

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Penalty No.40 /2016.
In Complaint No. 47/SCIC/2014

Smt. Sharmila S. Khandeparkar,
H.No. 100, Indira nagar,
Chimbel North-Goa.

.....Complainant.

V/s.

1.The Public Information Officer,
Panchayat Secretary of Chimbel,
Chimbel Panaji Goa

..... Opponents

CORAM :

Smt. Pratima K. Vernekar, State Information Commissioner,

Decided on: 07 /12/2016.

1. The brief facts of the case are that this commission, vide order, dated 12/10/16 partly allowed the appeal and has directed PIO to show cause as to why penal action should not be taken against him for delay in furnishing the information.
2. In pursuant to the show cause notice Respondent No. 1 PIO Shri Ashish Naik appeared on behalf of former PIO, Shri P.R. Pednekar and filed reply. Stating that the Respondent already have furnished information to the appellant and they have requested appellant to inspect outward registered of Village Panchayat Chimbel in order to verify if any notices are issued as she claimed as in RTI application and during her inspection she does not found any notices dispatch during that period. It is also further informed vide their reply that then PIO Shri P.R. Pednekar, Ex-Secretary has already retired from his services and he on many occasion tried to contact him on phone and in personally however he could not be contacted and his house was found closed. And as such he prayed that he present proceedings may be dropped against him.

..2..

3. I have heard both the parties also perused the material on records. The Point for our determination is:-

a) Whether the penalties can be imposed on the retired Employee.

4. 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 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.

6. In the present case undisputedly the then PIO 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”

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

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

- (a)
- (b)

..3/-

(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.*

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

8. 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....."

9. Under the above circumstances this commission is neither empowered to order any deduction from his pension or from gratuity amount for the purpose of imposing penalty or compensation . Thus the proceedings for penalty has become infructuous. Hence the proceedings 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.

Pronounced in the open court.

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa

