

HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION Nos. 37400 OF 2021 & 14425 OF 2020

COMMON ORDER:

Both the aforesaid writ petitions are filed by the same petitioner, lis involved is same, therefore the same were heard together and disposed of by way of this common order.

2. These writ petitions W.P.No.37443 of 2021 is filed;

- I. to declare the action of the respondent No.1 without cancelling the petitioner's Freedom Fighters Pension ID No. 112/7313/97-FF(HC)(P), dated 26.04.2004 (PPO No. MHAF-0414958, Ac. No. 52142354032 of S.B.I., Sirpuram Branch), straight away stopped the petitioner's Freedom Fighters Pension, contrary to the orders passed in W.P.No.15319 of 2009 dated 28.10.2019, in spite of the petitioner's representation dated 04.08.2021, including legal notice dated 17.11.2021, is illegal and void and opposed to Articles 14, 19 & 21 of Constitution of India and consequently to direct the respondents to release the petitioner's Freedom Fighters Pension forthwith, along with arrears.

W.P.No.14471 of 2020 is filed;

II. to consider petitioner's age by referring my case to the District Level Medical Board on par with other similarly situated persons by quashing the impugned enquiry report submitted vide Rc.C3/391/2020, dated 30.04.2020 of the 5th respondent and consequential impugned proceedings F.No.52/CC/123/2009-FF(HC) dated 29.07.2020 of the 1st respondent, in which petitioner's pension was cancelled and by holding the same are vitiated in the eye of law and further by quashing the guideline B issued in G.O.Lr.No.8/12/90/FF(P) dated 02.07.1998 issued the 2nd respondent in so far as age determination basing on voter list, by holding the same as illegal.

3. Heard Sri. Mummaneni Srinivas Rao counsel for the petitioner in W.P. No. 37400 of 2021, and learned counsel representing Sri. Chinna Baba counsel for the petitioner in W.P.No.14425 of 2020 and learned Asst. Solicitor General of India, for the respondents.

4. Petitioner is claiming that he is a freedom fighter. He had participated in the freedom struggle launched against Nizam Government during 1947-48 for merger of Hyderabad state into union. Therefore, according to him, he is entitled for pension under Swatantrata Sainik Samman Pension Scheme, 1980. Therefore he had made an application along with documentary evidence for grant of the said pension. Respondents on being satisfied with all the

documentary evidence presented by the petitioner sanctioned pension vide proceedings dated 26.04.2004.

5. Thereafter, according to the respondents, they have received several complaints stating that some people have submitted fake and fictitious documents and on the basis of the same, they applied and obtained freedom fighters pension. Therefore, Central Government had constituted a committee i.e., special screening committee to scrutinise the applications of persons who had claimed to have undergone suffering in the Hyderabad liberation movement, i.e., the erstwhile State of Hyderabad. However, the pension was sanctioned to the petitioner provisionally by giving him benefit of doubt.

6. In view of the aforesaid allegations, the Central Government has requested the State Government to conduct re-verification by considering the following aspects:

- a) The age of the applicant should be more than 15 years on March 1947 i.e., at the time of commencement of Hyderabad liberation movement.
- b) Proof of age should be based on official records, such as registration certificate, school certificate or voter ID card or voters list of 1995 or earlier etc.

- c) Claims may be verified from the camp in-charge who had issued the certificate in favour of the applicant or from the two central freedom fighters of the district of the applicant, if the in-charge of the border camp was not alive.

7. According to the respondents and in view of the serious allegations and several complaints received against pensioners basing on the bogus date of birth certificate, false certificate etc., in order to identify these type of bogus claims, the matter has been referred to Director General (Vigilance and Enforcement State of AP) to verify all the aforesaid freedom fighters belongs to Karimnagar, Nalgonda, Warangal and Khammam District. After completion of the said inquiry, Director General and Enforcement had submitted its report to the State Government and the State Government in turn had submitted the said report along with letter dated 23.05.2009 to the 1st respondent.

8. The petitioner herein had filed W.P.No.15319 of 2009 challenging the said letter/report submitted by the 3rd respondent. This Court had granted interim suspension of the aforesaid report dated 23.05.2009 vide order dated 29.07.2009. Thereafter, the said writ petition was allowed vide order dated 14.11.2019 and proceedings dated 23.05.2009 of State Government is set aside. This Court declare that the said recommendations dated 23.05.2009 of the State Government cannot form the basis for initiating any action against the

petitioner. However it is open for the respondent authorities to hold inquiry after giving notice and opportunity of being heard to the petitioner.

