

(2006) 08 GAU CK 0056

Gauhati High Court

Case No: None

Laheswari Basumatary

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Aug. 18, 2006**Citation:** (2007) 2 GLR 91**Hon'ble Judges:** Biplab Kumar Sharma, J**Bench:** Single Bench

Judgement

B.K. Sharma, J.

This writ petition narrates the woeful tale of an employee, who during his lifetime did not receive pensionary and other retirement benefits, even after, 12 years of retirement on attaining the age of superannuation. He could not leave anything for his wife and family except the hope of getting the pensionary and other retirement benefits with burden of pursuing the same left to his wife. It took another 9 years for the wife, who is the petitioner in the instant writ petition, to get the said benefits at the intervention of this court. The apathy shown by the respondents in the matter is simply intolerable.

2. The husband of the petitioner. Late Shri Jogendra Chandra Basumatary, entered the services of the respondents in the post of Mohorar way back in 1955 and retired from service on attaining the age of superannuation with effect from 31.10.1985. At the time of retirement, he was working as Lower Division Assistant (LDA) in the Bijni Tehsil office, which at that point of time was operating under the Deputy Commissioner, Kokrajhar. The Department in which he had been serving is the Revenue Department. After his retirement, necessary proposal for pension was sent by the then Deputy Commissioner, Kokrajhar by Annexure-1 letter dated 19.8.87 addressed to the Secretary, Revenue Department.

3. The proposal having not evoked any response, the husband of the petitioner made time to time representations, on the basis of which the matter was taken up with inter-departmental correspondences, i.e., between the Secretariat and the

office of the Deputy Commissioner. In this connection, the petitioner has annexed the copies of the letters dated 6.5.1991, 8.2.1995 and 2.5.1997. However, except the correspondences, nothing concrete resulted and the husband of the petitioner died on 10.10.1997 after awaiting for 12 long years for his retirement dues. He left behind his wife (petitioner), 3 sons and 2 daughters. The petitioner also made representation in respect of which the Sub-divisional Officer, Bijni made the communication dated 5.9.1998 with the Deputy Commissioner, Bongaigaon. However, the thick-skinned respondents did not do anything in the matter and all the efforts of the petitioner fell into their deaf ears.

4. The petitioner having had no other alternative invoked the writ jurisdiction of this court by filing the writ petition on 5.10.2001, exactly after 16 years of retirement of her husband from service and 4 years of retirement from this world. While entertaining the writ petition, this court having regard to the fact situation was inclined to pass an interim order directing the respondents to pay a sum of Rs. 50,000 to the petitioner for her survival. The payment was to be made within one month from the date of passing the order on 12.10.2001. This interim order passed by this court also remained unimplemented as if the respondents took the pledge not to budge an inch from their commitment not to pay retirement benefits to the petitioner.

5. After the aforesaid interim order passed on 12.10.2001, the respondents neither complied with the interim direction for payment of Rs. 50,000 nor responded to the writ petition by filing any counter affidavit. They just sat over the matter and did not take any step. On 4.4.2006, this court while taking up the writ petition noticed that even after 21 years of retirement of husband of the petitioner, the retirement benefits have not been paid and the interim order passed on 12.10.2001 has been violated with impunity. In such circumstances, the Secretary, Revenue Department as well as the Deputy Commissioner, Kokrajhar were directed to appear in person fixing the matter on 27.4.2006.

6. On 27.4.2006, the Secretary, Revenue Department Mr. K.K. Hazarika, and the Deputy Commissioner, Kokrajhar, Mr. H.K. Sarma, appeared in person. On being asked, they mentioned about their predecessors in the respective offices. Those predecessors were also directed to appear in person before this court on 15.5.2006. On 15.5.2006, all the officers appeared before this court except one Mr. S. Nath, presently Commissioner of Barak Valley Hills Development Council who at the relevant point of time was the Secretary, Revenue Department. This court monitored the matter by passing various orders including a direction to file affidavits explaining the cause of delay and as to who is responsible for such delay of 21 years.

