

MUKUND LAL BHANDARI AND ORS.

A

v.

UNION OF INDIA AND ORS.

[P.B. SAWANT AND G.N. RAY, JJ.]

MAY 14, 1993

B

Freedom Fighters Pension Scheme 1972—Swantantra Sainik Samman Pension Scheme—Delay in application, and retrospectivity in payment of pension—Held, object being to assist and honour freedom fighters, delay would not affect entitlement—Pension payable from the date of application.

C

The petitioners (late) freedom fighters participated in the Arya Samaj Movement in the late 1930 s, in the erstwhile Nizam State of Hyderabad.

The Freedom Fighters Pension Scheme 1972, when it was framed, provided for payment of pension to freedom fighters who had suffered a minimum imprisonment of six months and whose gross income did not exceed Rs. 5,000. From August 1980, the Scheme was extended to all freedom fighters irrespective of their income and as a token of honour (Samman) to them. In 1985, it was extended to those who participated in the Arya Samaj Movement of 1936-39 which took place in the former Hyderabad State.

D

In the writ petition before this Court it was contended for the Union of India that the petitioners had not produced the required proof to demonstrate eligibility; that they had filed their applications after the prescribed date; and that, in any event, they would be entitled to the pension only from the date they produced the required documentary proof and not an earlier date.

E

Allowing the petition, this Court

F

HELD : 1. Whatsoever the date on which the claimants make the applications, even where it is after the prescribed date, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time limit. (896-F)

G

Those eligible for the pension may be scattered, or may have no knowledge of the prescribed date. Moreover, if the scheme has been intro-

H

A duced with the genuine desire to assist and honour these who had given the best part of their life for the country, it ill-behaves the government to raise pleas of limitation against such claims.

B 2. The date on which the required proof is furnished should make no difference to the entitlement of the benefit under the Scheme. It is unrealistic and demeaning to the object of the scheme, to fix a rigid time limit for proof of entitlement. Once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished. (897-C)

C 3. The pension will be payable from the date on which the original application is received whether the application is received whether the application is filed with or without the requisite evidence. The sanction of the pension would, however, be subject to the requisite proof in support of the claim. (898-H)

D 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 existence. But 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. (897-F)

E

Moreover, since the benefit of the scheme is available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. (898-C)

F 4. Applications and evidence produced in support of the claim should be scrutinised and disposed of, in any case, within three months of their receipt. (898-G)

G *Duli Chand v. Union of India*. W.P. No. 1190 of 1989 and *Surja and Ors. v. Union of India & Anr.* W.P. No. 75 of 1991, referred to.

ORIGINAL JURISDICTION : Writ Petition (c) No. 153 of 1992.

H (Under Article 32 of the Constitution of India)

Mahabir Singh, R.K. Khanna and R.P. Singh (NP) for the Petitioners.

A

D.P. Gupta, Solicitor General, Ms. A. Subshini (NP) and Ms. Niranjana Singh for the Respondents.

The Judgment of the Court was delivered by

B

SAWANT, J. This is a petition by some freedom fighters and defendants of other freedom fighters claiming pension under the Freedom Fighters Pension Scheme, 1972. The Scheme was introduced by the Government of India on the occasion of the 25th Anniversary of the Independence. It commenced on 15th August, 1972 and provided for the grant of pension to freedom fighters and if they were not alive to their families and also to the families of the martyrs. The minimum pension sanctioned to the freedom fighters was Rs. 200 per month and for their families, it varied from Rs. 100 to Rs. 200 in accordance with the size and the number of eligible dependents in the family. Till 31st July, 1980 the pension was admissible only to those whose gross annual income did not exceed Rs. 5000. From 1st August 1980, the benefit of the Scheme was extended to all freedom fighters irrespective of their income and as a token of honour (Samman) to them. From that date, the maximum quantum of pension was also increased from Rs. 200 to Rs. 300 for freedom fighters and the minimum was enhanced from Rs. 100 to Rs. 200 to the widows of the late freedom fighters with addition of Rs. 50 per month for each unmarried daughter with a maximum limit of Rs. 300 per month. The eligibility to get the Samman pension, as it came to be called from 1st August, 1980, depended upon the freedom fighter having suffered a minimum imprisonment of six months. However, if the freedom fighter was a woman or belonged to the Scheduled Caste or Scheduled Tribe community, the minimum period of actual imprisonment, was reduced to three months. While explaining the meaning of the actual imprisonment the Scheme states; (a) the detention under the orders of the competent authority will be considered as imprisonment; (b) the period of normal remission upto one month would be treated as part of the actual imprisonment; (c) in case the trial ended in conviction, the under-trial period would be counted towards actual imprisonment suffered; (d) the broken period of imprisonment would be totaled up for computing the qualifying period; (e) the person remaining underground for more than six months, provided he was a proclaimed offender or one for whom an award for arrest or for his head was announced or one for whose detention, order was issued but not served and (f) the person interned in his home or external from his district for six months or more, a person whose property was confiscated or attached or sold due to participation in the freedom struggle, a person who became permanently incapacitated on account of violence inflicted on

C

D

E

F

G

H

- A him during such struggle, a person who lost his Govt. job Central or State and thus the means of livelihood for participation in such struggle, were also made eligible for the pension.

