

State of Karnataka & Others

v.

Shankara Gouda

(Supreme Court Of India)

HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE FAKKIR MOHAMED  
IBRAHIM KALIFULLA

C. A. No. 5271 of 2012 (Arising out of SLP (C) No. 27837 of 2010) | 16-07-2012

1. Leave granted.

2. This appeal arises out of an order dated 03.07.2009 passed by the High Court of Karnataka at Bangalore whereby Writ Appeal No. 5126 of 2008 filed by the appellant-State of Karnataka and Ors. has been dismissed and order dated 28.03.2008 passed by learned Single Judge of that Court upheld. The learned Single Judge had, by the said order, allowed Writ Petition No. 5858 of 2007 filed by the respondent herein and quashed Government Order No. DPAR 115 PFS 06, Bangalore dated 17.03.2007 which in turn had cancelled an earlier order dated 08.10.1992 issued by it granting pension to the respondent under Rule 7 of the Karnataka Swatanrya Sainik Sanman Pariyojana, 1969.

3. The facts giving rise to this petition to the passing of the Government Order and filing of the Writ Petition as also the Writ Appeal before the High Court have been set out by the order passed by the High Court at considerable length. We do not, therefore, consider it necessary to recount the same over again except to the extent it is necessary to do so. Suffice it to say, the respondent claimed to be a freedom fighter within of the meaning of the scheme mentioned above and applied for grant of pension to the State Government. The Government after inquiry sanctioned pension in favour of the respondent and few others in terms of an order dated 08.10.1992 referred to above w.e.f. 01.09.1982. It is not in dispute that pursuant to the said order of sanction, the respondent started receiving pension admissible under the Rules.

4. A complaint received from one Mr. Kakiragouda Lakkanangouda Lakkana Gouda by the Deputy Commissioner alleged that respondent had obtained the benefit of pension under the scheme afore-mentioned fraudulently. The said complaint was marked for inquiry to the Tehsildar, Navalgund who submitted a report inter alia stating that the respondent was a minor as in the year 1942, with the result that he would not have participated in the Quit India Movement of the year 1942. The Deputy Commissioner forwarded the said report with his own observations to the Government who upon re-consideration of the matter passed an order dated 17.03.2007 cancelling the pension sanctioned in favour of the respondent. While doing so, the Government placed reliance upon the reports submitted by the Tehsildar, Navalgund

Taluk according to which the date of birth of the respondent entered in the record of Government Primary School, Shiru was 10.8.1940 showing thereby that the respondent was a toddler hardly 2 years old hence incapable of participating in any kind of freedom movement whatsoever.

5. Aggrieved by the cancellation of the pension sanctioned in his favour, the respondent filed Writ Petition No. 5858 of 2007 in the High Court of Karnataka, which was as noticed earlier, allowed by the learned Single Judge of that Court on 28.03.2008. The learned Single Judge held that the respondent had not been given a proper opportunity of being heard in the matter before the pension sanctioned in his favour was withdrawn by the Government. Such a hearing was, according to the learned Single Judge, essential having regard to the fact that the pension had been sanctioned following the procedure prescribed under the Rules. The matter was then taken up in a writ appeal filed by the State Government, which was dismissed by a Division Bench of the High Court in terms of its order dated 03.07.2009. The present appeal assails the correctness of the said order.

6. We have heard learned counsel for the parties and perused the records.

7. When the matter first came up before us on 06.01.2012, it was contended on behalf of the respondent that the Government had withdrawn the pension sanctioned in favour of the respondent on the basis of the report submitted by the Tehsildar and forwarded by the Deputy Commissioner, Dharwad. The Tehsildar had in his report relied upon the School Leaving Certificate which allegedly showed the date of birth of the respondent to be 10.08.1940. This certificate was, according to the respondent, never confronted to him in the course of the inquiry nor was an opportunity given to the respondent to question its genuineness. The solitary document thus relied upon by the Government was used against the respondent behind his back violating the principle of natural justice. Finding merit in that contention this court by order dated 06.01.2012 directed that the photocopies of the material relied upon by the authorities including the school leaving certificate referred to in the Tehsildar's report be supplied to the respondent and the respondent be given an opportunity to make his submissions before the Deputy Commissioner, Dharwad who was directed to submit a proper report within a period of six weeks. The Deputy Commissioner has, pursuant to that direction, submitted a report dated 28.02.2012 in which the Deputy Commissioner has, in para 5, concluded:

"In the light of the above, it is clear that the school certificate pertaining to the matter belongs to one Sri Shankargouda Ningnagouda Goudar who is younger brother of Sri Shekharagouda Ningnagouda Goudar and the school certificate of Sri Shankaragoud Ningnagouda Goudar cannot be relied upon for the cancellation of pension of Sri Shekharagouda Ningnagouda Goudar, who is the respondent in the case before the Apex Court."

8. In light of the above there is no gainsaying that the certificate which constitutes the very basis for the withdrawal of the pensionary benefit granted to the respondent was wrongly relied upon by the authorities below inasmuch as such certificate has upon verification been found to be that of Shankar Gouda who happens to be younger brother of the respondent. Inasmuch as the Tehsilder, Deputy Commissioner and Government had proceeded on an assumption that the certificate belonged to the respondent and drawn a conclusion that he was a minor as on the date of his alleged participation in the Quit India Movement, the same is vitiated in law. It is noteworthy that the Government order under challenge before the High Court did not refer to any other material to deny the benefit of pension to the appellant although in the course of submissions before us Ms. Anita Shenoy, made an attempt to justify the denial of pension by referring to several documents which now form a part of the report submitted by the Deputy Commissioner including the Assembly Voters List for the Navalgund constituency for the year 2012, and the temporary ration coupon issued by the Food and Supplies Department of the State of Karnataka. She argued that in both these documents which the respondent had himself produced before the Deputy Commissioner in the course of the inquiry directed by this court the respondent is shown to be 73 years old which implies that he was born some time in the year 1939. If that be so, argued Ms. Shenoy, the respondent was in any case not more than 3 years old in the year 1942 which clearly belied his claim that he participated in the Quit India Movement. The denial of benefit of the pension under the scheme in question was sought to be supported on the strength of certain other documents and circumstance enumerated from the report of the Tehsildar including the statements said to have been made by the officials of Gram Panchayat and the villagers to show that the respondent was indeed a minor and was, therefore in no position to participate in any freedom movement.

9. We regret to say that we are not inclined in these proceedings to reappraise the material referred to by Ms. Shenoy to record a finding of fact as to the actual or possible age of the respondent and his entitlement to pension on that basis. In our opinion, since the order passed by the Government withdrawing the pension earlier sanctioned in favour of the respondent is unsustainable on the ground stated in the said order, the only option left to us is to direct a proper inquiry into the matter before the Government takes a fresh decision in the matter. We are conscious of the fact that the Deputy Commissioner has already held an inquiry in pursuance to the order of this court and submitted a report but the same is limited to whether the school certificate relied upon by the Government in its earlier order pertained to the respondent or his brother. The finding of the enquiry on that aspect has gone against the government. The Deputy Commissioner has not gone further to record a finding as to the probable date of birth of the respondent. We see no reason why the Deputy Commissioner cannot or should not do so.

10. We, accordingly, allow this appeal, set aside the order passed by the High Court in the writ petition as also the writ appeal filed by the State Government and direct that the Deputy Commissioner, Dharwad shall hold a proper inquiry into the matter giving a fair opportunity to the respondent to participate in the said inquiry to determine whether or not the respondent

was entitled to draw pension under the scheme in question. Depending upon the finding recorded by the Deputy Commissioner, the Government shall be free to pass a fresh order in accordance with law. Since the respondent is a fairly aged person, we request the Deputy Commissioner to hold the inquiry and submit a report to the Government expeditiously. We further direct that pending final orders to be passed by the government upon receipt of the report from the Deputy Commissioner no recovery of the amount already received by the respondent shall be made.