

CASE NO.:
Appeal (civil) 858 of 2003

PETITIONER:
State of M.P. & Anr.

RESPONDENT:
Devkinandan Maheshwari

DATE OF JUDGMENT: 03/02/2003

BENCH:
S.Rajendra Babu, Brijesh Kumar & G.P.Mathur.

JUDGMENT:

JUDGMENT

(Arising out of SLP (C) No.18395/00)

WITH

CIVIL APPEAL NOS.

OF 2003

@ SLP (C) No.18396/2000, SLP (C) No.21431/01,
SLP (C) .CC 7315/02

BRIJESH KUMAR, J.

Delay condoned in S.L.P . (cc) 7315/02. Leave granted in all Special Leave Petitions. In all the above noted cases, the respondents have been sanctioned pension under the M.P.Swatantra Sangram Sainik Samman Nidhi Niyam, 1972 (for short 'the M.P.Rules, 1972'). The State of Madhya Pradesh has however, come up against the judgment of the High Court providing for payment of the pension with effect from the date of application in stead of from the date of order of the sanction of the pension.

So far as the question of grant of pension to the respondents under the above said Rules is concerned, we do not think that any case is made out to interfere with that part of the order. The facts stand duly considered and it has been found that the respondents in the above noted appeals were entitled for the pension under the rules. In the appeal arising out of Special Leave Petition CC NO.7315 of 2002, learned State Counsel has specifically drawn our attention to the fact that the respondent - Avadesh Prasad Shukla had come out with a case that he had jumped into the national movement while he was aged 12 years only and had to be underground in the given circumstances then prevailing. The High Court has discussed the facts in detail and has believed the evidence which was furnished by the respondent and on the basis of the same it has been categorically found that he was legitimately entitled to the pension under the Rules. As observed earlier, we find no justification to interfere with that finding.

The main question of law as raised, common to all the appeals, is as to whether the respondents are entitled to claim pension (Samman Nidhi) under the M.P.Rules, 1972 from the date of application or from the date of sanction of the pension? The High Court in all the cases relying upon a decision of this Court reported in 1993 Suppl. (3) SCC P.2, Mukundlal Bhandari Vs. Union of India held that pension was payable with effect from the date of application and not from the date of order sanctioning the pension. The case of the appellants is that the decision in the case of Mukundlal

Bhandari (supra) would not be applicable to the cases governed by the M.P.Rules, 1972. The submission is that Mukundlal Bhandari's case (supra) was decided in relation to the Central Pension Rules whereas the M.P.Rules, 1972 have different provisions more particularly after the amendment effected by adding Clause (6) in Rule 3 of the Rules. The amendment was given effect to since the commencement of the Rules. It reads as under :
"(6) Freedom Fighter will be entitled to claim the benefits of Samman Nidhi from the date of passing the order.

This amendment shall come into force from the date of commencement of the said rules."

The different Division Benches of the Madhya Pradesh High Court and learned Single Judges whose decisions have been impugned in the instant appeals, have squarely relied upon the decision in the case of Mukundlal Bhandari (supra). It appears that the question before this Court in the above noted case was as to whether the pension was payable with effect from the date of the order or from the date of the application and further if it could be payable from any date earlier to the date of the application. It was held that pension was liable to be paid with effect from the date of the application. The case of Mukundlal Bhandari (supra) relates to the Freedom Fighters Pension Scheme, 1972 introduced by the Government of India. Apparently there does not seem to be any provision in the Central Govt. Rules particularly providing any date with effect from which pension would be payable. It is, therefore, submitted on behalf of the appellants that the position would be different for the cases covered by the M.P.Rules, 1972.

It appears that in some cases, the Madhya Pradesh High Court held that pension would be payable with effect from the date of order in view of the amended Rule 3(6) of the M.P.Rules, 1972. One of such decisions has been placed on record by the appellant (in S.L.P.(C) No.18395 of 2000). It is a Division Bench decision dated 28.9.1999 in L.P.A.No.167 of 1998, State of Madhya Pradesh & Anr. Vs. Anand Bihari & Anr. This judgment does not seem to have been brought to the notice of the learned Single Judges and the Division Benches whose orders have been impugned in the present appeals. Since there have been conflicting decisions of different benches, the matter was referred to a Full Bench later in Writ Petition No.1317 of 1998, Jagannath Prasad Vs. State of Madhya Pradesh and two Ors. which has been decided on 16.02.2001. The Full Bench held that the decision in the case of Mukundlal Bhandari (supra) would not be applicable to the cases governed by the M.P.Rules, 1972.

The question referred to the Full Bench was to the following effect :

"Whether a Freedom Fighter is entitled to pension from the date of order and the rules amended on 8th March, 1999, will have prospective or retrospective effect?"

The above question has been answered as follows:

"Consequently, the answer to the question referred to is that the Freedom Fighter is entitled to pension from the date of order and not from the date of application, and further that the rules amended on 8th March, 1999, will have retrospective and not

prospective effect."

In our view, the decision in the case of Mukundlal Bhandari (supra) will have no application to the cases where pension has been sanctioned and payment is made under the provisions of the M.P.Rules, 1972. This Court in the case of Mukundlal Bhandari (supra) had taken the view that pension would be payable with effect from the date of application in absence of any such rule providing as to from which particular date the pension would be payable. The Division Bench of the Madhya Pradesh High Court in the case of State of Madhya Pradesh Vs. Anand Bihari (supra) and later the Full Bench decision in the case of Jagannath Prasad Vs. State of Madhya Pradesh (supra) has rightly found that the decision in the case of Mukundlal Bhandari (supra) is distinguishable and would not be applicable to the present case. The orders passed by the High Court under challenge in these appeals squarely relying upon the decision in the case of Mukundlal Bhandari (supra) which, in our view, are not sustainable and they are liable to be set aside.

In the result, the appeals are allowed in part and the judgment and orders impugned in all the above noted appeals are set aside only to the extent they provided that pension shall be payable with effect from the date of application. Costs easy.