

A GOVERNMENT OF INDIA & ORS.

v.

SITAKANT S. DUBHASHI & ANR.

(Civil Appeal No. 987 of 2020)

B FEBRUARY 11, 2020

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Freedom Fighter – Pension – Swatantrata Sainik Samman Pension Scheme, 1980 – Goa Freedom Fighter’s Welfare Rules, 1988

- C – After liberation of Goa in 1961, the State framed the Goa Freedom fighter’s Welfare Rules, 1988 – After several deliberations, a list of 22 persons was approved on 26.12.2007 for the State pension in which respondent no. 1 was also included – The Swatantrata Sainik Samman Pension Scheme, 1980 was extended by relaxing the conditions contained therein to the participants of Goa Liberation Movement, Phase-II by the Government order dated 17.02.2003 – The scheme dated 17.2.2003 clearly provided that the Central Pension is to be granted to the participants of the second phase of Goa Liberation Movement who have been granted freedom fighter pension by the State Government by 01.08.2002 – After receipt of E State Pension, the respondent no. 1 sent a representation dated 06.08.2009 to the Government of India for grant of SSSP scheme from the Government of India – The Government of India found respondent no. 1 ineligible for grant of SSSP scheme under the relaxed criteria for Goa Liberation Movement, Phase-II – Writ petition by respondent no. 1 – The High Court allowed the writ F petition and directed the appellant to grant the pension under SSSP scheme to the respondent no. 1 w.e.f. 11.03.2008 – Before the Supreme Court, the respondent no. 1 contended that the object of SSSP scheme was to grant Central pension to all those who are in receipt of the State pension and the scheme dated 17.02.2003 lacked G intelligible differentia and also nexus with the object – Held: The object of the SSSP scheme was to grant the Freedom Fighters Central Pension to those who fulfil the eligibilities as per the Scheme – From the material available on record, it does appear that the Government of India deliberated on the issue of cut-off date to 01.08.2002 and the said cut-off date was consciously fixed for

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extending the benefit of SSSP scheme to participants of Goa Liberation Movement, Phase-II – The scheme was not an open-ended scheme and relaxation was granted to a particular category of persons, who were in receipt of the State pension by 01.08.2002 – The relaxation granted by order dated 17.02.2003 cannot be said to be the object of the Central Government – The object under SSSP was always and still is to grant freedom fighters pension to those who fulfil the eligibility of SSSP scheme – The submission of respondent that object of SSSP was to grant Central Pension to all those in receipt of the State pension cannot be accepted – By relaxing, the SSSP scheme for a limited category, the object of the main scheme shall not be lost nor those who are not covered by relaxed conditions can claim right to grant of SSSP Scheme, 1980 – Thus, the scheme dated 17.02.2003 has intelligible differentia and also nexus with the object – There was no error in rejecting the claim of respondent no. 1 for grant of SSSP Scheme, 1980.

Allowing the appeal, the Court

HELD: 1. From the material which has been brought on record, it does appear that Government of India deliberated on the issue of cut-off date to 01.08.2002 and the said cut-off date was consciously fixed for extending the benefit of Swatantrata Sainik Samman Pension Scheme, 1980 to participants of Goa Liberation Movement, Phase-II. The eligibility under the SSSP Scheme, 1980, is entirely different from the eligibility of the State pension under the Goa Freedom Fighter's Welfare Rules, 1988. Goa was liberated in 1961. The State has framed the rules initially in 1973 and thereafter in 1988. Freedom Fighters were sanctioned pensions in aforesaid Goa Rules at least after 1973. The question of extension of SSSP scheme to the participants of Goa Liberation, Phase-II was being considered by the Central Government from the year 2000 and ultimately, it was extended by Scheme dated 17.02.2003. [Para 23][752-B-E]

2. The SSSP Scheme, 1980 provided for eligibilities for Freedom Fighters to make an application under the SSSP Scheme, 1980. Freedom Fighters of the Goa were also included and those who fulfil the conditions therein were entitled to grant of the pension. In the present case, this Court is concerned with the SSSP Scheme, 1980. The object of the Scheme was to sanction

