



THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
KOHIMA BENCH

WP(C) No. 281/2022

SHRI SHAIREI RALENG
RETIRED REGISTRAR, GAUHATI HIGH COURT, KOHIMA BENCH,
R/O H/NO.208, DAROGAJAN VILLAGE, LANE NO.12,
DIMAPUR, NAGALAND – 797116.

Petitioner.

VERSUS

1. THE STATE OF NAGALAND,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND, NAGALAND, KOHIMA.
2. THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
NAGALAND, FINANCE DEPARTMENT,
ESTABLISHMENT BRANCH (ROP CELL),
NAGALAND, KOHIMA – 797001.
3. THE PRINCIPAL ACCOUNTANT GENERAL (A & E)
NAGALAND, KOHIMA.
4. THE SENIOR ACCOUNTS OFFICER (ROP CELL),
OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL (A & E)
NAGALAND, KOHIMA – 797001.

Respondents.

Advocate for the Petitioner : Mr. N.K. Luikham.

Advocate for the Respondents : Ms. Inaholi, GA, Nagaland,
Mr. N. Mozhui, SC, AG.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of Hearing : 22.03.2024
Date of Judgment : **10.06.2024**

JUDGMENT & ORDER

Heard Mr. N.K. Luikham, learned counsel for the petitioner. Also heard Ms. Inaholi, learned Government Advocate, Nagaland for the state respondents No. 1 and 2, and Mr. N. Mozhui, learned Standing Counsel for the Accountant General, Nagaland and the Senior Accounts Officer (ROP cell), respondents No.3 and 4.

2. This petition, under Article 226 of the Constitution of India, is preferred by Shri Shairei Raleng, retired Registrar, Gauhati High Court, Kohima Bench seeking following relief(s) :-

- (i) To direct the respondent authority/authorities to implement the Revision of pension of Pre-2008 pensioners as per Table-20 of Annexure-III of the ROP Rules, 2010 and Finance Department's O.M. dated 05/05/2017.
- (ii) To direct the respondent authority/ authorities to review and re-fix the pension entitlement of the petitioner to 50%

of the revised basic scale of pay of Rs. 54600/- w.e.f. 01/04/2010 to 31/12/2017.

- (iii) To direct the respondent authority/ authorities to remit the arrears of pension to the petitioner with admissible interest as applicable to outstanding pension amounts w.e.f. 21/12/2017, till payment is made.

3. The background facts, leading to filing of the present petition, are adumbrated herein below:-

"The petitioner is a pensioner. He retired from service on 28/02/2005, as the Registrar, Gauhati High Court, Kohima Bench. At the time of his retirement his last pay was Rs.31,350/- (Rupees Thirty-one Thousand Three Hundred Fifty Only) in the Scale Pay of Rs.16400-500-20900/-. The petitioner is entitled to revised monthly pension of 50% corresponding to the pre-revised pay scale from which the petitioner had retired in terms of the provisions of Rule-19 (1) (a) (e) (v) of the Nagaland Services (Revision of Pay) Rules, 2010 (hereinafter referred to as the ROP Rules-2010 in short), upon enforcement of the Nagaland Services (Revision of Pay) Rules, 2010 to the pensioners of the State of Nagaland, w.e.f. 01.04.2010.

The petitioner, while retiring as the Registrar, Gauhati High Court, Kohima Bench, on 28/02/2005, was drawing salary at the pre-revised Basic Pay of Rs. 20900/- in the Scale

of Pay of Rs. 16400- 500-20900/- in the Fitment Table-20 of Annexure-III of the ROP Rules, 2010 and the O.M. dated 05/05/2017. As per the Fitment Table-20 of Annexure- III, the Basic Pay of Rs. 20900/- is revised to Rs.54600/-. Therefore, the petitioner is entitled to 50% of the revised pension of Rs. 54600/-, that is to say, Rs. 27300/- per month w.e.f. 01/04/2010 to 31/12/2017 and not 50% of the minimum Basic Pay of Rs. 16400/- revised to Rs. 49590/-. Thereafter, the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell), vide Office Memorandum No. FIN/ESTT-2/9/ROP/PEN/2016, Dated 20th December, 2017 modified the O.M. dated 05/05/2017, in view of which the revision of the pension/family pension was given effect from 01/04/2010, i.e. the date of implementation of the ROP Rules, 2010.

Thereafter, the petitioner, having not been paid, the revised monthly pension entitled by him, by the respondent authorities, since 01/04/2010 till 31/12/2017, had submitted several representations on 18/01/2021, 08/03/21, 27/03/21, 13/06/2021, 15/07/21 and 23/08/21 to the Principal Accountant General, Nagaland, Kohima for implementation of O.M. dated 05/05/2017, in respect of Revision of Pension/Family Pension of Pre-2008 pensioners/family pensioners. However, the claim of the petitioner was denied by the Principal Accountant General Office, Nagaland, Kohima vide letter dated 1/10/2021, by stating that the Government of Nagaland has not adopted the decision of the Govt. of

India in respect of the Pensioner/Family Pension of Pre-01.06.2008, of the State of Nagaland. It is also stated that the Office of the Principal Accountant General (A&E), Nagaland is the Pension Authorizing Agency and not the Pension Sanctioning Authority. Thereafter, the petitioner, by a representation dated 02/12/2021, approached the Additional Chief Secretary & Finance Commissioner, Government of Nagaland, Finance Department to review and re-fix the revision of pension and implementation of the O.M. dated 05/05/2017, in accordance with Fitment Tables Annexure-III of the ROP Rules, 2010 in respect of Pre- 2008 Pensioners/Family Pensioners for the period from 01.04.2010 to 31.12.2017.

Then in response to the aforesaid representation of the petitioner, the Commissioner and Secretary, to the Government of Nagaland, Finance Department vide communication dated 02/03/2022 had requested the Principal Accountant General (A&E), Nagaland, Kohima to review and re-fix the pension of the petitioner in accordance with Table-20 of Annexure-III of ROP Rules, 2010. Thereafter, the Sr. Deputy Accountant General (A&E), Nagaland, Kohima vide letter dated 09/06/2022, communicated to the Commissioner and Secretary to the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell) that the revised pension of petitioner for an amount of Rs. 24795/- has been authorized w.e.f. 01.06.2013. However, by the aforesaid letter clarification was sought from the Finance

Department (ROP Cell) to provide illustrations as to how the provision of Annexure-III of ROP Rules, 2010 is applicable to pre-2008 pensioners/ family pensioners as indicated in the O.M. NO. FIN/ESTT- 2/9/ROP/PEN/2016, dated 05.05.2017, for settling pending cases. Then in response to the aforesaid letter dated 09/06/2022, of the Sr. Deputy Accountant General, Nagaland, Kohima, the Addl. Secretary to the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell) vide Letter dated 05/09/2022, clarified that the petitioner had retired after reaching the apex basic pay in the pay scale. Therefore, the pension of the petitioner on implementation of ROP Rules, 2010 should be fixed with reference to the corresponding pay and not with reference to the minimum of pay.

