
(2018) 02 GAU CK 0004
In the Gauhati High Court
Case No : 2174 of 2016

SMTI GOLAPI NATH

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 16-02-2018

Acts Referred:

Citation : (2018) 02 GAU CK 0004

Hon'ble Judges : L.S. Jamir

Bench : Single Bench

Advocate : J TALUKDAR

Final Decision : Disposed

Judgement

1. Heard Mr. S. K. Das, learned counsel for the petitioner as well as Mr. Goswami, learned Government Advocate appearing for the respondent

Nos. 1 and 2, and Mr. A. Chetri, learned standing counsel Pension Department. Also heard Mr. R. K. Talukdar, learned counsel for the respondent No. 4.

2. The petitioner's husband Late Mahendra Nath, while working as Khalasi (Grade-IV post) in the Office of Director of Town and Country

Planning, Assam died in harness on 20.06.2008 in a traffic accident, after serving for 31 years 7 months and 19 days. As the Family Pension and

other dues, on account of the petitioner's Late husband was not paid, the petitioner had approached this court by way of WP(C)/2045/2013.

During the pendency of the said writ petition, the Family Pension alongwith Death cum Retirement Gratuity was paid to the petitioner. However, in

the said writ petition, the petitioner prayed for interest on delayed dispersal. Accordingly, WP(C)/2045/2013 was disposed of by order dated

17.02.2014 with the following observations and directions :

6. When payment of pension and Gratuity is delayed and the delay is attributable to administrative lapses, under Rule 197-A of the Pension Rules,

the Secretary of the Department is required to consider payment of interest. Sub-Rule 6 of Rule 197-A provides for the rate of interest applicable

for such case.

7. Having regard to the fact that the petitioner's husband died on 20.06.2008 and the family pension papers were belatedly forwarded by the

Department only on 02.07.2012 without any explanation for the unusual delay, I am of the view that although the pension is now been paid in

December, 2013, interest claim of the petitioner should also be considered. Accordingly since the Secretary of the Department is the competent

Authority under Sub-Rule (6) of Rule 197 A of the Pension Rules, the departmental Secretary is directed to consider the claim for interest on

delayed payment of family pension and gratuity to the petitioner on account of her husband late Mahendra Nath. To facilitate the consideration, the

petitioner will furnish this order with her representation to the Department Secretary and the same be considered on merit in accordance with Rule

197 A of the Pension Rules. The claim should be decided expeditiously and preferably within 3 (three) months of receipt of intimation from the

petitioner's side.

8. For information of all concerned, this order be furnished to all the 4 counsels who appeared in the case, so that when the representation is filed

by the pensioner, the same is considered without any undue delay.

9. With the above direction, the case stands disposed of without any order on cost.

3. Thereafter, the Additional Chief Secretary to the Government of Assam, Urban Development Department passed an order dated 10.09.2014

rejecting the interest on account of delayed payment to the petitioner stating inter- alia that the family pension papers were submitted by the

deceased family after 6 (six) months i.e., 05.12.2008 and that the petitioner had the habit of remaining unauthorizedly absent from duty and which

has been computed to 627 days till his death. In the said order it has also been reflected that regularization of 627 days of unauthorized absence

through earned leave/extraordinary leave had taken some time and it was only

on 05.12.2011 that the same was regularized. In that view of the matter, the claim of the petitioner for interest was rejected. Being aggrieved the petitioner is before this Court seeking for interest on delayed payment of pension.

4. Mr. S.K. Das, learned counsel for the petitioner submits that the petitioner's late husband died as early as 20.06.2008 after serving for 31 years

7 months and 9 days. Though there was some delay in submitting the pension papers the respondent had delayed the matter inordinately and

therefore in terms of Rule 197A of the Assam Service (Pension) Rules, 1969 the respondents are bound to pay interest on the delayed payment.

No explanation has been given as to how the delay has occurred for more than 5 years in the order dated 10.09.2014 and the same was passed in

a mechanical manner without any application of mind. To support his case, the learned counsel for the petitioner has placed reliance in the case of

State of Kerala and Ors. Vs. M. Padmanabhan Nair reported in (1995) 1 SCC 429 and in the case of D. D. Tewari (dead) through Legal

Representatives Vs. Uttar Haryana Bijli Vitaran Nigam and Ors. Reported in 2014 (8) SCC 894.

5. Mr. N. Goswami, learned Government Advocate on the other hand submits that the petitioner's late husband was habitually remaining absent

from duty without any authorization and the total absence has been computed to 627 days since 1995 and for which there were irregularities in

service and increments were also not granted from 1995. As a result of such irregularities in his service the respondents have taken sometime for

settlement of regularization of his service, grant of leave and half pay leave, grant of increment, construction of initial pay structure as per the ROP

of 2010. He also submits that after verification, the unauthorized leave of the petitioner's husband has been granted by order dated 05.12.2011.

The annual increments for the year 1995 was granted by order dated 30.03.2012 and the increments for the year 1996-2005 was allowed by

order dated 30.03.2012. Further, the annual increments for 2006 and 2007 has also been passed by order dated 30.03.2012. It was for this

verifications, calculations and modifications of earlier orders that the delay of about 5 (five) years has occurred which cannot be attributed to the

respondents in as much as the petitioner's late husband has contributed to the

delay due to his unauthorized absence from duty. He, therefore, submits that there is no merit in the writ petition and therefore, no direction can be issued for payment of interest on delayed payment. In his support, the learned Government Advocate has placed reliance in the case of Union of India & Ors. Vs. Tarsem Singh reported in (2000) 8 SCC 648.

6. I have heard the learned counsel appearing for the parties.

7. After the order dated 17.02.2014 was passed by this court in WP(C)/2045/13, the petitioner has made a representation before the concerned authority on 03.03.2014. Thereafter, the Additional Chief Secretary to the Government of Assam, Urban Development Department has passed the impugned order dated 10.09.2014. A perusal of the order dated 10.09.2014 clearly indicates that there was delay in submission of the pension papers by the deceased family for about 6 (six) months. In fact, the pension papers were submitted only on 05.12.2008. Further, the order indicates that the petitioner was absent from duty without authorization for 627 days and that the regularization of the unauthorized absence has taken sometime. However, this court is of the considered opinion that the delay of about 5 (five) years is too long merely for the regularization of 627 days of the petitioner's unauthorized absence from duty, granting of increment for various years, grant of earned leave etc. Therefore, this court is unable to accept the explanation given in the order dated 10.09.2014 to reject the claim of the petitioner for interest for delayed payment.

8. This court has also taken into consideration the contribution of the petitioner's late husband in causing the delay. However, the inordinate delay by the respondents to finalize the pension payment is not acceptable by this court.

9. The authority relied upon by the learned Government Advocate has been considered by this court. However, this court is of the considered opinion that the same is related to belated service related claim including pension and pensionary benefits and therefore the same is not applicable to the case in hand. In that view of the matter, this writ petition, succeeds. The petitioner is entitled to interest on delayed payment of pension and gratuity. However, considering that the pension papers were submitted late, the interest on delayed payment will run from 05.12.2008 till

24.12.2013 i.e., the date the pension and gratuity were paid to the petitioner. The interest on delayed pension and gratuity is computed @ 6% per

annum which shall be paid by the respondents No. 1 and 2. Let such payment be made within a period of 6 (six) months from the date of this

order.

10. The petitioner is directed to furnish a certified copy of this order to the respondent Nos. 1 and 2 within one week from today.

11. The writ petition is accordingly disposed of.