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- A pension under the Scheme, 1980, who fulfil the eligibilities as per the Scheme. The State pension for which Scheme and Rules have been formulated by different States including the State of Goa were on different eligibilities and the mere fact that a person is eligible or entitled to a State pension does not ipso facto makes him eligible for the SSSP Scheme, 1980. The object of the SSSP Scheme, 1980 was to grant the Freedom Fighters Central Pension to those, who fulfil the eligibility which object was clearly fulfilled in including the Goa Liberation Movement also under the Scheme. As noted above, representations were received from various quarters to extend the SSSP Scheme, 1980 to participants of Goa Liberation Movement particularly, those, who participated in the Second Phase of the Movement (1954-55). The Central Government decided to relax the conditions of eligibility under SSSP Scheme, 1980 by Scheme dated 17.02.2003 and while relaxing the Scheme cut-off date 01.08.2002 was fixed for making eligible the participants of Goa Liberation Movement. This Court has already noticed the rationale for fixing the cut-off date, which was fixed after due deliberation and consideration of relevant facts. [Para 25][753 A-F]
 - 3. The submission of respondent No.1 is that there was no nexus with the object sought to be achieved by fixing the cut-off date 01.08.2002. As noticed, the object of SSSP Scheme, 1980 was to grant Central Pension to those who were eligible under the said Scheme. The Freedom Fighters of the Goa Liberation Movement were already included in the Scheme, 1980, who were eligible as per the said Scheme. Thus, with regard to Freedom Fighters of Goa Liberation Movement, the Scheme, 1980 covered them and the object was to grant only those Freedom Fighters of Goa Liberation Movement, who fulfilled the eligibility of SSSP Scheme, 1980. When Scheme was relaxed and extended to participants of the Goa Liberation Movement Second Phase, relaxation was granted in the eligibility as provided in the SSSP Scheme, 1980 with the condition that those who are in receipt of State pension by 01.08.2002 should be extended the benefit of relaxation. The Scheme was not an open-ended Scheme and relaxation was granted to a particular category of persons, who were in receipt of the State pension by 01.08.2002. The relaxation granted by order dated 17.02.2003 cannot be said to be the object

of the Central Government. The object under SSSP Scheme, 1980 was always and still is to grant Freedom Fighters pension to those who fulfil the eligibility of SSSP Scheme, 1980. The submission of the respondent No.1 that object of SSSP Scheme, 1980 was to grant central pension to all those, who are in receipt of the State pension cannot be accepted. By relaxing, the SSSP Scheme, 1980 for a limited category, the object of the main Scheme shall not be lost nor those who are not covered by relaxed conditions can claim right to grant of SSSP Scheme, 1980. Thus, this Court is of the view that the Scheme dated 17.02.2003 has intelligible differentia and also nexus with the object. When relaxation is granted to a limited category, the others, who are not covered by the Scheme cannot claim any violation of the right of equality. Right of equality can be claimed only by those who fulfil the eligibilities under the SSSP Scheme, 1980. [Para 26][753 F-H; 754 A-E]

4. Thus, there was no error in rejecting the claim of respondent No.1 for grant of SSSP scheme as communicated by communication letters dated 16.11.2009 and 13.11.2014. The Government Scheme dated 17.02.2003 also did not suffer from any infirmity. [Para 32][756 D-E]

Mukund Lal Bhandari and Others v. Union of India and Others (1993) Supp. 3 SCC 2 : [1993] 3 SCR 891 – distinguished. E

Case Law Reference

[1993] 3 SCR 891 distinguished Para 29
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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 987 of 2020.

From the Judgment and Order dated 16.03.2017 of the High Court of Bombay at Goa, Panaji in Writ Petition (C) No. 229 of 2016.

Vikramjit Banerjee, ASG, Akshay Amritanshu, Ms. Sunita Sharma, Siddharth Sinha, Prashant Rawat, Om Prakash Shukla, Shubham Sharma, B. V. Balaram Das, Advs. for the Appellants. G

Ms. Mugdha Pande, Pallav Mongia, Pratap Venugopal, Ms. Surekha Raman, Akhil Abraham Roy, P. S. Sudheer, Advs. for the Respondents. H