Inspite of the aforesaid direction of the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell), Nagaland, Kohima, communicated vide letter dated 02/03/2022, and dated 05/09/2022, to the Principal Accountant General, (A&E), Nagaland, Kohima, for fixation of the pension of the petitioner, with reference to the corresponding apex basic pay, in the pay scale from which the petitioner had retired, and not with reference to the minimum of the pay scale, no action, what so ever, was taken for implementation of the aforesaid direction by the Principal Accountant General, (A&E), Nagaland, Kohima. Thereafter, the petitioner had issued a Legal Notice dated 14/10/2022, to the Principal Accountant General, (A&E),

Nagaland, Kohima to implement the direction of the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell), Nagaland, Kohima communicated vide letter dated 02/03/2022, and dated 05/09/2022. However, no action has been taken to address to the demand of the petitioner by the Respondent No. 3, despite, clear direction of the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell) vide letter dated 02/03/2022 and letter dated 05/09/2022, to review and re-fix the pension of the petitioner as per Revision of pension of pre-2008 pensioners on implementation of Table-20 of Annexure-III of the ROP Rules, 2010 and Finance Department O.M. of even Number dated 05/05/2017, the benefits of the said Revision of pension of pre-2008 pensioners and entitled by the petitioner has not been implemented. It is the pleaded case of the petitioner that he had retired from service after drawing the apex basic scale of pay of Rs. 20900/- corresponding to Rs. 54600/- in the revised scale of pay, as per Table-20 of Annexure-III of the ROP Rules, 2010, he is entitled to 50% of the revised scale of pay of Rs. 54600/-. And as such, grave injustice has been suffered by him, in as much as, the Principal Accountant General, (A&E), Nagaland, Kohima has failed to act upon the direction of the Finance Department for implementation of Table -20 of Annexure-III of the ROP Rules, 2010 and Finance Department O.M. of even Number dated 05/05/2017.

Being highly aggrieved, the petitioner is before this court with the prayers mentioned herein above.”

4. The respondent No. 1 and 2 have filed their affidavit-in-opposition stating that the Table-20 of Annexure -III to the Nagaland Services (ROP) Rules, 2010 (herein referred to as ROP Rules, 2010) is applicable for fixation of pay in respect of those employees who were in Service as on 01.06.2008. And as the petitioner retired w.e.f 28.02.2005, therefore, the above parameters cannot be extended to the petitioner. It is also stated that the case of the petitioner was re-examined by the Finance Department, and states that Table-20 of Annexure-III relates to fixation of pay notionally with effect from 01.06.2008 in respect of serving employees. The petitioner retired in February 2005 and hence he is entitled to only fixation of pension at 50% of the minimum of pay in the pay band and grade pay with reference to Table-20 of Annexure-III under ROP Rules, 2010. Accordingly, the matter was clarified to the Principal A G (A&E), Nagaland vide Finance department's letter No. FIN/ESTT-2/9/ROP/PEN/2016 dated 21 February, 2023. It is also stated that no legally enforceable right of the petitioner has been violated and therefore, it is contended to dismiss the petition.

5. The respondent No. 3 and 4 also filed their affidavit-in-opposition stating that the last pay drawn by the petitioner, on superannuation, i.e., on 28.02.2005, was Rs. 20,900/- in the scale of pay Rs. 16400-500- 20900/- VI ROP and not as claimed by the petitioner. It is also stated that the Nagaland Services (Revision of pay) Rules, 2010

(hereinafter referred to as the Rules of 2010) came into force on the forenoon of 1st June 2008, i.e., much after the petitioner had retired from service on 28.02.2005, and as such, the claim of the petitioner that Rules of 2010 are applicable to him is misconceived. It is also stated that the Fitment Table-20 of Annexure III of the Rules of 2010, is applicable for fixation of pay in respect of employees who were in service as on 01.06.2008. It is not applicable to pre 01.06.2008, Nagaland Government Pensioners/Family Pensioners. As stated above, since the petitioner had retired w.e.f., 28.02.2005 on superannuation the Rules of 2010 is not applicable to him. It is also stated that as per the Office Memorandum dated 05.05.2017, the Office of the Principal Accountant General issued revised Pension/Family Pension Authority to the petitioner vide Office Authority No. Pen/Rev/Rop'2010/2017-18/196, dated 13.11.2017 to pay revised pension w.e.f., 01.06.2013. Subsequently, as per Office Memorandum dated 20.12.2017, a revised authority was issued by the Office of the Principal Accountant General by Authority No. Pen/Rev/Rop'2010/2017- 18/27, dated 18.04.2018 to pay the revised pension w.e.f., 01.04.2010. It is also stated that the petitioner was informed that no further pension benefit is admissible to him vide Letter No. Pen/Rev/Rop'2010/2018-19/1721, dated 23.01.2019. It is also stated that pension is sanctioned by the Head of the Department as per the Pension Rules, Notifications, Office Memorandums and Orders of the concerned State Government, and it is the duty of the Accountant General Office to scrutinize the Orders issued by the State Government and to point out discrepancies, irregularities and other provision of the State Government that such Orders do not contradict existing policies and guidelines. It is further

stated that on receipt of the letter, dated 02.03.2022, from the Government of Nagaland, the Office of the Accountant General, by Letter dated 09.06.2022, pointed out the discrepancies noticed in the above Letter, stating that the Rules of 2010 is applicable to Government Servant, who retires on 01.06.2008, and not applicable to pre-2008 Pensioners/Family Pensioners. It is also stated that a letter No. PEN/REV/ROP'2010/2022-23, dated 08.12.2022, was written to the Additional Chief Secretary and Finance Commissioner seeking further clarification as to how the provision of Annexure III of the Rules of 2010, as indicated in the Office Memorandum, dated 05.05.2017, is applicable to Pre-2008 Pensioners/Family Pensioners. Further, it was indicated/mentioned in the said Letter, that if pension is revised as claimed by the petitioner, contained in Office Memorandum, dated 05.05.2017; it will be applicable to all the Nagaland State Pensioners which will have a huge financial burden on the State Government for payment of pension and arrear pension. It is further stated that the claim of the petitioner to fix his pay in the apex basic pay of Rs. 20900/- corresponding to Rs.54600/- in the revised scale of pay as per Table 20 of the ROP, Rules of 2010 is not as per provisions of the ROP 2010. It is further stated that as per clarification received from Additional Chief Secretary and Finance Commissioner, Government of Nagaland by Letter No. Fin/Estt-2/9/ROP/PEN/2016 dated 21.02.2023, the revised pension issued earlier by Office Authority dated 18.04.2018, to pay the revised pension, w.e.f., 01.04.2010, Rs.24795/- is in accordance with extant order with Finance Department Office Memorandum dated 20.12.2017, and no further pension benefits is admissible to the petitioner.