7. On 28.6.2006, when the matter was again taken up, Mr. P.K. Mushahary, learned Senior Government Advocate, submitted that pension case of the deceased husband of the petitioner has been finalized and necessary direction has been

issued for payment of retirement dues. Recording the submission of the learned Counsel for the petitioner that the Treasury Officer, Bongaigaon has not released the dues payable to the petitioner, direction was issued to the Treasury Officer for immediate release of the same. By the said order, direction was also issued to the Accountant General Assam, to state the reason as to what has caused the delay towards the releasing the retirement benefits to the petitioner.

8. Amidst the aforesaid orders passed by this court the respondents realized for the first time that they cannot sit over the matter indefinitely and complied with the interim order passed on 12.10.2001. The Treasury Officer, Bongaigaon also intimated the registry of this court by his letter dated 10.7.2006, about the payment of pensionary benefits to the petitioner. The Accountant General, Assam in his affidavit filed on 3.8.2006 has indicated that the pension papers of the deceased husband of the petitioner were received in the office from the Deputy Commissioner, Kokrajhar, only on 9.3.2006, i.e., after 21 years from the retirement of the petitioner's husband and that the office has finalized the pension case of the husband of the petitioner by furnishing necessary pension payment order to the Treasury Officer, Bongaigaon in May 2006. Thus, it is the stand of the Accountant General that there was no delay on their part.

9. Having regard to the seriousness of the matter, the Secretaries of the Revenue Department as well as the Deputy Commissioners, Kokrajhar, who at the relevant point of time were holding the respective offices and who were named by the learned State Counsel were directed to file personal affidavits explaining the circumstances as to what had caused the delay in payment of retirement benefits and as to who was responsible for such delay. All the officers have filed their individual affidavits disowning their responsibility. The common plea taken is, either they were not aware of the matter and the order passed by this court or they were not holding the office at the relevant point of time. It will be appropriate to make a brief reference to the stand of the said officers in their affidavits.

Shri A.K. Bhutanl, Secretary, Gauhati Development Department.

He was the Deputy Commissioner, Kokrajhar at the time of passing the interim order dated 12.10.2001, As per his affidavit he came to know about the order on 23.12.2002. However, in the same breath, he has stated that he addressed a letter dated 2.9.2002 to the Secretary of the Department making a reference to the writ petition filed by the petitioner. It is his defence that since necessary fund was not provided, he could not do anything in the matter. This defence adduced by the officer is not at all acceptable. He being aware of the order passed by this court ought to have taken prompt action in the matter.

Kamal Krishna Hazarika, Secretary, Revenue Department.

His defence is that he was not the secretary of the Department at the relevant point of time. However, when he came to about the interim order passed by this court on

7.4.2006 paid the amount of Rs. 50,000 to the petitioner on 24.6.2006.

Mirnal Kumar Barooah, Commissioner & Secretary, Finance (Taxation).

He was the Commissioner & Secretary, Revenue Department from 6.9.2001 to 2.1.2004, i.e., at the time of passing the interim order on 12.10.2001. According to his affidavit, he was not aware of the interim order passed by this court. He has also stated as to how Sri S. Nath and Sri P. Dutta were also holding the office of the Secretary of the Department. According to him, it was only 12.5.2006, he could come to know about the case.

Shri Harish Sonowal. Commissioner & Secretary, Industries & Commerce Department.

He was the Commissioner & Secretary, revenue Department from 2.1.2004 to 9.2.2005. According to him, he was not aware of the interim order passed by this court and he came to know about the same through the Deputy Secretary of the Department on 12.5.2006.

Shri EX. Sarma

He is the present Deputy Commissioner, Kokrajhar. He joined as such only on 8.12.2004 and as per his affidavit he came to know about the matter only on 23.2.2006, when the pension proposal in respect of the deceased husband of the petitioner was put up before him. He has stated as to how he has taken prompt action in the matter for payment of the aforesaid amount of Rs, 50,000.

