

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.966 OF 2015.
 (GAJANAN SURESH BHOYAR..VS.. THE STATE OF MAH. & 1 ANR.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri A.Y.Sharma, Advocate for Petitioner.
 Shri R.S.Nayak, A.P.P. for Respondent Nos. 1 & 2.

CORAM : B.P.DHARMADHIKARI AND
Z.A.HAQ, JJ.

DATED : FEBRUARY 08, 2016.

Advocate Shri Sharma (appointed) states that the extended remission of total 56 days should be treated as part of imprisonment and benefit should be given to the petitioner. He is relying upon the orders of this Court dated 28/11/2014 in Criminal Writ Petition No. 739 of 2014. He points out that therein the judgment of the Hon'ble Apex Court in the case of *State of Haryana and others Vs. Jagdish*, reported in **(2010) 4 SCC 216** has been relied upon.

The learned A.P.P. submits that the petitioner is trying to take benefit of the Government notification dated 23/04/2012. According to him, that notification is applicable prospectively and as the petitioner was already undergoing imprisonment on that day, it does not apply to him. He further states that the Division Bench of this Court at Aurangabad made it applicable even to the cases like that of the present petitioner and hence, the issue was referred to the Home Department. The Home Department has on 21/06/2014 expressly pointed out that the said policy dated 23/04/2012 will have prospective effect.

The petitioner has been convicted with life imprisonment on 27/06/2002. He has been released on furlough on various occasions and on four occasions he also got extension in accordance with law. Thus, the total extension of four different occasions (in different calendar years) is of 56 days.

He submits that Clause 16 of the Government Notification dated 23/04/2012 expressly states that the extended period of furlough leave is also to be counted as remission of sentence.

There is no dispute about the notification dated 23/04/2012 or subsequent notification dated 25/06/2014. The Hon'ble Apex Court has held that if such rules as regards the remission prevailing on the date of consideration of convict for premature release are more liberal than the Rules prevailing at the earlier point of time, more liberal of the two will have to be applied. Following this mandate, the judgment has been delivered on 28th November, 2014 in Criminal Writ Petition No. 739 of 2014.

Even otherwise, insofar as the remission is concerned, the convict who is already in jail prior to 23/02/2012 does not stand on different padastral then one who is sentenced on or after the said date. The contention, therefore, that the said notification dated 23/11/2012 is applicable only prospectively does not hold good.

In this situation, we direct the respondents to treat the period of 56 days of extended furlough leave of the petitioner as remission for the purpose of completion of sentence.

The writ petition is thus, **partly allowed**.

Charges of the counsel appointed are fixed at
Rs.1,500/-.

JUDGE

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