



W.P.(MD) No.2939 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.P.(MD) No.2939 of 2024

Murugan

... Petitioner

-vs-

- 1.The Additional Chief Secretary
to Government
O/o.the Additional Chief Secretary
to Government
Home (Prison IV) Department
Secretariat, St.George Fort
Chennai
- 2.The Additional Director General of Prison
O/o.The Additional Director General of Prison
Whannels Road, Egmore, Chennai
- 3.The Deputy Inspector General of Prison
O/o.The Deputy Inspector General of Prison
Madurai Range, Madurai
- 4.The Superintendent of Central Prison
Central Prison
Palayamkottai, Madurai

... Respondents



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WEB C

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus to release the petitioner by giving the benefits of Section 8 of the Tamil Nadu Borstal Schools Act, 1925.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

Prayer in this writ petition is to direct the respondents to release the petitioner by giving him the benefits of Section 8 of the Tamil Nadu Borstal Schools Act, 1925.

2. It is the case of the petitioner that he is convicted by the learned Sessions Judge, Fast Track Court, Tirunelveli, by Judgment dated 23.02.2007 in S.C.No.194 of 2006, for the offence under Sections 341, 302 read with Section 34 I.P.C., and sentenced to undergo life imprisonment. The appeal preferred by him before this Court in CrI.A.(MD) No.495 of 2007 challenging the conviction and sentence imposed by the Trial Court came to be dismissed by Judgment dated 27.03.2013. He is in imprisonment for the past



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eight years and there is no adverse remark against him. Further, at the time of committing the offence, he was 19 years old. Thus, he was an adolescent offender at that time and he is entitled to the benefits of Section 8 of the Tamil Nadu Borstal Schools Act, 1925 (hereinafter, referred to as “the Act”). Therefore, he submitted a representation dated 06.12.2023 to the respondents. However, no action has been taken based on the said representation, the petitioner has filed this writ petition.

3. Learned Additional Public Prosecutor appearing for the respondents, on instructions, submitted that though the petitioner was an adolescent offender at the time of commission of offence, he has been convicted to undergo life imprisonment and therefore, he has no vested right to claim benefits under Section 8 of the Act as per the decision of the Larger Bench of this Court in the case of ***N.Gowthaman @ Babu vs. The Government of Tamil Nadu and another***, reported in ***2016 (4) MLJ (Crl) 129***.

4. Heard both sides and perused the materials available on record.



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5. It is the claim of the petitioner that he has been convicted for the offence under Sections 341 and 302 read with Section 34 I.P.C., and sentenced to undergo life imprisonment and at the time of commission of offence, he was 19 years old and hence, he, being an adolescent offender, is entitled to the benefits of Section 8 of the Act. However, the issue involved in this writ petition is no more res integra and the same has already been decided by the Larger Bench of this Court in **N.Gowthaman @ Babu's** case (cited supra), wherein it has been categorically held that the term “imprisonment” in Section 8 of the Borstal Schools Act does not include “imprisonment for life” and the relevant portion of the said decision is extracted hereunder:

“86 In the result, the answer to the questions under references in Part I and Part II, supra, are as under:

PART I

1 The convicting court (be it original or appellate) is vested with jurisdiction to act under Section 8 of the Borstal Schools Act only upon convicting the accused and before passing its sentence. An order under Section 8 of the Borstal Schools Act can be passed by the Appellate / Revisional Court, if the person has not



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crossed the age of 21 years on the date of the judgment/order, subject to conduct of enquiry under Section 8(2) and 11 of the Borstal Schools Act.

2 The term imprisonment in Section 8 of the Borstal Schools Act does not include imprisonment for life.

*3 The judgment of the Full Bench in **Thangammal**'s case does not lay down the correct law and accordingly, stands overruled.*

PART - II

(a) Sections 8 and 11 of the Borstal Schools Act do not cast a duty upon the Court to examine whether an adolescent offender who is convicted would be entitled to the benefit of the Act and it is for the offender to avail of the privilege after his conviction and before the passing of sentence.

(b) The convicted person does not have a vested right to claim the benefits of the Borstal Schools Act retrospectively after crossing the age of 21 years.

(c) The under-trial prisoners will not be entitled to the benefits of the Borstal Schools Act.

*87 Ex consequenti, the decision of the Division Bench of this Court in **Shanmuganathan**'s case extending the provisions of the Borstal Schools Act to remand prisoners is over-ruled and the consequent G.O. (D) No.922, Home (Prisons IV) Department dated*



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*12.08.2008, declaring all the sub jails as borstal schools is hereby quashed. It is open to the Magistrates to remand the accused between the age group of 18 and 21 years to prisons and not to borstal schools. Further, the judgment of the Full Bench of this Court in **Thangammal**'s case holding that the word imprisonment in Section 8 of the Borstal Schools Act, includes imprisonment for life, does not lay down the correct law and is accordingly overruled."*

6. In view of the above decision, the petitioner having been convicted for life, he is not entitled to any benefit under Section 8 of the Act. Therefore, we are of the view that the petitioner is not entitled to the relief as such sought for in this writ petition and the same is liable to be dismissed.

7. Accordingly, the writ petition stands dismissed. No costs.

[A.D.J.C., J.] [K.R.S., J.]

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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to Government,
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