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**(2004) 01 KAR CK 0066**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 14406 of 2001**

B.V. Gurushanthappa

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

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**Date of Decision :** 22-01-2004

**Acts Referred:**

Registration of Births and Deaths Act, 1969 — Section 13 (3)

**Citation :** AIR 2004 Kar 437 : (2004) 3 KarLJ 87 : (2004) 3 KCCR 1939

**Hon'ble Judges :** H. Rangavittalachar, J

**Bench :** Single Bench

**Advocate :** K.G. Nayak, for the Appellant; G. Nagarajula Naidu, Government Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

H. Rangavittalachar, J.—Petitioner is a freedom fighter having been imprisoned for participating in the freedom movement in the year 1947 (Mysore Chalo Movement). He was granted freedom fighter's pension on his application in pursuance of the Government Order No. DPAR 106 PFS 85, dated 24-2-1986. After he had drawn the pension for several years, he was served with a show-cause notice dated 2-7-2001 by the Under Secretary to the Government that he had obtained the pension by misrepresenting his age i.e., he had stated in the affidavit filed on 9-9-1985 while claiming pension that he was aged 15 years but his date of birth revealed he was born on 1-9-1936, which means during the year 1947, he was only 11 years and 1 month of age and it was improbable at that age to have participated in the freedom movement and it also ordered to suspend the payment of pension pending enquiry. Petitioner replied to the show-cause notice denying the charge. Meanwhile he also filed an application u/s 13(3) of the Registration of Births and Deaths Act, 1970 before the Judicial Magistrate First Class, Tharikere in CrI. Misc. Petition No. 70 of 1993 for correction of the entry in the date of birth register i.e., to show that he was born on 1-9-1933 and not on 1-9-1936. Learned Magistrate after notice and enquiry ordered for

correction.

2. During the enquiry conducted by the State Government in pursuance to the notice - Annexure-A, petitioner produced the order of the learned Magistrate and reiterated what he had stated in the affidavit filed early. The State Government not satisfied with his reply has withdrawn the pension granted to him only on the ground that "The petitioner was 11 years old when he claimed to have participated in the freedom movement and it was improbable at that age to have participated". This order at Annexure-G cancelling the pension granted is questioned in this writ petition.

3. By the narration of the facts stated above and by a reading of the impugned order, it is clear that the pension granted to the petitioner is recalled not by any finding of fact that the petitioner did not participate in the freedom movement but only on the ground that the petitioner being 11 years of age could not have participated in the freedom movement at that age.

4. In my view, this reasoning is totally fallacious. When there was an upsurge in this country opposing the foreign rule, every person stirred by patriotism, joined the freedom movement crossing all barriers of age. To say age was a barrier is not to understand the emotional bond of the person to the Country. That apart, it is not the case of the Government, that under the circular only persons who had crossed a particular age alone were entitled to get the pension. In the absence of such a reason cannot be appreciated. In fact in the case of *State of Madhya Pradesh v. Devkinandan Maheshwari*, the Supreme Court recognised a boy of 12 years who had gone underground for participating in the freedom movement as a "Freedom fighter" and directed the authorities to grant freedom fighters pension to him. Unfortunately in this case. State Government has proceeded on a hypertechnical ground overlooking the spirit of granting pension to a freedom fighter.

5. Since the reasoning for rejecting the pension is unsupportable, the impugned order is quashed.

6. Normally, this Court would have remanded the matter for reconsideration. But, having regard to the fact that the State Government itself recognised the petitioner as freedom fighter as early as the year 1985, paid the pension from 1985 till 1991 and has now recalled the grant on a ground which is unsustainable and having regard to the age of the petitioner who is stated to be 70 years and also the meagre sum of Rs. 100/- being granted per month, I do not think interest of justice requires that the matter should be remanded again.

7. Accordingly, the impugned order at Annexure-G is quashed. State Government is directed to continue to pay the freedom fighters' pension to the petitioner as it was doing earlier including the arrears petitioner is entitled from the date it was suspended till the payment.

8. Petition allowed.