
is not supported by the reading of Regulation which deals with Circle Head Draftsman as the case of the petitioner is. Moreover, by deeming fiction all promotees have been treated as direct recruits and there is no requirement for them to possess degree/A.M.I.E. qualifications. Any other construction of the circular would render Clause 2 of the circular referred to in the preceding para as otiose and illusory. We are to be considered view that the benefit of higher scale of pay cannot be confined by the B.B.M.B. to those engineers who have come from P.S.E.B. only. The benefits are meant for all the engineers working in the B.B.M.B. who are covered by circular letter dated 24th May, 1990 (supra) whether they have come from P.S.E.B or from any other organisation. The B.B.M.B has adopted the circular dated 24th May, 1990 for its application to the engineers working with them. The petitioner was promoted as A.D.E./S.D.O. on 25th April, 1971 and was regularised as such with effect from 1st May, 1979. He completed 16 years of service in the year 1987 much before the date of his superannuation i.e. 30th November, 1990. Another reason for taking the view that the petitioner is entitled to the benefit of circular dated 24th May, 1990 is that these are beneficent provisions made for the breaking of stagnation to bring efficiency in the working of the officers. The petitioner has since retired on 30th November, 1990, no prejudice is likely to be caused to any employee in the service.

(13) For the foregoing reasons, this appeal is dismissed. We concur with the learned Single Judge. While upholding the order dated 26th August, 1999, the appellant directed to comply with the directions given by the learned Single Judge within a period of three months from the date of receipt of copy of this order.

R.N.R.

Before M.L. Singhal, J

SHER SINGH,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

Crl. M. No. 40255/M of 1999

13th September, 2001

Code of Criminal Procedure, 1973—S.433-A—Haryana Government Instructions dated 4th February, 1993 (as amended on 17th July, 1997)—Para 2(a) & (b)—Murder of a woman—Accused

convicted & sentenced to imprisonment for life—Para 2(b) of 1993 instructions entitles a life convict to premature release after completion of 10 years of actual sentence—Government amending instructions & including murder of a woman in the category of heinous crime in para 2(a)—Consideration of such cases only after the completion of 14 years of actual sentence—Whether amended instructions discriminatory—Held, no—A life convict has no vested right to remission—Life sentence is a sentence for a whole life.

Held, that when the petitioner's case for pre-mature release matured for consideration, 1997 instructions had come into force. As per 1997 instructions murder of a woman has to be viewed with more seriousness than the murder of a man and a person convicted of the murder of a woman and sentenced to imprisonment for life cannot ask for premature release unless he has completed 14 years of actual sentence including undertrial-period/detention and after earning atleast 6 years remissions. There is logic in the inclusion of the murder of a woman in para 2(a) of 1993 instructions as amended on 17th July, 1997. Woman is looked upon with veneration in our society. She is viewed as 'Laxmi' in our society. She is viewed as a weak creature always requiring male protection. Murder of a woman was advisedly included in para 2(a) in view of the cultural heritage of our society inherited by us from hoary past. Thus, instructions dated 4th February, 1993 as amended on 17th July, 1997 are quite constitutional. These do not introduce any discrimination so far as the murder of a man vis-a-vis the murder of a woman is concerned as murder of a woman has to be viewed differently vis-a-vis the murder of a man.

(Paras 11, 14 & 15)

Prithvi Raj, Advocate,—*for the Petitioner*

Shri Sanjeev Shookand A.A.G. Haryana,—*for the respondent.*

JUDGMENT

M.L. SINGHAL, J

(1) Through this criminal misc, petition filed under Section 482 of the Code of Criminal Procedure read with Articles 226/227 of the Constitution of India. Sher Singh—petitioner has prayed for his premature release from jail. It is alleged by him in this criminal misc

