

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 15365 of 2009

ORDER:

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Heard learned counsel for the petitioner, learned counsel for the first respondent and learned Government Pleader for Revenue.

The present writ petition is filed seeking issuance of a writ of mandamus directing the respondents to consider the petitioner's age basing on the Doctor Certificate and other documents by quashing the guideline (b) in D.O.Lr.No.8/12/90 FF (P), dated 02.07.1998 of the first respondent insofar as age determination basing on Voters List by holding the same as illegal, arbitrary, unconstitutional and violation of Articles 14 and 21 of the Constitution of India and set-aside the impugned Lr.No.4566 (21)/FF.I/2009, dated 23.05.2009 of the second respondent by holding it as illegal, arbitrary and violation of principles of natural justice; and consequently direct the first respondent not to cancel petitioner's pension sanction Lr.No.112/3168/93-FF(HC)(E), dated 23.03.2004.

The averments in the affidavit filed in support of the writ petition would show that in due recognition to the participation of the petitioner in freedom struggle against the then Nizam Government for merger in Union of India, the Government of India granted Swatantra Sainik Samman Pension in his favour for the year 2003-2004. It is the case of the petitioner that subsequently by virtue of the impugned orders, the State Government recommended to the Government of India for cancellation of pension, without being preceded by any notice or an opportunity of hearing the petitioner.

An issue identical to the case on hand came up before this Court in W.P.No.14799 of 2009 wherein a learned Single Judge of this Court held as under:

"The Government of India, with a laudable and sacred object of safeguarding and protecting the freedom fighters, who sacrificed their lives, wealth, health and young age without expecting and anticipating anything in reciprocation, introduced the Swatantra Sainik Samman

Pension Scheme, 1980. In the considered opinion of this Court, the benefit under the Scheme is a right conferred in recognition of the sacrifices made by them during the freedom struggle. Therefore, the authorities entrusted with the functions of dealing with the claims under the said scheme are required to deal with such claims in a meticulous and careful manner and keeping in view the object behind the Scheme. Such a right created under this holy Scheme cannot be taken away or dispensed with, without complying with the principles of natural justice. It is the specific grievance of the petitioner herein that the District Collector submitted a report without any notice, enquiry and opportunity to the petitioner and the State Government recommended the case of the petitioner for cancellation on the basis of the said report. This is not denied by the State Government by filing counter and in the absence of any denial to the said effect, this Court has absolutely no scintilla of hesitation to hold that the said action is highly illegal, arbitrary and violative of principles of natural justice. The recommendations made by the State Government, based on the enquiry said to have been conducted without notice and opportunity to the petitioner and without adhering to the principles of natural justice, cannot be the basis for cancellation. This action on the part of the State Government is highly preposterous, iniquitous and cannot be sustained in the eye of law. For the aforesaid reasons, the writ petition is allowed and the impugned proceedings vide letter No.4566 (24) FF-1/2009 dated 23.04.2009 of the State Government is hereby set aside. Further, it is declared that the said recommendations cannot form the basis for initiating any action against the petitioner. However, it is open for the respondent-authorities to hold enquiry after giving notice and opportunity of being heard to the petitioner.”

In view of the judgment referred to above and having regard to the facts and circumstances of the case, the writ petition is allowed by setting aside the impugned proceedings vide letter No.4566(21)/FF.I/2009, dated 23.05.2009 of the State Government. Further, it is declared that the said recommendations cannot form the basis for initiating any action against the petitioner. It is always open to the respondent authorities to hold enquiry after giving notice and opportunity of hearing the petitioner. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

21.09.2015

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