

CASE NO.:
Appeal (civil) 7360 of 2003

PETITIONER:
UNION OF INDIA AND ANR.

RESPONDENT:
PUNJAB SINGH AND ANR.

DATE OF JUDGMENT: 15/09/2003

BENCH:
R.C. LAHOTI & ASHOK BHAN

JUDGMENT:
JUDGMENT

2003 Supp(3) SCR 728

The Judgment of the Court was delivered by R.C. LAHOTI, J. : Leave granted.

Punjab Singh, the respondent No.1, applied for the grant of Freedom Fighters Pension under the Freedom Fighters Pension Scheme 1972 framed by the Government of India. One of the eligibility conditions was that the applicant's annual income from all sources combined should not exceed Rs. 5,000. The respondent showed his total income from agriculture to be Rs. 2,500 per annum. The State Government recommended his case for the grant of pension and the same was released w.e.f. 15.8.1972. On 7.11.1978, the Government of Punjab intimated the Central Government that the annual income of Punjab Singh exceeded Rs. 5,000. The Government of India, vide its letter dated 26.12.1978, suspended the release of pension to the respondent. The issue as to the verification of his annual income was taken up afresh. However, on 1.8.1980, the Government of India promulgated a fresh scheme, known as Swatantrata Sainik Samman Pension Scheme, 1980 in place of the 1972 Scheme. Under the new scheme the ceiling on annual income as one of the eligibility conditions was waived.

On 24.9.1980, the Government of India issued a fresh grant of pension in favour of the respondent directing release of pension w.e.f. 1.8.1980 under the new scheme and at the same time directing that the amount drawn by him during the period when he was not eligible shall be liable to be adjusted against future payments. On 23.11.1996, the respondent filed a civil suit laying challenge to that much part of the order dated 24.9.1980 which upheld his ineligibility for the grant of pension under the 1972 Scheme and consequently directed adjustment of excess payment against the pension due and payable w.e.f. 1.1.1989. The suit has been decreed, by the trial Court, which decree has been maintained in first and second appeals. The Union of India has filed this appeal by special leave.

The submission made by the learned counsel for the appellants is that the suit filed by the respondent was hopelessly barred by time and, therefore, could not have been decreed. It is also submitted that the respondent was ineligible for payment of pension under the 1972 Scheme and the Government of India has not erred in releasing the pension w.e.f. 1.8.1980, the date on which the new scheme was promulgated in supersession of the earlier scheme and whereunder only the respondent became entitled to the grant of pension. We find force in the submission so made.

Without going into the merits of the plea whether the respondent was justified in staking the claim for pension for a period anterior to 1.8.1980, the date on which he became entitled for pension on account of new scheme having been promulgated, suffice it to say that the cause of action, if any, had arisen to the respondent on 24.9.1980 itself when the appellant emphatically and in no uncertain terms made it clear that his entitlement to pension was only w.e.f. 1.8.1980 and the payment made

earlier was liable to be adjusted against the pension due and payable under its order dated 24.9.1980. A civil suit filed more than 16 years after the date of the accrual of the cause of action was clearly barred by time. Under Section 3 of the Limitation Act 1963, the trial Court was bound to dismiss the suit as having been filed after the prescribed period of limitation. The decree could not have been maintained by the first appellate Court or the High Court. The learned counsel for the respondent submitted that in a case of freedom fighters pension this Court, in its jurisdiction under Article 136 of the Constitution, ought not to interfere with the decree passed by the courts below and upheld by the High Court. We find no merit in the submission so made with passion and fervency. A decree passed in clear breach of the mandate of Section 3 of the Limitation Act cannot be allowed to be sustained when specifically objected to on this ground. Secondly, we find no reason to take a sympathetic view on the claim of the respondent inasmuch as he, being a former railway police employee, did not disclose his pension and misstated his agricultural income as Rs. 2,500 only which was, on enquiry, found to be not less than Rs. 4,800 and with the amount of pension added to the agricultural income the respondent was found to be ineligible for the benefit of the 1972 Scheme.

The appeal is allowed. The decree of the trial Court, though upheld in first and second appeals, is set aside. The suit filed by the respondent Punjab Singh is directed to be dismissed. However, no order is made as to the costs.