

GOA STATE INFORMATION COMMISSION
Kamat Tower, Seventh Floor, Patto Panaji-Goa

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner.

Appeal No. 78/SCIC/2014

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

V/s.

Assistant Director of Education (Academic),
Public Information Officer,
Education Department,
Porvorim Goa.Respondent

Appeal Filed on: 21/07/2014

Disposed on: 23/12/2016

ORDER

1. The Appellant, Shri Surendra Volvoikar by his application dated 10/03/2014 filed under section 6(1) of RTI (Right to Information) Act 2005 sought certified copies of the documents in respect of Royale High School, Sailem Bhat, Aradi Band, Taliegao, Tiswadi-Goa which was runned and managed by “Little Lambs Primary School Society” from Public Information Officer (PIO) O/o Chief Secretary, Govt. of Goa, Porvorim-Goa. The Said application was transferred to Director of Education u/s 6(3) (ii) by PIO, Office of Chief Secretary, Porvorim-Goa on 14/03/2014. The Respondent PIO by his letter dated 27/03/2014 inturn transferred the same to the Head Master Royal High School Taleigao –Tiswadi Goa in terms of section 6(3) of RTI Act 2005.
2. The Appellant did not receive any reply from Respondent PIO within stipulated time and therefore preferred an appeal before FAA against the deemed refusal. The First Appellate Authority (FAA) by an order dated 10/06/2014 allowed the said appeal and directed Respondent PIO to provide the information which is available in the Office and the information which is not available shall be called from Royal High school Taleigao within 30 days from the date of order.
3. The Appellant has landed before this Commission in this Second Appeal on 21/07/2014 under section 19(3) of the Act on the ground that no information was provided to him in compliance with the order of FAA. In the present Appeal the appellant has prayed for directions as against the Respondent PIO for furnishing the information and for invoking Penal provision and for seeking Compensation.

4. Notices were issued to the parties, pursuant to which the appellant appeared only on two occasions and PIO, Shri Ishwar Patil was present for all hearings.
5. The PIO on 01/12/2016 filed the reply to the Appeal stating that he had taken his charge from January 2016 and that then PIO, Mrs. Vijaya Borkar, has been retired on superannuation. He also relied on the information which was provided to the Appellant by forwarding letters dated 02/09/2016, 14/10/2016, 18/10/2016. He has also enclosed the Xerox copy of the Acknowledgement card of postal authorities in support of his contention that due information have been submitted to the Appellant by Registered A.D.
6. On account of continues absent of the Appellant this Commission had no other option to hear the arguments of the Opponent, by giving opportunity to the Appellant to file his written synopsis if any within 15 days. Since no written synopsis are submitted, by the Appellant, that the information furnished to him is not in accordance with his requirement under section 6(1) of the Act, it would be presumed that the said information shall be held to be furnished as per the requirement of the Appellant. Since despite of giving opportunity to the Appellant he did not attend the hearing hence this Commission proceed to dispose the appeals based on the records.
7. Coming to the prayer of Penalty and Compensation as against the PIO for not complying the order of First appellate Authority. It is seen from the records more specifically the letters dated 15/07/2016 and letter dated 26/09/2016 shows that the present Respondent PIO have taken efforts to collect the information from the PIO of the Royal High school and on the receipt of the said information has promptly furnished the said information to the Appellant. Therefore I hold that the present PIO have shown his bonafides in furnishing the information.

Since the present Respondent PIO have submitted that then PIO, Smt. Vijaya Borkar has retired on superannuation, as such the question that arises for my consideration is whether the penalty under section 20(1) and compensation in terms of section 19(8)(b) can be imposed on the retired PIO and whether the same can be enforced.

8. 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.
9. 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*”

10. 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.

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

13. 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 his pension or from gratuity amount for the purpose of imposing penalty or compensation . Thus the proceedings for penalty has become in fructuous. 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.

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