9. According to 1st respondent, vide letter dated 28.10.2020, it has requested the State Government to conduct inquiry in to the claim of the petitioner after giving him notice and opportunity of being heard and thereafter furnished the report to the Ministry. Reminders dated 04.03.2020, 24.04.2020, 29.05.2020 and 18.06.2020 were also issued to the State Government. Vide the aforesaid letters and reminders, 1st respondent had requested the respondent No.4 to comply with the orders dated 14.11.2019 in W.P.No.13519 of 2009.

10. According to the 4th respondent and in compliance of the aforesaid order, the 5th respondent District Collector, Khammam District, had conducted inquiry and issued a notice dated 22.02.2020 to the petitioner with a request to attend inquiry on 10.03.2020 at 11:00 AM before him. Accordingly, the petitioner herein had attended and submitted certain documents including copy of the Aadhar Card. On consideration of the same, the documents submitted by the petitioner, 5th respondent had submitted a report dated 30.04.2020 to the 4th respondent with the following facts:

A. On verification of the actual voters list of 1995 available in the office related to 278-Madira Assembly constituency at P.S.No. 124/Rayannapeta Village, Morakan Mandal, the petitioner's name was

enrolled at Sl.No.31 and the age is recorded as 48 years as on 1995 and as such he was not born at the time of movement.

B. During the course of the inquiry the writ petitioner had attended, but not submitted any documentary evidence in support of his claim, about his age proof documents. However he stated that he had not undergone to jail, but he used to supply drinking water and food to the freedom fighters.

C. Further appraising these facts, the report has been submitted to the Secretary to the Government of Revenue (FF) Department Hyderabad, letter dated 30.04.2020 stating that the petitioner has been sanctioned the pension by submitting false documents about the age and he is not eligible for pension, accordingly, recommended for cancelation of his pension.

11. Thereafter, 4th respondent had submitted report dated 30.06.2020 to the 1st respondent. Vide Speaking Order dated 29.07.2020, 1st respondent had cancelled the freedom fighter pension to the petitioner herein drawing from 07.01.2004. Challenging the aforesaid Speaking Order dated 29.07.2020, the petitioner herein had filed Writ Petition i.e., W.P.No.14425 of 2020.

12. According to Sri, Mummaneni Srinivas Rao, learned counsel for petitioner, the respondents have not complied with the directions of this court in

the order dated 14.11.2019 in W.P.No.15319 of 2009. They have not afforded any opportunity before passing Speaking Order dated 29.07.2020 to the petitioner. The report submitted by 5th respondent District Collector Khammam is behind back of the petitioner, no notice was given and no opportunity was given to the petitioner. Therefore the entire action of the respondents in cancelling the pension is arbitrary and illegal.

13. The petitioner herein had filed a contempt case vide C.C.No.787 of 2020 alleging deliberate and wilful disobedience of the order dated 14.11.2019 in W.P. No. 15319 of 2009. The said contempt case came for hearing on 23.09.2021, on which date this Court directed respondents to produce final order, if any, passed by 1st respondent.

14. The petitioner herein had submitted a representation dated 04.08.2021 to the 1st respondent with a request to comply with the aforesaid order and pay pension. A reply dated 13.08.2021 was issued to the petitioner. Thereafter petitioner got issued a legal notice dated 17.08.2021 and 1st respondent sent reply dated 29.12.2021.

15. According to the respondents, the petitioner is not entitled for pension under the aforesaid scheme and even though he had submitted fabricated and fake documents and obtained pension. On receipt of several complaints, respondents have conducted inquiry and came to conclusion that petitioner

herein got pension basing on the aforesaid bogus documents and after giving an opportunity, a report was submitted. Therefore by following due procedure laid down under law and by giving notice and opportunity to the petitioner herein, the cancellation order dated 29.07.2020 was passed by 1st respondent.

16. According to the 1st respondent, in the said sanction letter dated 26.04.2004, itself, it is specifically mentioned in para No. 2 that provisional pension being sanctioned to the petitioner is subject to review by the President and is liable to be cancelled if it is found that it was sanctioned on mistaken grounds/false information. The petitioner herein had also submitted an unconditional undertaking to the effect that if any information given by him is subsequently found to be wrong or false, the Central Government will be authorised to cancel his pension and he will be liable to refund the entire amount of pension drawn under freedom fighter pension wrongly/forgedly drawn by petitioner herein by cancelling the same with immediate effect.

17. According to the 1st respondent, all the persons who took part in freedom movement in some way or other are not eligible for Swatantrata Sainik Samman Pension Scheme, 1980 Pension. Under the Swatantrata Sainik Samman Pension Scheme 1980, only such of freedom fighter are eligible for privilege pension who fulfils the conditions of the Swatantrata Sainik Samman Pension Scheme, 1980 by furnishing proof of claimed sufferings of nature and in the manner

specified in the Swatantrata Sainik Samman Pension Scheme, 1980 itself. In terms of the aforesaid scheme, the petitioner herein had to submit documentary evidence and also the claim in proper format. He has to submit proof of age which should be based on official record such as registration certificate, school certificate or voter ID or voters list of 1995 or earlier etc. He has to submit camp in-charge certificate who had issued certificate in favour of the claimant or from two central freedom fighters of the district of the petitioner, if the in-charge of the border camp is not alive.

