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Court : Kerala

Decided On : Mar-29-2005

Reported in : 2005(3)KLT426

Judge : K. Padmanabhan Nair, J.

Acts : Kerala Prison Rules, 1958 - Rules 299 to 320, 382, 383, 384 and 384A

Appeal No. : W.P. (C) No. 1408 of 2005

Appellant : Abdul Raffar

Respondent : Superintendent, Central Prison

Advocate for Def. : P.M. Habeeb, Government Pleader

Advocate for Pet/Ap. : Gopakumar R. Thaliyal and; Joseph Jerard Samson Rodrigues, Advs.

Judgement :

K. Padmanabhan Nair, J.

1. This Writ Petition is filed to issue a direction to the respondents to grant 60 days special remission of sentence in lieu of wages as provided under Rule 384A of the Kerala Prison Rules, for the year 1997. The petitioner was found guilty, convicted and punished with simple imprisonment for two years by the Enquiry

Commissioner and Special Judge, Thrissur in C.C. No. 49/1991. The conviction and sentences were upheld by this Court as well as the Supreme Court. When the judgment of the Trial Court was confirmed by this Court, the petitioner surrendered and underwent the punishment at Central Prison, Viyyur from 6.3.1997 to 24.4.1997 as Convict No. 9900. He was released on bail with effect from 24.4.1997, consequent to the admission of the Special Leave Petition by the Supreme Court. The Criminal Appeal filed by the petitioner before the Apex Court was also dismissed. The petitioner surrendered and is undergoing imprisonment from 3.1.2004 onwards.

2. According to the petitioner, in addition to the ordinary remission admissible to the prisoners, he is entitled to special remission in lieu of wages as provided in Rule 384A of the Kerala Prison Rules, for the years 1997, 2004 and 2005. According to the petitioner, he is entitled to be released from the prison with effect from 15.3.2005, and if the special remission claimed is not granted he will have to remain in prison till 15.5.2005.

3. It is averred that from 6.3.1997 to 24.4.1997, the petitioner had worked inside the prison for which he had earned wages but no special remission was given for that period as provided under Rule 384A of the Prison Rules. It is also averred that remission of sentence given to the petitioner upto 18.10.2004 alone was calculated and recorded in the history sheet as three months and six days which includes 60 days special remission for wages for the year 2004. According to the petitioner, he is entitled to get 180 days as special remission as provided in Rule 384A of the Kerala Prison Rules since his imprisonment is spread over to three years viz. 1997, 2004 and 2005. It is also averred that the respondents have taken a stand that the imprisonment for the term 6.3.1997 and 24.4.1997 cannot be considered for special remission in the year 2004. Hence this Writ Petition to issue a writ of mandamus or direction to the respondents to grant 60 days of special remission of sentence in lieu of wages for the year 1997 in addition to the remission that would be granted as per Rule 384A of the Kerala Prison Rules for the imprisonment from 3.1.2004 onwards.

4. The 1st respondent filed a statement and made available the file. It is contended that as per Rule 384A, if a convict prisoner wishes to purchase remission in lieu of wages that he earns from the prison labour, it will be granted fit subject to certain limitations. According to the respondents, the convict prisoner shall apply for special remission in lieu of wages for a particular month before 10th of that month and entries are made in their remission sheets then and there. The claim for remission which are more than 30 days are sent to Prison Headquarters for approval. According to the respondents, the petitioner did not apply for special remission in lieu of wages for the year 1997 while he was undergoing imprisonment. It is admitted that the petitioner had worked for 18 days in April 1997 and earned an amount of Rs. 37.80 as wages. He received the entire amount of Rs. 37.80, when he was released on 24.4.1997. At present the petitioner is having wages in his credit which he earned in the year 2004. According to the respondents, the petitioner had ample opportunity to purchase remission in lieu of wages during 1997 itself but he had not availed that benefit. It is contended that no convict can be allowed to purchase remission in lieu of wages with retrospective effect with the wages he earns subsequently, and the rule is meant to grant remission in lieu of wages to those convicts who are willing to purchase remission in lieu of wages in a current year while they are undergoing imprisonment.