- A The Judgment of the Court was delivered by
ASHOK BHUSHAN, J.
- B 1. This appeal has been filed against judgment of High Court of Bombay at Goa at Panaji dated 20.03.2017 allowing the writ petition filed by respondent No.1. The writ petition was filed by respondent No.1 challenging the notification dated 17.02.2003 issued by Government of India as well as orders dated 16.11.2009 and 13.11.2014 issued by the Government of India rejecting the claim of respondent No.1 for pension under Swatantrata Sainik Samman Pension Scheme, 1980.
- C 2. Brief facts of this case for deciding this appeal are: -
- D 2.1. The Government of India has introduced Freedom Fighters Pension Scheme, 1972. With certain modifications, the scheme was renamed as Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as “SSSP Scheme, 1980”). For grant of pension under the SSSP Scheme, 1980, there were eligibility conditions. The freedom fighters having suffered minimum imprisonment of six months were eligible for benefit of the Scheme. The Government of India decided to extend the SSSP Scheme to the participants of Goa Liberation Movement who fulfilled the eligibility conditions under SSSP Scheme. The respondent had made an application to the Government of India for grant of SSSP Scheme on 19.03.1982. The respondent No.1 was informed by the Government of India in the year 1985 that his case having not recommended by the State he is not entitled for SSS Pension. The Government of India received representation from various quarters for grant of pension to all the participants of Goa Liberation Movement particularly to those who participated in the second phase of the movement (1954-55). The Government of India decided to grant freedom fighter pension to participants of Goa liberation Movement Phase-II (1954-55) under SSSP Scheme, 1980 by Government Order dated 17.02.2003.
- E 2.2. After liberation of Goa in 1961, the State of Goa has initially framed Goa, Daman & Diu freedom fighters welfare Rules, 1973. In supersession of 1973 Rules, the State framed the
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- Goa freedom fighter's welfare rules, 1988. Freedom fighters A
- were defined in Rule 2.
- 2.3. The respondent had made an application for State pension by application dated 28.07.2001. On the application of the respondent, the Government of Goa asked for reports from Inspector General of Police which was submitted by Deputy Inspector General of Police dated 09.05.2002 opining that name of the respondent No.1 is not figuring in the freedom fighters register. The application of respondent No.1 was considered by the Government and the application of respondent No.1 for grant of State Pension was rejected B
- on 18.12.2002. C
- 2.4. The respondent No.1 made an application dated 15.04.2003 for grant of pension under the SSSP Scheme, 1980 for Freedom Fighters of Goa Liberation Movement Phase-II (1954-55). The State of Goa wrote a letter dated 13.02.2004 to the respondent No.1 that copy of Samman Pension order cannot be issued to him since his case has not been approved so far. The respondent No.1 was, however, informed that his application for State pension will be placed before the Committee for further action. The Committee constituted by State of Goa to consider the cases for grant of State pension considered the case of respondent No.1 and by proceeding dated 23.07.2004 opined to reject the claim. D
- 2.5. In pursuance of announcement of State of Goa for re-opening of Freedom Fighters Scheme in 2003, the claim of large number of persons were entrusted to a Committee constituted under the Chairmanship of Chief Secretary. After several deliberations ultimately a list of 22 persons was approved on 26.12.2007 for State pension in which respondent No.1 was also included. On 26.12.2007, the name of respondent No.1 was approved for grant of State Pension and consequently, a pension payment order was issued on 11.03.2008 to respondent No.1 for grant of State Pension w.e.f. 01.12.2007. After receipt of State Pension, the respondent No.1 sent a representation dated 06.08.2009 to the Government of India for grant of SSS Pension from the Government of India. The Government of India vide E
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- A letter dated 16.11.2009 communicated respondent No.1 that case of respondent No.1 has been examined and it is found that respondent No.1 has been granted State Pension in 2008 only, hence, he was ineligible for grant of SSS Pension under the relaxed criteria for Goa Liberation Movement Phase-II. The respondent No.1 was communicated that participants who were in receipt of State Pension by 01.08.2002 are only eligible. On a further representation by respondent No.1, again a similar communication was sent by the Government of India to respondent No.1 dated 13.11.2014.
- C 2.6. The respondent No.1 filed a writ petition No. 229 of 2016 in the High Court of Bombay, Goa at Panaji, praying for following relief:
- “A. Declaration that the decision of Government of India dated 4/2/03 and the notification dated 17/2/03 to the extent it restricts the entitlement of pension to freedom fighter participants of Goa Liberation Movement Phase II who were in receipt of pension as on 1/08/2002 is arbitrary null and void being violative of Article 14 of Constitution of India and for a declaration that freedom fighters recognized by the Government of Goa and in receipt of State Government pension notwithstanding the date being later than 1/08/02 are entitled to pension.
- B. Writ of mandamus, writ in the nature of mandamus directing the respondent to consider the application of petitioner for grant of pension under the Swatantrata Sainik Sanman Pension Scheme 1980 Goa Liberation Movement Phase-II (1954-55).
- C. For writ of certiorari, a writ in the nature of certiorari or any other writ direction and other quashing and setting aside Communication dated 16/11/09 and 13/11/2014 passed by the Ministry of Home Affairs.”
- 2.7. The appellant could not file any reply to the writ petition nor case of the respondent No.1 was specifically denied. The High Court after hearing the parties allowed the writ petition and directed the appellant to grant the pension under
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SSSP Scheme to the respondent No.1 w.e.f. 11.03.2008. A

The Government of India aggrieved by the said judgment has come up with this appeal. A Counter affidavit has been filed by respondent No.1 as well as respondent No.2, the State of Goa. The Government of India has filed an additional affidavit dated 02.12.2019. A rejoinder affidavit has also been filed by the appellant.

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3. We have heard Shri Vikramjit Banerjee, ASG for appellant, Mrs. Mugdha Pande has been heard for respondent No.1 and Shri Pratap Venugopal has appeared for State of Goa.