6. The petitioner had submitted his reply, to the affidavit-in-opposition of respondent No.1 and 2, reaffirming and reiterating the averments made in the writ petition. He denied that Table-20 of Annexure-III to the Nagaland Services (ROP) Rules, 2010 is not applicable for fixation of pay in respect of those employees who were in Service as on 01.06.2008, as the petitioner retired w.e.f. 28.02.2005, and therefore, the above parameters cannot be extended to the petitioner. It is pointed out that as per the provisions of Rule 19 of the Nagaland Services (ROP) Rules, 2010 and Office Memorandum dated 05/05/2017 and Office Memorandum dated 20/12/2017, the said Nagaland Services (ROP) Rules, 2010 and Table-20 of Annexure-III has been implemented as Revision of Pension/ Family Pension to Pre-2008 Pensioners/Family Pensioners. And as such he is entitled to the Revised Pension in terms of Table-20 of Annexure-III of the ROP Rules, 2010.

7. The petitioner had also submitted his reply, to the affidavit-in-opposition of respondent No.3 and 4 reaffirming and reiterating the averments made in the writ petition. It is stated that the petitioner had retired on 28.02.2005, in the pre- revised Scale of Pay of Rs. 16400-500-20900/- which was revised to the Revised Scale/Pay Band PB-4 Rs. 37400-67000/- and Grade Pay of Rs. 9900/- by the Nagaland Services (Revision of Pay) Rules, 2010 (VI Pay Commission). It is further stated that the petitioner is entitled to the Revised monthly pension of 50% corresponding to the pre-revised pay scale from which

the petitioner had retired in terms of the provisions of Sub-Rule-(1) (e) (v) of Rule-19 of the Nagaland Services (Revision of Pay) Rules, 2010.

8. Mr. N.K. Luikham, learned counsel for the petitioner, submits that the petitioner had retired from service on 28/02/2005, as the Registrar, Gauhati High Court, Kohima Bench and at the time of his retirement, his last pay was Rs.31,350/- (Rupees Thirty-one Thousand Three Hundred Fifty Only) in the Scale Pay of Rs.16400-500-20900/-. Mr. Luikham, further submits that the petitioner is entitled to revised monthly pension of 50% corresponding to the pre-revised pay scale from which the petitioner had retired in terms of the provisions of Rule-19 (1) (a) (e) (v) of the Nagaland Services ROP Rules 2010, upon enforcement of the Nagaland Services (Revision of Pay) Rules, 2010 to the pensioners of the State of Nagaland, w.e.f. 01.04.2010. Mr. Luikham, further submits that as per Table-20 of Annexure-III of the ROP Rules, 2010 and Finance Department letter dated 05/05/2017, he is entitled to pension @ 50% of the revised basic scale of pay of Rs. 54600/- w.e.f. 01/04/2010 to 31/12/2017. But, the respondent authorities, since 01/04/2010 till 31/12/2017, inspite of submission of several representations dated 18/01/2021, 8/3/21, 27/3/21, 13/6/2021, 15/7/21 and 23/8/21, to the Principal Accountant General, Nagaland, Kohima for implementation of O.M. dated 05/05/2017, in respect of Revision of Pension/Family Pension of Pre-2008 pensioners/family pensioners, the claim of the petitioner was denied by the Principal Accountant General Office, Nagaland, Kohima vide letter dated 1/10/2021, by stating that the Government of Nagaland has not adopted the decision of the Govt. of India, in respect of the

Pensioner/Family Pension of Pre-01-06-2008, of the State of Nagaland and also by stating that the Office of the Principal Accountant General (A&E), Nagaland is the Pension Authorizing Agency and not the Pension Sanctioning Authority. Thereafter, the petitioner, had filed another representation dated 02/12/2021, to the Additional Chief Secretary & Finance Commissioner, Government of Nagaland, Finance Department to review and re-fix the revision of pension and implementation of the O.M. dated 05/05/2017, in accordance with Fitment Tables Annexure-III of the ROP Rules, 2010 in respect of Pre-2008 Pensioners/Family Pensioners for the period from 01.04.2010 to 31.12.2017. And in response to the aforesaid representation, the Commissioner and Secretary, to the Government of Nagaland, Finance Department vide communication dated 02/03/2022, requested the Principal Accountant General (A&E), Nagaland, Kohima to review and re-fix the pension of the petitioner in accordance with Table-20 of Annexure-III of ROP Rules, 2010. Mr. Luikham, further submits that thereafter, the Sr. Deputy Accountant General (A&E), Nagaland, Kohima vide letter dated 09/06/2022, communicated to the Commissioner and Secretary to the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell) that the revised pension of petitioner for an amount of Rs. 24795/- has been authorized w.e.f. 01.06.2013. By the aforesaid letter, clarification was also sought from the Finance Department (ROP Cell) to provide illustrations as to how the provision of Annexure-III of ROP Rules, 2010 is applicable to pre-2008 pensioners/ family pensioners as indicated in the O.M. No. FIN/ESTT- 2/9/ROP/PEN/2016, dated 05.05.2017, for settling pending cases. Then in response to the aforesaid letter dated 09/06/2022, of

