

UNION OF INDIA AND ORS.

v.

KASHISWAR JANA
(Civil Appeal No. 2259 of 2008)

MARCH 31, 2008

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Freedom Fighter's Pension:

Date of entitlement to pension – Application for freedom fighter's pension rejected by Central Government – High Court in writ petition allowing the claim on benefit of doubt – HELD: Pension is to be granted from date of order of High Court and not from date of filing of application.

The respondent claiming himself to be a freedom fighter, filed an application on 28.7.1981 for grant of freedom fighter's pension. His claim was rejected by the Central Government. But, his writ petition was allowed by single Judge of the High Court on 4.8.1993. The Letters Patent Appeal of the Government was dismissed and the petition for special leave was also dismissed as time barred. Thereafter the respondent claimed the pension from 28.7.1981, the date of the application; whereas the stand of the Government was that since benefit of doubt was granted to the respondent, he was entitled to the pension from 4.8.1993, the date of the order of the High Court. The High Court did not accept the stand of the Government, and the Government filed the instant appeal.

Allowing the appeal, the Court

HELD: In view of the decision of this Court in Kaushalya Devi's* case, the pension is to be granted from 4.8.1993, the date of the order of the High Court. (para-8) [930-E-F]

*Kaushalya Devi 2007(9) SCC 525 – relied on.

A *M.L. Bhandari vs. Union of India* AIR 1993 SC 2127 – cited.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2259 of 2008.

B From the final Judgment and Order dated 22/3/2005 of the High Court of Calcutta at Calcutta in W.P. No. 9810 (W)/2000.

C T.S. Doabia, Lata Krishnamurthy, Ashok Kumar Singh, Naresh Kumar Gaur, Surinder Dutt Sharma, B. Swaraj, Anil Kumar Tandale, Sushma Suri, Rekha Pandey, Manoj Saxena, Rajnish Singh, Rahul Shukla, T.V. George, N.R. Choudhary and Somnath Mukherjee for the appearing parties.

The Judgment of the Court was delivered by

D **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

E 2. Challenge in this appeal is to the judgment of a learned Single Judge of the Calcutta High Court allowing the Writ Petition filed by the respondent. The controversy lies within a very narrow compass. The respondent claimed to be a freedom fighter and claimed freedom fighter's pension. The application in this regard was filed on 28th July, 1981. The application was rejected by the Central Government on 29.1.1993. A Writ Petition was filed before the Calcutta High Court questioning correctness of the order of the Single Judge. The writ petition was allowed and the present appellants were directed to release pension to the respondent.

F 3. Feeling aggrieved by the said order the Division Bench was moved in a Letters Patent Appeal which was dismissed. A special leave petition was also filed before this Court which was rejected as barred by time. The question that arose was the date from which the respondent was entitled to pension. Appellants released the pension with effect from 4th August, 1993 when the writ petition filed by the respondent was allowed by the learned Single Judge. Respondent claimed pension from

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the date of filing of the application. According to him he is entitled to pension from 28.7.1981 when the application was filed by him. Reference was made to the decision of this Court in *M.L. Bhandari v. Union of India* [AIR 1993 SC 2127].

4. Stand of the present appellants was that since the claim of the respondent could not be decided till 1993 because of the non co-operative attitude of the State Government regarding supply of requisite information. In any event, the benefit of doubt was granted to the respondent and in line with the order passed by the High Court earlier pension was granted from the date of order i.e. 4th August, 1993. The High Court did not accept the stand.

5. In support of the appeal learned counsel for the appellant submitted that the view of the High Court is clearly untenable because the question whether respondent was entitled to pension and whether he fulfilled the guidelines was under examination. Definite material was not placed by the State Government and only he was given benefit of doubt and because of the order of the High Court pension was granted to him.

6. Learned counsel for the respondent on the other hand supported the order of the High Court.

7. Almost similar issue came up for consideration before this Court in *Union of India & Anr. v. Kaushalaya Devi* (2007(9) SCC 525), wherein it was inter alia observed as follows:

“3. Heard learned counsel for the parties and perused the record. The short question in this case is whether the freedom fighters’ pension should be granted to the respondent from the date of the application or the date of the order granting the pension.

4. It has been held by this Court in *Govt. of India v. K.V. Swaminathan*¹ that where the claim is allowed on the basis of benefit of doubt, the pension should be granted not from the date of the application but from the date of the order.

A 5. In the present case, we have perused the record and
found that it is stated therein that the claim was allowed on
the basis of secondary nature of evidence. In other words,
B the claim was not allowed on the basis of jail certificate
produced by the claimant but on the basis of oral statement
of some other detenu. Hence, we are of the opinion that
the pension should be granted from the date of the order
and not from the date of the application.

C 6. Learned counsel for the respondent has relied on the
judgment of this Court in *Mukund Lal Bhandari v. Union
of India*(AIR 1993 SC 2127)

D 7. In our opinion that decision is distinguishable as it has
been stated therein that the pension cannot be granted
from any date prior to the application. In our opinion this
does not mean that it cannot be granted from a date
subsequent to the application.

E 8. For the reasons given above this appeal is allowed.
The impugned judgment is set aside and it is directed that
the pension will be granted only from the date of the order
for granting pension and not from the date of the
application.

F 8. Keeping in view what has been stated by this Court in
Kaushalaya Devi's case (supra) we direct the pension is to be
granted from the date of the High Court's order i.e. 4.8.1993.

9. The appeal is allowed to the aforesaid extent without
any order as to costs.

R.P.

Appeal allowed.