
(2006) 09 DEL CK 0026
In the Delhi High Court
Case No : LPA No. 1821 of 2006

Sadashiva Raj Purohit

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 134 DLT 99

Hon'ble Judges : Mukul Mudgal, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Nidhi, for the Appellant; Y.P. Narula and Madalsa Singh, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—Aggrieved by the denial of his prayer for payment of pension from the date of his application, a 77-year-old freedom fighter has approached this Court. He is aggrieved by the impugned order dated 13.7.2006 of a learned Single Judge rejecting his writ petition.

Facts

2. First, the facts. The appellant, a resident of Raichur, had participated in the Hyderabad Liberation Movement. He was arrested twice by the then Hyderabad police in 1947-48. He had been imprisoned for two periods from 2.10.1947 to 9.11.1947 and from 1.6.1948 to 25.8.1948 and remained underground from 15.2.1948 to 1.6.1948. Some time after the Freedom Fighters Pension Scheme was announced in 1972, the appellant applied for grant of pension. On 11.8.1973 Deputy Commissioner, Raichur forwarded the appellant's application for grant of pension, to the Secretary Ministry of Home Affairs, Government of India, the Respondent herein. This application was initially rejected on 27.6.1974 on the ground that the appellants annual income was beyond a limit prescribed under the said Scheme.

3. In 1980 a reformulated Scheme under the nomenclature of the Swantantrata Sainik Samman Pension Scheme was announced by the Central Government. The income restriction under the earlier Scheme was removed. Consequently, on 17.8.1981 the appellant again applied for pension. By a letter dated 24.4.1982 the Chief Secretary, Government of Karnataka, informed the appellant that his application had been forwarded to the Respondent. On 4.10.1989, the Chief Secretary, Government of Karnataka wrote to the Respondent pointing out that the appellant had furnished documentation concerning the period of imprisonment and underground work. It was further stated in this letter as under:

The State Level Advisory Committee after verifying the records has strongly recommended the applicant's case for sanction of Central Pension. The State Government agreeing with the opinion of the State Level Advisory Committee recommends the applicant's request for the sanction of Central pension in modification of their earlier report referred to above. A copy of the proceedings of the State Level Advisory Committee is enclosed herewith.

4. Acting on the above recommendation of the Government of Karnataka, which was based on the recommendations of the State Level Advisory Committee, the respondent Government of India granted the appellant the pension from 28.7.1992. By a letter dated 9.12.1992 the respondent authorised the Manager State Bank of Hyderabad, Raichur Karnataka to make monthly payment of pension @ Rs.750/- per month from 28.7.1992 up to 11.8.1992 and Rs.1,000/- per month from 12.8.1992 onwards.

5. Aggrieved that the pension was not being granted, the pension from the date of the application i.e. 17.8.1981, the petitioner wrote to the Respondent on 10.4.1993 and 28.11.1995. He repeated this request by a letter dated 25.3.1996 and then again on 24.6.2000 and 20.5.2000. In these letters the petitioner made reference to the judgments of the Hon'ble Supreme Court in Duli Chand v. Union of India, 1990 Supp SCC 762 and Mukund Lal Bhandari and others Vs. Union of India and others, : Mukund Lal Bhandari and others Vs. Union of India and others, . With no response to his repeated requests, the petitioner filed Writ Petition (C) No. 8559 of 2004 in this Court.

6. In the counter affidavit filed before the learned Single Judge it was not denied by the Respondent herein that the appellant herein had in fact, been sanctioned pension. It was stated in para 1 that the petitioner had not submitted requisite evidences in support of his claim, however, pension was sanctioned to him by then Minister of State for Home Affairs and accordingly sanction order was issued granting pension to him from the date of approval of the Minister i.e. 28.7.1992. This was as per the then prevalent rules and regulations. In the course of arguments before the learned Single Judge, the counsel for the Respondent relied on the order of the Hon'ble Supreme Court in Government of India represented by the Secretary Vs. K.V. Swaminathan, to contend that where pension was granted on a benefit of doubt, the pension was required to be paid from the date of sanction and not from the date of the application.

7. The appellants writ petition, along with the writ petitions of three other senior citizens seeking similar relief, came to be dismissed by learned Single Judge by the impugned order dated 13.7.2006. The learned Single Judge, at the instance of the respondent proceeded to examine the merits of grant of pension to each of the writ petitioners to determine whether in fact, the pension had been granted on a benefit of doubt. Applying the criteria specified in the scheme, the learned Single Judge concluded in all the cases pension has been rightly granted from the date of the order and in none of these cases pension should be granted from the date of the application. The writ petitions were held to suffer from the defect of laches as the claims were stale. Submissions of Counsel

8. Learned Counsel for the appellant assails the impugned judgment of the learned Single Judge on the following grounds:

(a) The case of the appellant herein was not one where the grant of pension was based on any benefit of doubt. Neither the order communicating the grant of pension nor the counter affidavit filed by the respondent before the learned Single Judge indicates that the pension was granted on a benefit of doubt. The present case was entirely covered by the judgment of Hon''ble Supreme Court in Mukund Lal Bhandari and not K.V.Swaminathan.

