IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 22nd OF APRIL, 2024

WRIT PET. (SERVICE) No. 1667 of 2005

BETWEEN:-

RAM DAYAL MISHRA, AGED 42 YEARS, EX-CONSTABLE, BORDER SECURITY FORCE S/O SHIV NATH MISHRA, R/O VILLAGE-PURAINIHA TOLA, POST-GOVINDGARH, DISTRICT REWA (M.P.)

.....PETITIONER

(BY SHRI ASHUTOSH TIWARI - ADVOCATE)

AND

1. UNION OF INDIA THROUGH THE SECRETARY TO MINISTER OF HOME AFFAIRS, NEW DELHI.

2. THE DIRECTOR GENERAL, BORDER SECURITY FORCE (PERS. DTE. RECTT. SECTION) BLOCK NO. 10 (Vth FLOOR), C.G.O. COMPLEX, LODHI ROAD, NEW DELHI-110003

.....RESPONDENTS

(BY SHRI PUSHPENDRA YADAV - DEPUTY SOLICITOR GENERAL)

This appeal coming on for orders this day, the court passed the following:

ORDER

Petitioner's case is that petitioner was working as a 'Constable' in the Border Security Force. He was convicted in a criminal case and, therefore, vide order dated 30/12/2004, Annexure P-14 bearing no. 25945-48, he was visited with penalty and he was dismissed from service vide order dated 27/08/1989.

He was convicted by the Sessions Court, Rewa for offences under

Sections 306 and 498-A of I.P.C. and was awarded seven years R.I. under Section 306 of I.P.C. and two years R.I. under Section 498-A of I.P.C. On the basis of said conviction, he was dismissed from service.

Now petitioner's contention is that he was granted pardon by His Excellency Governor of Madhya Pradesh vide order dated 6/06/2003 contained in Annexure P-7, passed by the State of Madhya Pradesh, Law and Legislative Affairs Department, wherein it is mentioned that His Excellency Governor of Madhya Pradesh, vide order dated 4/05/2003, exercising his powers under Article 161 of the Constitution of India has granted pardon to accused convict Ram Dayal S/o Shiv Nath Mishra. On the strength of the aforesaid pardon, petitioner moved several applications for reinstatement in service but vide order dated 30th December, 2004 Annexure P-14, his request was finally turned down. Hence, this petition.

Reliance is placed on the Full Bench judgment of the Andhra Pradesh High Court in the case of **The Deputy Inspector General of Police, North Range, Waltair and another Vs. D. Rajaram and others AIR 1960 A.P. 259** and it is submitted that with grant of pardon to a convicted person, he is free both from the punishment imposed on him as also from all penal consequences and such disqualifications, as disentitle him from following his occupation and which are concomitant of the conviction, are removed.

Thus, placing reliance on the aforesaid judgment, it is submitted that since all the disqualifications and disentitlements were wiped out, petitioner should have been reinstated.

Shri Pushpendra Yadav, learned Deputy Solicitor General, in his turn has placed reliance on the judgment of the Rajasthan High Court at Jaipur in D.B. Civil Writ Petition No. 5467/2003, **The Union of India and others Vs. Smt.**

Sushma Soni and another, decided on July 2, 2013, wherein the Hon'ble Division Bench after considering the judgment of the Supreme Court in **Sarat Chandra Rabha Vs. Khagendranath Nath AIR 1961 SC 334** has held that pardon only affects the execution of the sentence passed by the court and freed the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stood as it was.

Similarly, reliance is placed on the judgment of the Supreme Court in **State of Haryana and others Vs. Jagdish (2010) 4 SCC 216**, wherein in paras 28, 29 and 47, it is held as under **:-**

> "28. Nevertheless, we may point out that the power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of Article 72 and Article 161 of the Constitution of India. This responsibility was cast upon the executive through a constitutional mandate to ensure that some public purpose may require fulfilment by grant of remission in appropriate cases. This power was never intended to be used or utilised by the executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially. The punishment awarded through a judgment is not overruled but the

convict gets benefit of a liberalised policy of State pardon. However, the exercise of such power under Article 161 of the Constitution or under Section 433-A CrPC may have a different flavour in the statutory provisions, as short-sentencing policy brings about a mere reduction in the period of imprisonment whereas an act of clemency under Article 161 of the Constitution commutes the sentence itself."

"29. In Epuru Sudhakar v. Govt. of A.P. [(2006) 8 SCC 161 : (2006) 3 SCC (Cri) 438 : AIR 2006 SC 3385] this Court held that reasons had to be indicated while exercising power under Articles 72/161. It was further observed (per Kapadia, J.) in his concurring opinion : (SCC pp. 190-91, paras 62 & 65-67)

"62. Pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace. They are a part of constitutional scheme. When a pardon is granted, it is the determination of the ultimate authority that public welfare will be better served by inflicting less than what the judgment has fixed.

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65. Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. …

66. Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets

aside the punishment for a crime. …

67. The power under Article 72 as also under Article 161 of the Constitution is of the widest amplitude and envisages myriad kinds and categories of cases with facts and situations varying from case to case."

"47. Consideration of public policy and humanitarian impulses supports the concept of executive power of clemency. If clemency power is exercised and sentence is remitted, it does not erase the fact that an individual was convicted of a crime. It merely gives an opportunity to the convict to reintegrate into the society. The modern penology with its correctional and rehabilitative basis emphasises that exercise of such power be made as a means of infusing mercy into the justice system. Power of clemency is required to be pressed in service in an appropriate case. Exceptional circumstances e.g. suffering of a convict from an incurable disease at the last stage, may warrant his release even at a much early stage. Vana est illa potentia quae nun quam venit in actum means—vain is that power which never comes into play."

Thus, it is evident that the Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction and that being the ratio of the judgment of the Supreme Court, it is evident that the conviction being maintained despite the pardon and only sentence is wiped out, in view of the conviction being maintained, petitioner is not entitled to be

reinstated in service and, therefore, there is no illegality in the impugned order calling for interference.

Accordingly, the petition fails and is **dismissed.**

(VIVEK AGARWAL)
JUDGE

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