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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 177 OF 2018

Shri R. R. Tripathi

.. Petitioner

Vs.

1. Union of India and ors.

.. Respondents

Mr. R. R. Tripathi, petitioner, party-in-person, present.

Mr. Anil Singh, Addl. Solicitor General a/w Mr. Mohamedali M. Chunawala for respondent no.1 – UOI.

Mr. Ashutosh A. Kumbhakoni, Advocate General a/w Mr. Abhinandan Vagyani, Govt. Pleader and Mr. Akshay Shinde, “B” Panel Counsel, Ms. Nisha Mehra, AGP for respondent nos.2 to 4 – State.

CORAM: NARESH H. PATIL, CJ. &
N. M. JAMDAR, J.

JANUARY 09, 2019.

P.C.

1. The petitioner, party-in-person, prays for the following reliefs:

(a) The Hon’ble High Court be pleased to exercise its power u/A 226 and issue the Writ of Quo Warranto alongwith other appropriate Writs and or

directions of nature against the Respondent No.4 and other Respondents and quash and set aside the order and further tenure granted for Extension in Service since 01.12.2018.

(b) The Hon'ble Court be pleased to pass an appropriate writs, order and direction to set up an enquiry by a retired HC Judge as this is a case of favouritism and misuse of the power and position of the Respondent No 1 to 4.

(c) The Hon'ble Court be pleased to grant interim / ad-interim relief in term of the prayer clause 17 (a) by staying the further functioning of the Respondent No.4 as DGP state as he also admittedly holding the work as full time member for the so called committee based on which he is given the extension in service, till pending hearing of the Petition for final disposal.

(d) This Hon'ble Court may kindly be pleased to pass any appropriate orders and or directions as this Hon'ble Court deem fit and just.

2. The respondent no. 4 – D. D. Padsalgikar was appointed on 01/07/2018 as the Director General of Police, Maharashtra State, Mumbai. He had earlier discharged his duty as the Commissioner of Police, Mumbai. The respondent no.4 superannuated on 31/08/2018. The Home Department of the

State of Maharashtra extended his term as a Director General of Police for a period of three months by the Government order dated 31/08/2018. The second extension of further three months was given to respondent no.4 by Government order dated 30/11/2018.

3. The petitioner, party-in-person, practicing Advocate, has questioned the extensions granted to the tenure of respondent no.4 – D. D. Padsalgikar as a Director General of Police.

4. We have heard the petitioner, party-in-person, the learned Advocate General and the learned Additional Solicitor General appearing for the respective respondents. Perused the affidavits filed and the record placed before us. We have also perused certain documents tendered during the course of arguments by the petitioner, namely, list of officers serving in the State, who according to the petitioner are eligible to be considered

for the post of Police Commissioner and/or Director General of Police.

5. The petitioner submits that the extensions granted to the respondent no.4 are contrary to the provisions of Rule 16(1) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958 (for short Rules of 1958). Under the provisions of Rule 16(1), the extension could be granted to a person who is dealing with budget work or working as a full-time member of a Committee which is to be wound up within a short period. In the case of respondent no.4, no such contingencies exist for giving him an extension. It is submitted that there are other officers eligible to be considered for the post of Director General of Police in the State of Maharashtra. A list of such officers is presented before us during the course of the argument indicating their joining date in service and the posts held by the respective officers in the State. The petitioner further contended that the directions issued by the

Apex Court in the case of *Prakash Singh and ors. vs. Union of India and ors.*¹ are not complied with by the State. The extensions granted to the respondent no.4 are contrary to the view adopted by the Apex Court in the case of *Prakash Singh* (Supra) and the judgment delivered by the Division Bench of this Court in the case of *R. R. Tripathi vs. Union of India.*² On the affidavits filed on behalf of the State and the Union of India, the petitioner submits that even the relaxation granted by the Union of India to the applicability of the provisions of Rule 16(1) of the Rules of 1958 is not in consonance with the views expressed by this court in the case of *R. R. Tripathi*. No reasons are coming forth why the Union of India decided to relax the Rule 16(1) of the Rules of 1958 in exercise of its power conferred under Rule 3 of the All India Services (Conditions of Service – Residuary Matters) Rules, 1960 (for short Rules of 1960). The Union of India is not empowered to grant extension to the service tenure even in exercise of power

1 [(2006) 8 SCC 1]

2 [2008 (2) ALL MR 591]

conferred under Rule 16(1) of the Rules of 1958 and/or by exercising powers under Rule 3 of the Rules of 1960 in the given facts and circumstances of this case. The petitioner has also referred to the observations made by the Apex Court and this Court in the cases cited supra in support of his contentions.

