

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 19th December, 2018

+ LPA 711/2018 & CM. Nos. 52391-52393/2018
UNION OF INDIA & ANR Appellants
Through: Mr. Dev P. Bhardwaj, CGSC

versus

CHAND KAUR & ANR Respondents
Through:

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM No. 52393/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM No. 52391/2018 (for delay)

This is an application filed by the Union of India seeking condonation of 67 days delay in filing the appeal.

For the reasons stated in the application, the delay of 67 days in filing the appeal is condoned. Application stand disposed of.

LPA 711/2018

1. This appeal has been filed by the Union of India and its functionary against the order dated August 08, 2018 passed by the learned Single Judge whereby the learned Single Judge has allowed

the writ petition and set aside the order dated September 17, 2010, directing the respondent No.1 appellant herein to grant to the respondent No.1 pension under the 1980 Scheme from the date of the application, in accordance with the dicta of the Supreme Court in *Mukund Lal Bhandari's* case.

2. The facts as noted from the record are that, the respondent No.1 is approximately of 90 years of age. In and about September, 1980, the husband of respondent No.1, Late Sultan Singh, s/o Sh. Khialy Ram, had applied for pension under the 1980 Scheme. Late Sh. Sultan Singh's application seeking pension received the support of ex-Chief Minister of the, then, PEPSU State and the MLA and ex-President, Freedom Committee, Government of Haryana.

3. It appears that a writ petition was filed before this Court by 17 similarly placed persons; though the husband of respondent No.1, Sh. Sultan Singh was not a party to the petition. The writ petition was numbered as CWP No.3090/1991. The said writ petition was disposed of vide judgment dated April 22, 1996. Suffice it to state, that this Court had given directions to the respondents therein to consider the case of the 12 petitioners afresh for grant of freedom fighters pension within a period of eight weeks

without taking into consideration that they were let off before the expiry of six months on seeking remission.

4. It appears that a representation dated August 01, 1992 was filed by Late Sh. Sultan Singh. He had also approached this Court by way of writ petition i.e. CWP No.2717/1992. While Late Sh. Sultan Singh's case was pending adjudication, the respondent No.1 on September 10, 1996, recommended grant of pension to one Mr. Dharminder Singh in compliance with the judgment of this Court dated April 22, 1996, passed in CWP No.3090/1991. It is also noted that in one case of Sh. Murli s/o Sh. Sadi Ram, respondent No.1 vide its communication dated November 27, 1996, directed payment of pension to him as well. Sh. Murli was also part of CWP No.3090/1991.

5. Insofar as the writ petition being CWP No.2717/1992 filed by Late Sh. Sultan Singh is concerned, the same was finally disposed of by this Court vide order dated May 18, 2010. This Court noted the stand of the appellants and the State of Haryana, wherein it was averred that the State of Haryana had not recommended the case of the respondent No.1 for grant of pension by the Central Government. The letter dated December 03, 2009 of

the State of Haryana was enclosed with an affidavit filed by the appellants. The reason given by the State of Haryana for not recommending the case of respondent No.1 for grant of pension was that her husband, late Sultan Singh had remained in jail only for two months three days, whereas six months jail condition was required for Central Samman Pension.

6. In the aforesaid background, the Court directed reconsideration of the case of respondent No.1 for pension while, doing so, to examine as to whether late Sultan Singh's case was different from that of the 12 petitioners, who were referred to in the earlier judgment dated April 22, 1996 passed in CWP No.3090/1991. Suffice it to state that the case of the respondent No.1 for grant of pension of her late husband was rejected on the ground that he was incarcerated for two months and three days only, which is less than six months.

7. The learned Single Judge had framed for his decision, the following three issues:

"Issue No.1: Whether the direction of remand contained in the judgment dated 18.05.2010, passed in C.W.P. No.2717/1992, was binding on the

respondents in view of the fact that no appeal had been preferred against the same?

Issue No.2: Whether in taking a decision in the matter concerning Late Sultan Singh's eligibility for pension, respondent No.1 and 2 could rely upon the judgment of the Supreme Court in Union of India vs. Manohar Lal Azad which, even though delivered on 02.11.2000, was not relied upon, when, this Court rendered its judgment dated 18.05.2010?

Issue No.3: Whether the Guidelines relied upon by respondent No.1 and 2 would apply to the petitioner's case, in particular, paragraph 1.5 of the said Guidelines?"

8. On issue Nos.1 and 2, the learned Single Judge has held as under:

"22.1 The reason for the same is three fold.

(i) First, issues which are ruled upon and, therefore, closed by Court, inter parties, cannot be reopened merely based on a subsequent judgment of the Supreme Court. In the instant case, this is especially so, as neither a review petition was filed to re-open the judgment dated 18.05.2010 nor was the matter carried in appeal to the Appellate Court.

(i)(a) On this aspect of the matter, I may note the judgment rendered by the Supreme Court in M/s Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, 1969 (1) SCC 110. In that case, the Court was called upon to adjudicate a petition filed under Section 32 of the Constitution. The petitioner had moved the Court to quash the order of forfeiture passed by the Sales Tax Officer, in exercise of powers conferred under Section 21 (4) of the Bombay Sales Tax Act (iii) of 1953. The petitioner, challenged the order of forfeiture by filing a writ petition before the Bombay High Court, which was dismissed by an order dated 28.11.1958. The appeal, preferred by the petitioner to the Division Bench, suffered the same fate. Consequently, the petitioner paid the amount demanded by the Sales Tax Officer.

