

Erappa Vs. State of Karnataka and Others

Erappa Vs. State of Karnataka and Others

SooperKanoon Citation : sooperkanoon.com/377715

Court : Karnataka

Decided On : Sep-19-2000

Reported in : ILR2000KAR4706; 2001(3)KarLJ117

Judge : P. Vishwanatha Shetty, J.

Appeal No. : Writ Petition No. 13660 of 2000 (GM-FF)

Appellant : Erappa

Respondent : State of Karnataka and Others

Advocate for Def. : Sri G. Nagarajulu Naidu, Additional Government Adv.

Advocate for Pet/Ap. : Sri Gode Nagaraja, Adv.

Judgement :

ORDER

1. Though this petition is posted in order list, with the consent of the learned Counsel appearing for the parties, this petition is taken up for final hearing and disposed of by this order.

2. The petitioner in this petition is a freedom fighter and had taken part in the freedom movement as a revolutionary underground worker during the movement of Hyderabad-Nizam State in 1947. There is no dispute on this aspect of the matter.

3. In this petition, the grievance of the petitioner is with regard to the order dated 3rd January, 2000, a copy of which has been produced as Annexure-J to the writ petition, passed by the 1st respondent, limiting freedom fighter's pension (hereinafter referred to as 'pension') to the petitioner only from the date of the said order instead of from the date of the application made by the petitioner seeking grant of pension.

4. In at order Annexure-J, while accepting the claim of the petitioner for grant of pension to the petitioner, the 1st respondent has granted pension to the petitioner only from the date of the order. Therefore, the only question that would arise for consideration in this petition is as to whether the petitioner is entitled for grant of pension from the date of the application made by him seeking grant of pension or from the date of the order?

5. The Government of Karnataka had framed the Scheme known as 'Karnataka State Swathanthra Sainik Sanman Pension Scheme, 1969' (hereinafter referred to as the 'Scheme'). Clause 8 of the Scheme provides for the date of commencement of pension. The said clause reads as follows:

'8. Date of commencement of pension.-- The pension sanctioned under these rules will be effective from the 15th of the month or the 1st of next month according as the date of application was before or after the 15th, or from any later date as may be deemed fit by Government. This sanction will not also be effective from a date earlier than 1st January, 1967'.

As it could be seen from Clause 8 of the Scheme referred to above, it is clear that a discretion is conferred on the authorities to fix a date later than the date of the application made seeking grant of pension.

6. Sri Nagaraja, learned Counsel appearing for the petitioner submits that though the discretion is conferred under Clause 8 of the Scheme on the authorities to sanction the pension on a date later than the date of the application, the said discretion is required to be exercised reasonably and fairly and keeping in mind the object of the Scheme. According to the learned Counsel for the petitioner, it is only in cases of gross negligence or default on the part of the applicant in pursuing

the application or failure to furnish necessary particulars required to enable the authorities to take a decision, expeditiously, by giving valid reasons the authorities can fix a date later than the date of the application made seeking grant of pension. In other words, it is his submission that it is only in exceptional cases for valid reasons to be given in writing the authorities could sanction pension from a date later than the date of the application. In support of his plea that the petitioner is entitled for payment of pension from the date of the application, he relied upon the decision of the Supreme Court in the case of Mukund Lal Bhandari and Others v Union of India and Others and drew my attention to para 5 of the judgment.

7. However, Sri Nagarajulu Naidu, learned Additional Government Advocate relying upon the observation made by the Division Bench of this Court in the case of State of Karnataka v B. K. Nagaraju and Others , submitted that the applicant for payment of pension cannot seek for payment of pension from the date of the application as a matter of right. According to the learned Government Advocate, the discretion is conferred on the authorities, having regard to the facts and circumstances of the case, from what date the pension should be sanctioned to the applicant. In this connection, he drew my attention to para 2 of the judgment made in Writ Appeal No. 5262 of 1997 which reads as hereunder :

'A perusal of the clause shows that the pension is required normally to be sanctioned from the date of the application or any later date as may be deemed fit by the Government. The words 'as may be deemed fit by the Government' contemplate the exercise of the jurisdiction or option in a reasonable and effective manner. It is true that the Government has the authority to grant the pension from any later date than the date of the pension but for that it is assumed that the Government should have assigned some reasons'.

