
(2009) 12 KAR CK 0022
In the Karnataka High Court
Case No : Writ Appeal NO. 7067 of 2008 (GM-FF)

Shri Pitambara Rao

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Citation : (2009) 12 KAR CK 0022

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Liyaqat Fareed Ustad, for the Appellant; M. Kumar, AGA, for the Respondent

Final Decision : Allowed

Judgement

K.N. Keshavanarayana, J.—This case is a classic example as to what extent the bureaucracy could harass a person who had sacrificed his precious time and energy for the freedom struggle and thereby defeat the laudable purpose and object for which scheme framed by the State Government for honouring such freedom fighters and thereby redeem our debt of gratitude to such persons is defeated. This appeal u/s 4 of the Karnataka High Court Act is directed against order dated 10.06.2008 passed by the learned Single Judge in Writ Petition No. 7372/2008 dismissing the said writ petition filed by the appellant.

2. The Government of India framed a scheme called "Swantantra Sainik Samman Pension Scheme" with a view to honour freedom fighters and thereby to discharge the debt of gratitude the nation owed to them. The State of Karnataka framed Rules called Karnataka State Freedom Fighters" Welfare Rules, 1969. Persons who participated in the struggle for liberation of Hyderabad State were also eligible for grant of freedom fighters" pension under such scheme. The appellant claiming that he participated in the struggle for liberation of Hyderabad State filed an application on 06.10.1989 for grant of freedom fighters" pension under the scheme. Along with the said application, he also enclosed the copies of the arrest warrant issued by the Sub-Inspector of Police, Brahmapur, Gulbarga

and also co-prisoner's certificate issued by Shibiradhipathi Chitaguppihar Hakikatraya who was authorized by the Government of Karnataka for issuing such certificates. It appears the respondent after scrutiny of the papers, by letter dated 14.03.1981 called upon the appellant to produce original documents. According to the appellant, he submitted the originals of those documents which were duly acknowledged by the respondents. However, the respondents once again called upon the appellant to produce the original documents and informed him that if he failed to produce the originals, his application would be rejected. Thereafter, the appellant filed a Writ Petition No. 28177/1994 seeking a writ of mandamus to direct the authorities to consider his application and to pass orders expeditiously. The said writ petition came to be allowed and necessary directions were issued, pursuant to which the application of the appellant was considered by the concerned authority and the same was rejected by order dated 17.06.2004 on the ground that the appellant has failed to produce the original documents to prove that he had participated in freedom struggle. Questioning the correctness of the said order, the appellant filed Writ Petition No. 44064/2004 inter alia on the ground that the order came to be passed without giving him an opportunity of being heard. The said writ petition was allowed and order dated 17.06.2004 was quashed and the matter was remanded back to the concerned authority for fresh consideration after affording an opportunity to the appellant to substantiate his claim and then to pass orders in accordance with law. Thereafter, it appears the appellant was given notice to appear before the authorities and to produce the original documents to prove that he participated in the freedom struggle. Though the appellant reiterated his earlier stand that he had already produced the original documents, the application of the appellant came to be rejected by the order dated 07.12.2007 as per Annexure-P to the writ petition on the ground that the appellant has failed to produce the original documents to substantiate his contention that he participated in the freedom struggle and that there are discrepancies in the copies of the documents produced later by the appellant, therefore, he is not entitled for a grant of pension. The said order passed was questioned by filing Writ Petition No. 7372/2008. The learned Single Judge after hearing the learned counsel appearing for the appellant, by the order under appeal dismissed the writ petition concurring with the order passed by the authorities as per Annexure-P holding that the authorities are justified in opining that the appellant has failed to prove by acceptable evidence that he has participated in the Hyderabad liberation movement, as such, he is not entitled for the pension. Being aggrieved by the dismissal of the writ petition filed by him, the appellant has presented this appeal. 3. Learned Additional Government Advocate, on being directed to take notice on behalf of the respondents has appeared and has produced the original records as directed.

4. We have heard Sri Liyaqat Fareed Ustad, learned counsel appearing for the appellant and Sri M Kumar learned Additional Government Advocate appearing for the respondents and perused the original records.

5. It is not disputed that even a person, who participated in the struggle for

liberation of erstwhile Hyderabad State is entitled for grant of freedom fighters" pension under the scheme. The appellant filed application on 06.10.1989 for grant of freedom fighters" pension on the ground that he had participated in the struggle for liberation of Hyderabad State. Under the impugned order Annexure-P, the application filed by the appellant came to be rejected mainly on two grounds namely:

(i) The appellant has failed to produce the original documents namely the original certificate issued by the Shibiradhipathi for having participated in Hyderabad liberation movement and the original arrest warrant issued by the Police.

(ii) The appellant has given inconsistent statements before the Tahasildar, Gulbarga on 26.05.1990, 05.12.1996 and 16.09.2006.

