

Sham Singh v. State of Punjab and another (A. S. Bains, J.)

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*another v. Lala Roshan Lal Kuthiala and others* (1). The learned Judge held that section 23, occurring as it does in Chapter IV of Arbitration Act, applies only to arbitration in suits and not to arbitration with the intervention of a Court where no suit is pending. Therefore, in my view, the Court could not set aside the award on the ground that no points were framed for determination of the Arbitrator by the Court when the matter was referred to him by it. Section 30 contains the ground for setting aside the award. The Court has, however, not decided the other objections filed by the respondents. Consequently, I accept the revision petition, set aside the impugned order and remand the case to the Subordinate Judge for deciding the other objections. The costs in the revision petition shall be the costs in the cause. The parties are directed to appear in the Subordinate Court on February 15, 1980.

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Before A. S. Bains, J.

SHAM SINGH,—*Petitioner.*

*versus*

STATE OF PUNJAB and another,—*Respondents.*

*Criminal Writ Petition No. 189 of 1979.*

January 15, 1980.

*Punjab Jail Manual—Chapter 20, Paras 635 and 639—Prisoner serving sentence in default of payment of fine—Such prisoner—Whether entitled to ordinary remissions and remissions for good conduct.*

*Held*, that from a reading of para 635 of the Punjab Jail Manual, it is plain that a prisoner is entitled to two days remission in every month for his good conduct and scrupulous attention to all prison regulations and two days remission in every month for industry and due performance of the daily task imposed on him. Similarly, under para 639, a prisoner is further entitled to fifteen days' remission in a year in case he has not committed any prison offence during such period. However, if he completes three years of his sentence and is not punished for any prison offence during that period, he is entitled

to 60 days' good conduct remission for each of the first two years only. These two paras of the Punjab Jail Manual do not make any distinction for earning ordinary remissions on substantive imprisonment or on imprisonment to be undergone in default of payment of fine. If the State Government had intended not to allow any ordinary remission in case of imprisonment to be undergone by a prisoner in default of payment of fine, then it could make a specific provision in the Jail Manual itself. Accordingly, a prisoner undergoing imprisonment in default of payment of fine is entitled to the ordinary remission as envisaged in paras 635 and 639 of the Manual.

(Paras 3 and 5).

*Petition under Articles 226/227 of the Constitution of India praying that :—*

- (a) *a writ in the nature of Habeas Corpus or any other order or direction, be issued directing the respondents to grant all benefits of Remission System as given in Chapter 20 of the Punjab Jail Manual, especially of Paras 635 & 639;*
- (b) *the petitioner be released forthwith if he had completed the entire sentence setting of the remission available to him as prescribed in Chapter 20 of the Punjab Jail Manual;*
- (c) *filing of the affidavit in support of the petition may please be dispensed with ;*
- (d) *that cost of the petition, be awarded to the petitioner.*

V. K. Jindal, Advocate, for the Petitioner.

D. S. Brar, A.A.G. (Pb.), for the State.

#### JUDGMENT

A. S. Bains, J.

(1) The petitioner was convicted by the Ex-officio Additional Sessions Judge, Bhatinda, in four cases under sections 408 and 468 of the Indian Penal Code,—*vide* order, dated March 24, 1973. In all the four cases he was sentenced to five years' rigorous imprisonment and to pay a fine of Rs. 40,500. The substantive sentences in all the four cases were ordered to run concurrently. In default of payment of fine, he was to undergo four years and seven months' rigorous imprisonment in all the four cases. It is alleged in the petition that

Sham Singh v. State of Punjab and another (A. S. Bains, J.)

the petitioner has already completed five years' substantive sentence on October 23, 1976 and after that he is undergoing the sentence of imprisonment in default of payment of fine.

(2) The contention of the learned counsel for the petitioner is that the petitioner is entitled to the ordinary remission under para 635 and remission for good conduct under para 639 of the Punjab Jail Manual. The Jail Authorities have refused to grant him remissions for the period of imprisonment which he is undergoing in default of payment of fine. It is against the refusal of the Jail Authorities that the present petition under Article 226/227 of the Constitution of India has been filed.

