent No. 3 joined as Director General of Police, Punjab on 15.03.2012. It is apparent that an immediate decision was taken to file a motivated P.I.L. On 21.03.2012, Ms. Sudip Minnas wrote a letter appointing Shri Simranjit Singh as a "Director" and authorizing him to file the Public Interest Litigation. The fundamental and communal view of the organization, the systematic targeting of respondent No. 3 in association with other radicals like Shri Simranjit Singh Mann, their personalized hatred with respondent No. 3, all show that it is not a Public Interest Litigation and it accordingly needs to be dismissed on this ground alone.

13. Another preliminary objection of Mr. Aggarwal was that the issue raised pertains to the appointment of respondent No. 3 which was pure service matter and the Supreme Court had held time and again that the Courts should not entertain PILs involving service matters. Without prejudice, he argued that even if the PIL on this aspect was to be entertained, the scope was very limited, namely the PIL in the nature of quo-warranto only could be gone into by the Courts. If the matter was to be examined on this limited aspect, what was to be seen was that whether respondent No. 3 fulfilled the eligibility conditions/requirements for the post of Director General of Police. His submission was that on this aspect there was no quarrel and the petitioner had not even questioned that respondent No. 3 did not fulfil the requirements contained in the Rules for appointment to this post.

14. On-merits also, Mr. Aggarwal sought to justify the appointment. By submitting that there was no embargo or inhibition in considering the case of an officer who was facing criminal charge as per the principles enshrined by the Supreme Court in Vineet Narain and Others Vs. Union of India (UOI) and Another, as well as in Prakash Singh and Others Vs. Union of India (UOI) and Ors, it is only on conviction in a criminal case that the convicted employee was debarred from promotion. He submitted that in the absence of any legislation in Vineet Narain's case, (supra), the Supreme Court had laid down the general recommendations after taking into consideration the report of Lord Nolan Committee appointed in England on "Standards in Public Life". Relevant portion of this report is extracted in Para No. 54 of the judgment which reads as under:-

"54. It is a similar perception in England which has led to the Constitution of a Committee headed by Lord Nolan on "Standards in Public Life". In Volume 1 of Lord Nolan's Report (1995), the general recommendations made are:

General recommendations

4. Some of our conclusions have general application across the entire service:

Principles of public life

5. The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership are set out in full on page 14.

Codes of Conduct

6. All public bodies should draw up Codes of Conduct incorporating these principles.

Independent Scrutiny

7. Internal systems for maintaining standards should be supported by independent scrutiny.

Education

8. More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training."

61. The Seven Principles of Public Life are stated in the Report by Lord Nolan, thus:

"The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material

benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisation that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example."

15. The directions for appointment to such post which are given in the said judgment are contained in para No. 58 which read as under:-

"I CENTRAL BUREAU OF INVESTIGATION (CBI) AND CENTRAL VIGILANCE COMMISSION (CVC)

1. The Central Vigilance Commission (CVC) shall be given statutory status.

2. Selection for the post of Central Vigilance Commissioner shall be made by a Committee comprising the Prime Minister, Home Minister and the Leader of the Opposition from a panel of outstanding civil servants and other with impeccable integrity, to be furnished by the Cabinet Secretary. The appointment shall be made by the President on the basis of the recommendations made by the Committee. This shall be done immediately.

3. The CVC shall be responsible for the efficient functioning of the CBI. While

Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for over viewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's functioning. The CBI shall V report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which charge sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.

4. The Central Government shall take all measures necessary to ensure that the CBI functions effectively and efficiently and is viewed as a nonpartisan agency.

5. The CVC shall have a separate section in its Annual Report on the CBI's functioning alter the supervisory function is transferred to it.

