

GAHC010109732016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2190/2016

DIBRUGARH UNIVERSITY PENSIONERS' ASSOCIATION and ANR.
HAVING ITS REGD. OFFICE AT VILL. TEKELACHIRING GAON, DIBRUGARH
UNIVERSITY, LINK ROAD, P.O. and DIST- DIBRUGARH, ASSAM, PIN-786001,
REP. BY ITS GENERAL SECY. SRI CHANDRA KAMAL DAS

2: CHANDRA KAMAL DAS
S/O LT. BISWA BAHAN DAS
R/O SEUJEE PATH
TEKELA CHIRING GAON
UNIVERSITY LINK ROAD
P.O. and DIST- DIBRUGARH
PIN-78600

VERSUS

THE DIBRUGARH UNIVERSITY and 7 ORS
DISTRICT - DIBRUGARH, PIN-786004, REP. BY REGISTRAR

2:THE EXECUTIVE COUNCIL
DIBRUGARH UNIVERSITY
DIST- DIBRUGARH
PIN-786004
REP. BY ITS SECRETARY

3:THE REGISTRAR
DIBRUGARH UNIVERSITY
DIST- DIBRUGARH
PIN-786004

4:THE STATE OF ASSAM
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GHY-6

5:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GHY-6

6:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
PENSION AND P.G. DEPTT.
DISPUR
GHY-6

7:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
FINANCE B DEPTT.
DISPUR
GHY-6

8:THE DIRECTOR
HIGHER EDUCATION DEPTT.
ASSAM
KAHILIPARA
GHY-1

Advocate for the Petitioner : MS.M BARMAN

Advocate for the Respondent : MR.S BHUYANR- 1-3

JUDGEMENT AND ORDER

Heard Mr. K.N. Choudhury, learned senior counsel appearing for the petitioners. Also heard Mr. R. Goswami, learned counsel appearing for the Dibrugarh University authority (respondent Nos.1—3), Mr. K. Gogoi, learned standing counsel appearing for the Higher Education/respondent Nos.5 & 8, Mr. R. Borpujari, learned standing counsel appearing for the Finance Department/respondent No.7. None has appeared for respondent Nos. 4 and 6.

2. The petitioner No.1 is an association, representing 460 (approximately) retired employees of the Dibrugarh University and the petitioner No.2 is the Secretary of the said Association and the present petition has been filed in a representative capacity on behalf of all members of the association who retired with CPF benefits. As per the Assam Gazette

Notification No.216, dated 30.05.2013, the Dibrugarh University (Amendment) Act, 2013 (hereinafter referred to as 'the Amendment Act'), came into force by inserting, inter alia, Section 30A, providing pension to the teaching and non-teaching employees of Dibrugarh University, who retired from service, which reads as under:

“Section 30A (1) – The permanent employees of the University, both teaching and non teaching who have entered service before 1-2-2005 shall be entitled for pension on their retirement from the service of the University with effect from 1st day of April, 2013;

Provided that the employee of the University who entered service before 1-2-2005 and who have retired or expired before coming into force of this Act shall be entitled to receive pension or family pension as the case may be, under the provision of this Act.

Provided further that those employees of the University who have entered service on or after 1-2-2005 shall be covered under the New Pension Scheme introduced by the State Government.”

3. After the amendment of the Dibrugarh University Act, 1965, the Executive Council of the Dibrugarh University in its 320th Meeting held on 13.08.2013, had approved and adopted the Dibrugarh University Pension Rules, 2013 and the Dibrugarh University General Provident Fund Rules, 2013. A notification vide No.DU/RG/G.01.01/13/9399, dated 05.12.2013 was issued by the Registrar of the University notifying that in view of the amendment of the Dibrugarh University Act and the consequent approval by the Executive Council, the process for release of the pension fund by the Govt. of Assam is in progress. The Dibrugarh University authority also released partial amount of monthly pension, due to the retired employees, w.e.f. November, 2013 to March, 2014 or until further order as interim relief, subject to post facto adjustment. The retired employees were also asked to submit the duly filled forms, as available in the Pension Cell of the University.

4. On the basis of the above notification dated 05.12.2013, the Executive Council of the Dibrugarh University in its 322nd Meeting held on 14.03.2014, resolved as per the Resolution No.7 that, as approved by the Vice Chancellor under report to the Finance Committee, the grant of one third of amount of monthly pension due to the retired employee of the University as interim pension with effect from November, 2013 be ratified.

5. Rule 3(i) of the Dibrugarh University Pension Rules, 2013 (hereinafter referred to as 'the Pension Rules') provides that the permanent employees of the University, both teaching and non-teaching, who had entered service before 01.02.2005 shall be eligible for pension, on their retirement from the service of the University, w.e.f. 01.04.2013. It was also provided that the employees of the University who entered service before 01.02.2005 and who have retired or expired before coming into force of the Pension Rules shall also be entitled to receive pension or family pension, as the case may be. It was further provided that those employees of the University who had entered service after 01.02.2005, shall be covered under the New Pension Scheme, introduced by the State Government. Accordingly, as per the provision of Rule 3(i) of the Pension Rules, all categories of employees of the Dibrugarh University are entitled to receive the pension.

Rule 3(ii) of the Pension Rules provides that the cumulative balance of the CPF Account of the employees till 31.03.2013, who have entered regular service of the University prior to 01.02.2005 and continuing till 31.03.2013, which is to the extent of 10% of the basic pay as employees' contribution, along with the interest accrued thereon, shall be taken as subscription to the GPF Account.

6. The Director of Higher Education, Assam by the letter dated 21.02.2015, addressed to

the Registrars of the Gauhati University, Dibrugarh University, Bodoland University, Cotton College State University, K.K. Handique State Open University, K.B.V. & A.S. Sanskrit University to inform that the budget proposal for pensionary benefit and non-salary in respect of Universities for the year 2015—16 has been submitted to the Finance Department but the said budget proposal had not been approved by the Finance Department, for want of Memorandum of Understanding (MOU) of the concerned Universities with the State Government. Accordingly it was requested to take necessary action for signing of the MoU for early approval of the budget proposal by the State Government.

7. According to the petitioners, as per their knowledge, the Dibrugarh University had merely submitted a draft MOU to the Government but the said MOU has not yet been signed and the University authority are not proceeding with the matter in a serious manner.

8. In the meantime, the Dibrugarh University by the notification dated 05.10.2015, notified that the one third interim pension, that has been released to the eligible retired employees of the Dibrugarh University shall be ceased w.e.f. the month of October, 2015, due to non-release of funds by the Government, towards the pension for eligible retired employees of the University. The notification was issued in pursuant to the resolution taken by the Executive Council of the University, in its 327th meeting held on 28.09.2015. Thereafter another notification dated 09.11.2015 was issued, notifying that the Dibrugarh University is compelled to temporarily suspend the disbursement of the 1/3rd interim pension being released to the eligible retired employees of the University w.e.f. November, 2015, due to non-release of funds by the Government. It is further notified that the University shall release regular pension to the eligible retired employees, as soon as the funds are made

available, as per the statutory provision, as per the decision taken in the 327th meeting of the Executive Council of the University, held on 28.09.2015.

9. It is submitted that an amount of Rs.200 lacs, provided in the budgetary provision of 2014—15 of the Govt. of Assam for the purpose of payment of pensionary benefits to the retired employees, have already been released and deposited in the account of the Dibrugarh University and, therefore, the retired employees of the University ought to have paid the full amount of pension but paid merely 1/3rd of the pension, and thereby the University authority had committed a serious financial irregularity by not paying the full pension.

10. Being aggrieved by the action of the University authority, the petitioner association submitted various representations before the Registrar of the Dibrugarh University, the Executive Council of the Dibrugarh University as well as the Chief Minister of Assam, which yielded no result.

