

the knowledge that a particular question is in issue, though no specific issue has been framed thereon and adduce evidence relating thereto. The absence of a specific pleading on the question is a mere irregularity which causes no prejudice to the defendant.”

(8) In the light of this authoritative pronouncement in *Ram Niwas's* case (supra), it is no more open to exception that a particular question cannot be answered merely because no specific issue was framed although the parties had led evidence on that question. The observations of the learned Single Judge in *Sher Singh's* case, referred supra, being contrary to the judgment of the Division Bench of this Court in *Ram Niwas's* case (supra) have to be overruled.

(9) Apart from this, the learned Single Judge in *Sher Singh's* case did not appreciate that it was present to the mind of the parties to lead evidence in proof or disproof of the plea whether the strike was legal or illegal. The parties had gone to trial with full knowledge that a particular question was in issue. Though no specific issue had been framed by the Labour Court on that point, but evidence had been adduced by the parties thereto and the question was answered. The finding could not be reversed merely on the technical ground as observed by the learned Single Judge.

(10) For the reasons stated above, the view taken by the learned Single Judge in *Sher Singh's* case (supra) reproduced above, cannot be sustained and the same is accordingly overruled.

The question having been answered, we direct that the papers of this case be laid before our learned brother V. K. Bali, J. expeditiously for disposing of the writ petition on merits.

J.S.T.

Before Hon'ble H. K. Sandhu, J.

SATISH KUMAR,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Crl. Misc. No. 1908-M of 1993.

October 22, 1993.

Code of Criminal Procedure (V of 1980)—S. 482—Punjab Jail Manual Para 576A—Petitioner undergoing life imprisonment for

committing dowry death—Petitioner given provisional 'B' class facilities—Later these facilities withdrawn as Haryana Government instructions do not allow 'B' class facilities to persons convicted of Bride killings for dowry—Challenge to withdrawal of facilities—Such 'B' class facilities rightly withdrawn.

Held, that the judgment of the Apex Court dated April 10, 1992 leaves no doubt that the petitioner was convicted for the murder of his wife Shashi Bala. The allegation against him was that he was not satisfied with the dowry and the deceased was done to death by strangulation for not bringing the dowry demanded from her. She was then burnt so that evidence of murder may be destroyed. It may be that motive for the offence was not established yet the fact remains that the petitioner is guilty of murder of his wife for which he was convicted. Annexure R-3 clearly prohibits the awarding of facilities of 'B' Class to the persons convicted of bride killings for dowry. The petitioner has been convicted for murdering his wife, as such his prayer for grant of 'B' Class facilities was rightly rejected.

(Para 8)

A. L. Behl, Advocate, for the Petitioners.

S. S. Gill, AAG, Haryana, for the Respondents.

JUDGMENT

Harmohinder Kaur Sandhu, J.

(1) Satish Kumar, petitioner, alongwith three other co-accused, was tried for offences punishable under Section 302 and 201 Indian Penal Code. by Sessions Judge, Hissar. On 23rd April, 1981, he was found guilty, while his co-accused were acquitted of the charges. The petitioner was sentenced to undergo imprisonment for life for the offence punishable under Section 302 Indian Penal Code and to further undergo rigorous imprisonment for one year in respect of an offence punishable under Section 201 Indian Penal Code. The petitioner filed an appeal against his conviction and sentence, which was allowed and he was acquitted by a Division Bench of this Court on 25th November, 1981. The complainant party then filed Special Leave Petition in the Supreme Court. The appeal was finally heard by the Apex Court on 10th April, 1992, which was accepted and the conviction of the petitioner as recorded by the Sessions Judge was resorted. The petitioner surrendered before the jail authorities on July 13, 1992. He represented before the Superintendent, Central Jail, Hissar to restore him B class facilities which were earlier granted to him. The petitioner was graduate and had obtained a degree of Bachelor of Arts from Kurukshetra University, in the year 1975,

The Jail Superintendent allowed him B Class facilities on provisional basis. But on the receipt of some instructions from the office of Inspector General Prisons Haryana, the same were withdrawn. The petitioner filed this petition under Section 482 of the Code of Criminal Procedure read with Articles 226/227 of the Constitution of India for grant of 'B' class facilities while undergoing imprisonment for life in Central Jail, Hissar.

(2) The averments made in the petition are that under para 576A of the Punjab Jail Manual, the prisoners who by social status, education or habit of life have been accustomed to a superior mode of living were to be considered as Class B prisoners. The prisoner who was graduate in any faculty or honours in Punjabi or Hindi (Giani or Prabhakar) was also entitled to 'B' Class facilities in the jail. Para 576A of the Punjab Jail Manual had a statutory force and any instructions issued by the Inspector General Prisons or by any other authority except the Government were not binding and the same were *null and void*.