petition that he was convicted and sentenced to undergo imprisonment for life for committing murder of a woman in case FIR No. 215 dated 19th September, 1988 registered under Section 302 IPC at Police Station, Mohindergarh on 4th February, 1989 by the Sessions Judge, Narnaul. He has undergone actual sentence of 11 years, 2 months and has earned remissions of 4 years and 8 months. His conduct in jail has through out been good. Petitioner filed criminal misc, petition No. 11291-M of 1999 under Article 226/227 of the Constitution of India read with section 482 Cr.P.C. for his premature release and in compliance with the direction of this Court in the said criminal misc, petition, the case of the petitioner for his premature release was considered and it was ordered that the case of premature release of the petitioner would be considered when he completes 14 years of actual sentence and 20 years total sentence including remissions and held that the case of the petitioner falls in para 2(a) of the Haryana Government Instructions for premature release of life convicts, dated 4th February, 1993 as amended in 1997. Government of Haryana passed order Annexure P-1 whereby it was held that his case for premature release is governed by para 2(a) of the instructions, dated 4th February, 1993 as amended in 1997 and he will be considered for premature release as and when he completes 14 years actual sentence including undertrial period and 20 years total sentence including remissions, minus parole period. It is alleged that criminal misc, petition No. 11291-M of 1999 was in fact a writ in the nature of habeas corpus petition. A fellow prisoner named Satdev son of Dalle Ram who was lying confined in the same jail was ordered to be released prematurely under para 2(b) of the Government Instructions dated 4th February, 1993 on 11th October, 1999 who was also indicted for the murder of a woman and his case for premature release became due on 22nd April, 1999 whereas the case of the petitioner became due on 4th February, 1999 for premature release. Not only Satdev, many other convicts who filed petitions in this Court for their premature release were held entitled to premature release because of instructions dated 4th February, 1993. It was held that the policy which was in force on the date of conviction of the prisoner would govern the case of the prisoner for his premature release;

(2) State of Haryana filed SLP in the Hon'ble Supreme Court of India. Before any decision could be taken by the Hon'ble Supreme Court, State of Haryana conceded that the instructions dated 4th

February, 1993 would be applicable to their cases. The order dated 26th February, 1999 passed by the Hon'ble Supreme Court is Annexure P-2. The prisoners mentioned in Annexure P-2 were thus given back door pass-port to save themselves from the clutches of arbitrary policy of 1997 by the Haryana Government which is not based on rational criteria. It is alleged that the Government should not be discriminatory in its behaviour. It should not be selective when it is distributing its largesse.

(3) Section 433-A of the Code of Criminal Procedure which lays down 14 years period inside the jail mandatory for a life convict, does not come in the way of constitutional provision under Article 161. *In Maru Ram vs. Union of India* (1) it was held that the powers under Article 161 for premature release of life convicts would be exercised in the true sense by the Government of a State, as Governor being a signatory head. It was also held that such policy would be applied uniformly and without political vendetta.

(4) At the time when the State Government made a commitment before the Hon'ble Supreme Court, the policies of 1993, 1997 and 1998 were in force. Thus, by this action of the State, the policies of 1997 and 1998 became redundant as the State owed a moral duty towards its citizens not to discriminate people from others similarly situated. It is alleged that he is entitled to be governed by 1993 instructions para 2(b) in the matter of premature release. He is not governed by the subsequently amended instructions. A continuance wrong is being done to him by keeping him incarcerated after 26th February, 1999 when the State Government had made commitment before the Hon'ble Supreme Court that the policy of 4th February, 1993 would be applicable to the cases of persons who were respondents in these appeals.

(5) Respondent-State of Haryana contested this prayer urging that in compliance with the orders dated 31st May, 1999 passed by this Court in Crl. Misc. No. 11291-M of 1999, his case was considered but he was not eligible to be released prematurely under the instructions dated 4th February, 1993 as amended in the year, 1997 because under the instructions dated 17th July, 1997 "murder of a woman" falls under para 2(b) and such cases can be considered after completion of 14 years of actual sentence including undertrial period and after earning atleast 6 years remissions. As such, this petition is liable to

be dismissed on this score. The case of the petitioner was rightly rejected. Convict Satdev was released prematurely in compliance with the order of this Court passed in criminal misc. petition No. 10607-M of 1998.

(6) In criminal appeals No. 44 of 1994, 503 of 1999, 9 of 1998 and 10 of 1998 the Hon'ble Supreme Court held that the matter of premature release of convicts will be governed by the latest instructions, Petitioner has to under go actual period of 14 years excluding remissions. His case for premature release was decided as per the instructions dated 4th February, 1993 as amended in the year, 1997 in view of the orders passed by this Court in criminal misc. petition No. 11291-M of 1999.

(7) I have heard the learned counsel for the petitioner, learned AAG Haryana and have gone through the record.