11. It is contended that for the financial year 2015-2016, the Government of Assam had clearly provided that a written MOU be entered by the Dibrugarh University with the Government of Assam so as to enable it to provide sanction and release the required amount for the purpose of payment of pensionary benefit to the retired employees of the Dibrugarh University. For the purpose a specimen copy of the required MoU being the MoU between the Assam Agricultural University and the Government of Assam had also been provided, but the authorities of the Dibrugarh University are sitting over the matter and have not signed the MOU till date and on the other hand not paying the required pension to its retired employees, by citing the reason that no fund had been released by the Government of Assam. Such a diabolical stand on the part of the Dibrugarh University is arbitrary, unreasonable and violates

the legal rights of the retired employees to receive their pensionary dues. Further, by notifying its decision to stop the payment of even 1/3rd pension, the Dibrugarh University had acted in an arbitrary and unreasonable manner without any sanction of law. 12.

Petitioners submitted that as per Section 30 A of the Dibrugarh University Act, 1965 [as amended by Dibrugarh University (Amendment) Act, 2013], the entitlement for pension is a legal right under the statute and such statutory right cannot be curtailed by the respondent-Dibrugarh University merely by issuing notifications dated 05.10.2015 and 09.11.2015, inasmuch, as the provision of an Act, cannot be curtailed by a notification. Further, in the event of any conflict between the provision of an Act and a notification, the provision of an Act would prevail. All the serving employees of the DU have been regularly paid their salary allowances, but it is only the retired employees who had not been paid their pensionary benefits by citing the reason of non-availability of fund, which by itself is a discrimination. Due to non-payment of the pensionary dues, the retired employees are facing immense financial hardship, even for meeting their old age medical expenses and also in making arrangement for their two square meals. The conduct of the respondent/DU in bringing the retired employees in such a precarious condition is by itself an act of arbitrariness and unreasonableness and violative of Articles 14, 19 and 21 of the Constitution of India.

13. Therefore, the writ petitioners submitted that it is a fit case for this Court to interfere in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India by issuing a writ in the nature of certiorari setting aside the impugned notifications dated 05.10.2015 and 09.11.2015 of the Dibrugarh University, whereby the payment of pensionary benefits as required under Section 30 A of the Dibrugarh University Act, 1965, as well as the

payment of the interim 1/3rd pension with effect from the month of November, 2015, had been ceased/suspended (Annexure-10 and 11) and also setting aside the Resolution No. 54 dated 28.05.2015 taken in the 327th of the Executive Council of the DU (Annexure-12) and a writ in the nature of Mandamus directing the respondents not to give effect to the impugned notifications dated 05.10.2015 and 09.11,2015 of the DU, whereby the payment of pensionary benefits as required under Section 30 A of the Dibrugarh University Act, 1965, as well as the payment of the interim 1/3rd pension w.e.f. the month of November, 2015, had been ceased/suspended (Annexure-10 and 11) and also not to give effect to the Resolution No. 54 dated 28.09.2015, taken in the 327th of the Executive Council of the Dibrugarh University (Annexure-12) and a further writ in the nature of Mandamus, directing the respondent authorities to pay the full monthly pensionary benefit to the retired employees of the DU and also directing the respondent authorities to pay the arrear pensionary dues w.e.f. April, 2013, including the balance 2/3rd amount of the pensionary dues from April, 2013 to November, 2015, for which only 1/3rd pensionary benefits had been paid, with an interest of at least 12% per annum.

14. The respondent Nos. 1, 2 and 3, in their affidavit-in-opposition, have admitted that the DU has received Rs. 2,00,00,000/- (Rupees Two Crores) only under the head of pensionary benefit from the Government of Assam. However, the said amount falls far short of the funds required for making payment of pensionary benefit and as a result the University was forced to make withdrawals/adjustment from the general fund of the University. It is stated that upto the month of November, 2015, the University had disbursed Rs. 6,19,91,541/- (Rupees Six Crores Nineteen Lakhs Ninety One Thousand Five Hundred and Forty One) only, the excess

amount of Rs. 4.20 Crores approx. being borne from the DU (Dibrugarh University) General Fund. Denying the allegation that the University has not signed the MoU, it is submitted that pursuant to the amendment of the Dibrugarh University Act, 1965, the Director of Higher Education vide his letter dated 21.02.2015, directed the University to initiate necessary action for signing the MoU. As such, the MoU was prepared by the DU and the same after being duly signed by the Registrar, DU, was submitted to the Commissioner & Secretary, Higher Education Department, Government of Assam, with the forwarding letter dated 06.06.2015. Further, it contends that due to non-release of pensionary benefits by the Government of Assam, the DU had to stop the one-third pension that was being paid by the University to its past employees. Due to severe fund shortage resulting from non-receipt of any further support from the Govt. has led to a situation when it is no more possible for the University to bear the burden of pensionary benefit on its own shoulders alone. It is crystal clear from the above statements that DU, till date, has released approximately, Rs. 4,20,00,000/- (Rupees Four Crores Twenty Lakhs) more than it had received from the State Respondents from its own resources diverting from other heads. It goes without saying that DU is dependent on the Govt. of Assam for funds for its sustenance and it is now more feasible on the part of the University Administration to release any more funds under the head of pensionary benefits. Regarding the fund requirement of the DU for disbursing pension, the following table has been furnished:

**CONSOLIDATED STATEMENT OF PENSION PAYABLE TO THE RETIRED/RETIRING
EMPLOYEES (INCLUDING FAMILY PENSION) OF DIBRUGARH UNIVERSITY FOR
THE FINANCIAL YEARS 2013-14, 2014-15, 2015-16 AND 2016-17**

Sl. No.	Financial Year	Total no. of pensioners	Total fund requirement (in Rs.)	Fund received (in Rs.)	Amount disbursed (1/3 amount) (In Rs.)
1.	2013-14	398	9,10,42,948/ -	-----	1,00,23,489/-
2.	2014-15	416	10,25,01,92 4/-	-----	3,06,38,099/-
3.	2015-16	457	12,00,26,67 6/-	200,00,000/ -	2,13,29,953/-
Total-	Upto 2015-16		31,35,71,548	200,00,000/ -	6,19,91,541/-
	2016-17	494	13,80,32,68 8/-		
Total	Upto 2016-17		45,15,04,23 6/-		

15. The above table indicates the total fund requirement for disbursement of pension is Rs. 31.35 crores approx., whereas the State Govt. has provided Rs. 2 crores only. But in spite of such short supply of funds from the State Govt. the poor fund position, notwithstanding the DU continued to disburse the one-third pension till November 2015, when the solo effort of the University to provide pension had to be stopped. Since total pensionary benefit paid by

the University to the pensioners stood at Rs. 6.20 crores, approx. the entire excess amount of Rs. 4.20 crores was borne by the University alone from its general fund. As per the Demands for Grants of Department of Education, Art and Culture and Sports for the year 2014-15, under the "Head of Account 3006 Dibrugarh University" there is mention of 31 Grants-in-aid (including Rs. 200.00 Lakhs for pensioner liabilities). But thereafter, in the year 2015-2016, there was no such grant under the "Head of Account 3006 Dibrugarh University" as per the Demands for grants of Department of Education, Art and Culture and Sports. Dibrugarh University Administration has been constantly urging the State Government for the release of the pension fund and had visited the Dispur Secretariat a number of times and it was learnt that the same is under process of the Government.

