

CASE NO.:
Appeal (civil) 783 of 2007

PETITIONER:
Union of India & Anr

RESPONDENT:
Kaushalaya Devi

DATE OF JUDGMENT: 15/02/2007

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of Special Leave Petition (CIVIL) No.4395 of 2006)

MARKANDEY KATJU, J.

Leave granted.

This appeal has been filed against the judgment of the Himachal Pradesh High Court dated 5.1.2005 in Writ Petition No.143 of 2004.

Heard learned counsels 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.

It has been held by this Court in Government of India vs. K.V. Swaminathan (1997) 10 SCC 190 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.

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, 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 detainee. 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.

Learned counsel for respondent has relied on the judgment of this Court in Mukand Lal Bhandari Vs. Union of India & Ors. AIR 1993 SC 2127.

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.

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.