(8) As per para 2(b) of 1993 instructions all adult life convicts would be entitled to premature release whose cases are not covered under para 2(a) and who have committed crime which are not considered heinous as including mentioned in the clause (a). Their case may be considered after completion of 10 years of actual sentence including undertrial period, provided that the total period of such sentence including remission is not less than 14 years as per para 2(c) 1993 instructions, juvenile life convicts below the age of 18 years at the time of commission of offence and female life convicts are entitled to be considered for premature release after completion of actual sentence of 8 years including undertrial period provided that the total period of such sentence including remissions is not less than 10 years.

(9) As per para 2(a) of 1993 instructions, convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life for having committed a heinous crime such as murder with wrongful confinement for extortion/robbery, murder with rape, murder while in connection with dowry, bride burning, murder of a child under age of 14 years, murder of handicapped or pregnant woman or murder after abduction or kidnapping, murder on profession hired basis, murder exhibiting brutality such as cutting the body into pieces or burning/ dragging the body as evident from judgment of sentence, persistent bad conduct in the prison and those who cannot for some definite reason be

prematurely released without danger to public safety or convicts who have been imprisoned for life under section 120-B IPC or life convicts who have been imprisoned for life second time under the NDPS or for any offence, may be considered after completion of 14 years of actual sentence including undertrial period/detention and after earning atleast 6 years remissions.

(10) Learned counsel for the petitioner submitted that the murder of a woman was not included in 1993 instructions while illustrating what "heinous crime" is. Such inclusion of murder of a woman while illustrating heinous crime in the subsequent instructions is discriminatory. It was submitted that viewing the murder of a woman differently from the murder of a man is also discriminatory. It was submitted that there can be instances where the murder of a man can be termed "heinous" when it is cruel calculated and barbaric. It was submitted that in the instructions of 4th February, 1993 as amended on 17th July, 1997 while illustrating "heinous crime" in para z (a) of the instructions murder of a woman was included.

(11) When the petitioner's case for premature release matured for consideration, 1997 instructions had come into force. As per 1997 instructions murder of a woman has to be viewed with more seriousness than the murder of a man and a person convicted of the murder of a woman and sentenced to imprisonment for life cannot ask for premature release unless he has completed 14 years of actual sentence including under trial period/detention and after earning atleast 6 years remissions. There is logic in the inclusion of the murder of a woman in para 2(a) of 1993 instructions as amended on 17th July, 1997. Woman is looked upon with veneration in our society. She is viewed as "Laxmi" in our society. She is viewed as a weak creature always requiring male protection. When she is a child, she is required to be protected by her father, when she is young, she is required to be protected by her husband, when she is old, she is required to be protected by her sons.

(12) There is another logic behind the inclusion of the murder of a woman in 1993 instructions as amended on 17th July, 1997

namely that after 4th February, 1993 there may have been increase in the murder of women in Haryana. Murder of woman was therefore included in the category of heinous crime.

(13) Faced with this position, learned counsel for the petitioner submitted that murder is murder. Every murder is heinous inasmuch as it snuffs out human life. No body has the right to take another's life.

(14) It would bear repetition that murder of a woman was advisedly included in para 2(a) of 1993 instructions as amended on 17th July, 1997 in view of the cultural heritage of our society inherited by us from hoary past.

(15) In my opinion, instructions dated 4th February, 1993 as amended on 17th July, 1997,—*vide* instruction Annexure P-4 are quite constitutional. These do not introduce any discrimination so far as the murder of a man vis-a-vis the murder of a woman is concerned as murder of a woman has to be viewed differently vis-a-vis the murder of a man. The Hon'ble Supreme Court in *Maru Ram vs. Union of India*(2) observed that "even if the remissions earned have totalled up to 20 years, still the State Government may or may not release the prisoner and until such a release order remitting the remaining part of the life sentence is passed, the prisoner cannot claim his liberty. The reason is that life sentence is nothing less than life long imprisonment. Moreover, the penalty then and now is the same life term. And remission vests no right to release when the sentence is life imprisonment. Nor is any vested right to remission cancelled by compulsory 14 years jail life one we realise the truism that life sentence is a sentence for a whole life.

(16) For the reasons given above, this criminal misc. petition fails and is dismissed.

R.N.R.