

**IN THE HIGH COURT OF KARNATAKA, DHARWAD  
BENCH**

**DATED THIS THE 7<sup>TH</sup> DAY OF JULY, 2023**

**PRESENT**

**THE HON'BLE MR JUSTICE R.DEVDAS**

**AND**

**THE HON'BLE MR JUSTICE RAJESH RAI K**

**WRIT APPEAL NO. 100210 OF 2022 (GM-FF)**

**BETWEEN:**

- 1) THE STATE OF KARNATAKA,  
REPRESENTED BY PRINCIPAL SECRETARY,  
DEPARTMENT OF DPAR (POLITICAL PENSION)  
M.S. BUILDING,  
BENGALURU-560 001.
- 2) THE DEPUTY COMMISSIONER,  
BELAGAVI DISTRICT,  
BELAGAVI-590 001.
- 3) THE ASSISTANT COMMISSIONER,  
BAILHONGAL SUB DIVISION BAILHONGAL,  
DISTRICT BELAGAVI-591 102.
- 4) THE JOINT DIRECTOR,  
DISTRICT TREASURY OFFICER,  
BELAGAVI DISTRICT,  
BELAGAVI-590 001.

...APPELLANTS

(BY SRI. VIDYAVATHI. M. KOTTURSHETTAR, AAG AND  
SRI. V.S. KALASURMATH, HCGP)

**AND:**

SMT. SAVANTREWWA  
.....

  
SHIVAKUMAR  
HIREMATH

Digitally signed by  
SHIVAKUMAR  
HIREMATH  
Location: High Court  
of Karnataka, Dharwad  
Date: 2023.07.17  
11:24:06 +0530

...RESPONDENT

(SRI. H.M.DHARIGOND AND  
SMT. SANGEETHA. F. KALLIMANI ADVOCATES)

THIS WRIT APPEAL IS FILED U/S. 4 OF KARNATAKA HIGH COURT ACT. 1961. PRAYING TO, SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN W.P NO. 103247/2021 DATED 14.09.2021.

THIS APPEAL, COMING ON FOR ORDERS, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.04.2023, THIS DAY, **RAJESH RAI K. J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

The appellants in this writ appeal have questioned the correctness and validity of the order dated 14.09.2021, passed by the learned Single Judge in Writ Petition No.103247/2021 wherein the learned Single Judge by allowing the writ petition, quashed the order dated 11.02.2021 passed by the first appellant and further directed to take necessary steps to grant/disburse freedom fighters' pension together with all arrears in favour of the respondent. Being aggrieved by the said order passed by the learned Single Judge, the appellant-

State has filed this writ appeal to set aside the order of the learned single Judge.

2. Brief facts which are necessary for disposal of this appeal are as under:

The respondent is a widow. Her husband was a freedom fighter and is said to have participated in the Quit India Movement in the year 1942. After introduction of Freedom Fighters' Pension Scheme, 1969, he made an application along with all necessary documents before the first appellant and requested for grant of Freedom Fighters' Pension. In pursuance of the request made by the husband of the respondent, the first appellant granted Freedom Fighters' Pension to him vide order dated 10.09.1992. Subsequently, the Government issued an order on 09.03.1995 bearing No.DPAR 59 PFC 94, Bengaluru and directed all the Deputy Commissioners to re-verify the cases of freedom fighters' pension and submit a report along with list of documents. Accordingly, the second appellant submitted a report on 09.03.1995 and recommended to cancel the freedom fighters' pension

of the husband of the respondent. However, before passing the said cancellation order, notices were issued and an enquiry was also held and due to non-production of sufficient material by the husband of the respondent, his pension was cancelled by order dated 01.06.2000. The said order was challenged by the husband of the respondent in W.P.No.11706/2001 before the single Judge and the learned single Judge allowed the said writ petition and directed to consider the case of the husband of respondent in accordance with law. Accordingly, after due consideration of the records and also following the direction passed by the learned single Judge, the first appellant once again rejected the claim of the husband of the respondent vide order dated 25.02.2002 and confirmed the earlier order dated 01.06.2000. Subsequently on 16.12.2003, the husband of the respondent expired.

3. Later after lapse of 12 years, i.e. on 14.11.2014, the respondent herein filed a representation along with photocopies of co-prisoners' certificate and requested to

pay the arrears of the pension and family pension to her. Considering the application, a detailed enquiry was held by the committee headed by the Assistant Commissioner and a report was submitted before the second appellant herein. In turn, the second appellant has recommended the case of the respondent for grant of freedom fighters' family pension vide order dated 23.12.2016. Accordingly, the first appellant has addressed a letter to the second appellant and directed him to submit a report vide order dated 13.07.2017. In the meantime, the respondent filed W.P.No.109677/2017 and the learned single Judge allowed the said writ petition and directed to consider the case of the respondent in accordance with law vide order dated 12.07.2018. Based on the said order of the learned single Judge, after due consideration of the matter in accordance with law, the first appellant has rejected the claim of the respondent vide order dated 27.10.2018 and confirmed the earlier order dated 01.06.2000.