the Sr. Deputy Accountant General, Nagaland, the Addl. Secretary to the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell), vide Letter dated 05/09/2022, clarified that the petitioner had retired after reaching the apex basic pay in the pay scale. Therefore, the pension of the petitioner, on implementation of ROP Rules, 2010 should be fixed with reference to the corresponding pay and not with reference to the minimum of pay. Mr. Luikham further submits that inspite of the aforesaid direction of the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell), communicated vide letter dated 02/03/2022, and dated 05/09/2022, to the Principal Accountant General, (A&E), Nagaland, Kohima, for fixation of the pension of the petitioner with reference to the corresponding apex basic pay in the pay scale, from which the petitioner had retired and not with reference to the minimum of the pay scale. As no action was taken for implementation of the aforesaid direction by the Principal Accountant General, (A&E), Nagaland, the petitioner had issued a legal notice on 14/10/2022, to the Principal Accountant General, (A&E), but, no action has been taken to address to the demand of the petitioner by the Respondent No. 3. Then vide letter No. PEN/REV/ROP'2010/2022-23 dated 08.12.2022, addressed to the Additional Chief Secretary and Finance Commissioner seeking further clarification, it was indicated that if pension is revised as claimed by the petitioner contained in Office Memorandum dated 05.05.2017; it will be applicable to all the Nagaland State Pensioners which will have a huge financial burden on the State Government for payment of pension and arrear pension. Mr. Luikham further submits that the petitioner is discriminated by the respondents and he has

been denied his rightful entitlement. Referring to several judgments of Hon'ble Supreme Court in **(i) Nisha Priya Bhatia v. Union of India**, reported in **(2020) 13 SCC 56**, **(ii) State of Rajasthan and Others vs. Mahendra Nath Sharma** reported in **(2015) 9 SCC 540** **(iii) D.S. Nakara and Others vs. Union of India** reported in **(1983) 1 SCC 305** **(iv) Sukumaran vs. State of Kerela and Another** reported in **(2020) 8 SCC 106**, Mr. Luikham submits that pension is a right and the payment of it does not depend upon the discretion of the Government, but, is governed by the rules and a government servant coming within those rules, is entitled to claim pension and the grant of pension does not depend upon anyone's discretion. Referring to a decision of Hon'ble Supreme Court in **General manager, Uttaranchal Jal Sansthan vs. Laxmi Devi and others** reported in **(2009) 7 SCC 205**, Mr. Luikham submits that a Circular, being an executive instruction, cannot run contrary to the statutory provision and as such the contention of the respondent No.3 that Table-20 of Annexure-III of Nagaland Services (Revision of Pay) Rules 2010, as indicated in O.M. No. FIN/ESTT-2/09/ROP/PEN/2016, dated 05.05.2017, is not applicable to pre-2008 pensioners/family pensioners cannot be accepted as the said Table-20 of Annexure-III cannot override the constitutional right of the petitioner. Therefore, Mr. Luikham has contended to allow the petition.

9. Whereas, Ms. Inaholi, learned Government Advocate, Nagaland for the state respondent No. 1 and 2, has referred to two Ready Reckoner and submits that the pension of the petitioner is fixed as per the said Ready Reckoner and having not been challenged the same,

the petitioner cannot successfully maintain this petition. Ms. Inaholi, further submits that Annexure-III to Rule 2010 is not applicable to persons who had retired before 01.06.2008. It is therefore, contended to dismiss the petition.

10. On the other hand, Mr. N. Mozhui, learned Standing Counsel for the Accountant General, Nagaland and the Senior Accounts Officer (ROP cell), respondent No.3 and 4, submits that the petitioner has not challenged the two authorities by which the pension of the petitioner was fixed and as the same had not been challenged, this petition is not at all maintainable. Mr. Mozhui further submits that Table-20 of Annexure-III of the ROP Rules 2010 is not applicable to pensioners who had retired prior to 01.06.2008 and as the petitioner had retired in the year 2005, he is not entitled to said benefit. Therefore, it is contended to dismiss the same.

11. In view of the pleadings of the parties, the issue, to be addressed by this court is :-

Whether the petitioner is entitled to revised monthly pension, (as per Table -20 of Annexure -III of the ROP Rules, 2010 and Finance Department O.M. dated 05.05.2017,) @ 50% of the revised basic scale of pay of Rs. 54600/, corresponding to pre-revised pay scale from which the petitioner had retired, in terms of the provision of Sub-Rule 1(e) (v) of Rule 19 of the Nagaland Services (Revision of Pay) Rule 2010 , with effect from 01.04.2010 to 31.12.2017 ?

12. Having heard the submission of learned Advocates of both sides I have gone through the pleadings of the parties and also gone through the case laws referred by Mr. Luikham, learned counsel for the petitioner.

13. Before a discussion is directed into the issue, it would be in the interest of justice to understand what pension is. Hon'ble Supreme Court had the occasion to deal with this aspect in the case of **D.S. Nakara v. Union of India**, reported in **(1983) 1 SCC 305** in paragraph No. 19 and 20 as under:-

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v. State of Bihar* [(1971) 2 SCC 330 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be

necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh*. (1976) 2 SCC 1 :

14. Thus, it is well settled that pension is a right and the payment of it does not depend upon the discretion of the Government. It is governed by the rules. A government servant who comes within those rules is entitled to claim pension. Grant of pension does not depend upon anyone's discretion. Right to receive pension flows to the Government servants because of the rules. However, an order for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority. But, the right to receive pension does not flow to the Government servant from any such order.

15. It is not in dispute that the petitioner had retired from service on 28/02/2005, as the Registrar, Gauhati High Court, Kohima Bench. It is also not in dispute that at the time of his retirement his last pay was Rs.31,350/- (Rupees Thirty-one Thousand Three Hundred Fifty Only) in the Scale Pay of Rs.16400-500-20900/-. It is also not in dispute that he retired after reaching the apex pay scale. Further, it is not in dispute that in term of the provisions of Rule-19 (1) (a) (e) (v) of the Nagaland Services (Revision of Pay) Rules, 2010, he has not been provided with the revised pension.

16. The relevant provisions of Rule-19 of the ROP Rules, 2010 are read as under:

Rule-19- Pension.

(1) Revised Pension/Family Pension:

- (a) Pension to be paid at 50% of the average emoluments/last pay drawn (whichever is more beneficial) without linking to 33 years of qualifying service for grant of full pension, provided the employee concerned has rendered a minimum pensionable service of 20 years.
- (e) The pension/family pension of all existing pensioners/family pensioners (that is, persons go drawing pension/family pension as on 31.05.2008) shall be consolidated as on 01.06.2008.
- (iv) The amount so arrived will be the revised basic pension subject to the provision that the revised pension/family pension in no case, shall be lower than 50%/30% of the sum of the minimum of pay in the Pay Band and the Grade Pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired/died."