6. Recommendations for appointment of the Director, CBI shall be made by a Committee headed by the Central Vigilance Commissioner with the Home Secretary and Secretary (Personnel) as members. The views of the incumbent Director shall be considered by the Committee for making the best choice. The Committee shall draw up a panel of IPS officers on the basis of their seniority, integrity, experience in investigation and anti-corruption work. The final selection shall be made by the Appointments Committee of the Cabinet (ACC) from the panel recommended by the Selection Committee. If none among the panel is found suitable, the reasons thereof shall be recorded and the Committee asked to draw up a fresh panel.

7. The Director, CBI shall have a minimum tenure of two years, regardless of the date of his superannuation. This would ensure that an officer suitable in all respects is not ignored merely because he has less than two years to superannuate from the date of his appointment.

8. The transfer of an incumbent Director, CBI in an extraordinary situation, including the need for him to take up a more important assignment, should have the approval of the Selection Committee.

9. The Director, CBI shall have full freedom for allocation of work within the agency as also for constituting teams for investigations. Any change made by the Director, CBI in the Head of an investigative team should be for cogent reasons and for improvement in investigation, the reasons being recorded.

10. Selection/extension of tenure of officers upto the level of Joint Director (JD) shall be decided by a 12 Board comprising the Central Vigilance Commissioner, Home Secretary and Secretary (Personnel) with the Director, CBI providing the necessary inputs. The extension of tenure or premature repatriation of officers upto the level of Joint Director shall be with final approval of (his Board. Only cases pertaining to the appointment or extension of tenure of officers of the rank of Joint Director or above shall be referred to the Appointments Committee of the

Cabinet (ACC) for decision.

11. Proposals for improvement of infrastructure, methods of investigation, etc. should be decided urgently. In order to strengthen CBI's in-house expertise, professionals from the revenue, banking and security sectors should be inducted into the CBI.

12. The CBI Manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the concerned officials.

13. The Director, CBI shall be responsible for ensuring the filing of chargesheets in courts within the stipulated time limits, and the matter should be kept under constant review by the Director, CBI.

14. A document on CBI's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI.

15. Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

16. The Director, CBI should conduct regular appraisal of personnel to prevent corruption and/or inefficiency in the agency.

16. Mr. Aggarwal specifically referred to the recommendations No. 6 and 16 highlighted above. He further submitted that though the aforesaid guidelines pertain only to the appointment of Director of Central Bureau of Investigation (CBI) and Commissioner, Central Vigilance Commission, in so far as the position of the State Governments are concerned, in para No. 60, the Court had made it clear that there was an urgent need for the State Government to set up credible mechanism for selection of the Police Chiefs in the States on the same lines in the following manner:-

"67. In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Governments also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a

Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicizing the personnel. It is, therefore, essential that prompt measures are taken by 14 the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister in his letters to the State Governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the Constitutional Scheme found necessary to remedy the situation is too stringent in these circumstances."

17. This matter was carried further in Prakash Singh's case, (supra) which case pertains to Police Reforms in the State and the judgment was in the context of appointment of Police Chief in the State. Supreme Court referred to Vineet Narain's case, (supra) and made the following pertinent observations:-

"Having regard to (i) the gravity of the problem; (ii) the urgent need for preservation and strengthening of Rule of Law; (iii) pendency of even this petition for last over ten years; (iv) the fact that various Commissions and Committees have made recommendations on similar lines for introducing reforms in the police setup in the country; 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 issue 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. It may further be noted that the quality of Criminal Justice System in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions. Nearly ten years back, in Vineet Narain and Others Vs. Union of India (UOI) and Another, this Court noticed the urgent need for the State 15 Governments to set up the requisite mechanism and directed the Central Government to pursue the matter of police reforms with the State Governments and ensure the setting up of a mechanism for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendents of Police and above. The Court expressed its shock that in some States the tenure of a Superintendent of Police is for a few months and transfers are made for whimsical reasons which has not only demoralizing effect on the police force but is also alien to the envisaged constitutional machinery. It was observed that apart from demoralizing the police force, it has also the adverse effect of politicizing the personnel and, therefore, it is essential that prompt measures are taken by the Central Government. The Court then observed that no action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances. More than four years have also lapsed since the