The DU has also sent the general fund requirement including the Pension requirement in "L" Form under the head of pensionary benefits, including the year 2016-17, is to the tune of about Rs. 45,00,00,000/- (Rupees Forty Five Crores) only out of which, only Rs. 2,00,00,000/- (Rupees Two Crores) only had been received. Clearly indicating a deficit of about Rs. 43,00,00,000/- (Rupees Forty Three Crores) only. It should not, therefore, be difficult to appreciate that it was near impossible on the part of the DU to bear the full amount of pensionary benefit to the pensioners. DU is dependent on the Govt. of Assam for funds for its sustenance and it was no more feasible on the part of the University Administration to release any more funds under the pensionary benefits without the same being received from the Govt. Hence, the notifications dated 05.10.2015 and 09.11.2015, suffer from no illegality/infirmary.

16. Further, it is submitted that Dibrugarh University Administration has been constantly urging the State Government for the release of the pension fund and had visited the Dispur

Secretariat a number of times and it is stated that it was stalled due to the Assembly Elections, 2016. Apart from personal visits there were a lot of letters too from the DU to the Govt. The following correspondences with the State Govt. being-

- i) DU/ACC/PF/13/1003-1005/0018 dt. 11.11.2013 from the DU to the Director of Higher Education, Kahilipara, Dispur;
- ii) DU/RG/C.01.01/13/9404 dt. 09.12.2013 from DU to the Commissioner & Secretary to the Govt. of Assam;
- iii) DU/ACC/PF/PEN/01/13/0013 dt. 21.01.2014 from the DU to the Director of Higher Education, Kahilipara, Guwahati.
- iv) DU/RG/C.01.01/14/0589 dt. 11.09.2014 from the DU to the Director of Higher Education, Kahilipara, Guwahati.
- v) DU/RG/C.01.03/14/ dt 14.10.2014; DU/ACC/PEN/01/13-14/1149-51 dt. 08.12.2014, from the DU to the Director of Higher Education, Kahilipara, Guwahati.
- vi) DU/RG/C.01.01(B)/15/0054 dt 29.01.2015 from the DU to the Director of Higher Education, Kahilipara, Guwahati.
- vii) DU/ACC/PEN/01/13-14/1251-54 dt. 01.06.2015 from the DU to the Director of Higher Education, Kahilipara, Guwahati.
- viii) DU/FIN/Pension/2015-2016/576-77 dtd. 12.11.2015 from the DU to the Director of Higher Education, Kahilipara, Guwahati;

are clear indication of the sincere efforts made by the DU in pursuing the matter with the Govt. (Copies of Letters enclosed).

17. The respondent No. 5, i.e., the Commissioner and Secretary to the Government of Assam, Education (Higher) Department, Dispur, Assam, in its affidavit, has stated that pursuant to the Dibrugarh University (Amendment) Act, 2013, the Government of Assam in the Education (Higher) Department sanctioned fund amounting to Rs. 200 lacs as Grants-in-aid for pensionary liabilities to DU for the year 2014-2015, vide letter dated 09.02.2015. Thereafter, on 21.02.2015, the Registrar, DU was requested to sign Memorandum of Understanding with the State Government for making budgetary provision for payment of salaries and pensionary dues. The DU submitted a draft MoU to the Government of Assam in the Higher Education Department vide letter dated 06.06.2015. Then the matter was taken up with the Finance (EC-III) Department, but it was returned with some queries. Accordingly, the Registrar, DU submitted the reply to the query made by the Finance (EC-III) Department and the same was endorsed to the Finance (EC-III) Department.

In the meanwhile, the DU vide notification dated 05.10.2015 and 09.11.2015, stopped payment of pension to the retired employees of the DU by citing the reason of fund being not provided by the State Government, which are under challenge in the instant writ petition. Pursuant to the order dated 11.05.2016, passed by this Hon'ble Court directing to resolve the issue of payment of pension to the retired employees of the DU, several meetings were held in presence of the Hon'ble Minister, Education Department, Commissioner & Secretary to the Govt. of Assam, Finance Department, Commissioner & Secretary to the Govt. of Assam, Education (Higher) Department, Vice Chancellor, Dibrugarh University, Registrar, DU, Director of Higher Education, Assam, Director of Pension, Assam, DU Teachers' Association, DU Officers' Association, DU Employees Union and representatives of DU Pensioners' Association. In such meeting, decision has been taken regarding payment of pension to the retired

employees of the DU. As regards employees retired on or after 01.04.2013, it was noticed that they had drawn their CPF amount.

It is submitted that in order to give full pension to the retired employees, it is mandatory to return back the CPF amount paid to them along with the interest thereon. However, such CPF amount had been withdrawn far back and the possibility of returning the said amount by the retired employees has been ruled out in the meeting held by the Hon'ble Minister, Finance Department with Vice Chancellor of the DU and other association, namely, DU Teachers' Association, DU Officers' Association, DU Employees' Union on 20.04.2017. Since huge CPF amount cannot be refunded by the retired employees, the Department was advised to formulate a proposal of payment of monthly gratuity as decided in the meeting dated 20.04.2017. Thereafter, the Government of Assam in the Higher Education Department has decided to release the gratuity amount to the retired/expired teaching and non-teaching staff of the DU. Such benefit of gratuity will be increased whenever general revision of pay and other benefit occurs. In view of the decision of the payment of monthly gratuity to the retired/expired employees of the DU, the Government of Assam has classified into 7 slabs for payment of gratuity amount in respect of 422 numbers of retired/expired employees of the DU. On the basis of that, the Directorate has submitted a proposal for supplementary demand for an amount of Rs. 700.00 lacs for requirement as additional funds for release of gratuity amount to the retired/expired employees of the DU. Accordingly, the Govt. of Assam in the Education (Higher) Department has sanctioned an amount of Rs. 6,58,74,000/- as Grants-in-aid, on 03.07.2017, in favour of DU for payment of gratuity to the teaching and non-teaching staff who had retired/expired on or before 02.04.2013. In view of the above letter dated 03.07.2017, the Directorate submitted another proposal seeking finalization of individual rate

in respect of retired/expired teaching and non-teaching staff for payment of their gratuity amounts.

18. Thereafter, the Government of Assam has classified into 7 slabs for payment of gratuity amount in respect of 422 nos. of retired/expired teaching and non-teaching staff vide letter dated 21.07.2017. On receipt of letter dated 21.07.2017, the Directorate has submitted proposal for release of Fixation of Ceiling (FOC) for an amount of Rs. 6,58,74,000/-. In the meantime, the Registrar, DU has submitted another proposal for Rs. 2,60,02,476/- as additional Grants-in-Aid for payment of pensionary benefits to the teaching and non-teaching staff, who had retired/expired after 01.04.2013, vide letter dated 14.08.2017. Accordingly, the Directorate has submitted supplementary demand proposal for additional fund on 19.08.2017. After sanction and release of the aforesaid amount for payment of monthly gratuity, almost all the members of the petitioners' association has accepted the amount. In any case, since the retired/expired employees of the University are unable to return the CPF amount with interest so as to get regular full pension, therefore, their claim made in this writ petition for payment of full pension is not sustainable.

19. The respondent No. 7, in his affidavit-in-opposition has stated that none of the paras in the present writ petition are related to Finance Department. As such, parawise comments in respect of all the paras may be treated as no comments. The views of the Finance Department is as follows:-

“It may be stated that Finance Department released the fund subject to availability of budget provision only. It needs to mention that the requirement of fund of all the Universities is allocated under 31-GIA (Slary) and 32 GIA (Non-Salary). As such, the question of releasing

pension to the retired employees of the Universities by the Finance Department does not arise at all. Therefore, Finance Department is no way related to the matter for payment of any pension to the retired employees of the Universities."