17. It also appears that the O.M., dated 05.05.2017, provides for implementation of the decision of the Government of India - Revision of Pension/Family Pension of Pre-2008 Pensioners/Family pensioners,

which is being annexed with the petition as Annexure-'B', which is read as under:-

"GOVERNMENT OF NAGALAND

FINANCE DEPARTMENT

ESTABLISHMENT BRANCH (ROP CELL)

NO. FIN/ESTT-2/9/ROP/PEN/2016 Dated Kohima, the 05th May, 2017

OFFICE MEMORANDUM

Subject: Implementation of the decision of the Government of India-
Revision of Pension/Family Pension of Pre-2008 Pensioners/Family
Pensioners.

Ref:

1. O.M. No. 38/37/08-P&PW(A) dated 28.01.2013.
2. O.M. No. 38/37/08-P&PW(A) dated 13.02.2013.
3. O.M. No. 38/37/08-P&PW(A) dated 30.07.2015.

The undersigned is directed to refer to the subject cited above, and to convey the approval of the Government of Nagaland to adopt the decision of the Government of India in the following manner:

1. The existing provisions under Sub-Rule (1) of Rule-19 of Nagaland Services (ROP) Rules, 2010 is modified as follows:
 - i. The pension/family pension of pre 1.6.2008 pensioners/family pensioners as revised with effect from 1.6.2008 in terms of Sub-Rule (1) of Rule-19 of Nagaland Services (ROP) Rules, 2010 as notified by the Finance Department vide No. FIN/ ROP/VI-PC/1/2008 dated 10.8.2010, as amended from time to time, shall be further stepped up to 50%/30% as the case may be, of the sum of minimum of pay in the Pay Band and the Grade Pay, corresponding to the pre-revised pay scale from which the pensioner had retired as arrived at with reference to the Fitment Tables annexed as Annexure-III to the Nagaland Services (ROP) Rules, 2010

notified vide Finance Department Notification dated 10.8.2010 referred to above.

ii. The effective date for this modification shall be 01.06.2013, there shall be no change in the amount of revised pension/family pension paid during the period 1.6.2008 to 31.05.2013, and, therefore no arrear will be payable on account of these orders for that period.

2. This Office Memorandum is issued with the clearance of the P&AR department vide U.O. No. 42 dated 02.08.2013 and approval of the Cabinet conveyed vide letter No. CAB-2/2013 dated 26.04.2017.

Sd/-

TEMJEN TOY

Additional Chief Secretary & Finance Commissioner

Copy of the O.M. dated 05/05/2017 is annexed herewith as Annexure-B.

18. Thereafter, the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell), had issued another Office Memorandum No. FIN/Estt-2/9/ROP/PEN/2016, Dated 20th December, 2017, (Annexure-'C') modifying the date of implementation of the ROP Rule 2010, in respect of implementation for the revision of pension/family pension with effect from 01.04.2010. In the said O.M., a ready reckoner, indicating minimum pension/family pension of pre 01.06.2008, pensioners/family pensioners for the post carrying corresponding to pay band and grade pay is indicated at Annexure-III. And it also appears that the petitioner is being given the pension in the Scale of Pay of Rs. 16400- 500-20900/- in the Fitment Table-20 of Annexure-III of the ROP Rules, 2010 and the O.M. dated 05/05/2017, as his pre-revised basic pay was Rs. 20900/-.

19. But, the contention of the petitioner is that as per the Fitment Table-20 of Annexure- III, (Annexure-R/1 of the affidavit-in-reply of the petitioner dated 1st of August 2013) the Basic Pay of Rs. 20900/- is revised to Rs.54600/-. And as such the contention of the petitioner is that - he is entitled to 50% of the revised pension of Rs. 54600/-, that is to say, Rs. 27300/- per month w.e.f. 01/04/2010 to 31/12/2017 and not 50% of the minimum Basic Pay of Rs. 16400/- revised to Rs. 49590/-.

20. A conjoint reading of the ROP Rules, 2010 and the O.M. dated 05/05/2017, (Annexure-'B') and O.M. No. FIN/Estt-2/9/ROP/PEN/2016, Dated 20th December, 2017, (Annexure-'C') and the ready reckoner, would indicate that there is substance in the claim so made by the petitioner. As because Rule-19 of the ROP Rules, 2010 (1) (v) provides that the pension/family pension of all existing pensioners/family pensioners (that is, persons who drawing pension/family pension as on 31.05.2008) shall be consolidated as on 01.06.2008, and the amount so arrived at will be the revised basic pension subject to the provision that the revised pension/family pension in no case, shall be lower than 50%/30% of the sum of the minimum of pay in the Pay Band and the Grade Pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired/died. And under this Rule the authority dated 13.11.2017 and 18.04.2018 were issued to the petitioner by the respondent No.3 and 4.

20.1. Whereas, vide O.M. dated 05.05.2017, the aforesaid Rule 19(1) was modified as under:-

- (i) The pension/family pension of pre 1.6.2008 pensioners/family pensioners as revised with effect from 1.6.2008 in terms of Sub-Rule (1) of Rule-19 of Nagaland Services (ROP) Rules, 2010 as notified by the Finance Department vide No. FIN/ ROP/VI-PC/1/2008 dated 10.8.2010, as amended from time to time, shall be further stepped up to 50%/30% as the case may be, of the sum of minimum of pay in the Pay Band and the Grade Pay, corresponding to the pre-revised pay scale from which the pensioner had retired as arrived at with reference to the Fitment Tables annexed as Annexure-III to the Nagaland Services (ROP) Rules, 2010 notified vide Finance Department Notification dated 10.8.2010 referred to above.

20.2. Notably, the O.M. dated 05.05.2017, was issued for implementation of the decision of the Government of India-Revision of Pension/Family Pension of pre-2008 Pensioners/Family Pensioners, adopting the decision of the Government of India in reference to the (i) O.M. No. 38/37/08-P&PW (A) dated 28.01.2013. (ii) O.M. No. 38/37/08-P&PW (A) dated 13.02.2013. (iii) O.M. No. 38/37/08-P&PW (A) dated 30.07.2015. Also there was clearance of the P&AR Department vide U.O. No. 42, dated 02.08.2013, and approval of the Cabinet vide letter No. CAB-2/2013, dated 26.04.2017. The subject of the O.M. is clearly mentioned as under:-

“Implementation of the decision of the Government of India-Revision of Pension/Family Pension of pre-2008 Pensioners/Family Pensioners”

21. The factum of applicability of the O.M. dated 05.05.2017 was not disputed by respondent No. 1 and 2 also and this is apparent from the letter of the Commissioner and Secretary, to the Government of Nagaland, Finance Department vide communication dated 02/03/2022 **(Annexure-G)** by which request was made to the Principal Accountant General (A&E), Nagaland, Kohima to review and re-fix the pension of the petitioner in accordance with Table-20 of Annexure-III of ROP Rules, 2010, and also from the letter, dated 05/09/2022, **(Annexure-I)**.

