GOA STATE INFORMATION COMMISSION

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

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

Appeal No. 157/2016

Jawaharlal T. Shetye,
H.No. 35/A Ward No. 11,
Near Sateri Temple,
Khorlim Mapusa- Goa. ….Appellant

V/s.

1.The Public Information Officer,
The Head Clerk (Uday Salkar),
Mapusa Municipal Council,
Mapusa-Goa

2.The First Appellate Authority ,
The Chief Officer (Mr.Clen Madeira),
Mapusa Municipal Council,
Mapusa-Goa. ……Respondents

Filed on: 29/08/2016
Decided on: 17/05/2017

ORDER

1. The Appellant, Shri Jawaharlal T. Shetye by an application dated 16/05/2016 filed under section 6(1) of Right To Information Act 2005 sought certain information from Public Information Officer (PIO) of Mapusa Muncipal Council at point no. 1 to 10 as stated therein the said application.

2. The said was responded by Public Information Officer (PIO) on 15/06/2016. Being not satisfied with the reply of the Respondent No. 1 PIO the Appellant preferred first Appeal before Chief Officer of Mapusa Municipal Council on 01/08/2016 being First Appellate Authority (FAA) who is the Respondent No. 2 herein. And the Respondent No. 2 FAA by an Order dated 01/08/2016 directed the Respondent PIO to furnish the correct information to the Appellant within period of 30 days free of cost.

3. Being not satisfied with the order of FAA, the present Appeal came to be filed by the Appellant on 29/08/2016 before this Commission thereby seeking directions to furnish the requested information, for invoking penal provisions as against Respondent No. 1, and for directions for implementation of provisions of section 4(1) (a) and 4(1)(b) of Right To Information Act.

4. In pursuant to the notice the appellant present in person. Respondent No. 1 was represented by Advocate Salkar. Respondent No. 2 FAA absent. Reply filed by the Respondent No. 1 PIO on 31/03/2017.

5. In the course of hearing the information came to be furnished to the Appellant. On verification of information appellant submitted that his queries are duly answered and same are as per his requirements. However he submitted that since there is delay in furnishing information penal provision should be invoked.

6. It was submitted on behalf of Respondent No. 1 PIO that at the time when application under section 6(1) was received and when order was passed by FAA. Shri Uday Salkar was officiating as PIO who has been retired from the service on the superannuation PIO was directed to produce relieving Order of Then PIO Shri Uday Salkar. Accordingly on 17/05/2017 the said was place on record.

7. Since the information is provided to the appellant in the course of hearing the prayer a become redundant.

8. As regards to prayer 3 for invoking penal action the point for my determination is whether penalty can be imposed after the retirement of PIO.

9. 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.

10. 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"*

11. 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.

12. 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……..*"

13. 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.

14. Since the Respondent PIO is silent on implementation of the provision of section 4 (1)(a) and 4(1) (b) of the RTI Act 2005 the Commission hereby directs public authority to implement the said section within period of 30 days failing which the appropriate action may be taken against them.

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

Kk/-fnl