report above noted was submitted by the National Human Rights Commission to the Government of India. The preparation of a model Police Act by the Central Government and enactment of new Police Acts by State Governments providing therein for the composition Of State Security Commission are things, we can only hope for the present. Similarly, we can only express our hope that all State Governments would rise to the occasion and enact a new Police Act wholly insulating the police from any pressure whatsoever thereby placing in position an important measure for securing the rights of the citizens under the Constitution for the Rule of Law, treating everyone equal and being partisan to none, which will also help in securing an efficient and better criminal justice delivery system. 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. 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 16 are mandated by Article 144 to act in aid of the orders passed by this Court. The decision in Vineet Narain's case (supra) notes various decisions of this Court where guidelines and directions to be observed were issued in absence of legislation and implemented till legislatures pass appropriate legislations. With the assistance of learned Counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforementioned position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations: State Security Commission

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

NHRC

Ribeiro Committee

Sorabjee Committee

1. Chief Minister/HM as Chairman

1. Minister i/c Police as Chairman.

1. Mimker i/c Police (ex officer Chairperson).
2. Lok Ayuktaor, in his absence, a retired Judge of High Court to be nominated by Chief Justice or a Member of State Human Rights Commission.
2. Leader of Opposition.
2. Leader of Opposition.
3. A sitting or retired Judge nominated by Chief Justice of High Court. 3. Judge, sitting or retired, nominated by Chief Justice of High Court.
3. Chief Secretary.
4. Chief Secretary.
4. Chief Secretary.
4. DGP (ex officio Secretary).
5. Leader of Opposition in Lower House.
5. Three non-political citizens of proven merit and integrity.
5. Five independent Members.
6. DGP as ex officio Secretary.
6. DG Police as Secretary.

The recommendations of this Commission shall be binding on the State Government The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing a report thereon for being placed before the State Legislature.

Selection and Minimum Tenure of DGP

(2) The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two year irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a Court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties Minimum Tenure of IG. of police and other officers

(3) police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a Court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties. Minimum Tenure of I.G. of Police & other officers (3) Police Officers on operational duties in the field like the Inspector General of Police-in-charge Zone, Deputy Inspector General of Police-in-charge Range, Superintendent of Police- in-charge district and Station House Officer-in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.

Separation of Investigation

(4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full co-ordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population often lakhs or more, and gradually extended to smaller towns/urban areas also.

Police Establishment Board

(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director 19 General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

Police Complaints Authority

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

of Police. Similarly, there should be Anr. Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/Districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably 20 remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CJD, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the District and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority. National Security Commission

(7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organizations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper co-ordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the C.P. Os. and a couple of security experts as members with the Union Home Secretary as its Secretary.

13. The aforesaid directions shall be complied with by the Central Government State Governments or Union Territories, as the case may be, on or before 31st December, 2006 so that the bodies afore-noted became operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3rd January, 2007."

18. Based upon the aforesaid observations, his submission was that the guidelines were to remain in force till framing of appropriate legislation. In so far as State of Punjab was concerned, after the aforesaid judgment, the State legislator had enacted Punjab Police Act, 2007 and therefore, the provisions of this Act were to prevail which provide that mere framing of charge against an officer is of no consequence and he would be debarred only when the trial results into conviction by the Court of competent jurisdiction.