20. In the affidavit-in-reply, the petitioners, have stated that the return of the CPF amount may be made by way of adjustment from arrears due to the petitioners at the time of releasing pension to them. Further, they stated that as per Section 30 (2) of the Amendment, it is the bounden duty of the State Govt. to contribute to the University to meet the recurring charges of the University. The payment of pension does not depend upon the discretion of the State but on the other hand, payment of pension is governed by the Rules and the Government servants coming within the Rules are entitled to claim pension as has been held in the case of *Deokinandan Prasad –Vs- State of Bihar*; reported in **(1971) 2 SCC 330**. Therefore, the State Government cannot distance itself from the statutory duties and deny the payment of pensionary benefits to the petitioners.

21. Further, in their subsequent additional affidavit-in-opposition dated 04.04.2019, the respondent Nos. 1, 2 and 3 have stated that as directed by this Court, the University has provided the statistics of 423 person(s) based on the Notification No. 216, Dispur, Thursday, 30th May, 2013, published in the Assam Gazette (Extraordinary), who would be beneficiary of the regular full pension, provided the CPF and money under the head of 1/3rd pension and monthly gratuity pension as withdrawn by them is returned/refunded. That as per the statistics provided, the total liability of the University with regards to Regular Pension and Family Pension is Rs. 77,28,01,370/- (Seventy Seven Crores Twenty Eight Lakhs One Thousand Three Hundred Seventy only). CPF already withdrawn by the members of the

petitioner association amounts to Rs. 25,27,46,154 (Twenty Five Crores Twenty Seven Lakhs Forth Six Thousand One Hundred Fifty Four). As per the statistical data provided, the members of the petitioner association has also withdrawn Rs. 5,94,19,802/- (Five Crores Ninety Four Lakh Nineteen Thousand Eight Hundred Two Only) as 1/3rd pension w.e.f. 01.11.2013 to 31.10.2015. Additionally, the University has also released Monthly Gratuity Pension w.e.f. 01.04.2017 to 28.02.2019, amounting to Rs. 8,73,85,000/- (Eight Crores Seventy Three Lakhs Eighty Five Thousand Only). Therefore, amount that has been already withdrawn by the members of the petitioner association under the heads of CPF +1/3rd Pension + Montly Gratuity Pension equals to Rs. 39,95,50,956/- (Rupees Thirty Nine Crores Ninety Five Lakhs Fifty Thousand Nine Hundred and Fifty Six Only. Therefore, the existing liability of the University with regard to the disbursement of full regular pension is Rs. 37,32,50,414/- (Rupees Thirty Seven Crores Thirty Two Lakhs Fifty Thousand Four Hundred Fourteen Only) i.e., total payable pension liability minus amount already withdrawn (CPF + 1/3rd pension + monthly gratuity pension) as on 28.09.2019.

22. Again, in their second additional affidavit dated 19.02.2021, the respondent Nos. 1, 2 and 3, as regards the MOU between the DU and the Govt. of Assam, have stated that pursuant to the suggestions received from the Director of Higher Education, Assam, vide letter dated 29.04.2016 and the Joint Secretary to the Govt. Of Assam, Higher Education Department, vide letter dated 22.04.2016 for making some changes in the draft MOU the Dibrugarh University complied with the same by making the necessary changes and thereafter, communicated the same to the said authorities vide letters dated 09.05.2016. As per para No. 7 of the affidavit filed by the respondent No. 5, the Finance (EC-III) Department

had made certain queries on the draft MOU when the matter was taken up with them and accordingly, the modifications desired by the Finance (EC-III) Department were endorsed by the respondent No. 5 to the Finance (EC-III) Department. The DU has not received any further query, thereafter and, therefore, it can be presumed to be correct in all respects. The DU is ready to sign the MOU as and when the Govt. of Assam approves the same. Since the DU Pension-cum-GPF Rules, 2013 is already in place the requirement of Section 30 (A) (2) will be worked out after the signing of the MOU.

23. As regards the issue of submission of budget for salary and pension by the Dibrugarh University, they had informed the Director of Higher Education, Assam and Joint Secretary to the Govt. of Assam, Higher Education Department, vide Annexures-C and D series, praying for budget for salary and pension for the then year- 2016-17, in L form has been submitted vide letter No. DU/FIN/L-form/17377 dated 18.09.2015. In regard to the issue of the source of finance for providing pension to the retired employees, as per Act, it has been stated that as per Section 30 (2) of the DU Act, 1965, it is the Govt. of Assam, which is to provide fund for meeting the recurring charges of the University. The pension like the salary of the employees being a recurring charge, is therefore, a sacred obligation under the Statute and mandate of the Legislature, which falls within the authority of the State.

24. The contours of the power of the DU for raising funds has been laid down in Section 30 (1) of the Act, which provides a limited window for raising fund from the familiar modes like fees from students and fines mainly. The said provision further states that other incomes like contributions and donations as well as loans and advances from any source shall be deposited in the "The Dibrugarh University Fund" etc.

25. Regarding the issue of payment of monthly gratuity in lieu of pension the DU, it is stated that it has no particular take on and will abide by what is considered as acceptable to all the stakeholders. For the sake of record, it is stated that at present 284 numbers of employees have availed of monthly gratuity in lieu of pension.

26. The right to avail the pension by the employees of the Dibrugarh University was introduced by inserting Section 30 A of the Dibrugarh University Act, 1955, by way of amendment in 2013 and it is provided that the employees appointed prior to 01.02.2005 and retired prior to 01.04.2013 will be entitled to pensionary benefits. The instant writ petitioners were stated to have been appointed prior to 01.02.2005 and retired on 01.04.2013. From the matters on record, it reflects that after such amendment, granting of pensionary benefit, the Govt. of Assam has also made budgetary provision for payment of pension to Dibrugarh University employees, allocating Rs. 2,00,00,000/- (Rupees Two Crores) for financial years 2014-15. Pursuant to which, the Dibrugarh University, by resolving the matter in the Executive Council and adopting Dibrugarh University Pension Rules, 2013 and Dibrugarh University Provident Fund Rules, 2013, released a partial amount (1/3rd) of monthly pension, due to the retired employees for certain period, i.e., November, 2013 to March, 2014, but subsequently, the Executive Council resolved to stop such granting of pensionary benefits due to the fund constraint by issuing the notifications dated 05.10.2015 and 09.11.2015, which has now been impugned in the present writ petitions.

27. Mr K N Choudhury, learned Senior Counsel, initiating the arguments, on behalf of the petitioners, submitted in vehemence that by virtue of the provision of granting pension in the Act itself, present petitioners, being the retired employees accrued a legal right to get their

regular pension and the same cannot be frustrated by way of an administrative order as has been issued by the University concerned. It has been urged that if there is any conflict between notification and the legislation, the latter would prevail.

28. Referring to the relevant impugned notifications, it has been urged that such notification curbing the statutory right of the petitioners, cannot prevail over the statutory right conferred under Section 30 A of the Amendment Act. To bolster his argument, Mr Choudhury has placed reliance on certain decisions of the Hon'ble Apex Court, discussed below:-

- 1) In (1971) 2 SCC 330; *Deokinandan Prasad –Vs- State of Bihar*; it has been held that right to pension is a property and withholding the same, the fundamental rights guaranteed under Article 19 of the Constitution of India is effected and a mere executive order of the State has no force of law to withhold the same.
- 2) In 1992 Suppl. (1) SCC 664; *All India Reserve Bank Retired Officers' Association & Ors. –Vs- Union of India*, it has been held that the concept of pension is now well known and has been classified by this Court time and again. It is not a charity or a bounty nor it is gratuitous payment, solely dependent on the whims or sweet will of the employer. It is earned for rendering long service and it is often described as deferred portion of compensation for past service.
- 3) Similar view was reiterated in (2013) 12 SCC 210; *State of Jharkand & Others –Vs- Jitendra Kr. Srivastava & Ors.* [as held in *Deokinandan (supra)*]. Further it holds that executing instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of Article 300 A of the Constitution of India. On

the basis of a circular, which is not having the force of law, one cannot withhold even a part of pension or gratuity.

