

# SUPREME COURT OF INDIA

Government of India Represented By The Secretary

Vs.

K.V. Swaminathan

(K Ramaswamy and G Pattanaik JJ.)

18.11.1996

## ORDER

1. Leave granted.

2. This appeal by special leave arises from the judgment of the Madras High Court made on 14.3.1995 in W.P. No. 15732/94. The respondent claimed the benefit as freedom-fighter but the same remained pending for a long time. Ultimately, giving the benefit of doubt to the respondent, he was granted pension on 18.11.1989. Not feeling satisfied with the relief, the respondent filed writ petition claiming the pension from the date of his application. In the impugned order, the High Court has directed to pay the pension from the date of the application. The controversy is no longer res Integra. This Court had considered the entire controversy in Union of India v. M.R. Chelliah Thevar C.A. No. 7762/96 decided on April 30,1996 and held thus:

Heard counsel for both sides. On behalf of the union of India strong reliance was placed on the decision of the Division Bench of this Court dated 24th April, 1995. On the other hand, learned Counsel for the respondent placed reliance on an earlier judgment of this Court in Muktmnd Lal Bhandari and Ors. v. Union of India and Ors. 1993 Supp. (3) 2, as well as the decision in Amarnath Malhotra and Ors. v. Union of India dated 19th October, 1994. The distinction, however, is that in the case relied on by the Union of Inida, the respondents were granted the benefit under the policy not because it was a clear case of the respondents being freedom fighters but because benefit of doubt was given and hence the pension was restricted from the date of the order and not the date of application. In the two cases relied on by the respondents, there was no question of the benefit having been founded on a finding of fact which did not clearly establish that the petitioners were freedom fighters but on the liberal ground of giving them the benefit of doubt and restricting it from the date of order. We are therefore of the opinion that there is a distinction between the decision relied on by, the learned Additional Solicitor General on behalf of the Union of India and two decisions relied on by the respondent. In the instant case, since the benefit of doubt was given and the status of freedom fighter was recognised on that basis, the case would be covered by the first mentioned decision dated 24th April, 1995 (Union of India v. Ganesh Chandra Dolai and Ors.)

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. We are informed that pursuant to the order of the High Court, the amount has been released. Under this circumstance, the appellant is directed to deduct the paid amount proportionately from the amount payable in every month, instead of asking him to refund the amount.

4. The appeal is accordingly allowed. No costs.