

(2015) 11 KAR CK 0066
In the Karnataka High Court
Case No : Writ Petition No. 80365/2010 (GM-FF)

Sharadabai

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0066

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Chaitanyakumar C.M., Advocate, for the Appellant; Jairaj K. Bukka, ASGI, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—Petitioner is before this Court assailing the order dated 08.12.2008 only insofar as the date which has been fixed for sanction/commencement of pension as 08.12.2008 under Swatantra Sainika Sanmana Scheme, 1980 instead of the date of application.

2. The petitioner had made an application seeking grant of freedom fighter's pension on account of participation of her late husband Ambanna Gogi. The husband of the petitioner had also made an application during his lifetime. Since the application of the petitioner had not been considered, petitioner was forced to approach this Court in the earlier proceedings. At the first instance, the Division Bench of this Court by order dated 22.11.2005 in W.A. No. 3385/2005 had directed consideration of the case of the petitioner. Since consideration thereupon was not made in accordance with law, petitioner was once again before this Court in W.P. No. 3944/2007. This Court while disposing of the petition on 03.01.2008 had taken note of the circumstances under which the claim was being made by the petitioner and even though at an earlier instance, the respondents had arrived at the conclusion that the relevant documents had not been produced by the petitioner, this Court had taken into consideration the entries made in the book published by the State Government "who is who" and

since the name of the husband of the petitioner was indicated therein, to state that he had undergone imprisonment for a period of six months at Central Prison, Hyderabad, a direction was issued by this Court to consider the application of the petitioner.

3. Pursuant to the said order made by this Court, consideration has been made and the order dated 08.12.2008 is passed granting pension to the petitioner with effect from 08.12.2008. The petitioner contends that the order limiting grant of pension from 08.12.2008 is not justified and the consideration is to be made with effect from the date of the application. The learned counsel for the petitioner in that regard would rely on the decision of this Court in the case of Erappa Vs. State of Karnataka and Others, . The said decision would indicate that on consideration of clause "8" to the scheme, this Court was of the opinion that unless there are specific reasons to indicate that the pension is to be granted with effect from the date indicated in the order, in all other cases, consideration should be from the date of the application. In that view, it is contended that in the instant case when application had been made earlier and the respondents had erroneously rejected the application at an earlier point, there would be no justification for the respondents to limit the grant of pension from 08.12.2008 and in such circumstances, respondents are required to keep in view the date of the application and grant pension.

4. In the light of the contentions which are urged on behalf of the petitioner, perusal of the order would disclose that the decision to grant pension was taken pursuant to the order passed in W.P. No. 3944/2007. Though in the earlier instances respondents had rejected the case of the petitioner on the ground that the relevant documents had not been filed, this Court while disposing W.P. No. 3944/2007 had taken into consideration the name of the husband of petitioner appearing in the book published by the State Government called "who is who" and in that light had directed consideration. The details with regard to the materials relied on to indicate the name in the said books is not disclosed.

5. Be that as it may, when consideration is made in that fashion, the same would also become relevant to consider the effective date from which pension is to be granted. In that regard, the judgment of the Hon"ble Supreme Court in the case of Union of India and another v. Kaushalaya Devi [2002 (9) SCC 525] relied upon by the respondents to justify the contention with regard to the effective date would be relevant.

"3. Heard learned counsel for the parties and perused the record. The short question in this case is whether the freedom fighters" pension should be granted to the respondent from the date of the application or the date of the order granting the pension.

4. It has been held by this Court in Govt. of India v. K.V. Swaminathan that where the claim is allowed on the basis of benefit of doubt, the pension should be granted not from the date of the application but from the date of the order.

5. In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of secondary nature of evidence. In other words, the claim was not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenu. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.

6. Learned counsel for the respondent has relied on the judgment of this Court in Mukund Lal Bhandari and others Vs. Union of India and others, .

7. In our opinion that decision is distinguishable as it has been stated therein that the pension cannot be granted from any date prior to the application. In our opinion this does not mean that it cannot be granted from a date subsequent to the application.

8. For the reasons given above this appeal is allowed. The impugned judgment is set aside and it is directed that the pension will be granted only from the date of the order for granting pension and not from the date of the application."

6. A perusal of the same would disclose that grant of pension in relation to the effective date would be based on the documents that are relied upon for the purpose of grant of pension. The Hon"ble Supreme Court in that circumstance had held that when secondary materials are relied for the purpose of grant of pension, the effective date would be the date on which decision is taken based on such secondary consideration. If that aspect of the matter is kept in view, as already noticed in the instant case, claim of the petitioner no doubt was rejected earlier and has now been accepted through the order dated 08.12.2008. The earlier rejection as made by the respondents was for want of necessary documents in support of the application. The present consideration however is only in view of the observations made by this Court in W.P. No. 3944/2007 dated 03.01.2008 with reference to the book published by the State Government wherein the name of the husband of petitioner was indicated. Therefore, such consideration as made will have to be taken as consideration based on secondary document and the benefit of the provision was granted to the petitioner based on such consideration.

7. If that be the position, effective date as taken into consideration by the order dated 08.12.2008 would be justified and the order impugned would not call for interference or modification in any manner.

The petition therefore being devoid of merit stands disposed of.