(b) The pension already having been validly granted to the respondent the learned Single Judge exceeded the jurisdiction under Article 226, in examining the merits of the grant of such pension particularly where the respondent was not denying that the pension had been validly granted. The writ petition was confined to the question of the date from which the pension should be granted. In any event, the learned Single Judge erred in coming to the conclusion question that the petitioner had been granted pension on a benefit of doubt.

(c) Considering that the appellant was a septuagenarian pensioner living in Raichur in Karnataka and failed to get the Respondent to pay heed to his repeated requests, this was not a matter which required to be dismissed on the ground of laches.

9. Mr. Y.P. Narula, learned Senior Advocate appearing for the respondent vehemently opposed the grant of the relief sought for by the appellant and submitted as under:

(a) As explained in the counter affidavit before the learned Single Judge, the appellant had failed to produce any evidence in support of his application for grant of pension but, the pension was nevertheless sanctioned by the then Minister of State for Home Affairs. This tantamounted to the pension being granted on a benefit of doubt and Therefore, the judgment in K.V. Swaminathan which is the settled law would apply and not the judgment in Mukund Lal Bhandari.

(b) It was permissible for counsel in the course of arguments to invite the learned Single Judge to review on the merits of grant of pension in order to

establish that it was granted only on a benefit of doubt notwithstanding that the order granting pension itself may not say so.

(c) By referring to the particular clauses of the scheme, Mr. Narula invited this Court to rule that the appellant in fact did not satisfy the criteria for grant of pension and Therefore, the pension could not have been granted from the date of application. The law.

10. We notice that a similar issue of grant of pension from the date of the application arose recently in LPA 348/2006 (Union of India v. Indumati Bai). By a judgment dated 11.1.2005, a learned Single Judge of this Court had allowed Indumati Bais writ petition noticing that in her case the order granting pension was unconditional in the sense that it did not state that the pension was being granted on a benefit of doubt. In those circumstances, the learned Single Judge applied the law declared in Mukund Lal Bhandari and held that it would be not permissible for the respondent to deny the payment of pension with effect from the date of the application. The Division Bench of this Court dismissed the respondents appeal by an order dated 11.7.2006. In the instant there is no indication that the grant of pension to the appellant is conditional or on any benefit of doubt. Therefore, the present appeal would stand covered by the said decision of the Division Bench in Indumati Bai.

11. Nevertheless, since these matters seem to be repeatedly contested by the Union of India, and with an unusual zeal, we think it appropriate to recapitulate the law in this regard. By a short order in 1992 in Duli Chand, the Hon'ble Supreme Court directed that the payment of pension should be from the date of the application. The issue was re-examined in great detail by a Division Bench of the Hon'ble Supreme Court in Mukund Lal Bhandari. The Court formulated the issue thus (SCC p. 7 at para 9):

9. That leaves us with the question as to whether, notwithstanding the date on which the itself is made, the claimant should be entitled to the benefit of the pension with effect from an earlier date. In support of the contention that the benefit should be made available with retrospective effect, reliance is placed on the two cases cited earlier where the benefit is given with effect from August 1, 1980. We have given our anxious consideration to the question and are of the view that for reasons more than one, the benefit should flow only from the date of the application and not from any date earlier. As pointed out before in the two earlier cases the question with regard to the retrospectivity of the benefit was neither raised nor answered. We have, Therefore, to decide it for the first time.

Thereafter, the Hon'ble Supreme Court proceeded to lucidly expostulate the law as under (SCC, para 11):

(a) The respondents should accept the applications of the petitioners irrespective of the date on which they are made. The applications received hereafter should also be entertained without raising the plea that they are beyond the prescribed date.

(b) The respondents should scrutinise every application and the evidence produced in support of the claim and dispose it of as expeditiously as possible and in any case within three months of the receipt of the application, keeping in view the laudable and sacrosanct object of the Scheme.

(c) The pension should be paid to the applicant from the date on which the original application is received whether the application is filled with or without the requisite evidence. The sanction of the pension would, however, be subject to the requisite proof in support of the claim.