18. Initially the petitioner herein had submitted the said documents and considering the same and also undertaking given by the petitioner, vide proceedings dated 26.04.2004, 1st respondent had sanctioned pension to the petitioner under the aforesaid scheme. Thereafter respondent No. 1 to 4 has received several complaints alleging that several petitioners have obtained pension by submitting bogus document. Therefore, 1st respondent directed 4th respondent State Government to conduct inquiry and submit re-verification report by considering the aforesaid three aspects. Accordingly, inquiry was conducted and report dated 23.05.2009 was submitted. The petitioner herein had filed the writ petition challenging the aforesaid proceedings dated 23.05.2009, this Court vide order dated 14.11.2019 while setting aside the said proceedings dated 23.05.2009, directed the respondent to conduct fresh inquiry by giving due opportunity of hearing and take action in accordance with law.

19. Thereafter, on the request of 1st respondent, 4th respondent had requested 5th respondent District Collector to conduct inquiry by giving due opportunity to the petitioner herein. Accordingly a notice dated 22.02.2020 was served on the petitioner requesting him to attend inquiry on 10.03.2020 at 11 AM in the office of District Collector, Khammam. Accordingly he had attended the aforesaid inquiry and produced a Xerox copy of the Aadhar Card and other documents. On consideration of the aforesaid document, 5th respondent had submitted his report dated 30.04.2020. 5th respondent in his report dated 30.04.2020 has submitted the following facts with regard to the petitioner herein:

- a) Petitioner himself had admitted that he was 12 years old at the time of independence and he used to supply drinking water and food to the freedom fighters.
- b) Aadhar card verification indicate that he was born in 1936 he was 11-12 years during the time of Hyderabad liberation movement during (1947-48).
- c) Verification of actual voters list of 1955 in DC office indicates that he was 48 years in 1995 and he was not even born during Hyderabad liberation movement.
- d) He has been sanctioned by submitting the false evidence about his age.

e) He is not eligible for pension and recommended for cancellation of his pension.

20. Thus, 5th respondent District Collector Khammam, had conducted inquiry by giving due opportunity to the petitioner herein on 10.03.2022. He has submitted a report dated 30.04.2020.

21. The aforesaid report dated 30.04.2020 of 5th respondent District Collector Khammam was forwarded to 1st respondent by the 4th respondent vide letter dated 30.06.2020. Considering the said report dated 30.04.2020 of 5th respondent and letter dated 30.06.2020, vide Speaking Order dated 29.07.2020 respondent No. 1 has cancelled the pension of the petitioner herein.

22. It is relevant to note that while issuing the aforesaid cancellation order/Speaking Order dated 29.07.2020, 1st respondent has not issued any notice to the petitioner herein asking him to submit his explanation as to why pension granted to him cannot be cancelled. Without giving such an opportunity, 1st respondent has cancelled the pension granted to the petitioner vide proceedings dated 29.07.2020.

23. The only explanation offered by 1st respondent in the counter as well as in the aforesaid proceedings dated 29.07.2020 is that, the petitioner herein had submitted an unconditional undertaking to the effect that if any information given by him is subsequently found to be wrong or false, the Central

Government will be authorised to cancel his pension and he will be liable to refund the entire amount pension already drawn.

24. According to 1st respondent, the aforesaid proceedings dated 26.04.2004 issued by 1st respondent granting pension to the petitioner is only provisional pension and it was sanctioned to the petitioner subject to review by the President and is liable to be cancelled, if it is found that it was sanctioned on mistaken grounds/false information.

25. Therefore, in view of the aforesaid undertaking, reasons specifically mentioned in the proceedings dated 26.04.2004, there is no need of serving any notice to the petitioner and opportunity to submit explanation. It is relevant to note that cancelation of the aforesaid pension granted to the petitioner vide proceedings dated 26.04.2004 is a penal action. It is settled law that any penal action shall be preceded by compliance of principles of natural justice. The said principle was also laid down by this Court in **Mirza Khusru Ali v. The Greater Municipal Corporation**¹. Admittedly in the present case 1st respondent has not complied with principles of natural justice by serving notice to the petitioner, calling for his explanation in accordance with principle of natural justice. Therefore the aforesaid order dated 29.07.2020 is in violation of principles of natural justice.