22. It also appears that on receipt of letter dated 02/03/2022 **(Annexure-G)**, the respondent No.3, vide **Annexure-H**, a letter dated 09/06/2022, sought clarification from the Finance Department (ROP Cell) to provide illustrations as to how the provision of Annexure-III of ROP Rules, 2010 is applicable to pre-2008 pensioners/family pensioners as indicated in the O.M. No. FIN/ESTT- 2/9/ROP/PEN/2016, dated 05.05.2017, for settling pending cases. Then vide letter, dated 05/09/2022, **Annexure-I**, the Addl. Secretary to the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell) had clarified that the petitioner retired after reaching the apex basic pay in the pay scale. Therefore, the pension of the petitioner, on implementation of ROP Rules, 2010 should be fixed with reference to the corresponding pay and not with reference to the minimum of pay.

23. Mention to be made here that these two letters were issued on the basis of representation submitted by the petitioner on 02/12/2021, to the Additional Chief Secretary & Finance Commissioner,

Government of Nagaland, Finance Department to review and re-fix the revision of his pension and implementation of the O.M. dated 05/05/2017, in accordance with Fitment Tables - Annexure-III of the ROP Rules, 2010 in respect of Pre- 2008 Pensioners/Family Pensioners for the period from 01.04.2010 to 31.12.2017.

24. But, inspite of the aforesaid direction of the Government of Nagaland, Finance Department, Establishment Branch (ROP Cell), communicated vide letter dated 09/06/2022, **(Annexure-H)** and dated 05/09/2022 **(Annexure-I)**, to the Principal Accountant General, (A&E), Nagaland, Kohima, for fixation of the pension of the petitioner with reference to the corresponding pay in the pay scale from which the petitioner had retired and not with reference to the minimum of the pay scale, the respondent No. 3 and 4 have carried out the said direction.

25. It also appears from the Annexure-4, the letter dated 08.12.2022, annexed with the affidavit-in-opposition of the respondent No.3, that Table No.-20 of Annexure-III of Nagaland Service (revision of pay) Rules, 2010, exhibits the formula of fixation of pay in respect of pay band of Rs.37,400-Rs.67,000 with GP of Rs. 9,900 and provision of Rule 8 (ii) of ROP Rule 2010, is related to the employees who retired on or after 01.06.2008, not the employees who had retired prior to 01.06.2008, as per respondent No.3. It also appears that vide aforesaid letter, the respondent No.3 also sought for clarification of Annexure III of Nagaland Service (revision of pay) Rule 2010, as indicated in O.M. No. FIN/ESTT-2/9/ROP/PEN/2016, dated 05.05.2017

is applicable to pre-2008 pensioners/family pensioners. It is also stated that if, as per claim of the petitioner, his pension is revised the same will be applicable to all other employees which will have a huge financial burden on the State Government.

26. Further, it appears that the respondent 2, vide **Annexure-A**, a letter dated 21st February, 2023 addressed to the respondent No.3, which is being enclosed with the affidavit-in-opposition, had clarified that the pension of the petitioner, so fixed by respondent No.3, in respect of the petitioner is in accordance with extent order.

27. But, as submitted by Mr. Luikham, the learned counsel for the petitioner, that in the said letter the respondent No.2 had not answered the clarification being sought for by the respondent No.3 in respect of applicability of Annexure-III of Nagaland Service (revision of pay) Rules 2010, as indicated in O.M. No. FIN/ESTT-2/9/ROP/PEN/2016, dated 05.05.2017, in respect of pre-2008 pensioners/family pensioners or not. And only on the consideration of huge financial implication on State Government, in the event of reviewing the pension of the petitioner as claimed by him, as same will be applicable to all other Nagaland State Pensioners, which according to Mr. Luikham is not at all acceptable as on the ground of huge financial implication, the rightful claim of the petitioner, cannot be denied.

28. There appears to be substance in the submission so advanced by Mr. Luikham. Firstly, the respondent No.2 had not answered to the

clarification being sought for by the respondent No.3 and secondly, no reason is assigned as to how the pension of the petitioner, so fixed by the respondent No.3 is in accordance with the extent order, while on earlier two occasions it had directed to re-fix the pension of the petitioner and admittedly, in view of letters dated 02.03.2022, and the letter dated 05.09.2022, the O.M. dated 05.05.2017, is applicable to pre-2008 Pensioners/Family Pensioners. It appears that the respondent No.1 and 2 had departed from the earlier stand on consideration of huge financial burden.

29. It has already been discussed in para No. 14 of this judgment, that pension is a right and the payment of it does not depend upon the discretion of the Government, but is governed by the rules and a government servant coming within those rules is entitled to claim pension and the grant of pension does not depend upon anyone's discretion. This view has been re-affirmed in the case of (i) **Nisha Priya Bhatia** (supra), so referred by Mr. Luikham, wherein Hon'ble Supreme Court has held as under:-

“77. It is cardinal that pension is a valuable statutory right of an employee and is not controlled by the sweet will or pleasure of the Government. In the absence of express exceptions to the same, any provision resulting in denial thereof ought to be subjected to strict judicial scrutiny. This position of law has been succinctly expounded by this Court in *D.S. Nakara v. Union of India* (1983) 1 SCC 305, which reads thus: (SCC p. 320, para 20)

“20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace

of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v. State of Bihar* reported in (1971) 2 SCC 330] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh* [*State of Punjab v. Iqbal Singh*, (1976) 2 SCC 1.”

30. Same proposition of law is also echoed in the other cases in **Mahendra Nath Sharma** (supra); **D.S. Nakara** (supra); and in **Sukumaran** (supra), so referred by Mr. Luikham. That being so the rightful claim of the petitioner cannot be denied on the ground of huge financial implication.