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4. Learned counsel for the appellant submits that to the participants of Goa Liberation Movement, Phase-II, the SSSP scheme was extended with the conditions that only those applicants shall be eligible to receive the benefits of the scheme who are in receipt of State Pension on 01.08.2002. It is submitted that issue of fixation of date was deliberated and consciously included in the scheme which is apparent from relevant noting brought on record along with the additional affidavit.

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5. It is submitted that the respondent No.1 has been granted State Pension on 11.03.2008 only and he did not fulfil the condition of the scheme which was introduced by the Government Order dated 17.02.2003. The Government of India did not commit an error in rejecting the claim of the respondent No.1. High Court has erred in holding that cut-off date 01.08.2002 has no relevance. It is further submitted that High Court committed error in allowing the writ petition of respondent No.1 who did not fulfil the eligibility for grant of SSSP Scheme.

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6. Counsel appearing for respondent No.1, Ms. Mugdha Pande, vehemently refuting the submission of Counsel for the appellant contends that the respondent No.1 had been issued Identity Card of freedom fighter in the year 1984 and he had made an application for grant of State Pension on 28.07.2001 which although was rejected in December 2002 but subsequently State itself having granted pension w.e.f. 01.12.2007, the respondent No.1 is eligible for grant of SSS Pension.

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7. It is submitted that there is no rationale for fixing cut-off date 01.08.2002 for grant of SSS Pension to participants of Goa Liberation Movement, Phase-II and there is no nexus with object sought to be achieved. All freedom fighters who are in receipt of State Pension are eligible to SSSP Scheme.

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- A 8. Learned counsel appearing for State of Goa submitted that claim of respondent No.1 for grant of State Pension was rejected in December 2002 after due enquiry and after obtaining the report from the Deputy Inspector General of Police and other authorities. Learned counsel for the state of Goa has also produced the original records pertaining to claim of state pension by respondent No.1 which contains the application made by respondent No.1 in the year 2001. The reports obtained on the said application and decision, rejecting the claim. The record also contains the subsequent application of respondent No.1 after reopening of the State Pension Scheme in year 2003 and approval of grant of pension to twenty-two freedom fighters which included the name of respondent No.1 also w.e.f. 01.12.2007.

9. We have considered the submissions of learned counsel for the parties and perused the record.

10. The issue to be considered in the appeal is as to whether the respondent No.1 was entitled for grant of SSS Pension as per the scheme dated 17.02.2003 of the Government of India and whether the High Court had taken correct decision in allowing the writ petition of respondent No.1 and further as to whether cut-off date as fixed in the Government Order dated 17.02.2003 that applicant should be in receipt of State Pension by 01.08.2002 is a valid condition.
- E 11. For grant of State Pension, the State of Goa has framed Rules in the year 1973 and 1988. Goa freedom fighter's welfare Rules, 1988 contains the eligibility for grant of freedom fighters' pension to persons who participated in National Liberation Movement or Liberation of Goa. Rule 2 is a definition clause, Rule 2(1) defined freedom fighters which is F to the following effect: -

“2(I). “Freedom Fighter” means any person who on account of participation in National Liberation Movement or liberation of Goa, had undergone the sufferings listed below:

- G (a) He/she had been sentenced to imprisonment for not less than 15 days; or
- (b) He/she was had suffered imprisonment for not less than 15 days (including detention as under trial prisoner; or as prisoner in police custody for interrogation)
- (c) He/she was killed in action; or

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(d) He/she was sentenced to death; or A

(e) He/she died due to police or military firing or lathi charge or hit by any instruments; or

(f) He/she died after release from Portuguese prison or Custody provided that the death is directly attributable to ill treatment/brutalities/torture meted out to him/her during detention or B

(g) He/she lost his/her job or means of livelihood or the whole or substantial part of his/her property due to such participation, dismissal or removal from Government service/semi-Government Organisation/educational institution any other registered body duly supported by the record of the said body; or C

(h) He/she had gone underground for not less than one year but did not suffer imprisonment if he/she was declared by the Portuguese authorities as proclaimed offender or a warrant of arrest was issued against him/her by the Portuguese or an order of detention was issued against him/her by the Portuguese; or D

(i) He/she became permanently incapacitated on account of participation in the liberation movement;" E

12. Swatantrata Sainik Samman Pension Scheme, 1980, is a scheme of Central Government for grant of pension for those who participated in freedom movement of the country. Paragraph 3 of the SSSP Scheme, 1980 provides for who is eligible, which is to the following effect: - F

“3. WHO IS ELIGIBLE?