It is also held that the Hon'ble Supreme Court recognized that even after the repeal of Articles 19 (1) (7) and Articles 31 (1) of the Constitution of India (44th Amendment) Act, the right to property no longer remained a fundamental right, it was still a constitutional right as provided under Article 300 A of the Constitution. A person cannot be deprived of his pension, without authority of law which is a constitutional mandate under Article 300 A of the Constitution.

29. The learned Standing Counsel for the Dibrugarh University, Mr R Goswami, has submitted that only under compelling circumstances, the University issued impugned notifications temporarily suspending the payment of pension, due to non-availability of fund. But, there was, however, no intention to deny the pension of the retired employees, as has been contended by the petitioners. Because of such intention to provide pension, they started to provide 1/3rd of the pension by their limited fund as well as grant-in-aid received from the Government, and as same was again not enough to fulfill the requirement, so, the University has raised the demand for further grant-in-aid from the Govt. and also submitted the "L Form", indicating the requirement under the different heads, including the retired employees. But the same was not responded by the Govt. Apart from that, they have made numerous communications with the Director, Higher Education as well as Secretary to the Government over the aspect, which yield no result. On the other hand, they have also clarified the queries made by the Finance Department through Higher Education Department, as sought for, regarding the clauses of the MOU, but same has not been finalized from their ends.

Further, it has been contended that the University is not at all in a position to disburse the pensionary benefit of huge amount as indicated in its report, out of the limited sanction in the budget. Thus, it has been vehemently contended that University is not at all in fault in entirety of the matter and the concerned authority was apprised all about the status of the Dibrugarh University and the requirement of fund.

30. On the other hand, the learned Standing Counsel for respondent Nos. 5 and 8, Higher Education Department, Mr K Gogoi has submitted that the petitioners are governed by the Contributory Provident Fund (CPF) scheme and they had received the benefit of CPF. In case of an employee governed by the CPF Scheme his relation with the employer comes to an end on his receipt of CPF amount. Although they are not entitled for monthly gratuity the Government of Assam in the Higher Education Department has decided to release the gratuity amount to the retired/expired teaching and non-teaching staff of the Dibrugarh University. Accordingly, they have received the monthly gratuity. Since the retired/expired employee of the University are unable to return the CPF amount with interest so as to get regular pension therefore their claim made in this writ petition for payment of full pension is not sustainable unless the petitioners return the CPF amount first they are not entitled for pension. CPF is a substitute of pension.

Further, it contends that, till today, the authority of Dibrugarh University has not taken any policy decision to regulate the issue regarding implementation of pension and family pension to the employees as per Section 30 A (2) of the Dibrugarh University Amendment Act, 2013, nor MOU is signed by the Dibrugarh University with the State Government for making budget proposal under all heads of account, which is a mandatory requirement for the purpose of granting pension. As per Rule 4 of the Contributory Provident Fund Rules,

1962, the CPF Rules are applicable to every non-pensionable servant of the Government belonging to any of the services. Petitioners originally belong to non-pensionable servant. Now, if they want to come under the pensionable service under the provisions of the Dibrugarh University Amendment Act, 2013, they have to return the CPF amount first.

31. Further, contending that the rules governing the Provident Fund and its contribution are entirely different from rules governing pension and the legal position is that the right of each individual PF retiree finally crystallizes on his retirement, whereafter no continuing obligation remains, the learned Standing Counsel has relied upon the decision rendered in the case of *Krishena Kumar –Vs- Union of India & Others;* (1990) 4 SCC 207.

32. The Constitution Bench of Supreme Court in *Krishena Kumar (supra)* distinguished the status of Provident Fund retirees from the pension retirees. It was held that the Government's obligation towards an employee under CPF Scheme to give matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallised. Thereafter, no statutory obligation continues. As regards Pension Scheme, the Government's obligation does not begin until the employee retires, when only it commences and continues till the death of the employee. Thus, on the retirement of an employee, the Government's legal obligation under the Provident Fund Account ends while under the Pension Scheme it begins.

33. Mr Gogoi, learned Standing Counsel, Higher Education Department, further submitting that pension scheme and PF Scheme being structurally different, those belonging to the latter scheme cannot claim to come over to the former scheme as of right on the plea that the cut-off date fixed under the scheme violated Article 18 of the Constitution, has relied upon the

decision in *All India Reserve Bank Retired Officers –Vs- Union of India*; 1992 Supp (1)

Supreme Court Cases 664. Relevant paragraph of the case is quoted hereinbelow:-

“9. The scheme introduced by the Regulations is a totally new one. It was not in existence prior to its introduction with effect from November 1, 1990. The employees of the Reserve Bank who had retired prior to that date were admittedly governed by the CPF scheme. They had received the benefit of employer's contribution under that scheme and on superannuation the amount to their account was disbursed to them and they had put it to use also. There can, therefore, be no doubt that the retiral benefits admissible to them under the Rules of the Bank had been paid to them. That was the social security plan available to them at the date of their retirement. The Bank employees were, however, clamouring for a pension scheme, firstly on a restricted basis as a third retiral benefit and later in lieu of the CPF scheme. The Central Government had not approved of a pension scheme, as a third retiral benefit. After that proposal was spurned it appears that the employees of the Bank demanded a pension scheme on the pattern of the scheme available to Central Government employees in lieu of the CPF Scheme. This was approved by the Central Government and consequently it was introduced with effect from November 1, 1990 under the Regulations. There can, therefore, be no doubt that if the CPF retirees were not admitted to this new scheme they could not make any grievance in that behalf. They had no right to claim coverage under the new pension scheme since they had already retired and had collected their retiral benefits from the employer. But the moot question is whether it was open to the employer to grant the benefit of the pension scheme to one group of CPF retirees who had retired from Bank service on or after January 1, 1986 and deny the same to all those who had retired on or before December 31, 1985. Is this division of CPF retirees discriminatory and violative of Article 14 of the Constitution?

12. Lastly, the justification for fixing the cut-off date as January 1, 1986 is that the newly introduced pension scheme is modelled on the lines of a similar scheme applicable to Central Government employees. The proposal to have a scheme similar to the one applicable to Central Government employees in lieu of the existing CPF scheme was mooted by the in-service Bank employees sometime in 1986 and on the

Central Government according sanction, it was brought into effect from November 1, 1990. That is why it was made applicable to those who retired in the meantime on or after January 1, 1986. The underlying reason is to operate the scheme on the pattern of the scheme governing Central Government employees and to extend the benefit to those Bank employees who had demanded the same.

13. For the above reason we do not find any substance in the allegation that the cut-off date had been arbitrarily fixed by the Bank authorities or the Central Government while giving its approval or that it is devoid of rational consideration and is wholly whimsical. In fixing the cut-off date the respondents had not acted mala fide with a view to deprive those who had retired on or before December 31, 1985 of the benefit of the pension scheme but for reasons stated above it was not practicable to extend the benefit to such retirees. The rationale for fixing the cut-off date as January 1, 1986 was the same as in the case of Central Government employees based on the recommendation of the Fourth Central Pay Commission.

34. Further, Mr Gogoi contends that in view of the decision rendered in *Hari Ram Gupta (Dead) Through LR Kasturi Devi -Vs- State of UP*, reported in (1998) 6 SCC 328, the petitioners having superannuated prior to the Rules coming into force cannot claim the right to pension under the Rules.

