

(1999) 09 GAU CK 0013

Gauhati High Court

Case No: Civil Rule No. 3983 of 1997

Lohit Chandra Kalita

APPELLANT

Vs

State of Assam and
OthersRESPONDENT

Date of Decision: Sept. 8, 1999**Acts Referred:**

- Assam Services (Pension) Rules, 1969 - Rule 184, 185, 186, 187, 188
- Constitution of India, 1950 - Article 300A, 311

Citation: (2000) 1 GLT 203**Hon'ble Judges:** J.N. Sharma, J**Bench:** Single Bench**Advocate:** G.P. Bhowmick and B.K. Talukdar, for the Appellant; T.C. Chutia, for the Respondent

Judgement

J.N. Sarma, J.

This is an application depicting the callous and sheer negligent attitude of the State Government towards its retired employee. It has become almost the practice of the State of Assam to forget its retired employees. It does not pay the retirement dues in time and throws the employees to face pitiable situation. They do not determine pension of the retired employee in accordance with the rules in time, as provided in Assam Services Pension Rules, 1969. It is being seen by this Court that the matter relating to payment of pension is being delayed by the State of Assam without rhyme and reason as a matter of course, without any application of mind whatsoever they sleep over the claim/right of the employees though rule requires that even two years before the retirement of the person according to rule 95 they are to process all papers relating to the payment of pension which is necessary so that payment of pension may be given in a prompt manner. Rule 95 is quoted below:

95(1) Procedure-with a view to ensure completion of pension records and documents in time to avoid the possibility of any delay in the commencement of pension each head of department and office or the administrative department, where there is no head of department of office shall have a superannuation statement prepared on the 1st of January in each year showing a list of all officers, gazetted or non-gazetted who will attain the age of superannuation in course of the next calendar year i.e. between the 1st of January to 31st December of next year. As soon as the list is prepared an intimation should be sent to every such officer due to retire during the next year drawing his attention to his anticipated date of retirement and the provisions of Rule 184 to 188 to enable him to make a formal application for pension one year in advance of the date his anticipated retirement. The list should also include the names of officers who are on temporary deputation to other Department Government or on foreign services and intimation should similarly be issued to such officer as well as the head of the department or foreign employer under whom he is serving temporarily. If no intimation is however issued to the officer this shall not be in any way change his date of retirement and shall not confer on the Government servant any right to remain in service beyond the date on which he is required to retire. One copy each of the annual superannuation statement prepared should be sent to the Accountant General Assam Administrative Department and Finance Department respectively.

There is also detail office memorandum for simplification of procedure with a view to eliminate delays in the payment of superannuation and death cum retirement gratuity benefit which finds place below Rule 95. The Assam Government seems to forget this procedure as well as the office memorandum. They have simply become dead letters in the statute book.

2. Here in this case Petitioner retired from service on 6.7.89 and he was paid pension only in the year 1995. Further an amount of Rs. 49,301/- deducted from the pensionary benefit of the Petitioner on the ground that during the service tenure of the Petitioner, Petitioner made some overpayment Petitioner hearin filed C.R. No. 2723/94 challenging the order of retention of this amount of Rs. 49,301 and odd and civil Rule was disposed of by this Court on 30.3.95. Thereafter the amount was paid on 10.4.97 taking almost two years for the payment of this money. This writ petition has been filed for payment of interest on this amount as it is delayed payment. Law on this point has been settled by the two decisions of the apex court in [M/s. Sitaram and Bros. Vs. State of Rajasthan and others](#), where in the Supreme Court had pointed out as follows:

Constitution of India Art 311, 300A retirement dues-Delay in payment-liability of Govt. to pay interest at market rate-commence from expiry of two months from date of retirement-Govt. employees delayed payment of retirement-dues to non-production of last pay certificate by retiree-suit for interest-New production of certificate held was due to lapse of issuing authority-Govt. liable to pay interest.

3. To the same effect there is a decision of the apex court in [Baij Nath Gupta Vs. State of Bihar and Others](#), wherein in paragraph 9 the Supreme Court has pointed out as follows. That if Government is responsible for the delay, necessarily the Appellant would be entitled to the payment of interest on the delayed payment. Here in this case there is absolutely no explanation with regard to the delay from 1995 to 1997. At least for this period the Petitioner is entitled to interest Accordingly I direct from 13.4.95 that is two months after the judgment of the High Court till the date of payment the rate of interest shall be 12% from the date. The amount shall be paid within a period of two months from the date of receipt of the order failing which the amount of interest shall be 18%. Further the Petitioner claims that he has not been paid leave encashment benefit. That also if not paid shall be paid according to Rules. The Petitioner may obtain the certified copy of judgment and may produce it before the authority.

4. Heard Mr. Bhowmick learned Counsel for the Petitioner as well as Mr. Chutia for the State of Assam. No record has been produced, there is no affidavit in opposition.