For the purpose of grant of Samman pension under the scheme, a freedom fighter is: -

(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India. The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 01.08.1980. G H

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EXPLANATION

1. Detention under the orders of the competent authority will be considered as imprisonment.

2. Period of normal remission up to one month will be treated as part of actual imprisonment.

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3. In the case of a trial ending in conviction, under trial period will be counted towards actual imprisonment suffered.

4. Broken period of imprisonment will be totalled up for computing the qualifying period.

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(b) A person who remained underground for more than six months provided he was:

1. a proclaimed offender; or

2. one on whom an award for arrest/head was announced; or

3. one for whose detention order was issued but not served.

(c) A person interned in his home or externed from his district provided the period of internment/externment was six months or more.

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(d) A person whose property was confiscated or attached and sold due to participation in the freedom struggle.

(e) A person who became permanently incapacitated during firing or lathi charge.

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(f) A person who lost his job (Central or State Government) and thus means of livelihood for participation in national movement.

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A MARTYR is a person who died or who was killed in action or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include an ex-INA or ex-Military person who died fighting the British.”

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13. The eligibility under the SSSP Scheme, 1980 is, thus, entirely different from the eligibilities for grant of pension under the Goa Rules,

1973 and 1988. The applicability of SSSP Scheme, 1980 was also extended to other movements apart from mainstream of the liberation struggle of the country. Paragraph 4 of the SSSP Scheme, 1980 deals with “What are the movements/mutinies connected with National Freedom Struggle”, which is to the following effect: -

“WHAT ARE THE MOVEMENTS/MUTINIES CONNECTED B
WITH NATIONAL FREEDOM STRUGGLE

4. Apart from the mainstream of the liberation struggle the movements/mutinies which were directed against the British (French in case of Pondicherry and Portuguese in case of Goa) with freedom of the country as its ultimate goal are also treated as part of National Freedom Struggle for the purpose of grant of pension unless any movement(s) is specifically decided as not qualifying for the grant of Samman pension.

The Movements for merger of erstwhile Princely States within the Indian Union after 15th August, 1947 and the freedom struggle in the former French and Portuguese possession in India (Colonies) are considered as part of the National Freedom Movement for the purpose of grant of Samman Pension under Scheme.”

14. Thus, movements/mutinies, which were directed with regard to Portuguese in case of Goa was also covered by the said SSSP Scheme. Thus, Freedom Fighters of the Goa, who were eligible according to the SSSP Scheme, 1980 were also eligible to apply for SSSP Scheme, 1980. The respondent No.1 himself had applied for grant of SSS Pension Scheme, 1980 in the year 1982 itself as noted above.

15. Although, Goa Freedom Fighters, who fulfil the conditions under SSSP Scheme, 1980 were eligible for grant of pension, the Representations were received from various quarters for grant of pension to all the participants of Goa Liberation Movement particularly to those, who participated in second phase of movement (1954-55), which issue was under examination by the Home Ministry. The letter dated 19.08.2002 written to the Chief Secretary of Government of Maharashtra/Rajasthan/Haryana/Goa/Madhya Pradesh/Uttar Pradesh clearly mentions the above fact, which is to the following effect:-

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“No.8/10/99-FF(P)

Government of India/Bharat Sarkar Ministry of Home Affairs/Girh
Mantralaya

Freedom Fighters Division

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Lok Nayak Bhawan, Khan Market,

Date, New Delhi, the 19 August, 2002.

To

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The Chief Secretary,

Government of Maharashtra/Rajasthan/Haryana/Goa/ Madhya
Pradesh/Uttar Pradesh.

Subject: - Grant of Freedom Fighters Pension to the participants
of Goa Liberation Movement under the “Swatantrata Sainik

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Samman Pension Scheme, 1980”

Sir,

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I am directed to say that the participants of Goa Liberation
Movement who fulfilled the eligibility criteria of “Swatantrata Sainik
Samman Pension Scheme, 1980” have been sanctioned freedom
fighters’ pension by the Central Government. However,
representations/ requests have been received from various quarters
including VIPs for grant of pension to all the participants of Goa
Liberation Movement particularly to those who participated in the
Second phase of the Movement (1954-55). This issue is under
examination of this Ministry for quite a long time.

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2. You may be aware that the Second phase of the Movement
was organized in 1954-55. It is said that Portuguese Military
authorities shot dead various Satyagrahis including some batch
leaders and a large number of participants were physically pushed
back into the adjoining territories. Thus, the participants of this
Movement were never arrested, tried and punished by the
Portuguese Government and/or by the Martial Law Court but
physically thrown back out of Goa. There is no authenticated

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record as to how many Satyagrahis were thrown back primarily A because no such records were maintained. In the absence of any records of the sufferings of die participants, they could not be sanctioned FF pension as they do not fulfil the eligibility criteria laid down under the Scheme.

