

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.1804 OF 2010

ORDER

From the material on record it could be seen that the writ petitioner No.1 was granted pension under the Swatantrata Sainik Samman Pension Scheme vide proceedings dated 18.12.2003. Subsequently, he was issued with notice dated 25.11.2009, to show cause why pension granted to him, shall not be cancelled, as there are certain irregularities and suppression of material facts. The case of the petitioner is that he filed explanation to the show cause notice on 15.12.2009, and sent the said explanation to the 1st respondent under registered post with acknowledgment due with receipt No.6227544551 from Head Post Office, Nalgonda. The grievance of the petitioner is that without considering the same, and further noting in the impugned order, that the petitioner No.1 has not filed explanation to the show cause notice dated 15.12.2009, the 1st respondent – Union of India, represented by its Under Secretary, passed the impugned proceedings dated 18.10.2010, canceling the pension. Aggrieved by the same, the present writ petition has been filed.

This court on 02.02.2010 while ordering notices before admission, and posting the matter after six weeks, suspended the impugned order dated 18.10.2010 in the meanwhile.

During the pendency of the writ petition, the petitioner No.1 died and his wife has been brought on record as petitioner No.2 vide order dated 30.03.2012 in WPMP.No.9779 of 2012 in W.P.No.1804 of 2010.

Learned counsel for the petitioners submit that pursuant to show cause notice dated 25.11.2009, the writ petitioner No.1 filed his explanation dated 15.12.2009 and the sent the said explanation to the 1st respondent under by registered post with acknowledgment due, and later after receipt of impugned letter, addressed letter dated 27.01.2010 to the Superintendent of Post Offices,

Nalgonda under acknowledgment, requesting him to furnish the details as to the receipt of explanation by 1st respondent, but there is no response. Learned counsel submits that petitioner submitted his explanation with regard to discrepancy in age, but without considering the said explanation, the impugned order came to be passed, and this amounts to violation of principles of natural justice.

Counter affidavit is filed on behalf of 1st respondent, wherein it is stated that as the 1st petitioner failed to file explanation to the show cause notice explaining the discrepancy with regard to his age at the time of his alleged participation in the agitation, impugned proceedings came to be passed canceling the pension, and hence the same may not be interfered with.

Heard Sri N.Rajeshwar Rao, learned Standing Counsel for 1st respondent – Union of India, who reiterated the averments made in the counter affidavit.

Heard learned Government Pleader for Revenue for respondents 1 to 4.

In this case it is to be seen that the case of the petitioner No.1 is that he filed explanation to the show cause notice on 15.12.2009 by registered post with acknowledgment due with receipt No.622754551 and he also addressed letter dated 27.01.2010 to the Superintendent of Post Offices, Nalgonda under an acknowledgement, requesting him to furnish the details as to the receipt of his explanation by the 1st respondent. Copy of the said letter dated 27.01.2010 is filed along with the material papers, which bears the acknowledgment of the office of the Superintendent of Post Offices, Nalgonda. These circumstances *prima facie* suggest that the 1st petitioner filed his explanation to the show cause notice, and the same could not fall for consideration of the 1st respondent before passing the impugned order. Therefore, the writ petitioner No.1 could not get proper opportunity to defend his case and this amounts to violation of principles of natural justice.

As noted above, the petitioner No.1 died during the pendency of the writ petition and his wife has been brought on record as 2nd petitioner, and the learned counsel for the petitioners would submit that by virtue of the interim order passed by this court, the 2nd petitioner is in receipt of pension, and now she is aged about 88 years.

In view of the above facts and circumstances, the impugned order is set aside.

However, this order will not preclude the respondent No.1 from taking appropriate action in accordance with law, after issuing notice and opportunity of hearing to the 2nd petitioner.

The writ petition is accordingly allowed to the extent indicated above.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:01—11—2019

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