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## SURJA AND OTHERS

v.

UNION OF INDIA AND ANR.

SEPTEMBER 13, 1991

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[ RANGANATH MISRA, CJ AND P.B. SAWANT, J.]

*Freedom Fighters' Pension Scheme, 1972 (Swatantrata Sainik Samman Pension Scheme, 1980)—Pension under—Eligibility indicated.*

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*Constitution of India, 1950—Article 32—Writ Petition claiming freedom fighters' pension—Arya Samaj movement—Whether a part of freedom struggle—Freedom fighters' pension—Whether Arya Samajists entitled.*

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In the Application under Article 32 of the Constitution by 55 persons claiming the benefit of the scheme of pension for Freedom Fighters, the petitioners contended that they had joined the Arya Samaj movement in the late 1930s within the erstwhile Nizam's State of Hyderabad and were convicted under different provisions of the criminal law and sentenced to various terms of imprisonment; that the Arya Samaj movement had been equated with the freedom struggle and the benefit of the pension scheme was admissible to those who had participated in the movement.

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The respondents while not disputing the assertion of the petitioners that the Union of India has accepted the Arya Samaj movement to be a part of the freedom struggle, has disputed the entitlement of pension in the case of most of the petitioners.

Allowing the petition, this Court,

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**HELD:** 1. Freedom Fighters' Pension Scheme of 1972 which was renamed as "Swatantrata Sainik Samman Pension Scheme 1980" indicates: "A person who has suffered a minimum imprisonment for six months in the mainland jails before independence in the struggle for independence is eligible to be admitted to the benefits of the pension." Each of the petitioners had been convicted and was ordered to suffer imprisonment of more than six months. While they were undergoing sentence, without their praying for any remission, a general amnesty was declared by the then Nizam on his birthday and the sentence was reduced and the petitioners were set free. [118 E-F,D]

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2. In the facts of the case it would be appropriate to hold that each of the petitioners satisfied the condition for earning the benefit of pension and the fact that while undergoing sentence which was for a period beyond

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six months remission had been granted and they were let off earlier would not take away their right to earn pension. [118F]

*Duli Chand & Ors. v. Union of India & Ors.*, W.P.No. 1190/89, dated, July 16, 1991 by the Supreme Court of India, followed.

ORIGINAL JURISDICTION: Writ Petition (c) No. 75 Of 1991.

(Under Article 32 of the Constitution of India)

R.P. Singh for the Petitioners.

G. Ramaswamy, Attorney General, A.K. Srivastava and Ms. A. Subhashini (N.P.) for the Respondents.

The Judgment of the Court was delivered by

**RANGANATH MISRA, C.J.** This is an application under Article 32 of the Constitution by 55 persons—both men and women—claiming the benefit of the scheme of pension for Freedom Fighters.

It is the common contention of the petitioners that they had joined the Arya Samaj movement in the late 1930s within the erstwhile Nizam's State of Hyderabad and each of them had been convicted under different provisions of the criminal law then prevailing within the Nizam's State and sentenced to various terms of imprisonment. In the case of most of them the term of imprisonment was around two years. They maintained that the Arya Samaj movement has been equated with the freedom struggle and the benefit of the pension scheme is admissible to those who had participated in the movement as Arya Samajists. According to them, in the prime of youth the petitioners had been motivated by the call of Mahatma Gandhi, the Father of the Nation and leaders like the late Pt. Jawaharlal Nehru, Dr. Rajendra Prasad and others and had given up their home and hearth and had joined the agitation within the Nizam's State and suffered the consequences. Since their claim for pension had not been accepted by the Government of India they have applied to this Court for appropriate direction for being admitted to the benefits of the scheme.

A counter affidavit has been filed on behalf of the respondents by Under Secretary Alam in the Ministry of Home Affairs who while not disputing the assertion of the petitioners that the Union of India had accepted the Arya Samaj movement to be a part of the *freedom struggle* has disputed the entitlement of pension in the case of most of the petitioners.

- A Petitioners have relied upon the decision of this Court dated July 16, 1991, in Writ Petition No. 1190/89 (*Duli Chand & Ors. v. Union of India & Ors.*) where similar relief claimed by 41 persons had been accepted. That case, according to the counter affidavit, was disposed of *ex parte* and by accepting all the allegations of the petitioners therein. In view of the dispute now raised in the counter affidavit, particularly with reference to the factual aspects, we do not think it would be appropriate to dispose of the present petition by adopting the order of this Court in the said writ petition.

- B It is the accepted position that if petitioners suffered the minimum sentence of six months of imprisonment on account of their participation in the Arya Samaj movement they would be entitled to pension under the Swatantrata Sainik Samman Pension Scheme. The question for examination, therefore, is whether petitioners did suffer such sentence.

- C As we have already mentioned most of the petitioners have produced material to show that they had participated as alleged and were sentenced to imprisonment for terms exceeding six months. While they were undergoing sentence, without their praying for any remission, a general amnesty was declared by the then Nizam on his birthday and the sentence was reduced and the petitioners were set free.

- D Freedom Fighters' Pension Scheme of 1972 was renamed as "Swatantrata Sainik Samman Pension Scheme 1980". The brochure published by the Union of India indicates: "A person who had suffered a minimum imprisonment for six months in the mainland jails before independence in the struggle for independence is eligible to be admitted to the benefits of the pension". It has already been indicated that each of the petitioners had been convicted and was ordered to suffer imprisonment of more than six months. The petitioners' assertion that they did not claim remission has not been doubted or disputed. In the facts of the case it would be appropriate to hold that each of the petitioners satisfied the condition for earning the benefit of pension and the fact that while undergoing sentence which was for a period beyond six months remission had been granted and they were let off earlier would not take away their right to earn pension. Learned Attorney General appearing for the respondents has accepted this construction of the entitlement clause.

- E The writ petition is accordingly allowed and the respondents are directed to admit each of the petitioners to pension under the Scheme within two months hence. The pension be paid with effect from 1st August 1980 as in the connected case. No costs.