3. Ministry of Home Affairs is considering that the eligibility criteria B may be relaxed to provide pension under the “SSSP Scheme,1980” to the freedom fighters of Goa Liberation Movement, Phase II (1954-55) who have already been sanctioned pension by the State Government by 1.8.2002. To examine this proposal further, it is requested that the authenticated list of all those freedom fighters C (indicating details of their names, father’s name, addresses and date of sanction of pension by the State Government) who have been sanctioned freedom fighters pension by State Government up to 1.8.2002 for their taking part in the above Movement, may be sent to the Ministry of Home Affairs (Freedom Fighters Division) urgently so that the proposal may be processed further. D

Yours faithfully,
(Abdul Rashid)

Deputy Secretary to the Govt. of India”

16. The Central Government after examining the representations E received from various quarters decided to extend the SSSP Scheme, 1980 to the participants of Goa Liberation Movement.

17. The SSSP Scheme has been extended by relaxing the conditions F contained therein to the participants of Goa Liberation Movement, Phase-II (1954-55) by Government Order dated 17.02.2003. Paragraph 1 of the scheme is as follows: -

“1. I am directed to refer to this Ministry’s letter of even number G dated 16th/19th August, 2002 on the above subject and to inform you that it has now been decided to grant central pension to the participants of 2nd Phase of Goa Liberation movement (1954-55) who have been granted freedom fighters pension by the State Government by 1st August, 2002, by relaxing the eligibility criteria under the Swatantrata Sainik Samman Pension Scheme, 1980.”

18. The Scheme dated 17.02.2003 clearly provided that the Central H Pension is to be granted to the participants of the second phase of Goa

- A Liberation Movement who have been granted freedom fighter pension by the State Government by 01.08.2002. Whether the condition of cut-off date of 01.08.2002 as fixed in the Scheme has any rationale or the said date is arbitrary and despite not fulfilling the such condition, the respondent is entitled for grant of pension are the main questions to be answered.
- B 19. We may notice that before the High Court the appellant had not filed any reply nor gave any justification to restrict the entitlement of pension of freedom fighters who were in receipt of State Pension as on 01.08.2002. The appellant having not filed any reply, the High Court held
- C that so far as the averments and prayers of the writ petitions are concerned, there being no specific denial nor even reply filed by the respondent, therefore, contentions and ground raised by the petitioner need to be accepted.
- D 20. When this case was being heard by this Bench, a query was put to the counsel for the appellant as to what is the rationale for fixing cut-off date 01.08.2002. By order dated 19.11.2019, parties were permitted to file additional affidavits within two weeks and it was thereafter the appellant has filed additional affidavit on 03.12.2019.
- E 21. Learned counsel for the appellant has brought on record the notes of the meeting dated 02.08.2002 chaired by Deputy Prime Minister where cut-off date 01.08.2002 was fixed. Note contains the details of list of freedom fighters received from different states with regard to freedom fighters who took part in second phase of Goa Liberation Movement. The Government of Maharashtra had enclosed a list of 1716 freedom fighters, the Government of Rajasthan had sanctioned pension
- F to 24 persons. It has been noticed that total number of freedom fighters who may be eligible from State of Maharashtra, Rajasthan, Madhya Pradesh, Uttar Pradesh, Goa and Haryana could be approximately 3,500. It was noticed that the scheme cannot be kept open ended and the date fixed to consider only those freedom fighters eligible for relaxation under SSSP Scheme who had taken part in second phase of Goa Liberation
- G Movement(1954-55) and who had already been sanctioned the freedom fighters pension by the concerned State Government before a fixed date such as 01.08.2002. It is useful to refer to paragraphs 3, 4 and 5 of the Note: -
- H “3. Hon’ble Dy.PM expressed the view that a large number of senior leaders like Prof. Madhu Dhandavate, Shri Ram Naik, Shri

Sharad Pawar had pleaded the case of freedom fighters of Phase II of Goa Liberation Movement and the matter was pending for more than two years now. There was merit in granting them the benefits of the SSS Pension Scheme in relaxation of the eligibility criteria on similar grounds on which the relaxation was given to freedom fighters of Dadra and Nagar Haveli. While appreciating our apprehension that if the scheme was kept open ended, we may be flooded with more and more applications, the Dy.PM was of the view that we may fix a date and consider only those freedom fighters eligible for the relaxation under the SSS Pension Scheme who had taken part in Phase II of the Goa Liberation Movement in 1954-55 and who had already been sanctioned the freedom fighters pension by the concerned State Governments before a fixed dated such as 01.08.2002.