Dr. S. Nath, Commissioner of Hills & Barak Valley Division.

He has stated in his affidavit that he served as Secretary, Revenue from 31.12.1999 to 16.2.2000 and also with effect from 21.6.2003 to 15.2.2004 at the time when said Sri Mk Barooah was the Commissioner & Secretary of the Department. According to him, Shri Barooah was the administrative head of the Department and he, as the Secretary did not get any scope to act as the administrative head. According to him he had no jurisdiction and scope to deal with the pension case of the deceased husband of the petitioner.

10. In the other affidavits filed by all the officers, they have not stated anything as to who was responsible for causing the delay by 21 years. On perusal of the affidavits about which the reference has been made above, I am of the considered opinion that except Shri H.K. Sarma, the present Deputy Commissioner; Shri K.K. Hazarika, Secretary, Revenue Department and Shri Harish Sonowal, Commissioner & Secretary, Industries & Commerce Department, all other officers had a major role to play in the matter at least for implementation of the interim order dated 12.10.2001. From their affidavits, it appears that they have found fault with a ministerial staff in respect of the interim order passed by this court, unmindful of their own duty towards implementation of the same.

11. I have heard Mr. P. Kataki, learned Counsel for the petitioner and Mrs. M. Hazarika, learned senior counsel assisted by Mr. A. Medhi, learned Counsel representing Mr. A.K. Bhutan. I have also heard Mr. P.K. Mushahary, learned Senior Government Advocate, Assam, along with Ms. R. Chakraborty, learned State counsel on behalf of the other officers. I have also heard Mrs. R. Bora, learned Central Government counsel, representing the Accountant General.

12. Here is a case in which even after admission of the writ petition by order dated 12.10.2001, the respondents did not respond either to the writ petition or made any attempt to implement the interim order not to speak of payment of retirement benefits to the petitioner. It is only because of the monitoring of the case by this court by various orders passed from 4.4.2006 to 10.8.2006, the respondents could pay the retirement benefits to the petitioner within 4 months. Thus, what they could not do for long 21 years, they could do so within 4 months. This necessarily means that, but for the pressure of this court, the respondents and for that matter the aforesaid officers held responsible for the delay and non-implementation of the interim order, the pension case of the petitioner would have gone unattended at the hands of the respondents in tune with the persistent apathy shown for long 21 years.

13. Now the matter has come to an end with the payment of pensionary and other retirement benefits to the petitioner. However, the respondents cannot escape their liability from payment of interest on the accrued amount. They are also liable for payment of cost of the proceeding. Accordingly the following directions are issued:

(i) The respondents shall pay interest at the rate of 9% p.a. to the petitioner on the accrued pensionary and other retirement benefits from the date of expiry of 6 months from the date of retirement of the deceased husband of the petitioner from service, i.e., 31.10.1985.

(ii) The respondents shall also pay interest at the rate of 9% p.a. on the aforesaid amount of Rs. 50,000 which was payable within one month from 12.10.2001, i.e., from 12.10.2001 to the date on which the amount was paid to the petitioner.

(iii) In addition, the petitioner shall also be entitled to the costs of the proceeding, which is fixed at Rs. 15,000.

(iv) The payment towards interest and cost shall be made within 90 days from today, failing which the erring officials will be liable for contempt of court proceeding and the amounts will carry further interest at the rate of 9% p.a. to be realized from them.

(v) The State Government will be at liberty to realize the aforesaid amounts from the officials found responsible for causing the delay by 21 years and non-implementation of the interim order dated 12.10.2001 passed by this court.

14. The writ petition stands disposed of in terms of the above order. Let a copy of this judgment and order be sent to the Chief Secretary of the State for his necessary follow up action. It is expected that the Chief Secretary will take all necessary steps, so that this kind of negligence and apathy shown by the officials of the State in sensitive matter like payment of retirement benefits do not recur in future.