

(2000) 02 GAU CK 0017

Gauhati High Court**Case No:** Writ Petition (C) No. 5107 of 1999

Rohini Kumar Deka

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Feb. 7, 2000**Acts Referred:**

- Assam Services (Pension) Rules, 1969 - Rule 183, 184, 185, 186, 187
- Constitution of India, 1950 - Article 148(5), 309

Citation: (2000) 2 GLT 471**Hon'ble Judges:** J.N. Sharma, J**Bench:** Single Bench**Advocate:** G. Deka, for the Appellant; B.D. Goswami, for the Respondent

Judgement

J.N. Sarma, J.

This case again depicts the casual and cavalier and criminal negligent attitude of the State of Assam to pay the retiral benefits to a person in time. The State of Assam has taken attitude as if the pension and retiral benefits are bounties available to a person at the mercy of the authority and they are doing charity by paying the same. The law is settled that if it is due to the person for the legal service put up by him, and if any authority is required for this one may have a look at the following decision:

(1) [D.S. Nakara and Others Vs. Union of India \(UOI\)](#), , [D.S. Nakara and Others Vs. Union of India \(UOI\)](#), wherein the Supreme Court has laid down the law as follows:

(1) Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex-gratia payment. It is a payment for the past service rendered. It is a social welfare measure rendering socioeconomic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most

practical *raison d'être* for pension is the liability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of power conferred by Article 309 and 148(5) of the Constitution.

(2) [Dr. Uma Agrawal Vs. State of U.P. and Another,](#)

Petitioner v. State of U.P. and Anr. Respondents wherein the Supreme Court has laid down the law as follows:

(a) If rules/instructions which prescribe time-schedule for settling of retirement dues, are followed strictly, much of litigation can be avoided and retired government servants would not feel harassed. Pension is not a bounty but right of a government servant. Government is obliged to follow rules. Delay in settling retirement benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too, there is a prescribed procedure. This indeed is unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind time-schedule prescribed in the rules/instructions, apart from other relevant factors applicable to a case.

The present case is a clear example of inexcusable departmental delay. Respondents contended that letters were sent to the Petitioner after her retirement seeking some information for settling her retirement dues but that is denied by the Petitioner, even if it is assumed that such letters were sent, this cannot be an excuse for lethargy of the department, because rules/instructions provide for initiation of process much before retirement. The exercise which was to be completed much before retirement was in fact started long after Petitioner's retirement.

2. In Assam, the Assam Services (Pension) Rules, 1969 has framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. But it appears that the Assam Government has always flouted its own rules. Rule 95 of the Pension Rules provides as follows:

95. 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 of the Administrative Department, where there is no head of department or 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 1st 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 Rules 184 to 188 to enable him to make a formal application for pension one year in advance of the date of his anticipated retirement. The list should also include the names of officers who are on temporary deputation to other

department/Government or on foreign service and intimation should similarly be issued to such officer under whom he is serving temporarily. If no intimation, is however, issued to the officer this shall not 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.

The pension papers are to be processed by the department one year before the retirement of that particular person. Not only that, Rule 183 provides as follows:

183. All authorities dealing with applications for pension under these rules should bear in mind that the delay in the payment of pensions involves hardship. It is essential to ensure, therefore, that an officer begins to receive his pension on the day on which it becomes due.

Note - Annual Superannuation statement (vide rule 95) should be checked at least quarterly to see if any officer due to retire within one year not yet submitted his pension application. Attention of such officer should be drawn to rule 184 and they should be reminded to submit their formal application.

3. Regarding the retirement of the Petitioner there were some dispute. Be that as it may, we are not concerned with that dispute, because that has been finally settled by a decision of the Civil Court and a decree has been passed in Title Suit No. 66/94 as well as in Money Suit No. 77/97. We are not concerned with that. That decree may be executed by the Petitioner. Though he retired on 28.2.94, for the last six years he has not been paid the amount of provident fund, amount of gratuity and mainly pension from 28.2.95 (this will be the date of pension as the decree of the Civil Court it was clear that the Petitioner was to retire on that particular date). There is no denial of the fact that the Petitioner again and again approached the authority for payment of his pension and retiral benefits. But the authority did not do anything to pay pension to this poor and primary school teacher. It can be well imagined the hardship and difficulties faced by this person for not receipt of the pension for these last six years. Accordingly, I allow this writ application on the basis of the above decision and I direct to the authority that the authority shall pay the pension and other retiral benefits to the Petitioner within a period of one month from today. The authority shall also pay to the Petitioner the amount of Provident Fund and Gratuity due to him in accordance with rules and laws.

4. The pension which is due from 28.2.95 shall be paid to the Petitioner by the authority within a period of three months from today. If the arrear is not paid within this three months the amount shall carry interest at the rate of 18% per annum from the date on which it became due. This interest I am imposing on the basis of the above decision that is [Dr. Uma Agrawal Vs. State of U.P. and Another](#), The amount of interest shall be calculated in accordance with the above order and it shall be paid to

the Petitioner as the Petitioner has been unnecessarily dragged to this Court because of the negligence and laches on the part of the authority, with an exemplary costs of Rs. 15,000/- (Rupees fifteen thousand). The amount of exemplary cost shall be realised from the officer for whose negligence this unnecessary delay has been caused.