

UNION OF INDIA AND ANR.

v
KAUSHALAYA DEVI

FEBRUARY 15, 2007.

[S. B. SINHA AND MARKANDEY KATJU, JJ.]

*Freedom Fighter—Pension—Claim—Date from which to be allowed—
Held: When claim is not allowed on the basis of jail certificate but on basis
of oral statement of some other detainee, pension is to be granted from the
date of order for granting pension and not from the date of application.*

**The question which arose for consideration in this appeal was whether
the Freedom Fighters' Pension should be granted to the respondent from the
date of the application or from the date of the order granting the pension.**

Allowing the appeal, the Court

**HELD: On the perusal of the record it is found that the claim was allowed
on the basis of secondary nature of evidence. 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 detainee. Hence, the pension should be granted from
the date of the order for granting pension and not from the date of the
application. [Para 5] [746-E]**

*Mukand Lal Bhandari v. Union of India & Ors., AIR (1993) SC 2127,
distinguished.*

*Government of India v. K.V. Swaminathan, [1997] 10 SCC 190, relied
on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 783 of 2007.

From the final Judgment and Order dated 5.1.2005 of the High Court of
Himachal Pradesh at Shimla in CWP No. 143/2004.

Vikas Singh, A.S.G., Sunita Sharma and Sushma Suri for the Appellants.

Vinay K. Khuthiala, Vandana Khuthiala and Ashok K. Mahajan for the

A Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. Leave granted.

B 2. This appeal has been filed against the judgment of the Himachal Pradesh High Court dated 5.1.2005 in Writ Petition No.143 of 2004.

C 3. Heard learned counsels for the parties and perused the record. The short question in this case is whether the Freedom Fighters' Pension should be granted to the respondent from the date of the application or the date of the order granting the pension.

D 4. It has been held by this Court in *Government 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.

E 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 respondent has relied on the judgment of this Court in *Mukand Lal Bhandari v. Union of India & Ors.*, AIR (1993) SC 2127.

F 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.

G 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.

N.J.

Appeal allowed.

H