

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 31st DAY OF JULY 2013

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

WA NO 30411 OF 2013 (GM-FF)

BETWEEN

1. THE STATE OF KARNATAKA
BY ITS CHIEF SECRETARY
TO GOVT. M.S.BUILDING,
VIDHANA VEEDHI,
BANGALORE-1
 2. THE UNDER SECRETARY TO THE
GOVT OF KARNATAKA, D.P.A.R
(POLITICAL PENSION), M.S.BUILDING
VIDHANA VEEDHI, BANGALORE-560001
 3. THE DEPUTY COMMISSIONER
BELGUAM DISTRICT, BELGAUM
- ... APPELLANTS

(By Sri.K.VIDYAVATHI – AGA)

AND

SAVAKKA W/O MALLESHAPPA GANGOL,
AGED ABOUT 77 YEARS,
OCC: NIL, R/O LINGANAKOPP
TQ: KALAGHATAGI, DIST: DHARWAD
BANGALORE-1

... RESPONDENT

THIS WRIT APPEAL IS FILED U/S.4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE ORDER DATED:24/07/2012 PASSED BY THE LEARNED SINGLE JUDGE IN WP.NO.69065/2010(GM-FF) BY ALLOWING THE APPEAL.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY N.KUMAR.J., DELIVERED THE FOLLOWING :

JUDGMENT

This appeal is filed against the order passed by the learned Single Judge being frustrated with the attitude of the Government in not extending the benefit of pension to a freedom fighter who was 75 ears old.

2. The Government contends that the learned Singl Judge Instead of remanding the matter to the Government for fresh consideration has issued a direction to extend the benefit of freedom fighter pension from the year 2005.

3. The material on record discloses the husband of the respondent/petitioner was a freedom fighter who had taken part in the Quit India Movement in 1942. He

was imprisoned and locked up in jail. During his life time he filed an application for pension on 15.12.1982 and he was granted pension. After 17 years from the date of application he was informed that he is not entitled to Freedom Fighters' Pension on the ground that the documents which are produced by him are not genuine and there is paucity of material to show that he had participated in the freedom movement and on that ground they revoked the pension granted earlier. The said order of revoking pension was made on 5.11.1999. Unfortunately, the petitioner's husband thereafter died within 25 days. Thereafter it is the case of the petitioner that she made an application under the Right to Information Act for supply of the order revoking grant of pension. An endorsement was issued indicating that the said file has been destroyed as the papers are to be kept for a period of only 10 years. It is in those circumstances the petitioner approached this court by filing a writ petition. The learned Single Judge allowed

the writ petition by setting aside the order revoking Freedom Fighters' Pension by observing that the petitioner is entitled for Freedom Fighters Pension from the year 2005.

4. It is against this order, the State has preferred this appeal. There is a delay of 209 days in preferring this appeal. Affidavit is filed explaining the delay. All that the affidavit shows is that after the order, they had applied for copies, they have sent the papers to various departments for permission to file an appeal and in that process there is a delay of 209 days in filing this appeal.

5. The learned Government Advocate submits the Government has problem.; before a decision is to be taken to file an appeal, they are bound to consult several departments and the file has to pass through various tables and offices and in those circumstances, it is impossible to file an appeal within the period prescribed in law. The procedure prescribed by them

should prevail over the law of the land. We have come across various cases which are filed after the limitation period. Now we are certain that the Governmental authorities think that the procedure prescribed override the statutory provisions. Further, in spite of imposing costs and asking them to file affidavits, there appears to be no change in their attitude. Under these circumstances, we are not expected to tolerate this attitude and it is high time to indicate that they should fall in line. They have to dispense with the procedure they have adopted and should have due regard to the law passed by the parliament. Under these circumstances, we do not see any justification to condone the delay as in our view, the cause shown for the delay is not sufficient cause. If this order forces them to pay pension to a person who is not deserving, it has to be recovered from the persons who are in charge so that public is not made to pay from their pocket.

6. In that view of the matter we pass the following :-

ORDER

- i) The application for condonation of delay is dismissed;
- ii) Consequently the appeal is dismissed;
- iii) The Government shall recover the pension payable to the respondent from the officials who are responsible for the delay in preferring this appeal.

***SD/-
JUDGE***

***SD/-
JUDGE***

rs