4. Being aggrieved by the said order, the respondent once again filed W.P.No.108384/2019 and the learned

single Judge allowed the said writ petition and directed the appellants to consider the matter afresh in accordance with law within a period of two months. The appellants served notice to the respondent and directed her to produce all the relevant documents i.e. co-prisoners certificates to prove that her husband participated in the freedom movement. However, the respondent failed to produce any such certificate, as such the appellants after due consideration of the matter once again rejected the claim of the respondent vide order dated 11.02.2021. Nevertheless, the respondent once again filed W.P.No.103247/2021 and the learned single Judge allowed the said writ petition vide order dated 14.09.2021 and thereby quashed the order dated 11.02.2021 passed by the first appellant and directed the authorities to disburse the pension to the respondent. The said order passed by the learned single Judge is challenged herein by the State.

5. We have heard the learned Additional Advocate General Smt. Vidyavathi for the State and Sri H.M.Dharigond, learned Counsel for the respondent.

6. Learned AAG would vehemently contend that the freedom fighters' pension was granted to the respondent's husband in the year 1992, the same was cancelled on 01.06.2000. Though the said order of rejection was challenged by the husband of the respondent in W.P.No.11706/2001, and the single Judge by allowing the said writ petition directed the respondent's husband to avail the remedy of review by filing all necessary documents before the appropriate authority. In view of the said order, the proceedings were conducted and it was noticed that the documents produced by the respondent's husband especially the co-prisoners certificates of T.V.Odisumath and C.Y.Kabbin, are not genuine documents. It was also found that those co-prisoners were black listed by the Central Government. As such, the appellants rightly rejected the claim of the respondent's husband vide order dated 25.02.2002. The said order has attained finality which has not been challenged by the respondent's husband during his life time. Later, after the death of respondent's husband in the year 2003, after lapse of 12 years, the respondent once again submitted a

representation on 14.11.2014 and requested to pay arrears of pension. But the respondent has failed to produce relevant original documents in support of her claim. As such, the appellants have rightly rejected the claim of the respondent. The learned AAG would further contend that, the guidelines issued by the Central Government in respect of Central Sanman Pension Scheme, provides that:

*'Sanction of pension after the death of freedom fighter – No pension shall be sanctioned in the name of freedom fighter after his/her death even his/her matter was under examination. This also entails that no life time arrears of dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter.'*

7. This also entails that applications for grant of freedom fighters pension shall not be sanctioned to his/her spouse/daughter after the death of freedom fighter. The said guidelines are very much followed by the State Government also, hence, the respondent is not entitled for the freedom fighters' pension since her husband died long back in the year 2003. Accordingly, learned AAG prays to



allow the writ appeal by setting aside the order passed by the learned single Judge. Learned AAG relied on the Judgment passed by the Hon'ble Apex Court in the case of ***Union of India Vs. Bikash R.Bhowmik and others*** reported in **(2004) 7 SCC 722**.

8. Per contra, learned counsel for the respondent would vehemently contend that, the order passed by the learned single Judge does not suffer from any illegality or perversity and the same is based on the materials available on record and as such, the same does not call for interference by this Court. He would further contend that, during the life time of the husband of the respondent, he received pension by the appellants-authority till the year 2000. Hence, once the benefits have been extended as per the rules after making detailed enquiry by the District Level Committee and those committees have recommended the name of the respondent's husband for grant of pension, subsequently the said order was set aside by the appellants without assigning proper reasons. He would contend that, the guidelines issued in the year

2014 by the Central Government are prospective in nature and not retrospective, thereby the said circular does not apply to the claim of the respondent in whose husband's favour pension was granted in the year 1992, i.e. much prior to the issuance of the said circular/guidelines. According to the learned counsel by relying on that aspect only, the learned single Judge allowed the writ petition. He would further contend that, the co-prisoners' certificate produced by the respondent, is accepted by the initial committees and subsequently rejected for the reason that, their names are black listed by the Central Government. However, that cannot be a ground for rejecting the claim of the respondent for grant of pension. The order of rejection of pension passed by the first appellant is totally arbitrary for the reason that, the same was passed based on assumption and presumption by questioning the genuineness of the documents produced by the respondent before the authority. Though this Court repeatedly considered the case of the respondent for grant of pension and directed the appellants to consider her case and to grant pension, in spite of that, the Government

failed to act upon it and as such, the learned single Judge rightly allowed the writ petition and directed the appellants to take necessary steps to grant/disburse freedom fighters' pension together with all arrears in favour of the respondent. Hence, the learned counsel prays to dismiss the appeal.

9. We have bestowed our anxious consideration both on the arguments advanced by both the parties as well as the material available on record.