(3) Written statement was filed by the respondents in which it was contended that the petitioner was convicted for the murder of his wife Shashi Bala and for destroying the evidence of murder. The motive behind the commission of this ghastly act was that the petitioner was not satisfied with the dowry, which was received by him at the time of marriage. In view of this back ground, the petitioner was not entitled to 'B' class facilities as according to Para 2(i) of the Haryana Government instructions dated 21st January, 1985, persons convicted of bride killing for dowry were not eligible for 'B' Class facilities in jail. The case of the petitioner for grant of 'B' Class was referred to the Additional Director General of Prisons, Haryana, Chandigarh, on 4th September, 1992 and the same was rejected on 22nd January, 1993, as he had committed heinous and brutal crime of murdering his wife for lust of dowry.

(4) Copy of the order rejected the prayer of the petitioner has been placed on record which is Annexure R-1.

(5) I have heard Mr. A. L. Behl, learned counsel for the petitioner and Mr. S. S. Gill, Assistant Advocate General, Haryana, for the respondents.

(6) Respondents have placed a copy of the letter dated 25th May, 1983 issued by the Financial Commissioner and Secretary to Government, Haryana, Jails Department to the Inspector General Prisons, Haryana, Chandigarh Annexure R-2 relating to classification of prisoners based on para 576A of the Punjab Jail Manual into

'A' 'B' and 'C' Classes. According to this letter, the prisoners who had passed Graduation in any faculty or Honours in Hindi (Prabhakar) or Punjabi (Giani) from a recognised University were eligible to be classified as Class 'B' prisoners. Admittedly, the petitioner is a Graduate. Annexure P-4 is the copy of the degree of Bachelor of Arts awarded to the petitioner. The petitioner is, however, not entitled to be classified as 'B' Class prisoner as per the letter copy of which is Annexure R-3. This letter was also issued by the Financial Commissioner and Secretary to Government, Haryana Jails Department to the Inspector General of Prisons, Haryana, Chandigarh, in continuation of the earlier letter Annexure R-2. It was specifically mentioned there in that the Haryana Government had decided not to award 'B' Class facilities to the following persons :—

- (i) Persons convicted of bride killings for dowry ;
- (ii) Persons convicted for creating such circumstances that the lady is compelled to commit suicide ; and
- (iii) Persons convicted under the Official Secret Act, 1923.

These instructions have not been issued by the Additional Inspector General of Prisons as contended by the petitioner but were issued by the Government.

(7) It was argued on behalf of the petitioner that the petitioner had not been convicted of an offence of bride killing for dowry, which is punishable under Section 304-B Indian Penal Code. He was simply convicted under Section 302 Indian Penal Code and, therefore, instructions contained in Annexure R-3 were not applicable in his case. This submission of the learned counsel does not hold good.

(8) The judgment of the Apex Court dated April 10, 1992 Annexure P-3 leaves no doubt that the petitioner was convicted for the murder of his wife Shashi Bala. The allegation against him was that he was not satisfied with the dowry and the deceased was done to death by strangulation for not bringing the dowry demanded from her. She was then burnt so that evidence of murder may be destroyed. It may be that motive for the offence was not established yet the fact remains that the petitioner is guilty of murder of his wife for which he was convicted. He was charged for the offence in the year 1980 when Section 304-B was not enacted. It was only in the year 1986 that Section 304-B was inserted by the Dowry

Prohibition (Amendment) Act, 1986. Annexure R-3 clearly prohibits the awarding of facilities of 'B' Class to the persons convicted of bride killings for dowry. The petitioner has been convicted for murdering his wife, as such his prayer for grant of 'B' Class facilities was rightly rejected.

(9) For the reasons recorded above, I find no merit in this petition and dismiss the same.

J.S.T.

Before Hon'ble A. L. Bahri & N. K. Kapoor, JJ.

JOGINDER SINGH,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 12972 of 1991.

December 8, 1993.

Punjab Public Works Department (Public Health Circle)—State Service Class III Rules, 1983—Rule 8(3)—Executive Instructions issued on January 31, 1984—Paragraphs 2 and 3—Instruction issued by the Government—Such instructions contrary to statutory rules—Validity of the instructions.

Held, that paragraphs 2 and 3 of the executive instructions, if minutely examined are to operate contrary to the principle of 'Seniority-Cum-Merit' as enshrined in Rule 8(3) of 1983 Rules. Para 2 of the executive instructions indicates that preferential treatment is to be given to the candidates, who had passed the Assistant Grade Examination within first five chances i.e. having passed the examination aforesaid within five chances are available to fill the number of posts available, on promotion, even if persons senior to them fulfilling the eligibility conditions are there, the seniors are to be ignored from consideration for promotion to the post of Assistants. Rule 8(3) of 1983 Rules does not provide for non-consideration of senior persons fulfilling all the eligibility criterion. Executive instructions contrary to the rules cannot take the place of rules, which have force of law.

(Para 8)

K. L. Arora, Advocate, for the Petitioners.

R. K. Joshi, Addl. A.G., Punjab for No. 1 and 2 Nos. 4, 8, 9, 10 and 12 to 15 Arun Jain, Advocate, for the Respondents.