

D. P. Patil

Vs

Union of India and Others

I.A. No. 3 in Civil Appeal No. 11380 of 1996

(K. Ramaswamy, D. P. Wadhwa JJ)

07.04.1997

ORDER

1. By order dated 20-8-1996, we allowed the appeal of the respondent Union of India and set aside the order of the Tribunal granting the benefit of pension to the applicant. The applicant has filed the present applications to recall the order. It is stated therein that since he was not well, he could not appear on 13-8-1996 when the appeal was initially listed and intimation to that effect was given by him. The matter was thereafter listed on 20-8-1996 but he was not informed of such adjournment. Therefore, he could not be present on that date and the matter was disposed of ex parte. When the petitioner chooses to appear in person, the Court is not expected to give an intimation to the parties of the date of adjournment. Once intimation is given, it is the duty of the party to make note of the subsequent dates and make himself available and appear when the case is called out. However, we took care to satisfy ourselves of the grievance of the applicant by calling upon the respondents to explain to us the position.

2. The controversy is no longer res integra. The entitlement to the benefit of the pension was considered by this Court in *Krishena Kumar v. Union of India* ((1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846 : AIR 1990 SC 1782 : JT (1990) 3 SC 173). Following that judgment, this Court had set aside the order of the Tribunal. It is seen that the claim of the petitioner is that he did not have knowledge of the extension of the last date for giving the option. It is his case that he retired on 30-11-1975 and he did not have any opportunity of a knowing the extended date. That is falsified by the record. For the first time, it was extended up to 1-1-1973. It was further extended up to 23-7-1974; thereafter, up to 25-6-1975, 30-6-1976, 3-1-1977, 12-7-1977, 17-4-1978, 7-12-1978 and the last of the extensions was till 31-12-1978. While he was in service, he had the opportunity to register the option on three occasions, namely, on 1-1-1973, 23-7-1974 and 25-6-1975. He did not exercise the option at that time. The option was as regards the principle of gratuity. He thought that that would be a better principle advantageous to him. He withdrew the retiral benefits. Later, when the pension scheme was sought to be given to several persons, he came forward at a belated stage saying that he was not in the know of extension till 1991. When others were given benefit by the Tribunal, he came to file the petition. In view of the aforesaid facts, it is hard to believe that he had no notice of exercising the option for the pensionary benefits. Under these circumstances, we do not find any illegality in the order passed by this Court for recalling the order.

3. The interlocutory application is, accordingly, dismissed. No costs.