

**RA-CW-324-2018 in
CWP No. 6722 of 2018**

**DEVENDER AND ANOTHER
VS
STATE OF HARYANA AND OTHERS**

Present:- Mr. Vijay K. Jindal, Advocate with
Mr. Vishal Khatri, Advocate
for the applicant-petitioners

Mr. Deepak Sabharwal, Addl. A.G. Haryana

The applicant-petitioners sought a writ in the nature of mandamus for consideration of their claim for premature release on the basis of policy dated 12.04.2002 amended vide policy dated 26.08.2003. The writ petition was dismissed vide judgment and order dated 27.09.2018. It was *inter alia* held that “Cases of the petitioners were not ripe for the purpose of premature release and the said instructions were ultimately withdrawn on 30.08.2017, therefore, if the case of the petitioners is considered today there are no such instructions dated 26.08.2003 for the purpose of giving them the benefit of para 2(b) of the Policy”.

The present review application was filed on the ground that an error apparent on the face of the record had crept into the judgment as actually the cases of the applicant-petitioners were ripe for consideration under para 2(b) of the Policy before the instructions of 26.08.2003 were withdrawn vide Instructions dated 30.08.2017.

The petitioners were convicted vide judgment dated 24.01.2007 and their appeals were dismissed vide judgment dated 09.01.2013. The conviction was on account of murder of three persons. Vide policy dated 12.04.2002 (Annexure P-3) life convicts who have been convicted of murdering more than two persons can not be granted premature release before completion of 20 years of actual sentence and 25 years of total sentence with remissions in accordance with Clause

2(a)(iii) thereof. The said clause was struck down by this Court resulting in issuance of instructions dated 26.08.2003 (Annexure P-4) whereby directions were issued to the jail authorities in Haryana to send premature release cases of those convicts who were covered by Para 2(b) of the policy dated 12.04.2002 i.e. life convicts who had completed 10 years actual sentence and 14 years total sentence inclusive of remissions. This instruction was ultimately withdrawn vide Instructions dated 30.08.2017 issued by DGP Prisons, Haryana (Annexure P-5).

The argument of learned counsel for the applicants, thus, is that before withdrawal of the Instructions dated 26.08.2003 the case of the petitioners for premature release had ripened and consequently error apparent on the face of the record has occurred.

On the other hand learned State counsel argues that there is no error apparent on the face of the record. Although SLP against judgment of this Court has been dismissed, it has been observed therein that a classification validly made would not offend Article 14 of the Constitution of India and that the Supreme Court did not agree with the reasoning of the High Court. Thus, according to learned State counsel, Clause 2 (a)(iii) of the Policy dated 12.04.2002 has been revived.

A copy of the decision of the SLP has been circulated. The same is reported as *State of Haryana vs. Mahender Singh and others, 2007(4) RCR(Criminal) 909*. A perusal of this judgment shows that the judgment of the High Court has been upheld although for different reasons. Thus, it is incorrect to argue that Clause 2(a)(iii) of Policy dated 12.04.2002 has been revived.

Under the aforementioned circumstances, observations regarding case of the petitioners not being ripe for premature release before 30.08.2017 are erroneous and contrary to the record. The judgment and order dated 27.09.2018 is

reviewed.

Consequently, the application is allowed and the State is directed to consider the case of the petitioners for premature release in terms of Clause 2(b) of the Policy dated 12.04.2002.

**(SUDHIR MITTAL)
JUDGE**

December 07, 2020
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