- B In September 1985, on the recommendations of the non-official advisory committee at the Central level the Government renamed the Pension Scheme, and also enhanced the quantum of the pension by its Circular/letter of 30th September, 1985. It informed all the State Governments and Union Territory Administration that the Scheme was renamed as Swatantra Sanik Samman Pension Scheme. The circular further informed that the Scheme was extended with retrospective effect from 1980 to those who participated in the Arya Samaj Movement of 1936-39 which took place in the former Hyderabad State. The quantum of monthly pension admissible to the freedom fighters and their widows was raised to Rs. 500 with effect from 1st June, 1985 and the unmarried daughters of the widows who had been sanctioned family pension became entitled to additional pension of Rs. 50/- per month.

- D 2. In Writ Petition No. 1190 of 1189 - *Duli Chand & Ors. v. Union of India & Ors.* where the claim for pension was made by the petitioners, the Union of India did not file a counter. On the other hand, a statement was made on their behalf that on documents being produced in support of the claim, there would be no objection to granting the pension. It does not further appear that any contention was raised on behalf of the Government that the pension should not be made payable with retrospective effect. The facts, on the other hand, reveal that one of the petitioners in that writ petition was granted pension by the Government with effect from 1st August, 1980 during the pendency of the petition. It is on these facts, that this Court by its order of 16th July, 1990 made in that petition, directed that 41 of the petitioners should be granted pension with effect from 1st August, 1980 although they had made their applications beyond the date which was prescribed for making application.

- G Writ Petition No. 75 of 1991 - *Surja & Ors. v. Union of India & Anr.* - was filed by some of the participants in the Arya Samaj Movement in the late 1930s in the erstwhile Nizam State of Hyderabad. The participants in question were sentenced to various terms of imprisonment exceeding six months. The Union of India filed a counter-affidavit and pointed out that the earlier petition, viz., W.P. No. 1190 of 1989 (Supra) was decided ex-parte and by accepting all the allegations made by the petitioners therein. The Court, therefore, felt that it would not be appropriate to dispose of the petition by adopting the order made by it in the earlier petition. One of the questions which fell for consideration was whether the H petitioners had suffered the minimum sentence of six months' imprisonment on

account of their participation in the said Movement, which was the qualifying period of imprisonment under the Scheme. It was found from the material produced by most of the petitioners that they were sentenced to imprisonment for terms exceeding six months. However, while they were undergoing their sentences, a general amnesty was declared by the then Nizam on his birthday, and without their asking for the same, their sentences were reduced and they were set free. In view of the fact that the petitioners' sentences were reduced without their praying for the same, it was held that the petitioners had satisfied the condition under the Scheme, viz., that they had been imprisoned for six months. While interpreting the qualifying condition of six months' imprisonment, it was in terms held that if a prisoner was sentenced to imprisonment for six months or more and if the period of actual imprisonment was reduced not on account of his claiming any remission, he should be deemed to have fulfilled the qualifying period of imprisonment for six months. In the circumstances, the claim of the petitioners was accepted and they were directed to be paid pension with effect from 1st August, 1980. Here again, it may be pointed out, it was not contended on behalf of the Union of India that the pension should not be made payable with retrospective effect and hence there was no occasion to consider whether notwithstanding the delay in making the application and whatever the date on which the applicant made the claim, he should be entitled to the same with effect from the retrospective date as if he had made his application in time, viz., before the date prescribed for making such application.

3. Coming now to the present petition, the petitioners/the late freedom fighters are persons who had participated in the Arya Samaj Movement in the late 1930s in the erstwhile Nizam State of Hyderabad. In view of the amendment made to the Scheme by the Government Circular/letter dated 30th September, 1985, the petitioners would undisputedly be entitled to the benefit of the Scheme provided, of course, they produced the relevant material in support of their claim. This is not disputed on behalf of the Union of India. 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.

4. As regards the sufficiency of the proof, the Scheme itself mentions the

A 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.

B As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill-behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it 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. That would be the true spirit of working out such Schemes. The Schemes has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit.

Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and their dependents, would be readily in possession of the required documents. In the very nature of things, such

documents have to be secured either from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to produce documents within a fixed time limit. What is necessary in matters of such claims is to ascertain the factum of the eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, Once the application is made, even if it is unaccompanied by the requisite eligibility date, the date of which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished.

5. That leaves us with the question as to whether, notwithstanding the date on which the application 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 1st August, 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 nor answered. We have, therefore, to decide it for the first time. There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should be entitled 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 starlit-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 5,000. It is only later, i.e., from 1st August, 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

- A 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. It should not further be forgotten that now its benefit is made available irrespective of the income limit.
- B Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively.
- C Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment or accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now.
- D

Hence we are of the view that the pension under the Scheme should be made payable only from the date on which the application is made whether the application is accompanied by the necessary proof of eligibility or not. The pension should, of course, be sanctioned only after the required proof is produced.

- E
6. We decline to go into the facts of the individual petitioners in this petition and direct the respondents as follows:

- F [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.

- G [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, and the documents proof keeping in view the laudable and sacrosanct object of the Scheme.

- H [c] 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, however, be subject to the

requisite proof insupport of the claim.

A

The respondents are directed to dispose of the cases of the individual petitioners in the present petition in the light of the above directions at the latest within two months from today.

The petition is disposed of accordingly with no order as to costs.

B

U.R.

Petition disposed of.