

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 12416/2019

Rajasthan State Legal Services Authority

-----Petitioner

Versus

Chief Secretary Through State Of Rajasthan

-----Respondent

For Petitioner(s)	:	Shri V.R. Bajwa, Shri Lokendra Singh
For Respondent(s)	:	Shri M.S. Singhvi, Advocate General with Shri Siddhant Jain

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHA**

Order

15/10/2019

Shri V.R. Bajwa, learned amicus curiae has submitted four charts, which, in fact, are based on the information supplied by the respondents with their counter affidavit at Annexure-R/1 and R/2. Copy thereof has been supplied to learned Advocate General in court today.

There are 202 such convicts, who are about and above the age of 60 years in the various prisons of the State. The respondents in Annexure-R/1 filed in their counter affidavit have provided the details of 231 prisoners, out of whom 29 have been released. Of those 29, 6 have been granted permanent parole, 15 were granted bail and 7 have been released on account of either completion of sentence or acquittal and 1 has died. There thus remain only 202 convicts, details of which have been furnished in chart-1, provided by Shri V.R. Bajwa, learned amicus curiae. This chart-1 has been prepared on the basis of particulars furnished by

respondents in Annexure-R/2 of their counter affidavit and most of the prisoners, barring a very few, are more than 60 years of age.

Shri V.R. Bajwa, learned amicus curiae has invited attention of the Court towards chart-2, which contains the list of 138 prisoners, out of above referred to 202 convicts, who according to him, have been sentenced to life imprisonment.

In chart-3, 31 persons, out of 138 prisoners referred to above, are in jail for more than 14 years including remission. However, 7 prisoners out of them, as detailed out in chart-4 are those who have completed actual period of 14 years' in incarceration without the remission.

Shri V.R. Bajwa, learned amicus curiae has invited attention of the Court towards proviso to Rule 9 of the Rajasthan Prisoners (Release on Parole) Rules, 1958 and submitted that according said proviso, the cases of only those convicts, who have been sentenced to life imprisonment shall be liable to be placed before the State Committee for permanent release on parole, who have served 14 years of incarceration excluding remission. He submitted that as per the details which the respondents have furnished, it is not clear whether all these 7 persons have availed the benefit of parole in the past and if yes, on how many occasions, but this issue is no longer res integra, and in fact, has been set at rest by judgement of Full Bench of this Court in Prem Bai vs. State & Anr., D.B. Civil Writ Petition No.4382/2014 dated 29.08.2017, in which it has been held that it is not necessary to avail the benefit of first, second or third parole for being released on permanent parole.

We are inclined to uphold the contention of the learned amicus curie and direct the respondent-State to place the case of

these 7 persons before the State Committee for their release on permanent parole and pass appropriate order on or before the next date.

The present petition has been filed by way of public interest litigation for those, who are serving exemption of different duration in jail, who are more than 60 years of age. According to the details furnished by the respondents and the different four charts, which learned Amicus Curiae has produced today, out of 202 convicts, who are about or above the age of 60 years, 138 are such who are sentenced to life imprisonment. That means that 64 of them are such, who are though about or above the age of 60 years, have been awarded sentence of various description other than life imprisonment.

We therefore direct the respondent-State to examine their case also in the light of relevant rules whether or not, upon completion of certain specified period of time, may be roughly half of the substantive sentence, can they be not released on permanent parole on consideration of their old age as per the yardstick that may be adopted by the respondent-State.

In the chart-3 provided by learned amicus curiae, out of 131 convicts, who have been sentenced to life imprisonment, only 7 are such, who have completed 14 years of actual incarceration excluding the period of remission and therefore would be straightaway eligible for being released on permanent parole. However, as regards, 24 prisoners, who have although been sentenced to life imprisonment, but have completed period of more than 14 years with remission and in the case of some of them, even more than 16 years and some even 17 years.

The respondent-State shall examine their case whether any relaxation for the purpose of their release on permanent parole could be granted on the basis of yardstick of age, that may be adopted by the State or otherwise they could be transferred to open prison in relaxation of the outer age of 60 years given in Rule 3 of Rajasthan Prisoners Open Air Camp Rules, 1972 as the word "ordinarily" used therein has been repeatedly interpreted by number of judgments of this Court as "not necessarily", subject to any prisoner already in the open prison undertaking to take care of such old age prisoners or any family member of such prisoner agreeing to stay with such old age prisoner, as the respondents have been permitting the family members to stay with prisoners, who are shifted to Open Jail.

Shri M.S. Singhvi, learned Advocate General fairly submitted that the State Government shall examine all the aforementioned directions and come out with its response on or before the next date.

List the matter on 22.11.2019.

A copy of this order be given to learned Advocate General for the needful.

(NARENDRA SINGH DHADDHA),J

(MOHAMMAD RAFIQ),J