

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

W.P. No.7900 of 2004

ORDER

This writ petition under Article 226 of the Constitution of India is filed seeking the following relief;

“to issue a writ, order or direction more in the nature of writ of mandamus directing the respondent herein to grant Freedom Fighters Pension under Swatantra Sainik Samman Pension Scheme, 1980 with effect from the date of application i.e., on 20.06.1984 or alternatively at least from the date of consideration of my case by the respondent pursuant to the orders passed by this Hon’ble Court in W.P.No.2314 of 1995 dated 22.02.1995 by duly declaring the proceedings issued by the first respondent vide No.112/497/84-FF(HC)(A), dated 09.05.2003 in so far as granting the Freedom Fighters Pension to the petitioner under Swatantra Sainik Samman Pension Scheme, 1980 with effect from 23.04.2003 instead of 20.06.1984 i.e., from the date of application or at least from the date of passing of the order by this Hon’ble Court in W.P.No.2314 of 1995 dated 22.02.1995 for consideration of the claim of the petitioner is nothing but arbitrary, unjustified and contrary to the true intent of the Scheme i.e., Swatantra Sainik Samman Pension Scheme, 1980 and also the directions issued by the Hon’ble Supreme Court in that regard”.

2. Heard Sri V. Ravi Kiran Rao, learned counsel for the petitioner and Smt K. Mani Deepika, learned Additional Standing Counsel for the respondent.

3. By virtue of the proceedings No.112/4971/84-FF(HC)(A), dated 09.05.2003, the Union of India granted Freedom Fighters Pension to the petitioner herein with effect from 23.04.2003. Precisely, the case of the petitioner herein is that he is entitled for the said benefit from the date of his application i.e., 20.06.1984 or

at least from the date of consideration of his case pursuant to the orders passed by this Court in W.P.No.2314 of 1995 dated 22.02.1995. In support of his case, petitioner places reliance on the judgment of the Honourable Supreme Court in the case of **MUKUNDALAL BHANDARI v. UNION OF INDIA**^[1]. In fact, in the case of **STATE OF MAHARASHTRA v. RAGHUNATH GAJANAN WAINGANKAR**^[2], the Honourable Supreme Court at paragraph 7, held as under:

"7. It is true that in *Gurdial Singhs' case* (supra) this Court has emphasized the need for dealing with the claim of freedom fighters with sympathy dispensing with the need for standard of proof based on the test of "beyond reasonable doubt" and the approach should be to uphold the entitlement by applying the principle of probability so as to honour, and to mitigate the sufferings of the freedom fighters. However, the observations of this Court in *Mukund Lal Bhandari's case* (supra) cannot be lost sight of and given a complete go by wherein this Court has very clearly directed that :

"As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly."

The High Court exercising writ jurisdiction does not sit in judgment over the decision of the State Government like an appellate authority. Ordinarily, the High Court exercising writ jurisdiction cannot enter into re-appreciation of evidence and reverse the findings arrived at by the State Government unless they be perverse or be such as no reasonable man acting reasonably could have arrived at. If the High Court found that the decision arrived at by the State Government was flawed in any way then the High

Court should have, after laying down the necessary principles or guidelines or issuing directions, directed the State Government to reconsider the case of the respondent. In no case, the High Court could have in exercise of its writ jurisdiction relaxed the need for full satisfaction of the necessary requirements on the fulfilment of which alone the respondent's entitlement to the release of freedom fighters' pension depended."

4. In the case of **UNION OF INDIA v. GANESH CHANDRA DOLAI AND OTHERS**^[3], the Honourable Supreme Court at paragraphs 4 and 5, held as under:

“4. We have heard the learned counsel for the parties. We are of the view that the ratio in *Duli Chand case* [(1992) 2 SCC 28] is not applicable to the facts of the present case. In *Duli Chand case* this Court had by the order dated 16-7-1990 [1990 Supp SCC 762] directed the Government of India to pay pension to the petitioners therein w.e.f. 1-8-1980. It was specifically mentioned in the order that all the 41 petitioners had produced the relevant documents supporting their claim and keeping in view the facts of these cases pension was directed to be given w.e.f. 1980. In this case the Government of India has categorically stated that the respondents were given benefit of doubt and as such the pension can only be given from the date of the order.

5. Keeping in view the documents produced by the respondents before the Government, the respondents have been rightly given pension by the Government of India from the date of the order. We allow this appeal, set aside the impugned order of the High Court and restore the order of the Government of India whereunder pension has been given to the respondents from the date of the order of the Government of India. No costs.”

5. In the case of **UNION OF INDIA v. KAUSHALAYA DEVI**^[4], the Honourable Supreme Court at paragraphs 4 to 8, held as under:

“4. It has been held by this Court in *Govt. of India v. K.V. Swaminathan* [(1997) 10 SCC 190] 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* [1993 Supp (3) SCC 2].

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.”

6. A Division Bench of this Court and by virtue of an order dated 14.08.2012 allowed W.A.No.315 of 2012 following the judgment of the Honourable Supreme Court in the case of **UNION OF INDIA v. KAUSHALAYA DEVI** (supra 4) and directed to make payment from the date of the order and not from the date of application made by the writ petitioner therein.

7. Following the principles laid down in the judgments of the Honourable Supreme Court in **UNION OF INDIA v. GANESH CHANDRA DOLAI AND OTHERS** (supra 3) and **UNION OF INDIA v. KAUSHALAYA DEVI** (supra 4), this Court by virtue of an order dated 27.4.2012 in W.P.No.30769 of 2012 and batch dismissed the writ petitions holding that there is no arbitrariness, nor illegality in passing the impugned sanction orders granting

pension under Swatantra Sainik Samman Pension Scheme from the date of order and not from the date of application.

8. In view of the above referred judgments of the Honourable Supreme Court and this Court, the claim of the petitioner for grant of Freedom Fighters Pension from the date of application does not deserve any consideration and liable to be rejected. In fact, in identical circumstances this Court by virtue of an order dated 13.11.2013, dismissed W.P.No.4851 of 2005 after taking into consideration the above referred judgments.

9. Having regard to the facts and circumstances of the case and in view of the law laid down by the Honourable Supreme Court in the above referred judgments and keeping in view the orders of this Court in the above referred judgments, this Court deems it appropriate to hold that there is neither arbitrariness nor illegality on the part of the respondent authorities in granting Freedom Fighters Pension prospectively to the petitioner under Swatantra Sainik Pension Scheme and this Court finds no infirmity in the said action and accordingly the writ petition is dismissed. There shall be order as to costs.

10. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

A.V.SESHA SAI, J

29th November, 2013
sj

[\[1\]](#) AIR 1993 SC 2127

[\[2\]](#) AIR 2004 SC 4264

[\[3\]](#) (1997) 10 SCC 289

[\[4\]](#) (2007) 9 SCC 525