10. Having heard the counsel for the appellants and the respondent and having perused the documents, the only point that would arise for our consideration is;

*"Whether the learned Single Judge was justified in allowing the Writ Petition No.103247/2021 filed by the respondent by quashing the order passed by the first appellant dated 11.02.2021 and thereby directing the appellants to grant/disburse the freedom fighters' pension together with all arrears in favour of the respondent?"*

11. On a cursory glance of the material available on record, it could be seen from the order dated 11.02.2021

passed by the first appellant that the husband of the respondent Late Basappa Virupaksha Hittalamani was granted freedom fighters' pension vide order dated 10.09.1992. Subsequently, based on the Government order by directing all the Deputy Commissioners to re-verify the cases of the freedom fighters and the authenticity of the documents produced by them. Accordingly, the concerned officers verified the documents including the documents submitted by the husband of the respondent. Later, the District Commissioner directed him to produce relevant original documents in support of his participation in freedom movement. Though the husband of the respondent appeared before the District Commissioner during the enquiry, he failed to produce any such authenticated documents in support of his claim. As such, the Government cancelled the freedom fighters' pension of the respondent-husband vide order dated 01.06.2000. Nevertheless husband of the respondent challenged the same by filing W.P.No.11706/2001 and the learned single Judge directed the appellants to consider the representation of the respondent's husband. However,

the respondent's husband once again failed to produce the relevant documents before the authority, as such, his claim was rejected by the first appellant vide order dated 25.02.2002. The said rejection order was not challenged by the respondent's husband during his life time. Hence, the said order of cancellation of his pension attained finality and on 16.12.2003, the said Basappa Virupaksha Hittalamani died.

12. After a lapse of 12 years from the death of the husband of the respondent i.e. in the year 2014, the respondent herein filed a representation along with photocopies of co-prisoners certificate of Sri. T.V.Odisumath and Sri. C.Y.Kabbin and requested the authority to pay arrears of pension and family pension. In spite of that, the committee headed by the second appellant, after holding a detailed enquiry recommended to consider the representation of the respondent on the basis of the co-prisoners' certificate of the above named Odisumath and Kabbin. But those two prisoners were already black listed by the Central Government, as such

their co-prisoners' certificates were not considered by the appellant/authority. Even otherwise, the respondent failed to produce such authenticated documents before the authority, as such, the claim of the respondent is once again rejected by the second appellant. Though the said order was challenged in W.P.No.109677/2017 and the learned single Judge directed to consider the matter with reference to all materials before the authority, the respondent once again failed to produce any such authenticated document before the first appellant. On perusal of the order dated 11.02.2021 of the first appellant, it clearly depicts that the documents produced by the respondent are not genuine documents to prove the claim of the respondent. As such, the first appellant rejected the claim. Moreover, in the year 2014 the guidelines issued by the Central Government in respect of the disbursement of 'Central Government Sanman Pension Scheme' which was followed by the State Government also, passed an order that 'No pension shall be sanctioned in the name of freedom fighter after his/her death even his/her matter was under examination'. Hence, in our

considered opinion, the first appellant rightly rejected the claim of the respondent for grant of freedom fighters' pension.

13. Learned single Judge while allowing the writ petition held that, the circular/guidelines of the year 2014 are prospective in nature and not retrospective and do not apply to the claim of the respondent in whose husband's favour pension had already been granted in the year 1992, much prior to issuance of the said circular/guidelines. This view of the learned single Judge cannot be accepted for the reason that, though the said circular is prospective in nature, nevertheless, the respondent approached the appellants in the year 2014 by submitting the representation by claiming the pension. By that time, the circular/guidelines of the year 2014 was already issued and was in existence. In such circumstances, though the circular/guidelines are prospective in nature the same will be applicable in the case of respondent also.

14. The Hon'ble Apex Court in the Judgment rendered in the case of ***Union of India Vs. Bikash R.***

**Bhowmik and others** reported in **(2004) 7 SCC 722** at paragraph No.2 held as under:

*"Learned Additional Solicitor General appearing on behalf of Union of India relied upon two decisions of this Court viz., Mukund Lal Bhandari Vs. Union of India 1993 Supp (3) SCC 2 and Union of India Vs. Mohan Singh (1996) 10 SCC 351 to the effect that pension could be sanctioned only as per proof as required in the pension scheme and in no other manner. We think there is great force in the submission made by the learned Additional Solicitor General. We find that the High Court could not have traveled beyond the pension scheme to find that there was substantial compliance with the prerequisites as to suffering of imprisonment. In order to get the benefit of the pension scheme, the proof required must be as provided in the pension scheme itself. As long as such proof was not available, the benefit could not have been granted. Therefore, we set aside the order of the High Court and dismiss the writ petition filed by the respondent No.1. The appeal is allowed accordingly."*

[Emphasis supplied]

15. The dictum laid down by the Hon'ble Apex Court in the above case is squarely applicable to the case on



hand. In that view of the matter, in our considered opinion, the order passed by the learned Single Judge in W.P.No.103247/2021 is liable to be set aside. Accordingly, we answer the above point and proceed to pass the following order:

**ORDER**

- i) The appeal filed by the appellants is allowed.
- ii) The order dated 14.09.2021 passed by the learned single Judge in W.P.No.103247/2021 is hereby set aside.

Pending I.As, if any, shall stand disposed off.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**