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**(1997) 08 KAR CK 0021**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 14884 of 1997 connected with Writ Petition No's. 14960, 14981, 15414 and 15415 of 1997

Angadi Kotrappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

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**Date of Decision :** 20-08-1997

**Acts Referred:**

Karnataka State Freedom Fighters Welfare Rules, 1969 — Rule 7, 7 (i)

**Citation :** (1997) ILR (Kar) 3192 : (1998) 1 KarLJ 514

**Hon'ble Judges :** V.P. Mohan Kumar, J

**Bench :** Single Bench

**Advocate :** Sri L.M. Chidanandayya, for the Appellant; Sri N.K. Ramesh, Government Advocate, for the Respondent

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## **Judgement**

1. These writ petitions raise a common issue. The petitioners claim that they participated in the Mysore Chalo Movement in 1947. On the basis of the rules framed, they made applications for grant of political pension. As contemplated under the rules, an enquiry was conducted by the authorities. After conducting the enquiry, they were satisfied that the claim is genuine and by order dated 28-9-1983 and other dates, referred to in the respective petitions, pension was granted to the petitioners. They were receiving the pension since then. Thereafter, it is seen that proceedings were initiated by the respondents for cancellation of the political pension on the ground that the grant of pension was incorrect. The typical show-cause notice issued in this behalf reads as follows. (this is similar in all cases):

The petitioners seem to have replied to this show-cause notice. After receipt of the reply, the impugned order was passed by the authorities rescinding the political pension granted to all the petitioners in these writ petitions. It is these orders that are challenged by the petitioners in these writ petitions.

2. I have heard Mr. L.M. Chidanandayya, learned Counsel for the petitioners, as also Mr. N.K. Ramesh, learned Government Advocate, for the respondents.

3. Rules have been framed by the Central Government in the matter of grant of pension. It is called as the Karnataka State Freedom Fighters' Welfare Rules, 1969 (hereinafter referred to as the Rules). Under the rules a person, who comes within the ambit of claiming a pension, may make an application in the prescribed form to the authorities and if he satisfies the eligibility requirements laid down in the rules, political pension is awarded to him. The rules lay down that every application shall be accompanied by an affidavit sworn to by the applicant before a Magistrate or any other person authorised by law to administer oath to the effect that he was a freedom fighter. A certificate should also accompany which states that the Freedom Fighter concerned had been sentenced to imprisonment or suffered detention of three months issued by the authorities of the jail where the imprisonment or detention was undergone, or by a contemporary Freedom Fighter or any other responsible person. There was a stipulation that the annual income from all sources should not exceed Rs. 2,400/- per annum. But this stipulation has later been deleted. The State Government may after verifying the particulars furnished and after such enquiries as it considers necessary, sanction the pension or reject the application.

4. In all these cases, such applications were made and pension had been sanctioned after due enquiry. Subsequent thereto, namely, after lapse of nearly 10 years, the impugned order is issued cancelling the pension. The power invoked by the respondent to cancel the pension is what is conferred under Rule 7 of the Rules. Rule 7 reads as follows.-

"7. Discontinuance of pension.--Pension granted under these rules may be discontinued:--

(i) If the order granting it was based on mistake, misrepresentation or fraud;

(ii).....;

(iii) If the petitioner leaves the State of Karnataka for more than one year; and

(iv) For any other reason considered good and sufficient by the State Government:

Provided that in a case covered by clause (iii), payment of pension may be revised in the discretion of the State Government, if the pensioner returns to the State of Karnataka and the reasons for his/her absence for more than one year are satisfactorily explained. In such a case, the amount of pension payable for the period of absence may also be ordered to be paid".

5. Mr. N.K. Ramesh, learned Government Advocate appearing for the respondents, submitted that the case in hand falls under clause (i) of Rule 7, because the grant of pension is based on mistake, misrepresentation and fraud. A mistake, misrepresentation or fraud does furnish a cause of action to cancel the pension. But the show-cause notice, as extracted above, does not disclose what exactly is the mistake or misrepresentation vitiating the sanction or fraud played by the petitioners to secure the pension. As stated earlier, applications

