

Dr. Uma Agarwal vs State Of U.P. & Another on 22 March, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1212, 1999 (3) SCC 438, 1999 AIR SCW 876, 1999 LAB. I. C. 1174, 1999 ALL. L. J. 973, 1999 (2) LRI 194, 1999 (4) SRJ 329, 1999 (3) SERV LJ 212 SC, 1999 (3) ADSC 65, (1999) 2 JT 359 (SC), 1999 (2) JT 359, (1999) 82 FACLR 72, (1999) 2 CURLR 158, (1999) 2 SERV LR 22, (1999) 2 SCT 347, (1999) 2 UPLBEC 1006, (1999) 1 LAB LJ 1335, (1999) 2 ALL WC 1486, (1999) 2 LAB LN 651, (1999) 3 ESC 1697, (1999) 2 SCALE 153, (1999) 3 SUPREME 138, (1999) 3 MAD LJ 29

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Bench: M.Jagannadha Rao, N. Santosh Hegde

PETITIONER:

DR. UMA AGARWAL

Vs.

RESPONDENT:

STATE OF U.P. & ANOTHER.

DATE OF JUDGMENT:

22/03/1999

BENCH:

Hon. CJI., M.JAGANNADHA RAO, & N. SANTOSH HEGDE.

JUDGMENT:

M.JAGANNADHA RAO,J.

The petitioner was working as Medical Officer in the service of the Government of Uttar Pradesh and retired on 30.4.1993 on completion of 58 years. She filed this writ petition on 18.11.1995 complaining that she has not been paid her retiral benefits, namely, gratuity, provident fund, pension etc. This Court admitted the writ petition on 4.12.1995 and issued notice to the respondents. The respondents submitted to this Court that, after her retirement, in spite of the petitioner being requested to send three sets of pension papers, petitioner did not send them. This was, however, denied by the petitioner. This Court directed the respondents on 12.2.1996 that upon petitioner furnishing three sets of pension papers with all relevant documents, the same should be processed. The respondents then sent a special messenger to various places to get details of her service and thereafter the pension papers were sent on 24.12.1996 to the Director General, Medical Health, U.P. It was stated that provisional pension was paid in December, 1996 and February, 1997. Arrears were

paid on 17.3.1997. Papers were sent on 29.1.1997 to the Pension Directorate, Lucknow. In regard to the GIS it was pointed out that the petitioner had not paid premium of Rs.4770/- and thereafter, the petitioner deposited the same on 9.12.1997. The GIS was sent to petitioner on 17.12.1997, 90% of GPF was paid on 20.1.1998, balance was paid on 25.4.1998. The Gratuity was paid on 25.6.1997 and the encashment of earned leave was also paid on the same date. The petitioner demanded interest while the respondents contended that no interest was payable. Though some other questions relating to promotion etc. were referred to in the writ petition, learned senior counsel for the petitioner stated that the petitioner is confining this writ petition only in regard to the pensionary benefits. Now the only question that remains to be decided is the question relating to payment of interest. Learned counsel for the petitioner requested us that some guidelines may be issued regarding the steps to be taken by departments for prompt payment of retiral benefits.

Now-a-days, several writ petitions are being filed in this Court and various High Courts seeking relief for disbursement of retiral benefits, because of inordinate delays in payment of these benefits. As Krishna Iyer, J. stated in *State of Mysore vs. C.R.Sheshadri & Others* [1974 (4) SCC 308], 'a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant - not unusual in government', it is becoming necessary to issue directions, in several cases, for early payment of these dues. In yet another case in *State of Kerala & Others vs. M.Padmanabhan Nair* [1985 (1) SCC 429], this Court had occasion to point out that usually 'the delay occurs by reason of non-production of the L.P.C(last pay certificate) and the N.L.C.(no liability certificate) from the concerned departments' but both the documents pertain to matters, records whereof would be with the concerned government departments. It was observed that inasmuch as the date of retirement of every government servant was very much known in advance, it was difficult to appreciate why the process of collecting the requisite information and issuance of the abovesaid two documents should not be completed well before the date of retirement so that the payment of gratuity amount could be made on the date of retirement or on the following day and the pension, at the expiry of the following month. This Court stated that the necessity for prompt payment of the retirement dues to a government servant immediately after his retirement could not be over-emphasised and it would not be unreasonable to direct that there would be a liability to pay penal interest on these retirement benefits. In several cases, decided by this Court, interest at the rate of 12% per annum has been directed to be paid by the State.