19. Mr. Aggarwal has also submitted that debarring a person from appointment to such a post on mere filing of charge-sheet in a case and framing of charge would lead to disastrous consequences as one was to keep in mind the ground realities inasmuch as (a) such persons in higher position face professional hazards because of the nature of their functions and duties and can be easily involved in a criminal case; (b) as per the law laid down by the Supreme Court, the charge is also framed liberally; and (c) the trial goes on for years together (which has happened in the present case as well) and for all these reasons the career of a person cannot be put in jeopardy merely because a criminal case was pending. His further submission was that the present case was governed by the judgment of the Supreme Court in Prakash Singh's case (supra) and not Centre for PIL case (supra) which pertains to the appointment of C.V.C. He highlighted that in Prakash Singh's case (supra), test for removal is conviction in a criminal case and not merely implication in a criminal case and the test for appointment was specifically stated in para No. 60 of Vineet Narain's case (supra) accepted in Prakash Singh's case (supra) as 22 well, namely, seniority, integrity, experience in investigation and anti-corruption etc.

20. Distinguishing the case of Centre for PIL (supra), his submission was that where as in the matter of appointment of C.V.C., the principle of "institutional integrity" would be applicable as the post of C.V.C. is a constitutional post, that principle would not apply to the appointment of post of D.G.P. which was at best was the case of "personal integrity". In so far as of personal integrity of respondent No. 3 is concerned, it was of high order and without blemish. On the contrary, for his yeoman service, respondent No. 3 had incurred the wrath of terrorists and other fundamentalists who were systematically targeting respondent No. 3 in association with other radicals.

21. Mr. Rupinder Khosla, learned counsel appearing for respondent No. 3 argued almost on the same lines and in addition he submitted that in the case of Centre for PIL (supra), the main reason for setting aside the appointment of C.V.C. was that the decision making process was faulty and institutional integrity was highlighted. In contrast, in the present case, everything was disclosed including the pendency of criminal case against respondent No. 3 and discussed at every stage. He also submitted that though the charges were framed in January, 2007, criminal revision was filed against framing of those charges which was pending before Delhi High Court. Still the trial was going on but it was getting delayed because of the conduct and attitude of the complainant and therefore,

respondent No. 3 could not be made to suffer on that account. He further pleaded that there may be some perception about the tough reputation of respondent No. 3 but as far as his honesty and integrity is concerned there was not even a whisper about the same which was of highest standard.

22. We have given our due consideration to the aforesaid submissions of learned counsel for the parties with reference to the record. We would like to begin with our observations that it has now been a well grounded principle of law that in service matters, public interest litigation is not to be entertained. This has become an established principle of law through catena of judgments of the Supreme Court some of which are as under:-

- (i) Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others,
- (ii) Seema Dhamdhare, Secretary, M.P.S.C. Vs. State of Maharashtra and Others,
- (iii) Dr. B. Singh Vs. Union of India (UOI) and Others,
- (iv) Gurpal Singh Vs. State of Punjab and Others,
- (v) Ashok Kumar Pandey Vs. The State of West Bengal and Others,

23. The legal position explained in the aforesaid judgments is that Public Interest Litigations are to be admitted with great care and it should be entertained for redressal only of genuine public wrongs or injury and not of redressal of private, publicity oriented or political disputes or other disputes not genuinely concerned with public interest. As far as service matters are concerned, Public Interest Litigations should not be entertained. The Court noted that inspite of this dicta in Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., the inflow of so called Public Interest Litigations involving service matters continues unabated in the Courts which are entertained as well. The Supreme Court exhorted the High Courts to throw them out on the basis of the decision in Duryodhan Sahu's case (supra).

24. Further in Gurpal Singh's case (supra), the scope of entertaining the Public Interest Litigations, particularly in service matters, was stated in the following manner:-

"The scope of entertaining a petition styled as public interest litigation, locus-standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to

see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect."

25. Likewise, in Ashok Kumar Pandey's case (*supra*), the Supreme Court emphasized that the Courts have to be watchful that no one's character is besmirched and that justifiable executive actions are not assailed for oblique motives. The Court has to be extremely careful that it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.