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4. When the delegation led by Prof. Dhandavate called on the Dy.PM and handed over the representation as at FR, Dy.PM asked them about how many freedom fighters from which States would be eligible for the Pension in case relaxation under the Scheme were provided. It was pointed out by the delegates that there would be approximately 3500 freedom fighters who may become eligible from the States of Maharashtra, Haryana, Rajasthan, Madhya Pradesh, Uttar Pradesh and Goa. The figure excluded the freedom fighters from Karnataka (2225) who had been sanctioned pension by the State Government but whose pension was subsequently cancelled by the Government of Karnataka in 1995.

5. After discussions, Dy.PM desired that we may take action as under: -

(i) Provide relaxation under the SSS Pension Scheme, 1980 to the freedom fighters of Goa Liberation Movement, Phase II (1954-55) who had already been sanctioned Pension by the State Governments of Maharashtra, Rajasthan, Haryana, Madhya Pradesh, Uttar Pradesh and Goa by 01.08.2002.

(ii) We may write to the State Governments concerned to send us a list of such freedom fighters, immediately, However, such lists should be confined to cases where the freedom fighters' pension had been actually sanctioned by the State Government by 01.08.2002.

- A (iii) The approximate figure of the freedom fighters eligible for this relaxation is 3500. Eligibility criteria for the grant of SSS Pension will be the grant of freedom fighters' pension by the State Government by 01.08.2002 for his having taken part in the Goa Liberation Movement during the years 1954-55."
- B 22. Subsequently, the cabinet approved the scheme and scheme dated 17.02.2003 was issued by the Government of India incorporating the cut-off date to 01.08.2002.
23. From the material which has been brought on record, it does appear that Government of India deliberated on the issue of cut-off date
- C and the cut-off date was consciously fixed for extending the benefit of SSSP scheme to participants of Goa Liberation Movement, Phase-II. The eligibility under the SSSP Scheme, 1980, is entirely different from the eligibility of the State pension under the Goa Rules. Goa was liberated in 1961. State has framed the rules initially in 1973 and thereafter in 1988. Freedom Fighters were sanctioned pensions in aforesaid Goa Rules at least after 1973. The question of extension of SSSP scheme to the participants of Goa Liberation, Phase-II was being considered by the Central Government from the year 2000 and ultimately, it was extended by Scheme dated 17.02.2003. Already, more than forty years have been passed for Goa Liberation and more than 30 years have been passed for
- E start of sanction of pension by the State of Goa. SSSP Scheme, 1980, had been extended to Goa Liberation Movement, Phase-II by relaxing the conditions which were there for grant of SSS Pension Scheme, 1980. When a benefit is granted in relaxation of Scheme, it is open for the Government to put conditions for eligibility.
- F 24. In view of the above, we are of the considered opinion that there is a rationale for extending the Scheme with a cut-off date. The submission of learned counsel for respondent No.1 is that there was no nexus with the object sought to be achieved in fixation of cut-off date i.e. 01.08.2002. Learned counsel for the respondent No.1 submits that when the object of SSS Pension Scheme is to grant the benefit of pension
- G to all Freedom Fighters, who participated in the Goa Liberation Movement, there is no intelligible differentia between Freedom Fighters, who were granted State pension by 01.08.2002 and those, who were granted pension subsequent to 01.08.2002. Elaborating the argument, it is further submitted that in any view of the matter in the Cut-off date, there is no nexus with the object sought to be achieved. It is submitted that due to there being

no intelligible differentia and there being no nexus with the object sought to be achieved, the cut-off date 01.08.2002 was clearly arbitrary and liable to be struck down.

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25. We have already noticed that the SSSP Scheme, 1980 provided for eligibilities for Freedom Fighters to make an application under the SSSP Scheme, 1980. Freedom Fighters of the Goa were also included and those who fulfil the conditions therein were entitled to grant of the pension. In the present case, we are concerned with the SSSP Scheme, 1980. The object of the Scheme was to sanction pension under the Scheme, 1980, who fulfil the eligibilities as per the Scheme. The State pension for which Scheme and Rules have been formulated by different States including the State of Goa were on different eligibilities and the mere fact that a person is eligible or entitled to a State pension does not ipso facto makes him eligible for the SSSP Scheme, 1980. The object of the SSSP Scheme, 1980 was to grant the Freedom Fighters Central Pension to those, who fulfil the eligibility which object was clearly fulfilled in including the Goa Liberation Movement also under the Scheme. As noted above, representations were received from various quarters to extend the SSSP Scheme, 1980 to participants of Goa Liberation Movement particularly, those, who participated in the Second phase of the Movement (1954-55). The Central Government decided to relax the conditions of eligibility under SSSP Scheme, 1980 by Scheme dated 17.02.2003 and while relaxing the Scheme cut-off date 01.08.2002 was fixed for making eligible the participants of Goa Liberation Movement. We have already noticed the rationale for fixing the cut-off date, which was fixed after due deliberation and consideration of relevant facts.