6. On behalf of the State, the learned Advocate General submitted that a Public Interest Petition in service matters is not maintainable. The petitioner has not challenged the decision taken by the Union of India in exercise of power under Rule 3 of the Rules of 1960 and the extensions granted consequent to the relaxation of the Rule 16(1) of the Rules of 1958. While distinguishing the cited cases on facts, the learned Advocate General submitted that the observations made by the Division Bench of this Court in the case of *R. R. Tripathi* are not applicable to the facts of the present case as in the said case the issue for consideration was regarding grant of extension under Rule 16(1),

whereas in the present case the extension was already granted after the Union of India relaxed the Rule 16(1) of the Rules of 1958 in exercise of power conferred under Rule 3 of the Rules of 1960.

7. The learned Advocate General has pointed out that by communication dated 20/11/2018, the State has submitted a proposal to the Union of India for two years' tenure for respondent no.4 as a Director General of Police, which reads as under :

Dated 20th Nov. 2018.

“
Dear Rajiv,

As you are aware Sh Data Padsalgikar is working as Director General of Police in the state since 1st July 2018. Sh Padsalgikar was due to superannuate in August 2018. The state government moved a proposal to give a tenure of two years to Sh Padsalgikar. However government of India approved extension of three months to Sh Padaslgikar. Now he is due to superannuate in November 2018.

Sh Padsalgikar is from 1982 batch of IPS. In 1983 and 84 batch of IPS there is no serving officer in the state of Maharashtra. After Sh Padsalgikar next senior officer is Sh Subodh Jaiswal. Sh Jaiswal is presently serving as Commissioner of Police, Mumbai since July 2018. In case Sh Padsalgikar superannuate in November, 2018,

then the DG of the state will get a short tenure of about 5 months. As next senior officer is Sh Jaiswal, who has about four years of service left, will mostly become DG police of the state. Hence Sh Jaiswal, who is presently working as Commissioner of Police, Mumbai will also get short tenure of only five months as Police Commissioner, Mumbai.

In the state of Maharashtra post of Police Commissioner, Mumbai is as important as the post of Director General of Police. Hence both Director general of police and Commissioner of Police, Mumbai, needs to have full tenure to have effective policing in the state and to create positive perception about law enforcement in the state.

Sh Padsalgikar has a meritorious track record and has served both in central government and the state government with distinction. Same is the case with Sh Subodh Jaiswal.

In view of the above facts state government desires and reiterates its earlier request for a full tenure of two years to Sh Padsalgikar. It is requested that Sh Padsalgikar may be given a full tenure of two years commencing wef 1st July 2018.

Yours sincerely,

Sd/-

Sunil Porwal

*To,
Sh Rajiv Gauba
Home Secretary, GOI,
New Delhi.”*

8. It is informed that the said proposal is yet to be finally disposed of. Pending consideration of the said proposal, the Union of India has granted the extensions. The learned Advocate General submits that there is no officer eligible to be considered and appointed as a Director General of Police within the Batch for the period from 1982 to 1985.

9. The learned Additional Solicitor General appearing for the Union of India raised a preliminary objection regarding the maintainability of the Public Interest Petition. The learned Additional Solicitor General submitted that the present Public Interest Petition has not raised any issue concerning the power under Rule 3 of the Rules of 1960 to relax the Rule 16(1) of the Rules of 1958, which power is exercised in the present case. He submitted that the judgments cited by the petitioner are distinguishable. Learned Additional Solicitor General submits that as regards the proposal submitted by the State Government in

respect of two years' tenure as Director General of Police to be given to respondent no.4 is pending consideration of the Union of India and during pendency of the said proposal, the Union of India, in the public interest, extended the tenure by granting three months' extension twice. The learned Additional Solicitor General has further referred to the order passed by the Government of Maharashtra dated 30/11/2018, wherein there is a mention of an order passed by the Ministry of Home Affairs, Government of India, New Delhi dated 30/11/2018 granting six months extension with effect from 01/12/2018.

