

BEFORE THE GOA STATE INFORMATION COMMISSION
Seventh Floor, Kamat Towers, Patto, Panaji, Goa.

Complainant No. 36/SIC/2014

Shri Surendra M. Volvoikar,
R/o House No. 398/1-A,
Tari Wada, Marcela,
Ponda Goa.

.....**Complainant**

V/s.

1. Assistant Director of Education (Academic),
Assistant Director of Education,
Education Department Porvorim,
Bardez Goa.

2. The Head Master,
Royala High School , Plot No."O",
H.No. 17/4/2, Sailem Bhat, Aradi Band,
Taleigao, Tiswadi Goa.

.....**Opponent**

Smt. Pratima K. Vernekar, State Information Commissioner,

Filed on:13/11/2014
Decided :01/12/2016

O R D E R

1. Brief facts of the case are that Complainant Shri Surendra M. Voivolkar by an application dated 06/06/2014 had sought certain information from Opponent No. 1 PIO Education Department Porvorim Bardez Goa.
2. The said application was transferred by Respondent No. 1 PIO to opponent No. 2 the incharge of Royal High School on 17/6/14. Under section 6(3) of the Right to Information Act 2005.
3. Since the complainant was not satisfied with the information provided to him by opponent No. 1 PIO and since he claimed that the wrong, incomplete and evasive information was furnished to him , he preferred 1st Appeal on 30/07/14 before the director of Education Porvorim being First Appellate Authority (FAA). And after

..2/-

..2..

hearing both the parties the FAA was pleased to pass an order dated 12/09/2014 directing the Opponent No. 1 to furnish the information at point No. 1 and 7 within seven days.

4. Since the order of FAA dated 12/09/2014 was not complied by the PIO and being aggrieved by the action of Opponent the present Complaint came to be filed on 13/11/2014 against both the opponents.
5. After appointment of this Commission the fresh notice were issued to both the parties. During the hearings Complainant opted to remain present only on one occasion and then opted to remain absent.. On behalf of Opponent, No. 1 present PIO Shri Ishwar patil appeared and on behalf of Opponent NO. 2 Advocate Atish Mandrekar appeared.
6. Opponent No. 1 filed his reply on 30/08/16 there by enclosing the information pertaining to point No. 1 and 7 also filed additional reply on 24/10/16 enclosing the information which was earlier furnished to the complaint. On behalf of Opponent No. 2 reply was filed on 30/08/16.
7. On account of the continuous absence of the complainant no copy of reply could be furnished to him.
8. While both the replies of opponent No.1 PIO one of the ground they have contended that then PIO Smt. Vijay Borkar has been retired on supernumeration with effect from 30/11/14 and had enclosed order dated 29/12/14. Vide their reply they had also contended that the whatever information was available on record information was furnished to the complainant further vide their reply dated 30/08/16 they furnished the additional information at point No. 1 and 7 in compliance of the order of the First appellate authority. It is the case of present PIO that information at point 1 and 7 was furnished by him during present hearing, as he found no

..3/-

..3..

documents in the office of academic section of the Directorate of education stating that the order of the FAA dated 12/09/14 to provide the information has been implemented.

9. Vide their reply the opponent No. 2 have contended that the RTI application dated 6/6/14 was never received in their office/school so also she was not a party to a first appeal No. 20/2014, before the first Appellate Authority . It was further contended that she had wrongly joint with the above complaint as a opponent No. 2 only with a intention to cause of harassment and get her penalized by hook or by crook as the complainant has grudge against opponent No. 2 as his wife did not get post of head mistress. It is her further contention that she was never a PIO and order passed by FAA is not against her.
10. After awarding the opportunity to both the parties to file written argument within 15 days , since no written argument came to be filed by both the parties, this commission had no other option to decide the matter based on the records available in the file.
11. Apparently from the record it is evident that there is delay in furnishing the information. The information came to be furnished only after filing of the present complaint by the present PIO. The records shows that then PIO Smt. Vijay Borkar has not complied with the order of First appellate authority

I have perused the material on records. The Point for my determination is:-

- a) Whether the penalties can be imposed on the retired Employee.
12. The PIO appointed by the public Authorities are its employees. In case of default on the part of PIOs, u/s 18 read with section 20 of Right to Information Act, (Act) provides for imposition of penalties on erring PIO and not authorities. Thus the liability for payment of penalty is

..4/-

personal. Such penalty, which is levied in terms of monies, being personal in nature is recoverable from the salaries payable to such employee's payable during their services. Similarly recommendation of disciplinary action can also be issued during the period of service. After the retirement, what is payable to the employee are the pensionary benefits only.

13. In the present case undisputedly the then PIO Smt Vijaya Borkar has retired and is entitled for pension. Pension Act 1871, which governs such pension, at section (11) grants immunity to the pension holder against its attachment in following words.