35. In *L.R. Kasturi Devi (supra)*, the question arising for consideration was whether pension could be made available to employees who had already retired from service. In the said case, the appellant therein had retired from service on superannuation in the year 1980. He claimed benefit of pension under the Uttar Pradesh Palika (Centralised) Service Retirement Benefit Rules, 1981. On this aspect, the Supreme Court observed that the appellant having superannuated prior to the Rules coming into force cannot claim the right to pension under

the Rules as the Rules do not have any retrospective operation.

36. Reliance has been placed by the learned Standing Counsel, Higher Education Department in the case of *PEPSU RTC –Vs- Mangal Singh*; (2011) 11 SCC 702, to contend that conceptually pension and CPF are separate and distinct. It has been held that pension is paid periodically as long as petitioner is alive, whereas CPF is paid only once on retirement. On receipt of CPF amount, relationship between employee and employer ceases to exist without leaving any legal right or obligation qua each other. Pension and CPF are separate and distinct. Pension is in a nature of right, which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. The object of providing pensionary benefit is to provide social security to the employee and his family. Relevant paragraphs are reproduced below:-

“34. Pension is a retirement benefit partaking of the character of regular payment to a person in consideration of the past services rendered by him. We hasten to add that although pension is not a bounty but is claimable as a matter of right, yet the right is not absolute or unconditional. The person claiming pension must establish his entitlement to such pension in law. The entitlement might be dependent upon various considerations or conditions. In a given case, the retired employee is entitled to pension or not depend on the provisions and interpretation of Rules and Regulations. The Contributory Provident Fund appears to be simple mechanism where an employee is paid the total amount which he has contributed along with the equal contribution made by the employer ordinarily at the time of retirement of an employee. In short, we quote what was repeatedly said by this Court that “pension is payable periodically as long as the pensioner is alive whereas C.P.F. is paid only once on retirement”. Therefore, conceptually, pension and C.P.F. are separate and distinct.

35. Now we will try to explain the essential distinction between these two retirement benefits that an employee may derive at the time of his retirement from

service. The C.P.F. was introduced with the object of providing social security to the employees working in factories and other establishments, after their retirement. The C.P.F. was instituted as a Compulsorily Contributory Provident Fund by the enactment of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Provident Fund Act"). The employee registered under the Provident Fund Act shall be entitled to claim all benefits available under the C.P.F. Scheme framed under the Act. This CPF Scheme requires opening of the account for the employee by the employer. The Government/employer is under the continuous obligation to deposit equal or matching contribution made by the employee in his account till he retires. Once the employee is retired, then his rights qua Government/employer's contribution into his C.P.F. account finally crystallizes. After retirement, this entire C.P.F. amount is paid to the employee as a retrial benefit. On the receipt of C.P.F. amount, the relationship between employee and employer ceases to exist without leaving any further legal right or obligation qua each other."

37. As regards the entertainment of family pension by the legal heir of deceased employee, the learned counsel for respondent No. 5 has referred the decision of 2001 10 SCC 587; *State of Odissa & Another –Vs- Prativa Ghosh & Another*, wherein, it has been held that once the husband retired with contributory provident fund scheme in force and having got the retiral benefit, ordinarily, he would not be entitled to claim pension or family pension, unless the subsequent notification gives such option and the option is exercised. In the given case, notification of the Government giving benefit of pension was issued subsequent to the death of the employee concerned and as the employee did not exercise option for family pension, granting of family pension was held to be not proper

38. Mr Gogoi has also placed reliance upon the decision of this Court in the case of *Anil Roy Choudhury –Vs- State of Assam* (decided on 27.07.2017) (WPC No. 986/2015).

39. Mr R Borpujari, learned Standing Counsel for the Finance Department, respondent No.

5, adopting the submission of the respondent No. 7, had submitted that the petitioner had to return the CPF amount, which they have already withdrawn at the time of retirement and the University has not yet signed the MoU with the Government and whereas, University has not yet formulated any regulation under Section 30 (2) of the new amended provision of New Pension Scheme and Government cannot be held liable by shifting the burden. Further, it contends that the amount of Rs. 2,00,00,000/- was granted as grant-in-aid for regular pension, but not for retired persons and the claim of the University is not justified. According to the learned counsel for the Finance Department, DU is an autonomous body and Government sometimes sanction grant-in-aid as an interim measure, which does not indicate that the Govt. can be burdened all the time to provide such huge amount of funds. Further, the amount released earlier was under "Non-Planned" head and the University cannot claim fund as a matter of right, as the university has not given proposal under "Planned" head. As regards the impugned notifications, the present writ petition (stopping the pension), the Government was never intimated and now, the Department concerned cannot be saddled with the liability. Prior to shifting the burden to the Government/the Finance Department, Dibrugarh University has to fulfill the requirement of the law. Further, it has been contended that conversion of CPF to GPF cannot be allowed as has been incorporated in Rules, 2013. Accordingly, it is urged that the petitioners who retired prior to 01.04.2013, are not entitled to regular pension. Decision in *DTC Retired Employees' Association -Vs- Delhi Transport Corporation; (2001) 6 SCC 61*, has been relied on.

40. In course of the argument, attention of this Court has been drawn by the learned counsel for the petitioner, to the order dated 29.01.2019, wherein, this Court directed the University to submit the statistics as to the amount received by the members of the

petitioners' association by way of CPF and the amount receivable by them by way of pension and other retirement benefits, w.e.f. the date of attaining the age of superannuation/date of death. Accordingly, such report with all statistics was furnished and brought to the record by way of filing affidavit and as per the report, existing liability of the University towards disbursement of full regular pension is Rs. 37, 32, 50, 414/- (Rupees Thirty Seven Crores Thirty Two Lacs Fifty Thousand Four Hundred Fourteen), as on 28.09.2019, deducting the amount withdrawn under CPF + 1/3rd pension + monthly gratuity pension. It has been urged that as has been agreed by the petitioners' side, regular pension can be calculated by deducting all the amount as indicated in the above report, to calculate the regular pension of the employees concerned.

41. Reference has also been given to the Clause-3.3 of the OM dated 1st May, 1997, issued by Govt. of India, Ministry of Personnel, Public Grievances and Pension, Department of Pensioners' Welfare, which provides that CPF beneficiaries, who have already retired and have also been paid the CPF benefits, will have an option to have their retirement benefits, calculated under the Pension Scheme, provided they refund the Government contribution to the CPF fund and the interest thereon, drawn by them at the time of settlement of CPF Account. By giving a parity to such OM, the CPF adjustment can also be facilitated in the present case.

42. Due consideration has been given to the rival submissions of both the parties and the pleadings between the parties under relevant documents annexed.

43. It is not in dispute that the members of petitioners' association and the legal heirs of the deceased employees of Dibrugarh University were appointed prior to 01.02.2005 and had

retired or expired on or before 01.04.2013. On such cessation of their employment, they have received the amount by way of CPF. The claim for regular pension are structured following the amendment in the Dibrugarh University Act, 1965, whereby the Section 30 A was inserted. The proviso to the said Section describes that those employees of a University, who entered service before 01.02.2005 or had retired or expired before coming into force of the Act w.e.f. 01.04.2013, would be entitled to receive pension/family pension. While inserting the said provision, the Legislature was well aware about the retirement of employees prior to the date of amendment. Nothing is reflected as regards the manner to avail such pension after deduction of the CPF amount. Immediately, after such amendment, the Govt. has also sanctioned Rs. 2,00,00,000/- (Rupees Two Crores) for the budget estimate for the years 2014-15, as grant-in-aid, for pensionary liability under Chief Minister Special Scheme. On the basis of the said sanctioned amount, the University also provided the 1/3rd of the pension, towards regular pension to the respective employees of the petitioners' association and also asked for further grant to facilitate the disbursement of regular pension as there was acute financial constraint to meet the requirement. Simultaneously, Dibrugarh University Pension Rules, 2013 and DU Provident Fund General Provident Fund Rules, 2013, were formulated on 13.05.2013. A MoU was forwarded to the Department of Higher Education, Assam, but same was not signed by the Finance Department and returned with certain queries, which was again met up by the Dibrugarh University. But they did not finalize the MOU, nor any instructions was issued to the Dibrugarh University. It reveals that since filing of the MoU on 06.06.2015, till date, the Departments concerned sit over the matter with sheer silence, which has aggravated the entire matter. Now, the above Departments have blamed the Dibrugarh University for not signing the MOU, whereas, it was incumbent on their part to

finalize the MOU by inserting all necessary terms and conditions, the necessity of the University under specific heads etc. etc, to address the issues.

