

(1994) 02 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Petition No's. 1193, 2418, 2859, 2860, 3789, 4045 and 4423 of 1992 and 17, 88, 424, 425, 1298, 2044 and 1984 of 1993 and 34 of 1994

Baldev Parsad Arya

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-02-1994

Acts Referred:

Citation : (1994) 1 AD 954 : (1994) 29 DRJ 19

Hon'ble Judges : K. Shivshankar Bhat, J;G.C. Mittal, J

Bench : Division Bench

Advocate : S.N. Marwah, S.N. Gupta, V.K. Raina, Madan Lokur and Nandini Ramachandran, for the Appellant;

Judgement

K. Shivshankar Bhat, J.

(1) In all these writ petitions, petitioners Seek the benefit of Swatantarta Sainik Samman Pension Scheme (earlier known as Freedom Fighters Pension Scheme. 1972)-and referred hereinafter as the Scheme. Their main plea is that the pension under the scheme ought to be granted with effect from 1.8.1980.

(2) These petitioners assert that they or their predecessors participated in the Aryasamaj Movement of 1938-39 against the Government of the then Nizam of Hyderabad and consequently suffered imprisonment and thus they are entitled to the grant of pension under the Swatantarta Sainik Samman Pension Scheme. 1980 (same as "the Scheme"). They are also aggrieved by the non-consideration or the rejection of the applications on the. ground that the applications were filed after 30.6.1986. It is unnecessary for us to refer and consider the various contentions raised in the writ petitions, as the questions are fully covered by the authoritative pronouncement of the Supreme Court in the decision rendered in Mukund Lal Bhandari and others Vs. Union of India and others, .

(3) According to the learned counsel for the petitioners, said decision is not

conclusive when it says that the benefit of the scheme is available only from the date of the application filed by a claimant seeking the pension. The learned counsel contended that irrespective of the date of the application, an eligible claimant should be granted the benefit with effect from 1.8.1980. when the scheme was brought into force. The learned counsel relied on two earlier decisions of the Supreme Court wherein the benefit was extended w.e.f. 1.8.1980 and argued that the subsequent decision in Mukund Lal Bhandari's case was by a Bench of two Judges, which cannot over-rule the earlier rulings.

(4) Earlier rulings were specifically considered in Mukund Lal Bhandari's case and were distinguished: it is only thereafter it was held that the benefit of the scheme should be extended from the date of the application. When a Bench of the Supreme Court refers to an earlier decision of the said Court and either distinguishes the earlier decision or clarifies the same, the subsequent decision would operate as a binding precedent, as far as the High Courts and other Courts are concerned. High Court is not competent to ignore the subsequent decision on the ground that the said decision wrongly applied the ratio of the earlier decision. In Mukund Lal Bhandari's case, the Supreme Court considered the date from which the eligible claimant should be granted the benefit: the court also considered the nature of the evidence required to be produced by the claimant to justify the claim. The three contentions considered in the said decision Mukund Lal Bhandari and others Vs. Union of India and others, are stated at page 345 thus:-

" HOWEVER, three contentions have been raised. Firstly, the petitioners have not produced the required proof in support of their claim that they had in fact participated in the movement and were sentenced to imprisonment for six months or more. Secondly, they had filed their applications before the Government after the date prescribed for filing the application. And thirdly, in any case, if it is held that they satisfied the qualifying conditions under the Scheme, they would be entitled to the pension only from the date they produced the required documentary proof in support of their claim and not from any earlier date."

(5) These three contentions cover all aspects of the present cases raised before us. However, as to the date of the application, for the purpose of extending the benefit, there was some dispute before us. It was contended that applications received by Sarvadeshik Arya Pratinidhi Sabha (referred as the "Sabha" for short) should be considered as valid applications and the "relevant date" from which pension should be granted, ought to be at least the said date. if not 1.8.1980.

(6) It is undisputed that the aforesaid Sabha has been recognised as a representative body of these freedom fighters. The Sabha had, even, sent a list of 2142 Stay agra his up to 30.6.1986, in batches. Earlier, Satyagraha was started by the Sabha. The Government had constituted a non-official scheme committee (as per its Memorandum dated 13.11.1986), of 7 members, to

speedily dispose of the applications for pension. Swami Anand Bodh Saraswati. President of the Sabha was the Chairman of this non-official Committee. Most of the Satyagrahis are now old many are no more and the present claimants are their widows or eligible children. The claimant may be illiterate, poor or ignorant. In these circumstances read with the nature of the Sabha, we are of the view that a proper application submitted to the Sabha could be considered as a valid application for the purpose of Constituting the "relevant date" from which the pension should be granted.

(7) There is also another reason. Purpose of the Pension Scheme is not merely conferment of honour. In the words of the Supreme Court, in *Mukund Lal Bhandari and others Vs. Union of India and others*, , object of the Scheme was. "to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need". "The spirit of the scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made.....". It is further said that, "it would be contrary to its spirit to convert it into some kind of programme of compensation" Therefore, the Supreme Court held that benefit of the pension cannot be extended to the date of the notification bringing the scheme into operation i.e. 1.8.1980. It was held that the benefit should be available from the date of the application filed seeking the benefit of the scheme. When we are confronted with the question as to when this date ought to be, the twin purpose of the scheme and the restriction read into the scheme to grant the benefit are to be borne in mind. In para 7 of its judgment in *Mukund Lal Bhandari's* case, the Supreme Court also pointed while rejecting the contention of the Government that applications filed after the prescribed date cannot be considered that, "In fact, the Government, if it is possible for them to do so. should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same". Honour should be conferred and not sought after.

(8) Bearing all these factors. we are of the view that an application filed before the Sabha. if duly certified by the Sabha as having been received by it, should be considered as the application for the pension under the scheme, for the purpose of identifying the relevant date from which, the pension should be granted, if the applicant is proved to be otherwise eligible for the pension under the scheme.

(9) In view of the above, no other contention remains for consideration. Question of eligibility for the pension and the date of the application to identify the "relevant date" are in the realm of facts, to be examined by the respondent: and we direct the respondent to consider the cases of all these petitioners, in the light of the decision of the Supreme Court and give the decision within 3 months from the date of the receipt of this order.

(10) One more clarification is necessary. The learned counsel for the petitioners projected an apprehension that in a few cases where, benefit of the scheme was extended to a few individuals retrospectively with effect from a date earlier to

the applications. government may proceed to recover the excess payments. We do not think so. We do not have any such specific instance before us: but we are certain that the benefit once extended by mistake regarding the "relevant dale" may not be erased by the Government by taking action to recover such excess payments.

(11) In the result, these writ petitions are allowed and we make the following order: The claim of the petitioners under the scheme shall be considered by the respondent within three months from the date of receipt of this order and while considering the individual cases:- (i) The Government shall bear in mind the observations of the Supreme Court in Mukund Lal Bhandari's case and those made in this order while considering the applications: and (ii) The applications presented to the "Sabha" shall be treated as proper applications to identify the "relevant dale" with effect from which the eligible claimant shall be paid the pension. The parties shall bear their respective costs in these writ petitions.