31. Admittedly, respondent No.3 and 4 are not the pension Sanctioning Authority, but a Pension Authorizing Agency. And the same is apparent from its letter, dated 01.10.2021, which is being annexed with the petition as **Annexure-E**, and also from their affidavit-in-opposition. The respondent No. 2, i.e. pension Sanctioning Authority, in its two earlier letters, addressed to respondent No.3, dated 02.03.2022 (**Annexure-H**) and 05.09.2022 (**Annexure-I**) specifically directed the respondent No.3 to fix the pension of the

petitioner, on implementation of ROP Rules, 2010, with reference to the corresponding pay and not with reference to the minimum of the pay scale. Despite, the respondent No.3 had failed to comply with the direction of respondent No.2, on the consideration of huge financial implication on State Government in the event of reviewing the pension of the petitioner as claimed by him, as the same will be applicable to all other Nagaland State Pensioners, and also on confusion about applicability of Annexure III of Nagaland Service (revision of pay) Rule 2010, as indicated in O.M. No. FIN/ESTT-2/9/ROP/PEN/2016, dated 05.05.2017 in respect of pre-2008 pensioners/family pensioners.

32. Ms. Inaholi, the learned Government Advocate for the respondent No.1 and 2, however, advanced a strange argument at the time of hearing. According to Ms. Inaholi since the pension of the petitioner was fixed as per two Ready Reckoners and as the said Ready Reckoners have not been challenged the petitioner cannot maintain this petition. It is also the contention of Mr. Mozhui, the learned counsel for the respondent No.3 and 4 that pension of the petitioner was already granted by two authorities and having not challenged the two authorities, the petitioner cannot successfully maintain this petition. Mr. Mozhui also argued that Annexure III of Nagaland Service (revision of pay) Rule 2010, as indicated in O.M. No. FIN/ESTT-2/9/ROP/PEN/2016, dated 05.05.2017 is applicable only in respect of pre-2008 pensioners/family pensioners.

33. The argument, so advanced by Mr. Mozhui is unsustainable in view of the fact that respondent No.3 and 4 are only Pension

Authorizing Agency. The Pension Sanctioning Authority is respondent No.1 and 2. If the Pension Sanctioning Authority, after consideration of the representation submitted by the petitioner arrived at conclusion that the pension of the petitioner, on implementation of ROP Rules, 2010 should be fixed with reference to the corresponding pay and not with reference to the minimum of the pay scale, the respondent No.3 and 4 being the Pension Authorizing Agency has no business in putting forward another interpretation of the Rule, while in the O.M. dated 05.05.2017, in no undertrained terms indicated the subject as “Implementation of the decision of the Government of India-Revision of Pension/Family Pension of pre-2008 Pensioners/Family Pensioners”, and Mr. Luikham, the learned counsel for the petitioner has rightly pointed this out. It has to abide by the direction issued in the letters dated 02.03.2022 (**Annexure-H**) and 05.09.2022, (**Annexure-I**), of the petition. Instead, the respondent No.3 had authored one letter on 08.12.2022 (**Annexure-4**) of the affidavit-in-opposition to the respondent No.1 and 2 seeking clarification in respect of applicability of the Annexure III of Nagaland Service (revision of pay) Rule 2010, as indicated in O.M. No. FIN/ESTT-2/9/ROP/PEN/2016, dated 05.05.2017, in respect of pre 01.06.2008, pensioners/family pensioners and also reminded the respondent No.1 and 2 about huge financial implication in the event of revising of the pension of the petitioner. And based on which the respondent No.1 and 2 had backtracked from its earlier stand and vide **Annexure-A**, had only stated that the pension of the petitioner, so fixed by respondent No.3, in respect of the petitioner is in accordance with extent order.

34. The clarification in respect of applicability of the Annexure-III of Nagaland Service (revision of pay) Rule 2010, as indicated in O.M. No. FIN/ESTT-2/9/ROP/PEN/2016, dated 05.05.2017, in respect of pre 01.06.2008, pensioners/family pensioners remained unanswered. And thereby, rightful claim of the petitioner is denied, perhaps, due to impending financial implication in the event of revising the pension of the petitioner. But, as held by Hon'ble Supreme Court, in the case of **Mahendra Nath Sharma** (supra), the state cannot take a plea of financial burden to deny the legitimate dues of the petitioner.

35. The subsequent stand of the respondents No. 1, 2 and also the stand of the respondents No. 3, 4 and also the argument so advanced by the counsel for the above respondents are contrary to the decision of a Constitutional bench decision of Hon'ble Supreme Court in **Deokinandan Prasad v. State of Bihar**, reported in **(1971) 2 SCC 330**, wherein it has been held that pension is a right and the payment of it does not depend upon the discretion of the Government, but is governed by the rules. A government servant coming within those rules is entitled to claim pension. Grant of pension does not depend upon anyone's discretion. The right to receive pension flows to the officer by virtue of the rules.

36. The respondents here in this petition by contending that Annexure-III of Nagaland Service (revision of pay) Rule 2010, as indicated in O.M. No. FIN/ESTT-2/9/ROP/PEN/2016, dated 05.05.2017, is not applicable to those pensioners, who had retired prior to 01.06.2008, for the purpose of pension benefits. Thus, the pensioners,

who have formed a class, would its upward revision, permit a homogeneous class to be divided by arbitrarily fixing an eligibility criterion unrelated to purpose of revision of pension. A question was posed about the permissibility of this classification in the case of **D.S. Nakara** (supra) in para No.9 as under:-

9. Is this class of pensioners further divisible for the purpose of “entitlement” and “payment” of pension into those who retired by certain date and those who retired after that date? If date of retirement can be accepted as a valid criterion for classification, on retirement each individual government servant would form a class by himself because the date of retirement of each is correlated to his birth date and on attaining a certain age he had to retire. It is only after the recommendations of the Third Central Pay Commission were accepted by the Government of India that the retirement dates have been specified to be 12 in number being last day of each month in which the birth date of the individual government servant happens to fall. In other words, all government servants who retire correlated to birth date on attaining the age of superannuation in a given month shall not retire on that date but shall retire on the last day of the month. Now, if date of retirement is a valid criterion for classification, those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose. Is it permissible or is it violative of Article 14?

37. Thereafter, the question was answered in para No.65, stating as under:-

“.....by introducing an arbitrary eligibility criterion: “being in service and retiring subsequent to the specified date” for being eligible for the liberalized pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalized pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for

liberalized pension scheme of “being in service on the specified date and retiring subsequent to that date” in impugned memoranda, Exs. P-1 & P-2, violates Article 14 and is unconstitutional and is struck down.”