26. However, an exception to a limited extent is also carved out, namely, quo-warranto in service matters in the form of Public Interest Litigation, can be entertained by the Courts. Therefore, no doubt, the present petition involves the service matter; the limited scrutiny in the nature of quo-warranto is still permissible. Further more, in the present case, we are concerned with the appointment of Number One position in the police hierarchy in the State of Punjab, namely, that of Director General of Police. The matter, to that extent, becomes that of public importance, though the scope of scrutiny would be limited. It is for this reason that even when this Court found bona fides of the petitioner in filing this petition somewhat questionable, this Court still decided to examine the issue after removing the petitioner and taking suo-motu cognizance.

27. We thus clarify that because of the aforesaid reasons, we are examining the merits of the appointment, though at the same time, keeping in view the limited scope of judicial review in the matter of quo-warranto.

28. In exercise of its powers of judicial review, the High Court is not concerned with the merits of the decision but its legality is to be examined as to whether the concerned authority, who took the decision, was guided only by the relevant and germane consideration. In a writ of quo-warranto the judicious scrutiny revolves around the determination of the issue as to whether the holder of a public office has a valid title to it. Such writ can be issued to oust the persons not entitled to their office or to remove the usurpers of public office. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, the Supreme Court held that before quo-warranto can be claimed the Court must have satisfied two things, namely, (i) the office in question is a public office; and (ii) the holder is a usurper without legal authority. This will lead to an enquiry as to whether the appointment has been made in accordance with law or not. Further, in *Statesman (Private) Ltd. v. H.R. Deb and others*, AIR 1966 Supreme Court 1495, the Supreme Court observed that the High Court will issue a quo-warranto only when there is a clear infringement of relevant legal provisions. It can clearly be issued in those cases where the person appointed to an office does not have the necessary qualification attached to that office/post

and/or the appointment is contrary to the Recruitment Rules. Likewise, if a person is appointed to an office, contrary to the constitutional provisions, such an appointment can be challenged by a writ of quo-warranto (See Shri Kumar Padma Prasad Vs. Union of India and others,

29. In the present case, it is not in dispute that the respondent No. 3 fulfils the requirement of the Rules for appointment to the post of Director General of Police. It is also not in dispute that he had become eligible to be considered for this post and was under the zone of consideration. The specific assertion of the respondents about high integrity, impeccable honesty and competence of the respondent No. 3 have not been denied by the petitioner.

30. However, the entire argument hinges on the submission that there are serious allegations against the respondent No. 3 and Central Bureau of Investigation has filed the charge-sheet in the Court of law after investigation and charges under Sections 341, 342, 364 and 120-B of the Indian Penal Code have been framed against him. The respondent No. 3 is facing trial in (hose charges and therefore, he could not have been appointed to this post. It is towards this basic submission that the aid of following provisions is taken:-

(a) Circular dated 27.02.1998 issued by the Government of India which prescribes the following of sealed cover procedure in such matters where departmental enquiry or criminal case is pending against an officer and not to give promotion during the pendency of such proceedings;

(b) Section 6(2) of the Punjab Police Act, 2007 stipulates that a person should not be appointed to the post of Director General of Police if he is facing trial for a charge which constitutes moral turpitude; and

(c) Principles of institutional integrity as propounded by the Supreme Court bars the appointment of such a person like the respondent No. 3 to the post of Director General of Police.

31. By a specific query put by this Court, Mr. Bal Gopal was candid in conceding that in so far as instructions dated 27.02.1998 are concerned, they do not directly apply to the appointments of Director General of Police and this selection to the said post is exclusively governed by Section 6 of the Punjab Police Act, 2007. Therefore, we straight away come to the second submission of Mr. Bal Gopal predicated on Section 6 of the Punjab Police Act, 2007. Infact, Mr. Ashok Aggarwal, learned Advocate General, Punjab has relied upon this provision to submit that the Punjab Police Act, 2007 is a result of the observations of the Supreme Court in Vineet Narain case (supra) and Prakash Singh case (supra).

