
(2014) 12 KAR CK 0127

In the Karnataka High Court

Case No : Writ Petition No. 103834/2014 (GM-FF)

Sadeppa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0127

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : H.M. Dharigond, Advocate for the Appellant; K. Vidyavathi, Additional Government Advocate, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner and the learned Government Advocate. The State Government has also filed the statement of objections. Hence the petition is considered for disposal even at this stage having regard to the facts of the case.

2. The petitioner claims to be a Freedom Fighter who had participated in the Quit India Movement in the year 1942. He was arrested and kept in the Central Jail, Belgaum along with others for more than six months. With the introduction of Freedom Fighters Pension Scheme, 1969, the petitioner is said to have made an application along with necessary documents to the 1st respondent and requested grant of pension. After a detailed enquiry, the petitioner was granted pension on 11.01.1993 with retrospective effect from 22.11.1980 at the rate of Rs. 100/- per month. It is claimed that, after a period of eight years from such grant, the 1st respondent has cancelled the pension on the ground that the petitioner had failed to comply with the direction to produce all documents in respect of his bonafides at the time of enquiry that was conducted in respect of all the recipients of such pension on account of wholesale fraud.

3. The petitioner has filed a review petition along with all necessary documents before the 1st respondent on 27.07.2011. The 1st respondent had allowed the

said review petition and the petitioner's pension was resumed from the date of cancellation by the order dated 11.09.2013. Thereafter, without assigning any reasons, the said order was unilaterally modified by the order dated 17.01.2014 to hold that the pension would be paid from the date of the order and not from the date of cancellation. It is that which is sought to be challenged in this petition.

4. As a matter of fact, when there was no fault involved on the part of the petitioner, who obtained the benefit of pension, it is impermissible to the authorities to cancel the order directing the payment of pension and seeking recovery. For no fault of the petitioner, if he has received any pension, he shall not be called upon to refund the same. It is that which is under challenge.

5. The State Government has entered appearance and has filed statement of objections to contend, on reexamination it was noticed that the applicant had submitted fresh co-prisoners certificate for re-examination of his case for sanction of pension before the Government on 23.08.2013 and therefore, in terms of the rules, he was entitled for sanction of pension only from the date of issuance of Government order, as on the basis of the earlier documents, he was not entitled for sanction of pension. Therefore, it is contended that the applicant is not entitled for sanction of arrears of pension from the date of cancellation of pension as per the rules. The rule in particular is Rule 7 of the Karnataka State Freedom Fighters Welfare Rules, 1969 which reads as follows:

"7 - Discontinuation of Pension:-

Pension granted under these rules may be discontinued:--

- i. If the order granting it was based on mistake, misrepresentation or fraud;
- ii. If the annual income of the pensioner, excluding the amount of pension has increased so as to exceed the sum of Rs. 2,400.00 per annum (this provision has subsequently been deleted);
- iii. If the pensioner leaves the State of Mysore for more than one year, and
- iv. For any other reasons considered good and sufficient by the State Government."

6. It is plain that it is on re-examination of the case and in terms of Rule 7 that the applicant was entitled for pension from 11.09.2013 and it is the accurate interpretation that he was not entitled for sanction of arrears of pension for the reason that, earlier he had not submitted supporting co-prisoner certificate for the reason that he was a genuine freedom fighter and accordingly, he ought to be denied the arrears. This reasoning of the State, when in fact he has produced the necessary certificate though belatedly, and to hold that he would be disentitled to such arrears of pension, cannot be justified since the petitioner has received the benefit of arrears not on the basis of any fraudulent claim, but after verification of the necessary certificates produced by him. Though the State has belatedly realized that the certificate, namely co-prisoners certificate, ought to

have been produced in the first instance but was produced later, would not result in the petitioner not being a freedom fighter or being disentitled to the pension, but there was a default on his part in not having produced the necessary certificate at appropriate time. This by itself would not disentitle him from pension. Hence the amount having been paid as arrears is not capable of recovery in the absence of any fraud or illegality on the part of the petitioner.

Accordingly, the petition is allowed. The impugned Annexure is quashed.