were made by the applicants along with the required details and the pension is to be granted only after an enquiry is conducted. Therefore, there exists a prima facie presumption that the applications were duly made and after verification it is found that the petitioners were eligible to receive pension. It is a prima facie finding that the particulars furnished along with the applications made by the petitioners are true. When it comes to the question of discontinuing the pension, there should exist the materials made mention in Rule 7. It is not a case that the petitioners have left the State of Karnataka or there exists any material for the State Government to discontinue the pension. Their case is that (as could be made out from the strenuous argument of the learned Government Advocate) there has been misrepresentation of fact by the applicants regarding their age or regarding the imprisonment undergone by them. When three categories are indicated in the rules furnishing cause of action to cancel the pension, then the particular category relied on to invoke the rule should be made known to the adversary. When such being the case, it is imperative on the part of the respondents to have disclosed the specific mistake, misrepresentation or fraud that is alleged against the petitioners so that they will be in a position to answer the same. It is not the case of seeking a grant of pension for the first time. When it is being granted for the first time, the incumbent duty on the part of the applicants is to satisfy the requirements of law that they do possess the qualifications made mention of in the rules and the pension can be granted only if they satisfy the requirements of law. When such an application is made, an enquiry will be conducted and thereafter alone pension will be granted or rejected. This process has been completed in all these cases. As stated earlier, it raises a presumption that the applicants had the requisite qualifications for the grant of pension. When this right or privilege has been earned by them, it can be cancelled only on the ground of specific reasons. If the respondents are in possession of the materials which would indicate that the grant of pension was on the basis of mistake, misrepresentation or fraud, it is imperative on the part of the respondents to have disclosed such information they have, so that the petitioners will be in a position to answer the same. Without disclosing this material information, it is not possible for the petitioners to meet the allegations. This is an inherent duty cast on the respondent, when it intends to cancel the benefit that has been granted to the petitioners after being satisfied that they are eligible. As can be seen from Rule 7, it confers the power on the respondent to cancel the pension for reasons of mistake, misrepresentation or fraud. If so, the nature of the mistake, misrepresentation or the nature of fraud played by the applicants which vitiated the order, should be made known to them. It is only thereafter that they may be in a position to reply. Unless these materials are disclosed, it would be a denial of the basic principles of natural justice. I am, therefore, of the opinion that since the petitioners were not told these material in the show-cause notice, the whole exercise is against the fundamental principle of natural justice. The show-cause notice, as can be seen from these cases, was merely a notice merely informing them to disclose of the details of their claim once again. That does not furnish the reason why it should be cancelled. If the

respondents were not satisfied with the applicants' status at the initial stage itself, then the applications ought to have been rejected summarily. When that was subjected to a full-fledged enquiry and granted, there should exist supervening circumstances which would render it invalid because of mistake, misrepresentation or fraud. If these circumstances are not disclosed, I am of the view that there is no question of cancelling the pension.

6. When the rule speaks of the existence of the mistake, misrepresentation or fraud, that means, the alleged circumstance, which the respondents consider are mistake, misrepresentation or fraud vitiating the grant of the pension, should have been in existence even on the date of issuance of the show-cause notice. And those circumstances should be disclosed to the persons whose pension is intended to be cancelled at the initial stage itself. After such persons are called upon to furnish the documents that should accompany the application at the earlier stage, it is not open for the respondents for the first time to invent such mistake, misrepresentation or fraud. The respondents are expected to have had in their possession this material which would vitiate the grant of pension even at the time they started the exercise. A case could not be invested by the respondent for the first time on the materials placed by the petitioners in response to the show-cause notice. A right to issue show-cause notice invoking Rule 7 exists only if they have in their possession the materials, i.e., the circumstances vitiating the award of pension by mistake, misrepresentation or fraud. If none of them did exist at the initial stage, there is no power conferred under the rules to invoke Rule 7 at all and cancel the pension. The respondents, if they had in their possession such information regarding the mistake, misrepresentation or fraud rendering the grant itself bad, then they were bound to disclose such mistake, misrepresentation or fraud to the petitioners in the show-cause notice itself so as to enable them to meet the allegations. It is not open to them to raise such a ground for the first time after the petitioners were called upon to answer the show-cause notice which is issued after the pension is granted. That tantamounts to exercise of a power of review which the rules do not confer. There is no inherent power of review unless the statute clothes such a power. Virtually the authorities have reviewed the earlier order sanctioning the pension. This is impermissible under the law. Therefore, the order passed cancelling the pension cannot be sustained. The impugned orders are quashed.

7. It is to be noted that it is alleged in the impugned order that the proceedings are initiated on the basis of an anonymous petition/representation received by the respondents. This is not to be taken into account at all unless at least the contents of the materials are disclosed to the petitioners. In every case, granting of pension is always on the basis of the report received from the subordinate officers. A recommendation is received from the Deputy Commissioner on the basis of the report he receives from his subordinates. At that distance of time it has to be conceded that, these reports may largely rely on hearsay and other available materials. If a person who holds the Office of the Deputy Commissioner or a person who holds the Office of the Assistant Commissioner or the Tahsildar,

submits reports to the Government and the Government acts, then it is not expected that the Officer could send a totally different and varying report and if he does so, such report should not be taken on its face value. Such "pendulum syndrome" should not influence the Government while dealing with important rights of a citizen who was once declared, after due enquiry, a freedom fighter. The Government should have taken care at the initial stage itself and ascertained that proper reports are received before granting the pension. Otherwise, a situation may arise that with every Officer there would be varying reports varying from the earlier report. Such is not an ideal situation in the administration.

8. In the light of what is stated above, the impugned orders are quashed. I make it clear that if there are cogent and reliable materials on which the respondent can hold that there was a mistake, misrepresentation or fraud vitiating the grant of pension, it is always open to them to initiate fresh proceedings in accordance with law. But, if they are in possession of such materials and they intend to invoke Rule 7 referred to above, it is inherent on their part to disclose to the petitioners whatever material they have, so that the petitioners will be in a position to answer the charges. I make it clear that while making orders, respondent should refrain, as far as possible to take steps to recover the amount already paid and confine the order for prospective operation. The writ petitions are allowed.