¹. 2013 (2) ALD 785

26. In view of the aforesaid discussion, the aforesaid proceedings dated 29.07.2020 is set aside only on the said ground. Liberty is granted to 1st respondent to pass appropriate orders after serving a notice on the petitioner and calling for his explanation in compliance with the principles of natural justice. Petitioner herein is aged about 92 years. Therefore, the 1st respondent shall complete the aforesaid exercise as expeditiously as possible, preferably within period of 4 weeks from the date of receipt of copy of this order.

27. It is relevant to note that petitioner herein had filed W.P.No.37400 of 2021 alleging that his pension was stopped without passing cancellation orders in terms of order dated 14.11.2019, in W.P.No.13519 of 2009. It is relevant to note that petitioner herein had filed 14425 of 2020 challenging the cancellation proceedings dated 29.07.2020 contending that his pension was cancelled without serving any notice, without giving any opportunity and without complying with the direction of this Court in the order dated 14.11.2019 in W.P.No.15319 of 2009. He has also filed the copy of the said proceedings dated 29.07.2020. The said writ petition is the first Writ Petition. Therefore the petitioner cannot blow hot and cold together. On one hand he is claiming that his pension was not cancelled and it was stopped. On the other hand, he is challenging the very cancellation order dated 29.07.2020. The same is impermissible.

28. Therefore, the petitioner is not entitled for any relief in W.P.No.37400 of 2021. The same is liable to be dismissed and accordingly it is dismissed.

29. In W.P.No.14425 of 2020 he sought for direction to referring to the District Level Medical Board on par with other similarly situated persons.

30. It is relevant to note that in the counter filed by District Collector, Khammam District, it is specifically contended that on representation of certain freedom fighters, 1st respondent has ordered for referring their cases for determination of age in respect of 28 cases vide letter dated 06.02.2015 by duly enclosing the list of 28 beneficiaries of the Samman Pension under Swatantrata Sainik Samman Pension Scheme, 1980 of Khammam District. They were directed to carryout scientific medical test by constituting Medical Board at District Level for determination of their actual age. As such, a Medical Board was constituted by 4th respondent consisting of District Coordinator of Hospital Services Khammam. The list has been forwarded to the District Coordinator of Hospital Services Khammam for medical examination to determine their age and submitted report. Accordingly, those cases were referred to the Medical Board and after getting the report, the reports were submitted. But the case of the petitioner was not among those 28 list marked. The 1st respondent or the 4th respondent has not issued any directions to the 5th respondent to refer the case of the petitioner to the Medical Board.

31. The said facts were suppressed by the petitioner in W.P.No.14425 of 2020. Without considering the same this court had granted interim stay on 28.09.2020 in I.A.No.1 of 2020 in W.P.No.14425 of 2020. In view of the same at this point of time and at the age of 92 years, the petitioner herein cannot seek a direction to respondent to refer the matter to the Medical Board for determining of his age, and he cannot also seek for quashing of Guideline B issued in G.O.Lr.No.8/12/90/FF(P) dated 02.07.1998 issued by the 2nd respondent with regard to determination of age basing on the voter list by holding the same as illegal. It is a policy decision and the petitioner cannot seek relaxation of the said conditions.

32. Petitioner having submitted proof of age, obtained pension vide order dated 26.04.2004, cannot seek to declare the said Guideline No.B 02.07.1998 as illegal. Therefore the petitioner is not entitled for the said relief.

33. In **Union of India v. Chaudri Nayak**,² the Apex Court held that grant of freedom fighter pension to bogus claimants producing false and fabricated documents is bad, as genuine freedom fighter being denied pension. The only way to respect the sacrifices of the freedom fighter is to ensure that genuine freedom fighters getting the pension. This means that the Government should read out false and fabricated claims and cancel the grant when bogus claims comes to light.

². (2010) 8 SCC 796

34. In **Union of India v. Avatar Singh**³, the Apex court held, that the people who had no role to play in the freedom movement should not be permitted to benefit from the liberal approach required to be in the case of freedom fighter.

35. As stated above the 5th respondent District Collector has submitted a report on 30.04.2020 by duly giving opportunity to the petitioner herein holding that the petitioner herein had not submitted proof of age and also documents. Thus respondent in compliance of the aforesaid order dated 14.11.2019 in W.P.No.15319 of 2009 had passed the said order dated 29.07.2020, but the same was not preceded by the compliance of principles of natural justice.

36. Therefore, in view of the aforesaid discussion W.P.No.14425 of 2020 is allowed by setting aside the Speaking Order dated 29.07.2020, 1st respondent is directed to pass fresh orders by putting the petitioner on notice, affording him an opportunity to submit his explanation and pass appropriate order as expeditiously as possible, preferably within a period of 4 weeks from the date of receipt of copy of this order. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

K. LAKSHMAN, J

Date: 12.10.2022
AQS

³. (2006) 6 SCC 493