

Karnataka High Court

Gudappa S/O. Durgappa Pasagi vs The State Of Karnataka on 29 January, 2013

Author: Ashok B. Hinchigeri

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IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 29TH DAY OF JANUARY 2013

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

WRIT PETITION No. 75264/2013 (GM-RES)

BETWEEN :

GUDAPPA S/O. DURGAPPA PASAGI
AGE: 56 YEARS, OCC: NIL
R/O. AT POST: GUTTAL, TQ: HAVERI
DIST: HAVERI .

... PETITIONER

(BY SRI : SADASHIV S. PATIL, ADVOCATE)

AND :

1. THE STATE OF KARNATAKA
R/BY ITS CHIEF SECRETARY
VIDHAN SOUDHA, BANGALORE.
2. THE DEPUTY COMMISSIONER
HAVERI, DIST: HAVERI .
3. THE DEPUTY TAHASILDAR
GUTTAL, DIST: HAVERI .

... RESPONDENTS

(BY SRI Y.V. RAVIRAJ, A.G.A.)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT
OF MANDUMUS TO THE RESPONDENTS NO.1 TO 3 TO RELEASE
THE HANDICAPPED PENSION FROM THE DATE OF ORDER

DATED:18/06/2010 PASSED BY RESPONDENT NO.3 AS PER ANNEXURE - B.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner, who has 100% blindness, has a grievance that the physically handicapped persons' pension is not being released to him.

2. Sri Sadashiv S. Patil, the learned counsel for the petitioner submits that the petitioner is completely blind. The petitioner was given the physically handicapped persons' pension of Rs.8,000/- (Rs.400/- per month) from November 2008 to June 2010. Again the pension amount of Rs.21,000/- (Rs.1,000/- per month) from July 2010 to March 2012 was disbursed and thereafter the 3rd respondent withheld the release of the pension.

3. Sri Y.V. Raviraj, the learned A.G.A. for the respondents submits that the petitioner is not entitled to the grant of pension meant for the physically handicapped persons as his income exceeds Rs.12,000/- p.m. The authorities have assessed that the petitioner's family income aggregates to Rs.80,000/- per year.

4. In the course of rejoinder, Sri Sadashiv S. Patil, the learned counsel for the petitioner submits that the revenue authorities have arrived at the astronomical figure of Rs.80,000/- based on the petitioner's father holding 35 acres of land. He submits that the petitioner's father is dead leaving behind seven brothers and six daughters and if Rs.80,000/- is divided amongst the 13 persons, each member of the family is left with an annual income of Rs.6,154/- only. He submits that because of the petitioner's blindness and his consequent inability to earn, even his brothers and sisters have left him to his fate.

5. No documents are placed on the record of the Court to show that the income ceiling is imposed for the grant of pension to the physically handicapped persons. The case of the physically handicapped persons and that too of the blind persons falls in a different category altogether. Fixing of uniform income limits for the grant of all pensions may not be desirable. The State Government has to act in aid of the provisions contained in Sections 42 and 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Chapter VII of the said Act, containing the provisions regarding the affirmative action reads as follows:

"42. Aids and appliances to persons with disabilities - The appropriate Governments shall by notification make schemes to provide aids and appliances to persons with disabilities.

43. Schemes for preferential allotment of land for certain purposes - The appropriate Governments and local authorities shall by notification frame schemes in favor of persons with disabilities, for the preferential allotment of land at concessional rates

for -

a. house;

b. setting up business;

c. setting up of special recreation centers; d. establishment of special schools; e. establishment of research centers; f. establishment of factories by entrepreneurs with disabilities."

6. The afore-extracted provisions are reflective of the concern and sensitivity shown by the Union Legislature towards the physically handicapped persons.

7. The respondents are in no position to offer any justification for withholding the release of the pension to the petitioner. The withholding of the pension is indicative of not only the non-application of mind, casualness, un-responsiveness, but also the lack of sensitivity to the cause of the physically handicapped persons.

8. On being specifically asked as to the basis for granting the pension to the petitioner, the learned A.G.A. Sri Y.V.Raviraj submits that it was based on the Tahsildar's report. The withholding of the pension amount without considering the Tahsildar's report amounts to excluding the relevant material from consideration.

9. The withholding of the pension amount is not preceded by the issuance of any notice to the petitioner. The principles of natural justice are not observed.

10. The stoppage or suspension or withholding the pension can only be consequential to the passing of some order by the competent authority. But the respondents are in no position to trace the withholding of pension to any order passed by any competent authority. Thus, viewed from any angle, I do not see any justifiable reason for withholding the pension to the petitioner.

11. The learned A.G.A. has filed the particulars of the payment and of the non-payment of the pensionary amounts to the petitioner. They are culled out in the table hereinbelow: 1 From November 2008 to June 2010 Rs. 8,000-00 (Rs.400/- per month for 20 months) 2 From July 2010 to March 2012 Rs. 21,000-00 (Rs.1,000/- per month for 21 months) 3 From April 2012 to December 2012 Rs. 9,000-00 (Rs.1,000/- per month for 9 months (Not paid) Rs.9,000/- in arrears) 4 For the month of January 2013 Rs. 1,000-00 (Rs.1,000/- in arrears) (Not paid)

12. For all the aforesaid reasons, I allow this petition, directing the 3rd respondent to release the arrears of pension to the petitioner within two weeks from today. The future pensions, as and when they fall, due shall also be released to the petitioner.

13. This petition is accordingly allowed. No order as to costs.

Sd/-

JUDGE hnm/