5. Chapter XVIII of the Kerala Prison Rules, 1958 which contains Rules 299 to 320 deals with The Remission System. Rule 299 in Chapter XVIII defines the words 'prisoner' and 'sentence'. Rules 300 and 300A deal with exclusion of certain sentences from the purview of Chapter XVIII of the Rules. Rule 301 deals with forfeiture of remission. Of course, a special remission granted in lieu of wages under Rule 384A cannot be cancelled, under Rule 301 invoking the powers under Rule 301. Rule 302 deals with readmission of excluded prisoner, and Rule 303 deals with scale of ordinary remission. Rule 303 is relevant. It reads as follows:

'303. Scale of ordinary remission.-- Ordinary remission shall be awarded on the following scales:

(a) Two days per month for thoroughly good conduct and scrupulous attention to all prison regulations.

(b) Two days per month for industry and the due performance of the daily task imposed. A prisoner who is unable to labour through causes beyond his control by reason of being at Court, in transit from one Jail to another, in hospital or on invalid gang shall be granted remission under Clause (a) of the rules on the scale earned by him during the period in question has been such as to deserve such grant. He shall also be entitled to the grant of remission under Clause (b) on the scale earned by him during the previous month if he has been in prison during that term; if not, at the rate of two days per month.'

Rule 304 deals with the scale applicable to convict officers. Rule 305 deals with the date from which remission is calculated, which reads as follows:

'305. Date from which remission calculated.-- Remission under Rule 303 shall be calculated from the first day of the calendar month next following the date of the prisoner's sentence any prisoner who after having been released on bail or because his sentence has been temporarily suspended is afterwards readmitted to Jail, shall be brought under the remission system on the first day of the calendar month next following his readmission, but shall be credited on his return to Jail with any remission which he may have earned previous to his release on bail or the suspension of his sentence. Remission under Rule 304 shall be calculated from the first day of the next calendar month following the appointment of the prisoner as convict, warder, convict overseer or convict night watchman.'

(emphasis supplied)

Rule 306 deals with additional remission to prison servants. Rule 307 deals with award of remission for good conduct. Rule 308 deals with the authority competent to award ordinary remission. Rule 309 deals with procedure on award, which reads as follows:

'309. Procedure on a ward.-An officer awarding ordinary remission shall, before making the award, consult the prisoner's history ticket in which every offence

proved against the prisoner must be carefully recorded.

If a prisoner has not been punished during the month otherwise than by a formal warning, he shall be awarded the full ordinary remission for that month under Rule 303, or if he is a convict officer under Rule 304.

If a prisoner has been punished during the month otherwise than by a formal warning, the case shall be placed before the Superintendent, who after considering the punishments awarded, shall decide what amount of remission shall be granted under Rule 303 or if the convict is a convict officer, under Rule 304. All remission recorded on the prisoner's history ticket shall be entered quarterly on the remission sheet (or cards) are not maintained in a general remission register.'

(emphasis supplied)

Rule 310 deals with record of award. It reads as follows:

'310. Award of record.-- The award of ordinary remission to prisoners sentenced to one year and above shall be made as nearly as possible on the 1st January, 1st April, 1st July and 1st October, and the amount shall be intimated to the prisoner and recorded on his history ticket. Remission granted to a prisoner under Rule 307, shall be recorded on his history ticket as soon as possible after it is awarded.

The award of ordinary remission to prisoners sentenced to less than one year shall be made as nearly as possible, on the first of the month following and the amount shall be intimated to the prisoner and recorded on his history ticket.'

(emphasis supplied)

Rule 311 provides that no prisoner shall receive ordinary remission for the calendar month in which he is released. Rules 312 and 312A deal with qualification for special remission. Rule 313 deals with the authority competent to award special remission. Rule 314 deals with record of special remission, which reads as follows:

'314. Record of special remission.-- An award of special remission shall be entered on the history ticket of the prisoner as soon as possible after it is made, and the reasons for every award of special remission shall be briefly recorded.'

Rule 315 provides that the total remission awardable shall not without the special remission of the Government exceed one third part of the sentence. Rule 316 deals with method of calculating date of release. It reads as follows:

'316. Method of calculating date of release.--In calculating the date of release of a prisoner the number of days of remission earned shall be converted into months and days, at the rate of thirty days a month.'

Rule 317 deals with release of prisoners. Rule 318 deals with endorsement of remission on warrant. Rule 319 deals with procedure on transfer and Rule 320 deals with preservation of remission sheets.