12. Thereafter on 24.4.1995 in *Union of India and Others v. Ganesh Chandra Dolai and Others*, (1997) 10 SCC 289, another Division Bench of the Hon'ble Supreme Court took the view that whether the pension was granted on benefit of doubt, it should be from the date of the grant of pension and not from the date of application. This was reiterated in *Union of India v. M.R. Chellaiah* [Civil Appeal No. 7762 of 1996 decided on 30.4.1996]. Both these orders were further reiterated in *Government of India v. K.V. Swaminathan* where it was observed as under:

3. In view of the above settled legal position, though the respondent was not entitled to the pension as a freedom fighter, he was given the relief on the basis of benefit of doubt. Therefore, he is entitled to the pension only from the date of the order and not from the date of the application. The present case

13. The stand of Union of India in the present case is wholly based on the above ruling in *K.V. Swaminathan*. In order to examine the tenability of this stand, we perused the records to see if in fact the pension granted to the appellant herein was on a benefit of doubt. As noticed earlier, the Government of Karnataka on 4.10.1989 wrote to the Respondent recommending the grant of pension to the appellant on the basis of the recommendation made by the State Level Advisory Committee. Therefore, the appellants claim had been examined at least at two levels before the respondent entertained it. That letter also indicates that the appellant had furnished relevant documentation for satisfying the requirements of the prevalent pension scheme. Surprisingly, in the counter affidavit filed by the respondent there is no denial of the aforementioned letter dated 4.10.1989 of the Government of Karnataka a reference to which has been made in para 6 of the writ petition, enclosing the copy of the said letter. The reply to para 6 is part of an omnibus reply to paras 2 to 6 in following words That the contents of the corresponding paras are matter of records. The stand taken in the counter affidavit that the petitioner had not submitted requisite evidences in support of his claim Therefore does not appear to be correct particularly when the Government of India has not denied what has been stated by the Government of Karnataka. Nowhere in its reply or in the letter dated 9.12.1992 written by the respondent authorising the Bank to commence making the monthly payment of pension, is there any whisper of the pension having been granted on a benefit of doubt. Clearly, Therefore, it was the ingenious submission of counsel for the respondent across the bar before the learned Single Judge that brought up this

so-called benefit of doubt theory. It has no basis in the records of the case. It is an instance of the counsel for the respondent having found a judicial order and then going about finding facts to justify the application of such an order to deny the grant of pension from the date of the application. Unfortunately, the learned Single Judge too does not appear to have noticed the letter dated 4.10.1989 of the Government of Karnataka or the fact that the reply of the respondent did not assert that the pension had been granted to the appellant on a benefit of doubt. This in turn led the learned Single Judge into examining whether the contents of the scheme stood satisfied vis-a-vis the appellant. In our view this was a wholly unnecessary exercise considering the fact that no challenge at all had been laid to the validity of the grant of pension to the appellant herein. On the contrary, the learned Single judge should have refused to get into the question whether the pension had been granted on the benefit of doubt. We are of the view that unless such assertions expressly emanated either from a document on record or on affidavit, its both unsafe and not permissible for the Court to simply accept the submission of learned Counsel across the Bar. We hold that the grant of pension to the appellant was not on any benefit of doubt. Therefore, the decision in K.V. Swaminathan can have no application to the facts of the instant case.

14. We would like to reiterate that even when processing the applications for grant of pension, the Government ought to have due regard to the exposition of law in Mukund Lal Bhandari and in particularly in Sub-para (c) of para 17 where the Supreme Court has categorically held that the pension should be paid to the applicant from the date on which the original application is received whether the application is filed with or without the requisite evidence. The sanction of the pension would, further, be subject to the requisite proof in support of claim. In this context, we would also like to remind the respondent of what the Hon"ble Supreme Court said in Mukumd Lal Bhandari (SCC p.8, para 9):

There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should be entitled to the benefit from the date the Scheme came into operation. But the history, the true spirit and the object of the Scheme would itself probably not support such strait-jacket formula. As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs 5000. It is only later, i.e., from August 1, 1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object 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. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which

they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated.

15. For all of the above reasons we find that no merit whatsoever in the stand of Union of India and accordingly are of the view that the impugned judgment of the learned Single Judge cannot be sustained in law.

16. The impugned judgment dated 13.7.2006 is set aside and writ petition (C) No.8559 of 2004 filed by the appellant is hereby allowed. The Respondent is now directed to pay the entire arrears of pension to the appellant not later than 12 weeks from today and in any event not later than 18.12.2006. The Respondent will also pay the appellant a sum of Rs.10,000/- as costs not later than 18.12.2006.

17. With the above directions, appeal is accordingly allowed.