38. Thereafter, while dealing with the approach, required to be adopted by the court, Hon’ble Supreme Court in the above noted case in para No. 32 has held as under:-

“**32.** But, the approach of court while considering such measure is of paramount importance. Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution which, when achieved, would permit us to claim that we have set up a welfare State. Article 38(1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice — social, economic and political — shall inform all institutions of the national life. In particular the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this Court in *Randhir Singh v. Union of India* [(1982) 1 SCC 618 : 1982 SCC (L&S) 119] . Revealing the scope and content of this facet of equality, Chinnappa Reddy, J. speaking for the Court observed as under:

“Now, thanks to the rising social and political consciousness and the expectations aroused as a consequence, and the forward-looking posture of this Court, the underprivileged also are clamouring for their rights and are seeking the intervention of the court with touching faith and confidence in the court. The Judges of the court have a duty to redeem their constitutional oath and do justice no less to the pavement-dweller than to the guest of the five-star hotel.”

Proceeding further, this Court observed that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that can't be done when they are in service, can that be done during their retirement? Expanding this principle, one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. Article 39(e) requires the State to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations *unsuited to their age or strength*. Article 41 obligates the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in *cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want*. Article 43(3) requires the State to endeavour to secure amongst other things full enjoyment of leisure and social and cultural opportunities.

39. Thereafter, in para No.36 Hon'ble Supreme Court has held that:-

“36. Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life.”

40. Now, advertent to the case in hand, I find that the classification of the pensioners, being attempted to make, on the basis of date of

retirement, and fixing criterion for entitlement of pension, lacks rational principle, which must have nexus to the objects sought to be achieved in the objects underlying the payment of pension which has already been discussed in para No.14, above. There is no rational principle behind granting revised pension only to those who retired subsequent to that date i.e. 01.06.2008, simultaneously denying the same to those who retired prior to that date. If the underlying principle of granting pension is augmenting of social security in old age to government servants then those who, retired earlier cannot be worse off than those who retire later. Thus, the attempt so made to divide the pensioners into two classes, is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. The principle of equal treatment, as guaranteed in Article 14 of the Constitution of India, is thus violated and such a division is not only arbitrary but also unprincipled. Therefore, the classification does not stand the test of Article 14. Reference in this context can be made to the decision of Hon'ble Supreme Court in **D.S. Nakara** (supra). Therefore, the contention of Mr. Mozhui and Ms. Inaholi cannot be acceded to.

41. It may be mentioned here that in the case of **D.S. Nakara** (supra), Hon'ble Supreme Court also held that the pension scheme must receive liberal construction. The relevant paragraph is reproduced herein below:-

“30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see *American Jurisprudence*, 2d, 881).

42. Thus, there are good and substantial reasons to accept the submission of Mr. Luikham, the learned counsel for the petitioner, who has rightly pointed this out at the time of hearing that Annexure-III of the O.M. No. FIN/ESTT-2/9/ROP/PEN/2016, dated 05.05.2017, cannot override the Rule, as submitted by Mr. Luikham, the learned counsel for the petitioner and the ratio, laid down in the case of **General Manager, Uttaranchal Jal Sansthan** (supra), also strengthened his submission. It is to be noted here that in the said case it has been held by the Hon’ble Supreme Court that a Circular being the executive instruction cannot run contrary to the statutory provision.

43. A bare perusal of the Rule-19 of the ROP Rules, 2010 indicates that Revised Pension/Family Pension (e) of all existing pensioners/family pensioners (that is, persons drawing pension/family pension as on 31.05.2008) shall be consolidated as on 01.06.2008, (v) the amount so arrived at will be the revised basic pension subject to the provision that the revised pension/family pension in no case, shall be lower than 50%/30% of the sum of the minimum of pay in the Pay Band and the Grade Pay thereon, **corresponding to the pre-revised pay scale** from which the pensioner had retired/died. Perusal of O.M. dated 05.05.2017 clearly indicates that Rule 19(1) was

modified, as indicated in Para 20.1 and the same is applicable to pre-2008 Pensioners/Family Pensioners.

44. Thus, having tested the arguments, so advanced by Ms. Inaholi and Mr. Mozhui, learned counsel for the respondent No. 1, 2 and 3, 4, respectively, in the light of the principle of law laid down by Hon'ble Supreme Court, in the cases discussed herein above and also on the touchstone of the Article 14 of the Constitution of India, the same, to the considered opinion of this court, has failed to withstand the test of legality. Accordingly, the arguments, so advanced by the learned counsels for the respondents, stands overruled.

45. It is also to be noted here that **Deokinandan Prasad** (supra), Hon'ble Supreme Court has held that the right to get pension is "property" and by withholding the same, the petitioner's fundamental rights guaranteed under Articles 19(1)(f) and 31(1) are affected. These rights safeguard an individual's economic and personal liberties, ensuing that they are not deprived of their rightful entitlements without due process of law.

46. Notably, Article 19(1)(f) was omitted by Constitutional Forty Fourth Amendment, 1978 and now this is no longer a fundamental right. But, it is Constitutional Right in view of Article 300(A) of the Constitution of India, which provides that "*no person shall be deprived of his property save by authority of law.*"

47. Thus, it is well settled that right to receive pension is a Constitutional Right. And drawing premises from the illuminating discourse it can be held that this right to receive pension also encompasses the right of the petitioner to receive the appropriate quantum of pension, as per his entitlement. And this is being denied to the petitioner in the case in hand. That being so, any attempt to withhold or curtail the legitimate entitlement of the petitioner, based solely on administrative directions, would be contrary to the constitutional mandate and, consequently, the same would be unconstitutional.

48. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. By a mandamus of this court the respondent No. 3 and 4 are directed to re-fix the pension entitlement of the petitioner to 50% of the revised basic scale of pay of Rs. 54600/- corresponding to pre-revised pay scale from which the petitioner had retired in terms of the provision of Sub-Rule 1(e) (v) of Rule 19 of the Nagaland Services (Revision of Pay) Rules, 2010, with effect from 01.04.2010 to 31.12.2017, as per Table-20 of Annexure-III of the ROP Rules, 2010 and Finance Department O.M. dated 05/05/2017.

49. The petitioner shall submit a certified copy of this judgment and order, within a week from today, before the respondent authorities. Thereafter, within a period of three months, from the date of production of certified copy of this judgment and order the respondent authorities shall carry out the entire exercise. It is further provided that in the event of failing to carry out the exercise within the

stipulated period, the accrued sum shall carry interest @ 9% per annum, till realization. In awarding the interest, this court derived authority from a decision of Hon'ble Supreme Court in **Mahendra Nath Sharma** (supra).

50. The parties have to bear their own cost.

Sd/- Robin Phukan
JUDGE

Roy