32. Preamble to this Act reads as under:-

"An Act to respond to the democratic aspirations of the people and to provide for the establishment, regulation and management of the police, redefine its role, duties and 28 responsibilities and to enable it to functions an efficient, professional, effective, accountable, people friendly, service oriented and

responsive agency, free from extraneous influences, accountable to law by taking into account the emerging challenges of policing, enforcement of rule of law, the concern for security of the State and the society, particularly the venerable sections and minorities, good governance, human rights and for the matters connected therewith or incidental thereto."

33. Chapter (II) of this Act deals with the "Constitution and Organization of Police Service" and Section 5 appearing in this Chapter provides that for overall direction, control and supervision of the police service, the State Government shall appoint a Director General of Police. The Director General of Police shall exercise such powers, perform such functions and duties and have such responsibilities, as may be prescribed. Section 6 of the Act deals with the selection in terms of office of Director General of Police and reads as under:-

"Selection and term of office of Director General of Police.

5.(1) The State Government shall select the Director General of Police from amongst Indian Police Service officers borne on the State cadre, who are in the rank of Director General or are eligible to hold this rank for appointment as Director General of Police.

(2) The Director General of Police so appointed, shall have tenure of not less than two years, unless he attains the age of superannuation:

Provided that the State Government may, transfer the Director General of Police before completion of two years of his tenure, if he is -

(a) convicted by a court of law in a criminal case or where charges have been framed against him by a court in a case involving corruption or moral turpitude; or

(b) incapacitated by physical or mental illness or otherwise becoming unable to discharge his functions as the Director General of Police; or

(c) promoted to a higher post under either the State or the Central Government:

Provided further that the State Government may also transfer the Director General of Police before the completion of two years" tenure, for special reasons, to be recorded in writing."

34. As already pointed out above, the respondent No. 3 fulfills the conditions mentioned in sub sections (1) and (2) above. Thrust of Mr. Bal Gopal, however, was on Clause 6(a) to the proviso to sub section (2) of the Act which authorizes the State Government to transfer the Director General of Police before completion of two years of his tenure and clause (a) thereof stipulates that such a transfer would be permissible if he is convicted by the Court of law in a criminal case or where the charges have been framed against him by a Court in a case involving corruption or moral turpitude. Sub Section (2) of Section 6 assures minimum tenure of two years for Director General of Police on his appointment as such unless he attains the age of superannuation. Proviso caters to a situation

where even before completion of two years of tenure, such Director General of Police can be transferred by the State Government. Therefore, in stricto-sensu this provision may not apply. We would still like to examine the case on the premise that spirit behind this provision gets attracted as it caters to the situation occurring after the appointment. The rationale behind this Section is not to continue a person who is already appointed as Director General of Police on his conviction in a criminal case or where the charges have been framed against him by the Court involving corruption or 30 moral turpitude. Then such a consideration should weigh even at the time of appointment to the post in question. However, we would hasten to add that the proviso is only an enabling provision which authorizes the State Government to transfer the Director General of Police even before completion of two years tenure if the charges framed against him or he is convicted in a case involving corruption or moral turpitude. This provision does not stipulate that in such a case the Director General of Police has to be necessarily transferred but the discretion is conferred upon the State Government to do so if it so want. Of course such a discretion has to be exercised objectively and there should be valid reasons on record where the State Government still decided not to transfer such a Director General of Police on his conviction in a criminal case or where the charges have been framed against him by the Court involving corruption or moral turpitude. As a corollary, even at the time of appointment, if it is to be treated as relevant factor, discretion lies with the appointing authority to take a decision keeping in mind all other relevant factors as well, touching upon the competence integrity and service record etc. of the officer.

35. In this backdrop, it will have to be determined as to whether the offence for which the respondent No. 3 is charged, involves moral turpitude, as these charges do not relate to corruption. Moral turpitude is not defined statutorily. The expression, however, is explained in various judgments of the Courts.