6. As noticed above, the appellant is before this court in the third round. When his application was not considered within the reasonable time, the appellant sought a writ of mandamus to the authorities concerned for consideration of his application. Thereafter, when his application came to be rejected without giving him an opportunity of being heard, he questioned the said order by filing a writ petition before this court. After remand of the matter by this Court, the authorities once again rejected the application filed by the appellant on the aforesaid grounds. According to the appellant he was aged about 87 years, when he filed the latest writ petition in the year 2008. Under the impugned order, reference has been made to some inconsistent statement said to have been made by the appellant. The authorities concerned appear to have lost sight of the fact that on account of the advanced age, the appellant might be suffering from loss of memory. Therefore, much importance ought not to have been given to such so called inconsistent statement. Even the alleged inconsistent statement is to the effect that at one point of time the appellant alleged to have stated that he was kept in jail for sometime and at another point of time he alleged to have stated that while he was shouting slogans, he was beaten by the Police for which he took treatment in the hospital. The other alleged inconsistent statement was that in one statement he has stated that the certificate issued by the Shibiradhipathi has been produced before the High Court and in another statement he has stated that the same has been produced in the year 1991 itself.

7. We are of the considered opinion that having regard to the advanced age of the appellant, much importance ought not to have been given to this so called inconsistency in the statement. The respondents ought to have considered the merits of the claim of the appellant on the basis of the documentary evidence. The learned Single Judge also seems to have given much importance to this alleged inconsistencies in the statements of the appellant.

8. With regard to the non-production of the original documents as observed in the impugned order as well as in the order of the learned Single Judge, we find that there is no substance in the said observation for the reason that the perusal of the original records produced by the learned Additional Government Advocate

indicates that as long as in the year 1990 itself the appellant had produced the original documents namely the original certificate issued by Shibiradhipathi and also arrest warrant issued by the appellant which was in Urdu. In fact in the original file indicates that along with the letter dated 25.04.1990, from Section Officer, DPAR, (Political Pension) to the Director of Translation Department, the original document which was in Urdu was sent to Director of Translation Department for translating the same into Kannada and English. The letter dated 10.01.1991 from the Director of Translation Department to the Government, which is available in the file indicates that the Director of Translation Department along with the said letter sent the English translation of the Urdu document which had been submitted for translation as per the letter dated 25.04.1990. This strengthens the case of the appellant that the original documents had already been produced earlier. The letter dated 12.08.1991 from the Asst. Secretary to Government, addressed to the appellant in No. DPAR 588 PFS 90, reiterates this position. The contents of said letter which is in Kannada reads as under:

From this, it is clear that immediately after filing of the application in the year 1989, the appellant did in fact produced the original documents as directed by the authorities, to prove that he had participated in the struggle for liberation of the Hyderabad State. However, in spite of the same, the authorities went on demanding the appellant to produce the original documents and though the appellant reiterated that he has already produced the original documents, the authorities proceeded to reject the application for grant of pension mainly on the ground that original documents are not produced. Having received the original documents in the year 1990 itself from the appellant, it is not open to the authorities to contend that the original documents have not been produced and to reject the claim of the appellant on that ground. The appellant cannot be expected to produce the original documents every time as demanded by the authorities. Appellant can have only one set of original documents. If the authorities have lost the original documents produced by the appellant, the appellant cannot be blamed for the same. The authorities have failed to consider this aspect of the matter. The learned Single Judge also appears to have not bestowed his attention to find out as to whether the appellant had really produced the original documents as contended by him. The original records since had not been produced before the learned Single Judge, obviously the learned Single Judge had no opportunity to look into the original file. If the learned Single Judge had an occasion to go through the original file, we are sure that the learned Single Judge would not have affirmed the finding of the authorities in the impugned order Annexure-P.

9. Therefore, the rejection of the claim of the appellant is bad in law. The documents, the copies of which were made available by the appellant before the authorities would clearly establish that he had participated in the struggle for liberation of Hyderabad State. According to the certificate of the Shibiradhipathi, the appellant had remained underground as there was a warrant of arrest issued

against his name by the jurisdictional police on the ground that by remaining underground, appellant used to stealthily visit his house in late hours. The combined reading of the certificate issued by the Shibiradhipathi and the arrest warrant issued by the Police would clearly indicate that the appellant has participated in the struggle for liberation of Hyderabad State.

10. Having regard to the facts and circumstances of the case, we are of the opinion that the authorities are not justified in rejecting the claim of the appellant. Therefore, the impugned order Annexure-P cannot be sustained, as such, it is liable to be quashed. Having regard to the fact that the appellant has been made to move from pillar to post for the last 20 years to get the pension and since he is approaching this Court repeatedly, we are of the opinion that it is just and necessary to direct the authorities to grant the pension to the appellant as per the scheme as mere remand of the matter to the authorities may meet the same fate as earlier. In this view of the matter, appeal deserves to be allowed. Accordingly, the appeal is allowed with exemplary cost of Rs. 10,000/- the cost shall be paid within four weeks from today. The order dated 10.06.2008 passed by the learned Single Judge in Writ Petition No. 7372/2008 dismissing the petition is set aside. The Writ Petition is allowed. Rule issued and is made absolute. The impugned order dated 10.06.2008 Annexure-P passed by the Respondent No. 2, rejecting the application of the appellant for grant of freedom fighters' pension is hereby quashed. The second respondent is directed to grant the freedom fighters' pension to the appellant as per the scheme. Two months time is granted to the second respondent to comply with this direction.