6. Chapter XXII of the Kerala Prison Rules deals with Convict Labour and Jail Industries. Rule 382 deals with fixing of hours of work. Rule 383 provides as to how to fix the task. Rule 384 deals with how to utilise the wages earned. Rule 384A deals with remission in lieu of wages, which reads as follows:

'384A. Remission in lieu of wages.-- If a prisoner wishes to have remission of sentence in lieu of wages, he may purchase the remission at the rate of 25 N.P. per day subject to the condition that not more than 30 days special remission by the Superintendent of the Jail and 60 days by the Inspector General of Prisons shall be so granted to any one convict in a year.'

Rule 389 is also relevant and it reads as follows:

'389. Who may grant the wages.-- The Superintendent of Prisons shall be the authority to grant the wages as provided in the foregoing rules.'

Rules 309 to 311 deal with the procedure for awarding the remission. Rule 309 provides that all remissions shall be entered quarterly on the remission sheet, or if remission sheets are not maintained in a general remission register. Rule 310 shows that for the purpose of granting ordinary remission one calendar year is

divided into four quarters. The first quarter starts on 1st January, 2nd quarter on 1st April, 3rd quarter on Ist July and the 4th quarter on 1st October. A combined reading of Rules 309 and 310 shows that whenever a prisoner sentenced to one year and above earns a remission, that has to be entered in the remission register once in three months. Though no specific rule has been produced, the file made available shows that every prisoner who wants to purchase remission in lieu of wages under Rule 384A has to make an application before 10th of every month.

7. The petitioner underwent imprisonment from 6.3.1997 to 24.4.1997. There cannot be any doubt that he was entitled to all remissions including the special remission for that period also. He had worked for 18 days in April 1997 and earned Rs. 37.80 as wages. But, when he was released from custody on 24.4.1997, consequent to the suspension of the execution of sentence by the Apex Court, he received the entire wages which he had earned during that period. So, no wages are outstanding to the petitioner for the period 6.3.1997 till 24.4.1997. The case put forward by the petitioner is that the wages he earned during 2004 or 2005 shall be taken into account for granting special remission for the year 1997. According to the respondents, if a prisoner foils to purchase special remission for a particular quarter of an year, he cannot be allowed to make a claim for that period after the expiry of that particular quarter of that year. I am of the view that if a convict person who work and earns wages for a particular year intends to make a claim of special remission under Rule 384A he shall make such claim during that year itself. There is absolutely no justification for making a claim in a subsequent year for special remission in lieu of wages for the previous year after receiving the wages for the previous year merely because he has earned wages for the subsequent year enough to cover for the claim for 60 days or the previous year also. In Soman v. State of Kerala, 1989 (2) KLT 315, it was held as follows:

'...a prisoner who wishes to have remission of sentence in lieu of wages should purchase remission for the days mentioned therein in the year to which that remission relates. In a particular year prisoner can purchase remission for 30 days from the Superintendent of the Jail and for 60 days from the Inspector General of Prisons. This right of the prisoner is not to be carried forward to the succeeding year. In case prisoner fails to purchase the remission which he is legally entitled

to, during the year that right will be lost once for all.'

I respectfully agree with the principle laid down in Samoa's case.

8. The records show that the petitioner had not applied for any special remission during 1997. In fact, he may not have thought off readmission on 24.4.1997 because. at that time the conviction and punishment had not become final: It is argued by the counsel for the petitioner that had the petitioner gone out of prison on 24.4.1997 without receiving the wages he had earned during that period, he could have legitimately made a claim for special remission in lieu of wages. Since that is not the position here, I need not consider that point in this case. Admittedly, the petitioner did not make any claim for special remission in lieu of wages during 1997 and he had received the entire wages he had earned for that period in the year 1997 itself. The petitioner was given special remission for 2004. Since the petitioner is in prison for 2005 also, he is entitled to get special remission in lieu of wages under Rule 384A for this year also. If the petitioner had earned wages for the year 2005 he may purchase the remission in lieu of wages he had already earned for the year also, in accordance with law.

9. In the result, the Writ Petition is disposed of in the following manner:

(i) The claim of the petitioner for remission in lieu of wages for the period 6.3.1997 to 24.4.1997 is disallowed.

(ii) If the petitioner had earned any wages for the year 2005 and if he wishes to have remission in lieu of wages, he may purchase the remission in accordance with the law for any wages he had earned in the year 2005. That special remission shall also be taken into account while fixing the date of release of the petitioner.

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