

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(233)

CRWP-1754-2020

Date of Decision:03.03.2022

Dayawanti

--Petitioner

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. V.C. Shukla, Advocate for the petitioner.

Mr. Vishal Kashyap, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covil-19 situation and as per instructions.

The present petition has been filed praying for issuance of a writ in the nature of Mandamus directing the respondents no.2 and 3 to release the petitioner from jail.

Learned counsel for the petitioner has contended that petitioner was prosecuted in case FIR No.261 dated 8.10.2007 registered under sections 498-A, 302 I.P.C at Police Station, Meham, District Rohtak and was awarded sentence for life on 17.7.2009. The petitioner thereafter preferred an appeal against the order of conviction and High Court dismissed the same vide order dated 7.5.2015. Aggrieved by the orders, petitioner preferred SLP before the Hon'ble Apex Court which was finally declined vide order dated 20.7.2015.

Counsel submits that the petitioner is suffering the life sentence which was affirmed up to the Hon'ble Supreme Court. Present petition has been filed on the plea that petitioner deserves to be granted remissions in

view of the notification dated 30.7.2019 issued by the Hon'ble Governor of Haryana. The notification is appended by the State with its reply as Annexure R-3. Counsel submits that in view of the above notification the convicts who have been sentenced to life imprisonment and are 75 years of age or above in case of male and 65 years of age or above in case of female as on 15.8.2019 and have completed 8 years of actual sentence in case of male convicts and 6 years of actual sentence in case of female convicts including under trial period and excluding parole period and whose conduct has remained satisfactory during confinement and who have not committed any major jail offence in the last 2 years be released forthwith.

Counsel submits that petitioner qualifies both the conditions but despite, that benefit of the aforementioned notification was not extended to her. He submits that as the petitioner is illiterate she never had any birth certificate and hence the certificate in support of her age on submitting her Adhar Card etc. had been issued by the South Delhi Municipal Corporation which was issued on 16.10.2019. Counsel submits that in view of the certificate issued the date of birth of the petitioner is 1.1.1952 and thus she is above 65 years of age. Admittedly her incarceration is much more than the 6 years actual sentence. It is submitted that the rejection of the certificate issued by the South Delhi Municipal Corporation is simply on the ground that the state authorities have carried out the Ossification Test of petitioner which is contrary to the birth certificate issued. Counsel has relied upon the case of ***Mukarrab & others Vs. State of Uttar Pradesh, 2017(2) SCC 210***, wherein the Hon'ble Supreme Court has held as under:-

“23. It is a well-accepted fact that age determination using ossification test does not yield accurate and precise conclusions after the examinee crosses the age of

30 years, which is true in the present case. After referring to Bhola Bhagat case and other decisions, in Babloo Past case, this Court held as under:

“18. Nevertheless, in Jitendra Ram v. State of Jharkhand the Court sounded a note of caution that the aforesaid observations in Bhola Bhagat would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit and each case has to be considered on the basis of the materials brought on record.

22. It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.”

Learned State counsel on the other hand has controverted the submissions made by counsel for the petitioner. Petitioner is admittedly illiterate and the State had no other option than to carry out the Ossification Test for ascertaining her age, however, the certificate relied upon by the petitioner was verified and the same was got issued by the relatives of the petitioner on the basis of Aadhar Card and the same being contrary to the Ossification Test which was carried out on the recommendations of the Medical Board, the case of the petitioner was allegedly rejected.

I have heard learned counsel for the parties and have gone through the record made available.

The petitioner was convicted and her conviction was upheld up to the Hon'ble Supreme Court. The precise submission before this Court is that the petitioner is covered by the notification issued by the Hon'ble

Governor of Haryana. There were two eligibility conditions for the same viz the age of 65 years and completion of more than 6 years of actual sentence. The note in the notification would read as under:-

“Note:- The age of above convict should be calculated according to the Matriculation certificate or birth certificate and in absence of both it will be calculated according to the judgment of the trial court and the Superintendent Jail will ensure correctness of age.”

After hearing both the sides, this Court is of the opinion that the case of the petitioner is required to be reconsidered by the State in view of the overall facts and circumstances of the case. Reliance may be placed upon the decision rendered by Hon'ble Apex Court in ***State of Haryana Vs. Bhup Singh, 2009(1) RCR (Criminal) 654.***

This petition is accordingly disposed of with a direction to respondent no.3 that the case of the petitioner be reconsidered and take a conscious decision by passing a reasoned and speaking order within a period of 3 months from today.

Disposed of.

(RAJESH BHARDWAJ)
JUDGE

03.03.2022

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No