(3) I have perused the relevant provisions (i.e. paras 635 and 639) of the Punjab Jail Manual. Para 635 is in the following terms:—

“635. Ordinary remission shall be awarded on the following scale:—

- (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.”

From the reading of this para it is plain that a prisoner is entitled to two days remission in every month for his good conduct and scrupulous attention to all prison regulations and two days remission in every month for industry and due performance of the daily task imposed on him.

Para 639 of the Punjab Jail Manual is as follows:—

“639. (1) Any prisoner eligible for remission under the rules who, for a period of one year reckoned from the first day of the month following the date of his sentence of the date on which he was last punished for a prison offence, has committed no prison offence whatever, shall be awarded fifteen days' ordinary remission in addition to any other remission earned under these rules.

- (2) If, however, a prisoner completes three years of his sentence and is not punished during that period for any

prison offence, he shall be granted 60 days' remission for good conduct at the end of the third year. In such cases the prisoner shall in addition be granted 15 days' good conduct remission for each of the first two years only. The total remission earned shall not in any case exceed the maximum remission permissible under the rules.

*Explanation.*—For the purposes of this rule prison offences punished only with a warning shall not be taken into account.”

From the reading of this para it is evident that a prisoner is further entitled to fifteen days' ordinary remission in a year in case he has not committed any prison offence during such period. However, if he completes three years of his sentence and he is not punished for any prison offence during that period, he is entitled to 60 days' remission for good conduct, in addition to a further period of 15 days' good conduct remission for each of the first two years only.

(4) Reply has been filed by the respondents. It is admitted that the aforesaid two provisions of the Punjab Jail Manual are mandatory and are applicable to all the prisoners. These two provisions do not make any distinction between the imprisonment which a prisoner undergoes for an offence under the Indian Penal Code or any other law and the imprisonment which he undergoes in default of payment of fine. The State Government has not framed any law which may nullify the effect of the aforesaid two provisions of the Punjab Jail Manual with regard to the imprisonment which a prisoner undergoes in default of payment of fine.

(5) Mr Brar, learned counsel for the State, has pointed out that under section 68 of the Indian Penal Code, the petitioner is not entitled to any remission for imprisonment suffered in default of payment of fine. Section 68 of the Indian Penal Code reads as under:—

“68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.”

This provision only lays down that the imprisonment imposed in default of payment of a fine shall terminate as and when that fine is

Sham Singh v. State of Punjab and another (A. S. Bains, J.)

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either paid by a prisoner or levied by process of law. Section 69 lays down that the imprisonment imposed in default of payment of fine shall be reduced in proportion to the amount of fine paid or levied on a prisoner. Mr. Brar has further brought to my notice the provision of section 432 of the Code of Criminal Procedure, which gives power to the State Government to suspend or remit sentences. This provision has nothing to do with the present case. He has also relied upon an authority of the Allahabad High Court reported as *Paras Nath and others v. State* (1), wherein it is held that the State Government has no power to remit or commute the sentence of imprisonment in default of payment of fine. In this authority, no provision of any Jail Manual is interpreted. There only the question was whether the State Government could remit, suspend or commute the sentence of imprisonment which a prisoner was undergoing in default of payment of fine, and in that situation, it was held that the State Government had no power to do so. In the present case, only the interpretation of the provision relating to remission is under determination. The aforesaid two paras of the Punjab Jail Manual do not make any distinction for earning ordinary remissions on substantive imprisonment or on imprisonment to be undergone in default of payment of fine. If the State Government had intended not to allow any ordinary remission in case of imprisonment to be undergone by a prisoner in default of payment of fine, then it could make a specific provision in the Jail Manual itself. Accordingly I am of the view that in the absence of any specific provision to deny the ordinary remissions in case of imprisonment in default of payment of fine, the petitioner is entitled to the ordinary remission as envisaged in paras 635 and 639 of the Punjab Jail Manual.

(6) For the reasons stated, this petition is allowed and it is directed that the Jail authorities will allow to the petitioner remissions in the sentence of imprisonment which he is undergoing in default of payment of fine in accordance with paras 635 and 639 of the Punjab Jail Manual.

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(1) 1969 Cr. L.J. 350.