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26. The submission of learned counsel for the respondent No.1 is that there was no nexus with the object sought to be achieved by fixing the cut-off date 01.08.2002. As noticed above, the object of SSSP Scheme, 1980 was to grant Central Pension to those who were eligible under the said Scheme. The Freedom Fighters of the Goa Liberation Movement were already included in the Scheme, 1980, who were eligible as per the said Scheme. Thus, with regard to Freedom Fighters of Goa Liberation Movement, the Scheme, 1980 covered them and the object was to grant only those Freedom Fighters of Goa Liberation Movement, who fulfilled the eligibility of SSSP Scheme, 1980. When Scheme was relaxed and extended to participants of the Goa Liberation Movement Second Phase, relaxation was granted in the eligibility as provided in the SSSP Scheme,

- A 1980 with the condition that those who are in receipt of State pension by 01.08.2002 should be extended the benefit of relaxation. The Scheme was not an open-ended Scheme and relaxation was granted to a particular category of persons, who were in receipt of the State pension by 01.08.2002. The relaxation granted by order dated 17.02.2003 cannot be said to be the object of the Central Government. The object under SSSP Scheme, 1980 was always and still is to grant Freedom Fighters pension to those who fulfil the eligibility of SSSP Scheme, 1980. The submission of the learned counsel for the respondent No.1 that object of SSSP Scheme, 1980 was to grant central pension to all those, who are in receipt of the State pension cannot be accepted. By relaxing, the SSSP Scheme, 1980 for a limited category, the object of the main Scheme shall not be lost nor those who are not covered by relaxed conditions can claim right to grant of SSSP Scheme, 1980. We, thus, are of the view that the Scheme dated 17.02.2003 has intelligible differentia and also nexus with the object. When relaxation is granted to a limited category, the others, who are not covered by the Scheme cannot claim any violation of right of equality. Right of equality can be claimed only by those who fulfil the eligibilities under the SSSP Scheme, 1980.

27. The submission which has further been pressed by the counsel for respondent No.1 is that when ultimately the state has accepted the respondent No.1 was entitled for State Pension, although, in the year 2008, there is no justification for denying him the benefit. It is submitted that respondent No.1 had applied for grant of State Pension much before 01.08.2002 and if the State had wrongly rejected it earlier, the claim of the respondent No.1 cannot be prejudiced.

28. We have carefully examined and looked into the materials before us as well as the original records. In the subsequent grant of pension to the respondent No.1 in the year 2008, there is no reference or claim that earlier rejection of claim of respondent No.1 was unjustified or was wrong. The scheme was reopened in the year 2003 by the State of Goa and in response to the reopening of the scheme, applications were received and after scrutinizing the claim of respondent No.1 sanctioned w.e.f. 01.12.2007. The Sanction of the Scheme granted to the respondent from 01.12.2007 cannot be read to mean that he was sanctioned from the date when his earlier application was rejected or from the date, he made the application.

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29. The High Court has referred to and relied on the judgment of this Court in *Mukund Lal Bhandari and Others Vs. Union of India and Others, (1993) supp. 3 SCC 2*. In the above case, one of the grounds for rejecting the application for grant of SSS Pension was that the petitioner had made an application after the date for making the application as specified in the scheme expired. This Court held that the date prescribed inviting the claim was more of the matter of administrative convenience than as a rigid time limit. In paragraph 7 of the judgment, following has been laid down by this Court: -

"7. 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 is possible for them to do so, should find out the freedom fighters or their dependants 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 Scheme 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

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- A *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.”*
- B 30. The date for making an application in the Scheme, as in the above case the last date for application for considering the freedom fighter’s pension may not be a rigid rule as rightly held by this Court in ***Mukund Lal Bhandari***’s case but present is a case where SSSP Scheme has been extended by relaxing the scheme to Goa Liberation Movement, Phase-II, by fixing a cut-off date for consideration under the scheme which is a condition for grant of SSS Pension. The judgment in ***Mukund Lal Bhandari*** is thus distinguishable and cannot be pressed in service in facts of the present case.
- C 31. As noted above, before the High Court appellant could not file reply and bring the relevant facts and materials. The appellant ought to have been careful and produced relevant materials before the High Court for its consideration, but given opportunity by this Court, relevant materials have been brought on the record by way of additional Affidavit which materials we have perused. The appeal is being decided after taking into consideration the relevant materials brought on record.
- D 32. We thus are of the view that there was no error in rejecting the claim of respondent No.1 for grant of SSSP scheme as communicated by communication letters dated 16.11.2009 and 13.11.2014. The Government Scheme dated 17.02.2003 also did not suffer from any infirmity.
- E 33. In result, the appeal is allowed. The writ petition of the respondent No.1 stands dismissed.

Ankit Gyan

Appeal allowed.