

CASE NO.:
Writ Petition (civil) 2259 of 2008

PETITIONER:
Union of India & Ors

RESPONDENT:
Kashiswar Jana

DATE OF JUDGMENT: 31/03/2008

BENCH:
DR. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
JUDGMENT

REPORTABLE

CIVIL APPEAL NO. 2259 OF 2008
(Arising out of SLP (C) No. 8873 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

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.

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 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. Swaminathan¹ 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.

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, 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.

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)

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.

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.

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.