(i) (b) The Supreme Court, in another case, (i.e. Kantilal Babulal Vs. H.C. Patel (1968) 21 STC 174), struck down the provisions of Section 12- A (4) of the Bombay Sales Tax Act on the ground that it infringed Section 19 (1)(f) of the Constitution. This matter had reached the Supreme Court via the Gujarat High Court, which had in fact sustained the challenge to the said Section. The petitioner, having become aware of the judgment of the Supreme Court which was rendered on 23.09.1967, approached the Court under Article 32 of the Constitution for quashing the order

of forfeiture passed by the Sales Tax Officer. The Supreme Court via majority judgment dismissed the writ petition and while doing so, made the following observations, which to my mind, would apply to the respondents in this case:

“The question is: can the petitioner in this case take advantage, after a lapse of a number of years, of the decision of this Court ? He moved the High Court but did not come up in appeal to this Court. His contention is that the ground on which his petition was dismissed was different and the ground on which the statute was struck down was not within his knowledge and therefore he did not know of it and pursue it in this Court. To that I answer that law will presume that he knew the exact ground of unconstitutionality. Everybody is presumed to know the law. It was his duty to have brought the matter before this Court for consideration. In any event, having set the machinery of law in motion he cannot abandon it to resume it after a number of years, because another person more advantageous than he in his turn got the statute declared unconstitutional, and got a favorable decision. If I were to hold otherwise, then the decision of the High Court in any case once adjudicated upon and

acquiesced it may be questioned in a fresh litigation revived only with the 'argument, that the correct position was not known to the petitioner at the time when he abandoned his own litigation. ”

(ii) Second, the Supreme Court, while rendering its judgment in Manohar Lal Azad's case, did not expressly disagree with the ratio of the judgment in Surja's case; both of which were rendered by a Bench comprising two Judges.

(ii)(a) As a matter of fact, another Division Bench of the Supreme Court in Mukund Lal Bhandari case noticed the dicta enunciated in Surja's case, though, the Court in that case was, amongst others, grappling with the issues as to when the pension if accorded to an application would get triggered. In Mukund Lal Bhandari, the Supreme Court ruled that the payment of pension will be triggered from the date of the application.

(ii)(b) Therefore, having regard to the aforesaid principle, I am of the view that the argument advanced by Mr. Bhardwaj that this Court could not trigger payment of pension to the petitioner, contrary to the eligibility condition is unsustainable for the reason that this Court, prior to the institution of the instant writ, has already given its view qua the

subject eligibility condition. The Division Bench of this Court vide its judgment dated 22.4.1996, had already ruled based on the view taken by the Supreme Court in Surja's case that merely because there was a remission in the sentence, which entailed that the applicant would ultimately, in effect, suffer imprisonment of less than six months was a factor, which would not be taken in considering the applicant's case for grant of pension.

(emphasis supplied)

(ii)(c) To my mind, there was an issue estoppel between the parties on this aspect of the matter as alluded to above, since, the respondent chose not to carry the matter in appeal or seek review of the judgment, which includes the judgment in Late Sultan Singh's own case dated 18.5.2010. This aspect, in my opinion, cannot be reopened by the respondent at this stage.

(emphasis supplied)

(iii) Third and, more importantly, the record shows that respondent no.1 and 2, in fact, complied with the directions contained in the judgment of the Division Bench dated 22.04.1996 as is evident from the affidavits of Mr. Dharindra Singh and Mr. Murli.

(emphasis supplied)

(iii)(a) It is, perhaps, for this reason that respondent no.1 and 2 did not take recourse to Manohar Lal Azad's judgment which was rendered on 02.11.2000 when C.W.P. No.2717/1992 was being disposed of by the learned Single Judge on 18.05.2010. To my mind, both these issues have to be decided in favour of the petitioner and against the respondents. ”

9. On issue No.3, the learned Single Judge was of the following view:

“Issue No.3

23. As to whether paragraph 1.5 of the Guidelines could be used by the respondents to deny pension to the petitioner. According to me, the subject Guidelines cannot be relied upon by respondent no.1 and 2 to deny the petitioner's claim for grant of pension. The reason for the same is that the said Guidelines, sought to be relied upon by the respondents, cannot have retrospective effect. The petitioner's husband, as indicated above, had made an application to respondent nos.1 and 2 for grant of pension as early as September, 1980. This was followed by preferring a writ petition (i.e. C.W.P. No.2717/1992), which was disposed of with specific remand directions on 18.05.2010. ”

10. Having heard Mr. Bhardwaj whose submissions are similar to the one made before the learned Single Judge, we are of the view that the learned Single Judge was right in rejecting the pleas of the appellants on the aspect that the husband of the respondent No.1 did not meet the eligibility of having suffered incarceration for six months on the basis of the judgment of this Court in the petition filed by 12 petitioners wherein direction was given to consider their cases without taking into consideration that they were let off before the expiry of six months on seeking remission and also in the case of Late Sultan Singh himself dated May 18, 2010 wherein direction was given for reconsideration of his case, keeping in view the cases of the 12 petitioners. That apart, the learned Single Judge has also held that the principle of estoppel shall come into play as the appellants herein chose not to carry the matter in appeal / seek review of the judgments. We agree with the said conclusion arrived at by the learned Single Judge in the peculiar facts of this case.

11. The issue No.3 as decided by the learned Single Judge is relatable to the argument of Mr. Bhardwaj that the case for grant of pension in terms of the revised policy guidelines dated August 06, 2014 cannot be granted to the legal heirs of the freedom fighters

after his death. The finding of the learned Single Judge has already been noted in Para 9 above. We agree with the said conclusion of the learned Single Judge as the guidelines issued on August 06, 2014 cannot have retrospective effect, as Late Sultan Singh had made an application to the appellants for grant of pension as early as September 1980.

12. In view of our aforesaid conclusion, the two submissions made by Mr. Bhardwaj, being without merit, the appeal is dismissed.

CM No. 52392/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 19, 2018/aky