44. On the next, it is submitted that unless the MoU was finalized, it was difficult on the part of Dibrugarh University to formulate any regulations, in terms of Section 30 (2) of the Act. The Department concerned, being aware of the demand made by the Dibrugarh University was supposed to respond and reply with great promptitude in a pension matter, but same was not addressed in a desired manner. The submission of the Finance as well as Higher Education Department is not maintainable in the given circumstances.

Further, it is to be noted that submission of respondent No. 7 is beyond pleadings as same was not raised in their affidavit. Respondent No. 5, on the other hand, has not confronted any of the documents that have been relied by the respondent Nos. 1 to 3/Dibrugarh University, whereas, it was incumbent upon them to reply to the above documents. State Respondent No. 4 State and respondent No. 6/Commissioner and Secretary to the Govt. of Assam, Pension and Public Grievances Department, did not file any affidavit in rebuttal to the specific pleadings against them by the Dibrugarh University. They deliberately did not make their reply to any of the vital issues, for which any argument beyond the pleadings have no any probative value.

Certain documents, which have been relied by the Dibrugarh University have not been challenged by the Department, which are referred as below:-

- 1) Demand for grant for the years- 2014, 2015 and 2016, vide Annexure-C series.
- 2) Letter dated 11.11.2013 for budget allocation for pension to the employees of the Dibrugarh University with all details of employees, which reads as follows:-

“DU/AC/PF/13/1003-1005/0013

Date-11/11/13

To

*The Director of Higher Education,
Kahilipara, Dispur,
Guwahati- 781014.*

Sub:- Budget for Pension to the Employees of the Dibrugarh University with effect from 01.04.2013 to 28.02.2014.

Sir,

With reference to the subject, we would like to inform you that pension to the employees of the University is due from 01.04.2013, as per the notification No. 216 dt. 30th May 2013 as published in the Assam Gazette (copy enclosed). The estimated amount of fund required for payment of pension is Rs. 9,10,42,948.00 (Nine crores ten lakhs forty two thousand nine hundred forty eight) only, for the period as above (Detail calculations are enclosed in Statements).

You are requested to kindly arrange necessary fund as above for payment of pension to the employees of the University.

Registrar

Dibrugarh University

Dibrugarh.

- 3) Letter dated 09.12.2013, issued to the Commissioner & Secretary, by the Registrar of Dibrugarh University, reads as follows:-

“To

The Commissioner & Secretary to the Govt. of Assam,

*Department of Higher Education,
Dispur, Guwahati- 781 006.*

Sub:- Interim relief against monthly pension due to the retired employees of the University.

Sir,

We would like to invite your kind attention to the recent amendment of the Dibrugarh University Act, 1965, vide Gazette Notification No. 216, dated 30th May, 2013, whereby the retired employees of tis University have become eligible for pension w.e.f. 01.04.2013. The University has accordingly, applied to the Govt. of Assam for providing necessary fund for payment of pension to the retired employees of University w.e.f. 01.04.2013, vide letter No. DU/ACC/PF/13/1003-1005, dated 11.11.2013.

However, in view of the financial hardship faced by the retired employees, the University has decided to release a partial amount of monthly pension due to them w.e.f. November, 2013 to March, 2014, as interim relief subject to post facto adjustment on receipt of fund from the Government of Assam.

This is for favour of your information please.

Yours faithfully,

*Registrar,
Dibrugarh University,
Dibrugarh."*

Above communication addressed to the respondent Nos. 5 and 8, praying for budget allocation for those retired employees/petitioners, herein, w.e.f. 01.04.2013. There was no opposition/denial for receipt of such communications by the Department concerned that no such pensionary benefit can be extended unless CPF is refunded.

Similarly, various other letters dated 04.12.2013, 11.09.2014, 14.10.2014, 29.01.2015, 01.06.2015 and 12.11.2015, were addressed by the Registrar, Dibrugarh University to the

Director of Higher Education Department, praying for budget allocation, indicating the pension/family pension payable to the retired employees. The letter dated 29.01.2015, which is more specific all about is extracted below:-

“Ref: No. DU/RG/C.01.01(B)/15/0054

Date: 29.01.2015

To,

*The Director of Higher Education,
Government of Assam,
Kahilipara,
Guwahati – 781 014.*

Sub:- Pension to the retired employees of Dibrugarh University.

- Ref: 1. Our Letter No. DU/AC/PF/.13/1003-1005/0013 dated 11.11.2013.*
2. Our Letter No. DU/AC/PF/PEN/01/13/0013 dated 21.01.2014.
3. Our Letter No. DU/ACC/PEN/01/13-14/1050-52 dated 25.04.2014.
4. Our Letter No. DU/RG/C.01.03/14/0665 dated 14.10.14.

Sir,

This has a reference to the subject stated above and the references mentioned as desired by you to kindly take note of the following points with regard to the pension matters payable to the retired employees of Dibrugarh University.

- 1. That Dibrugarh University is a State University established under the Dibrugarh University Act, 1965 (as amended upto 2013) by the State Legislative Assembly of Assam.*
- 2. That the University being a State Government University, it is primarily funded by the Government of Assam for all financial aspects relating to salary of the regular employees.*
- 3. That there has been a long standing demand of the Dibrugarh University employee for grant of pension.*
- 4. That the Government of Assam, therefore, effected an amendment to the Dibrugarh University Act in 2013 for grant of pension to its retired employees vide Dibrugarh University (Amendment) Act, 2013.*

5. *That the Dibrugarh University, being an institute of higher education under the Assam Government, the University has no source of fund for paying the pension to its retired employees as stipulated in the Amendment of Dibrugarh University Act notified vide the Government notification.*
6. *That Dibrugarh University, therefore, submitted to the Assam Government requesting to provide an amount of Rs. 19.35 crore and Rs. 12.00 Crore for the period from 01.04.2013 to 28.02.2015 and 01.03.2015 to 28.02.2016 respectively for meeting the expenses for paying the pension to its retired employees.*
7. *That Dibrugarh University has been sanctioned an amount of Rs. 2.00 Crore only in the last budget towards pension of its retired employees.*
8. *That even the sanctioned amount of Rs. 2.00 Crore, which has been found totally inadequate, has not been released as yet.*

In view of the above, we would like to reiterate that the request of the Dibrugarh University for grant of pension benefit to its retired employees is completely justified.

With kind regards,

Yours sincerely,

(M.N.Dutta)

Registrar,

Dibrugarh University,

Dibrugarh."

There is no any reply and response from the respondent/Department at that point of time nor any pleadings before the Court.

45. The respondent Nos. 5, 7 and 8 have relied on certain decisions (referred above), to submit that the petitioners are not entitled to pension, unless the CPF Amount is returned, but it is to be noted that the fact situations are totally different in the aforesaid decisions.