36. The meaning of term "turpitude" and "moral turpitude" has been given in Black's Law Dictionary, Fourth Edition, as follows:-

"Turpitude - In its ordinary sense, inherent baseness or vileness of principle or action; shameful wickedness; depravity. In its legal sense, everything done contrary to justice, honesty, modesty, or good morals.

State v. Anderson 117 Kan 230, Hughes v. State Board of Medical Examiners, 162 Go. 246; 134 S.E. 42, 46, An action showing gross depravity. Traders & General Ins. Co. v. Russell, Te & Civ. App. 99; S.W. 2-d 1079, 1084" "Moral Turpitude- A term of frequent occurrence in statutes, especially those providing that a witness" conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general, it means neither more nor less than "turpitude", i.e. anything done contrary to justice, honesty, modesty, or good morals."

37. In Pawan Kumar Vs. State of Haryana and another, wherein the Apex Court

has observed as under:-

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

38. The aforesaid judgment in Pawan Kumar case, (supra) has been considered by the Hon'ble Supreme Court again in Allahabad Bank and Another Vs. Deepak Kumar Bhola, and placed reliance on Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others, wherein it has been held as under:-

"The expression "moral turpitude" is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man"

39. Gauhati High Court in case Har Kumar Das Vs. Bharat Petroleum Corporation Ltd. and Others, held that the act of murdering a person cannot be said to be a moral turpitude. While taking this view, the Gauhati High Court relied upon the judgment of this Court in case Durga Singh Vs. The State of Punjab, Mann Singh Vs. Dharamjit Singh and Others, this Court held that an offence of murder committed due to enmity could not be treated as an offence involving moral turpitude, though it would involve wickedness of character. Gauhati High Court in that case referred to earlier judgments wherein conviction u/s 19(1) of the Arms Act; conviction u/s 61(1)(a) of the Punjab Excise Act, 1914 for having in possession of illicit liquor etc. were held not involving moral turpitude. In the present case, the 33 charges against the respondent No. 3 are that of wrongful confinement, kidnapping and abduction and would not constitute moral turpitude.

40. Coming to the manner of selection, we find from the record that the entire material was placed before the Selection Committee and pendency of the criminal case was well within the knowledge of the Selection Committee. Not only it was apprised of the same, this aspect was specifically discussed and deliberated. Similar exercise was undertaken at every stage upto the highest authority. Notwithstanding, the pendency of this criminal case, the appointing authority choose to appoint the respondent No. 3 as the Director General of Police. Thus, it is not a case where some material was suppressed from the Selection Committee or the Appointing Authority or they were kept in dark about this material. This factual position appearing on record even conceded by the learned Amicus. In a matter like this, it was for the competent authority to take

into consideration the factum of pendency of the aforesaid criminal proceedings against the respondent No. 3. No doubt, it is a relevant factor which has to be given due weightage. On one hand, there are serious charges in the criminal case pending against the respondent No. 3. Flip side of the case reflects that the alleged incident in which the respondent No. 3 is involved is of the year 1994. The charges were framed against the respondent No. 3 on 09.01.2007 by the Court of Addl. Sessions Judge, New Delhi, and against the order of framing of charge, criminal revision petition is filed which is pending consideration before the Delhi High Court. Though there is no stay of trial, the allegations of the respondent-State as well as respondent No. 3 is that the matter is getting delayed because of the conduct and attitude of the complainant. In such circumstances, it was for the competent authority to weigh these considerations on both sides and to take a decision as to whether the respondent No. 3 be appointed to the coveted post of Director General of Police or not. The Government/competent authority took into account all these factors. Once we find that there is no fault in the decision making process; the respondent No. 3 is legally competent to hold the post; he was found eligible for the same; and that he was ranked most meritorious in competitive merit, the present petition of quowarranto and that too in the nature of Public Interest Litigation, where the scope of enquiry is limited, it appears difficult for this Court to interfere with the decision of the Government in appointing the respondent No. 3 as the Director General of Police.

We thus dismiss the present petition.