As these delays have increased in the last few years, it has become necessary to refer to the Rules and Departmental instructions which do contain adequate provisions for compilation of all the necessary data and preparation of the necessary documents for disbursement of retiral benefits, well in advance. The present case arises from Uttar Pradesh and we find that the Government of Uttar Pradesh has issued instructions to the effect that "the Head Office, or other authority responsible for preparing the pension papers should initiate the pension case, two years before retirement of the Government servant. At that stage, the essential information necessary for working out the qualifying service should be collected, and the entire service book and other service records should be examined and completed with a view to remove deficiencies and imperfections, if any, in the service book/records. This process should be completed" atleast eight months in advance of the date of retirement of the Government servant. The actual computation and preparation of the pension

papers should then start and "any deficiency or imperfection, or omission which still remains in the service records should be ignored, and the determination of qualifying service should be proceeded with on the basis of entries in the service records, whatever the degree of imperfection to which it might have been possible to bring them by that time". "The process of determining the qualifying service and the average emoluments and the admissible pension and gratuity should be positively completed within a period of 2 months and the pension papers sent to the Accountant-General not later than 6 months before the date of retirement. The said office is to issue the pension payment order (including the order for the payment of the Death-cum-retirement gratuity) one month in advance of the date of retirement". "It should be ensured that the payment of superannuation pension commences on the first of the month following the month in which the government servant retires". This appears to be the clear position in Uttar Pradesh.

We may in this connection also refer to F.R.58 which relates to "preparation of pension papers". It states that "every Head of Office shall undertake the work of preparation of pension papers in Form 7 two years before the date on which the Government servant is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement whichever is earlier". F.R.59 deals with the 'stages for the completion of pension papers'. Sub-clause (1)(a) bears the heading, the first stage, and refers to the verification of service details. There are five parts in this sub-clause. Sub-clause (1)(b) refers to the second stage, namely, making good the omissions in the service book. Sub-clause 1(b)(ii) is important and it states very clearly as follows:

"Every effort shall be made to complete the verification of service, as in clause (a) and to make good omissions, imperfections or deficiencies referred to sub-clause (i) of this clause. Any omission, imperfections or deficiencies including the portion of service shown as unverified in the service book which it has not been possible to verify in accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the book."

This directive in the rules is obviously intended to see that once the period is quite close to 10 months before the retirement of an employee, further time is not to be wasted in verifying data which it has not been possible to verify by following the procedure in sub-clause (1)(a) of F.R.59. Sub-clause (1)(c) refers to the third stage and it says that at least 10 months before the date of retirement, the Head office shall take various steps by issuing a Certificate to the government servant and the officer can offer his remarks and thereafter, he shall be furnished Form 4 and Form 5 which he has to fill-up and send to the Head Office at least 8 months before the date of retirement. F.R.60 refers to 'completion of pension papers' in Part-I of Form 7 at least 6 months before the date of retirement of the government servant. F.R.61 deals with the 'Forwarding of Pension Papers to Accounts Officer', in Form 5 and Form 7 with a covering letter in Form 8 along with service book duly completed, upto date, and other documents. This has to be done at least 6 months before the date of retirement. Rule 63 refers to recovery of amounts due by the government servant and the particulars in this behalf are to be sent at least 2 months before the date of retirement, so that the same could be recovered from the gratuity. F.R.64 deals with provisional pension. F.R.65 requires the Accounts Officer to assess the amount of pension and gratuity at least one month before the date

of retirement. F.R.68 requires interest to be paid on delayed payment of gratuity. As already stated, in cases of delayed payment of pension, this Court has levied interest at 12% per annum in several cases.

We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps atleast two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral 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 is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case.

The case before us is a clear example of department delay which is not excusable. The petitioner retired on 30.4.1993 and it was only after 12.2.1996 when an interim order was passed in this writ petition that the respondents woke up and started work by sending a special messenger to various places where the petitioner had worked. Such an exercise should have started atleast in 1991, two years before retirement. The amounts due to the petitioner were computed and the payments were made only during 1997-98. The petitioner was a cancer patient and was indeed put to great hardship. Even assuming that some letters were sent to the petitioner after her retirement on 30.3.1993 seeking information from her, an allegation which is denied by the petitioner, that cannot be an excuse for the lethargy of the department inasmuch as the rules and instructions require these actions to be taken long before retirement. The exercise which was to be completed long before retirement was in fact started long after the petitioner's retirement.

Therefore, this is a fit case for awarding interest to the petitioner. We do not think that for the purpose of the computation of interest, the matter should go back. Instead, on the facts of this case, we quantify the interest payable at Rs.1 lakh and direct that the same shall be paid to the petitioner within two months from today.

The writ petition is disposed of accordingly. There will be no order as to costs.