46. In case of *Krishena Kumar (supra)*, retired employees of Railways, who were covered by the CPF fund scheme, after introduction of pension scheme was given option either to retain the Provident Fund benefits or to switch over to the pensionary benefits on condition

that the matching Railway contribution already made to the Provident Fund Account would revert to the Railways on exercise of option. The employees who did not opt for the pension scheme, within time, held to be not entitled in the pension scheme. Now, in the present case, no such condition/option was imposed to disburse pension and pension has been granted to all category of permanent employees of the University. The *ratio decidendi* in *Krishena Kumar (supra)* is not applicable in the present case. Of course, there is no denial that the PF retirees and pension retirees constitute different class. But, however (in the decision referred) at the time of introducing of pension scheme, every Department was provided different conditions towards such withdrawal of pension, but in the present case, no such option/condition was given.

47. Similar is the fact situation in *All India Reserve Bank Retired Officers (supra)*, where the employees of the Reserve Bank of India, prior to introduction of the pension scheme, enjoying superannuation benefits, comprising CPF and Gratuity. Under the Regulation for Pension, new entrant joining on and after November 1, 1990, were automatically governed by the pension scheme; for them CPF Scheme has no existence. Those employees who were in the employment of the bank, prior to November 1, 1990, were given option to switch over to the Pension Scheme, subject to the conditions and option was also given to those employees, who had retired between January 1, 1986 and coming into force of the Regulations, to come over to the Pension Scheme provided they were willing to refund the Employers' Contribution under their CPF Scheme with interest thereon and with further interest @ 6 % p.a. from the date of receipt of Provident Fund Amount, till the date of payment. The Pension Scheme introduced under the Regulations was patterned on the Pension Scheme, governing the Central Government Employees, which was brought into effect from January 1, 1986, on the

recommendation of Central Pay Commission. However, by fixing cut-off date, the bank employees who superannuated on or before December 31, 1985, are denied the benefit of pension scheme. The retired bank employees on or before December 31st, 1985, who were not entitled to opt for pension under the aforesaid Regulations challenged before the Supreme Court, that both groups, namely, those who retired on or before December 31st, 1985 and those who retired between January 1st, 1986 and October 31st, 1990, belong to the same group of CPF retirees and artificial cut-off date under the Regulations offend the Article 14 of the Constitution. Rejecting their contentions, it was held that fixation of cut-off date valid and not arbitrary and it satisfied the test of classification.

48. In *L R Kasturi (supra)*, the employees retired much prior to the introduction of pension scheme, claimed for benefit of pension subsequently (discussed earlier) and the Hon'ble Supreme Court holds that employees were superannuated prior to the Rules, cannot claim the right to pension.

The ratio laid down is not applicable to the case of the present petitioners as the new Pension Scheme is clearly made applicable to all employees without options, who entered their service before 01.02.2005 and retired before 01.04.2013 and the present petitioners are the retired employees of that period.

49. The words in a Statute must be given an ordinary meaning and different interpretation of the same is not sustainable. The Legislature in its wisdom has extended the benefit of pension to the retired employees of the Dibrugarh University and it is not in the domain of Department concerned to resist such legislative intent and the legitimate due of the employees, which will frustrate the very object of the Legislature. Any decision that

petitioners are not entitled to pension, will run contrary to the enactment.

50. As regards the assertion made by the respondent that in view of the inability of the employees to refund the CPF, different Departments of the Government after sitting together, has decided to provide gratuity to such retired employees and in fact, such gratuity has been provided to large number of employees, it is to be considered how far such resolution about granting of gratuity during pendency of the proceeding is maintainable.

51. Payment of Gratuity Act, 1972 is an act to provide for Scheme for payment of Gratuity to employees engaged in factories, mines, oilfields, plantations, port, railway companies, shops or other establishments and for matters connected.

Section 4 of the Act, reads as follows:-

Section: 4 Payment of gratuity.

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

52. In view of the above, only Gratuity can be provided to certain class of employees against the service period is indicated in the Act, but as per the Assam Service Pension Rules, 1969, an employee is entitled for regular pension after completing the qualifying period. Present petitioners covered by the said Assam Pension Rules and have completed the qualifying period, and entitled to pension, as has been provided under the amended

Dibrugarh University Act, and cannot be provided only Gratuity as has been contemplated, as a gratuity can substitute pension.

53. Neither the legitimate claim of the petitioners nor the stand taken by the Dibrugarh University can be discarded in the light of the factual background as well as the pleadings between the parties as discussed above. One has to give liberal interpretation towards the implementation of such benevolent scheme of the Government, which aims at social safety and security of the retired employees and hyper-technical approach would frustrate the aim and object of the Statute.

54. The resistance of the Higher Education Department as well as the Finance Department towards the implementation of the scheme, while the present petitioners are ready to return the CPF by way of adjustment, appears to be not justifiable and beyond rationale. It is, of course the retired employees have already utilized the CPF amount received by them for which they are unable to return the amount in cash, but agreeable to the adjustment of the amount at the time of final settlement. In terms of specific statement, the petitioners are entitled to pension/family pension, not gratuity

55. As per direction of this Court, the Dibrugarh University has already made an exercise, to submit the statistics as to the amount withdrawn of 1/3rd pension, as well as the amount under CPF and also the amount of monthly Gratuity, withdrawn by the petitioners as on 28.09.2019 and furnished the report before this Court. That being so, there will be no difficulty to make such similar exercise to assess the amount of pension/family pension of each of the petitioners by deducting earlier amount of pension, Gratuity as well as the proportionate amount of CPF to be returned. As per Rule 3 (2) of the Pension Rules, 10 %

basic pay of employees' contribution shall be treated as a subscription to the GPF Account.

56. The State respondents should shoulder the liability to honour the wisdom of the legislature, as Dibrugarh University cannot generate such high amount of its own. The State respondents should sign the MOU towards the implementation of such Pension Scheme so as to grant adequate grant-in-aid to the Dibrugarh University to provide the required amount under the proper head for disbursement of pensionary benefits of the retired petitioners as well as regular pensioners.

57. As has been reiterated by the Hon'ble Apex Court, the right to receive pension is a Right to Property and the same is still a constitutional right. In view of the legal proposition and in the given facts and circumstances of the case, it is the considered opinion of the Court that the objection raised by the respondents cannot stand on the way of issuing writ of mandamus to the State to adjudicate the long standing claim of the old/retired persons to redress the grievances as per the mandate of law.

58. Resultantly, the petition stands allowed with the following directions:-

- 1) The impugned notifications dated 05.10.2015 and 09.11.2015, issued by the Dibrugarh University is hereby set aside.
- 2) The respondent authorities are directed to pay the regular monthly pensionary benefits, along with the arrear pensionary dues, to the retired employees of the petitioners' association, w.e.f. April 2013, by deducting the earlier 1/3rd pension (already paid) as well as deducting the amount of Gratuity (already paid), and by adjusting the proportionate Govt. contribution towards the CPF and interest thereon.
- 3) The Govt. will finalize the MOU, already filed by the Dibrugarh University with

appropriate terms and conditions to provide the adequate fund towards payment of such regular pension and the Dibrugarh University will sign the MOU, at the earliest.

4) The Dibrugarh University will prepare the necessary chart by calculating all above adjustments (as has been done earlier), to reflect the entitlement of each individual pensioner, w.e.f. 01.04.2013, till the present, to assess the exact fund requirement as on date (indicating financial year) and on the basis of same, budget estimate will be submitted to the Govt.

5) On receipt of such budget estimate, the Govt. will provide the budget either as a grant-in-aid or in appropriate column, as it deem fit, without any delay. In alternate, in case of extreme fund constraint, the Government is also given liberty to release the first regular pension/family pension (monthly) to all the eligible retired employees of petitioners' association and to release the arrear pension by way of adequate installments.

The above exercise must be completed with outer limit of 5 (five) months from today.

59. Matter stands disposed of accordingly.

JUDGE

Comparing Assistant