“ Exemption of pension from attachment: *No Pension granted or continued by Government or Political consideration, or on account of past service or present infirmities or as a compassionate allowance and no money due or to become due on account of any such pension or allowance shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such court”*

14. Section 60 (1) (g) of civil procedure code which is reproduced here under also bars attachment of pensioner following words:

1) The following particulars shall not be liable to such attachments or sale namely:

- (a)
- (b)
- (C)
- (d)
- (e)
- (f)

(g) Stipends and gratuities allowed to pensioners of the Government or of a local authority or any other employer, or payable out of any service family pension fund notified in the gazette, by the central government or the state Government in this behalf and political pension.

..5..

From the reading of above provisions there leaves no doubt on the point of non –attachability of pension , gratuity etc.

Hon'ble Apex Court in Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra in Appeal (Civil) 1874 of 1999 have held

“This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands.....”

- 14 Under the above circumstances this commission is neither empowered to order any deduction from pension of retired person or from gratuity amount for the purpose of imposing penalty or compensation. Thus the proceedings for penalty as against then PIO Smt. Vijay Borkar has become infructuous.

Be that it may be

15. The prayers of the Complainant are in the nature of penal action either by granting of penalty or by way of compensation. The strength of evidence required in such proceedings is laid down by the Hon'ble High Court of Bombay at Goa in **writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others** wherein it is held;

“11. The order of penalty for failure is akin to action under criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate

16. Proving certain facts raised / alleged by complainant always rests on him and under no circumstances burden shifts on the opposite party. In other wards the onus is always on the complainant to prove that information furnished to him was incomplete and incorrect and/or that information was malafidely denied to him.

..6/-

17. By continuous absent of the complainant and failure to produce any evidence, in support of his contention the complainant, thereby has miserably failed to discharge his burden. It appears that he is not interested in the present proceedings, as such not made himself available before this commission to substantiate his case.
18. On the contrary present opponents vide their reply have explained the reasons for the delay caused in furnishing the information in pursuant to the order of First Appellate authority and have shown his banafides in furnishing the information without any further delay.
19. The records also shows that opponent No. 2 was not made an party by the complainant in 1st appeal nor order of First appellate authority is against her. Complainant if was not satisfied with information provided to him by opponant No. 1 PIO after collecting it from opponannat No. 2 and if he was of the opinion that opponant No. 2 has with held some information or has provided deliberately incomplee information he ought to have made opponent No.2 an partly in first appeal and making her partly belately during the present complaint appears to be after thaught there is also no sufficient reason also given by complainant for not making her partly in first appeal nor any avernment are made against opponant No. 2 in the present complaint.

The prayer (1) about direction for furnishing information also cannot be considered as in an complaint in view of the decision of the Apex Court while dealing with similar facts, the Hon'ble Apex Court, in the case of ***Chief Information Commissioner and another v/s State of Manipur and another (civil Appeal No. 10787-10788 of 2011)*** has observed at para (35) thereof as under:

"Therefore, the procedure contemplated under [Section 18](#) and [Section 19](#) of the said Act is substantially different. The nature of the power under [Section 18](#) is supervisory in character

..7..

whereas the procedure under [Section 19](#) is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under [Section 19](#). This Court is, therefore, of the opinion that [Section 7](#) read with [Section 19](#) provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through [Section 18](#) is contrary to the express provision of [Section 19](#) of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876)1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden."

The rationale behind these observation of apex court is contained in para (37) of the said Judgment in following words.

"37. We are of the view that section 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies, one cannot be substitute for the other."

Again at para (42) of the said judgment their lordships have observed.

"42. Apart from that the procedure under [Section 19](#) of the Act, when compared to [Section 18](#), has several safeguards for protecting the interest of the person who has been refused the information he has sought. [Section 19\(5\)](#), in this connection,

..8/-

..8..

may be referred to. [Section 19\(5\)](#) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. There is no such safeguard in [Section 18](#). Apart from that the procedure under [Section 19](#) is a time bound one but no limit is prescribed under [Section 18](#). So out of the two procedures, between [Section 18](#) and [Section 19](#), the one under [Section 19](#) is more beneficial to a person who has been denied access to information.”.

Considering the above facts I do not find any malafides on the part of the opponent No. 1 present PIO and opponant No. 2 head Mistress in not furnishing the information sufficient to attract penalty or compensation as provided u/s 20 of the RTI Act. Hence I am unable to concede to the request of the complainant for invoking penal provisions.

Hence th procedings stands closed.

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Sd/-

(Ms.**Pratima K. Vernekar**)

State Information Commissioner
Goa State Information Commission,
Panaji-Goa