10. The foundation of the petitioner's argument is based on the applicability of Rule 16(1) of the Rules of 1958. The said Rule 16(1) prescribes that a member of the Service, like the respondent no.4, dealing with the budget work or working as a full-time member of a Committee which is to be wound up within a short period may be given extension of service for a period not

exceeding three months in public interest, with the prior approval of the Central Government. From the record placed before us and the orders passed by the State and Central Government from time to time, we find that Union of India exercised its power under Rule 3 of the Rules of 1960. In other words Rule 16(1) of the Rules of 1958 gets relaxed in view of the powers exercised by the Union of India under Rule 3 of the Rules of 1960. The Union of India has considered the case of respondent no.4 based on the proposal submitted by the State Government and pending consideration of the said proposal, the Union of India has granted extension of three months twice to the respondent no.4 in public interest.

11. We have perused the judgment of the Apex Court in the case of *Prakash Singh and ors.* and the further directions issued by the Apex Court in Writ Petition No. 310 of 1996 on 3/7/2018 as regards the fixed tenure of two years to the post of Director General of Police. Said directions read as under :-

(a) All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time at least three months prior to the date of retirement of the incumbent on the post of Director General of Police;

(b) The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in Prakash Singh's case (supra) and intimate to the States;

(c) The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;

(d) None of the States shall ever conceive the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh's case (supra);

(e) An endeavour has to be made by all concerned to see that the person who was selected and appointed as the Director General of Police continues despite his date of superannuation. However, the extended term beyond the date of superannuation should be a reasonable period. We say so as it has been brought to our notice that some of the States have adopted a practice to appoint the Director General of Police on the last date of retirement as a consequence of which the person continues for two years after his date of superannuation. Such a practice will not be in conformity with the spirit of the direction.

(f) Our direction No.(c) should be considered by the Union Public Service Commission to mean that the persons are to be empanelled, as far as practicable, from amongst the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage.

(g) Any legislation/rule framed by any of the States or the Central Government running counter to the direction shall remain in abeyance to the aforesaid extent.”

12. The learned Advocate General brought to our notice the amendment to the Maharashtra Police Act, wherein Section 6 of the principal Act, has been amended. In Section 6 of the principal Act, after sub-section (1), sub-Sections (1A) & (1B) have been inserted. Said Sub-Sections (1A) & (1B) read as under :

“(1A) The Director General and Inspector General of Police shall be selected by the State Government from amongst the four senior most Police Officers from the Cadre, on the basis of their length of service, very good record, range of experience, integrity and professional ability for heading the Police force.

(1B) Once appointed, the Director General and Inspector General of Police shall have a minimum tenure of at least two years, subject to his age of superannuation. The Director General and Inspector General of Police may, however, be relieved of his responsibility by the State Government consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules, 1969 or following his conviction in a court of law or in a case of corruption, or guilty of gross dereliction of his duty or if he is otherwise incapacitated from discharging his duty.”

13. The learned Advocate General submitted that after the directions issued by the Apex Court on 3/7/2018, there is no move to amend further the Maharashtra Police Act, but the State is bound by the directions issued by the Apex Court. Considering the merits of the case, the State was convinced to submit a proposal to the Union of India for seeking extension of two years to the post of Director General of Police.

14. Taking into consideration the aforesaid facts and circumstances, we are of the view that no interference, at this stage,

is warranted. However, we direct the Union of India to take appropriate decision, on the proposal submitted by the State Government on 20/11/2018 seeking full tenure of two years to the post held by the respondent no.4 as a Director General of Police of the State, within two weeks on its own merits. We further observe that any decision taken by the Union of India could be subject to the judicial scrutiny.

15. At this stage, the learned Additional Solicitor General submitted that the decision making process on the proposal submitted by the State Government would take little more time as the subject is routed through Appointment Cabinet Committee. The learned Additional Solicitor General, therefore, submits that instead of two weeks, the Union of India be granted four weeks' time to take appropriate decision on the proposal submitted by the State Government as the term of the second extension of respondent no.4 would expire by 28/02/2019.

16. As per the directions issued by the Apex Court in respect of the fixed tenure of two years and the proposal submitted by the State Government, we hope and expect that the Union of India would take the decision at the earliest. We accordingly grant four weeks' time to Union of India to take appropriate decision on the proposal submitted by the State Government.

17. The Public Interest Petition is disposed of accordingly.

N. M. JAMDAR, J.

CHIEF JUSTICE