8. While I find considerable force in the submission of Sri Nagaraja, I am unable to accede to the submission of Sri Nagarajulu Naidu, learned Government Advocate. No doubt, a discretion is conferred under Clause 8 of the Scheme to sanction pension from a date later than the date of the application. That does not mean that the authorities who sanction pension can arbitrarily fix a date later than the date of the application made seeking payment of pension. It is well-settled that whenever

a discretion is conferred on an authority, the said discretion is required to be exercised in a fair and reasonable manner. The Scheme for payment of pension has been introduced both by the Government of India and by the State Government keeping in mind, the sacrifices made by the freedom fighters to secure freedom to this country. The Supreme Court in the decision relied upon by Sri Nagaraja while considering the question as to whether a freedom fighter is entitled for payment of pension from anterior to the date of the application has taken the view that the applicant is entitled for payment of pension from the date of the application. Merely because, Clause 8 of the Scheme relied upon by the learned Government Advocate confers a discretion on the authorities to sanction the pension from a date later than the date of the application, in my view, as rightly pointed out by the learned Counsel for the petitioner, it cannot be denied to him from the date of the application arbitrarily and without valid or just cause. The Clause 8 of the Scheme provides that the pension sanctioned under the rules will be effective from 15th day of the month or 1st of next month according to the date of the application. No doubt as pointed out by Sri Nagarajulu Naidu, the Division Bench of this Court has observed that it is open to the authorities to fix a date later than the date of the application. In my view, though the Division Bench has observed that it is permissible for the authorities to fix a date later than the date of the application, the substance of the observation made by the Division Bench indicates that it is only in exceptional circumstances by giving reasons, the date of sanction of the pension can be fixed on a date later than the date of the application. It is necessary to point out that in the said case, the Division Bench has affirmed the direction given by the learned Single Judge granting pension from the date of the application made seeking pension which was denied by the authorities. The facts of this case show that the petitioner made an application for grant of pension on 2nd January, 1985. There is no dispute on this question. However, in the impugned order pension has been sanctioned from the date of the order. No reason has been assigned for not granting pension from the date of the application. Merely because, the application filed by the petitioner in the year 1985 was kept pending till 1999 and came to be disposed of only on 3rd January, 2000. In my view, there is no justification to deny the payment of pension from the date of the application. It is not the case of the respondents in the impugned order that

there was any lapse on the part of the petitioner in furnishing details required to take a decision on the matter or his conduct is such which disentitles him to claim pension from the date of the application. In my view, though discretion is conferred on the authorities to sanction pension from a date later than the date of the application, having regard to the object and purpose of the Scheme, the pension as a rule is required to be sanctioned from the date of the application. It is only in exceptional cases where the conduct of the applicant disentitles him from the date of the application, it can be denied; and not in other cases. The delay in sanctioning the pension only results in hardship or causes prejudice to the applicant and not to the authorities. Therefore, as observed by me earlier, the sanction of the pension from the date of the application must be held as a rule and any date other than the date of the application must be held as an exception. This is also clear from the observation made by the Hon'ble Supreme Court in the case of Mukund Lal Bhandari, supra, which reads as follows:

'Hence we are of the view that the pension under the Scheme should be made payable only from the date on which the application is made whether the application is accompanied by the necessary proof of eligibility or not. The pension should, of course, be sanctioned only after the required proof is produced'.

Therefore, merely because, Clause 8 of the Scheme relied upon by the learned Government Advocate confers a discretion on the authorities to sanction pension from a date later than the date of the application, as rightly pointed out by the learned Counsel for the petitioner, is not a ground not to sanction pension from the date of the application. It is necessary to point out that while interpreting the provisions of the Scheme, it is necessary to bear in mind the object of the Scheme. The object of the Scheme is to honour the persons who have sacrificed for the sake of the Country and also to mitigate the hardship of such persons whenever they are in need of financial assistance by granting pension. In this connection, it is useful to refer to the observation made by the Supreme Court in the case of Mukund Lal Bhandari, supra, at para 5 of the judgment which reads as hereunder:

'5..... We have, therefore, to decide it for the first time. There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should

be entitled to the benefit from the date the Scheme came into operation. But the history, the true spirit and the object of the Scheme would itself probably not support such strait-jacket formula. As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs. 5,000. It is only later, i.e., from 1st August, 1980 that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation'.

9. In the light of the discussion made above, I am of the view the order impugned requires to be modified, directing the respondents to sanction pension from the date of the application. Accordingly, it is ordered. Since the petitioner is aged 81 years, it would be in the interest of justice to direct the respondents to comply with the direction given above, as expeditiously as possible and at any event of the matter, not later than six weeks from the date of receipt of a copy of this order.

10. In terms stated above, this petition is allowed and disposed of. Rule issued is made absolute.

11. Sri G. Nagarajulu Naidu, learned Additional Government Advocate is given four weeks time to file his memo of appearance.