

GOA STATE INFORMATION COMMISSION

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

Pen. No. 35/2017

In

In Appeal No. 179/2016

Mr. Laxman Putu Pagi,
H.No. 1372, Sakhwamol,
Xelim-Loliem,
Canacona Goa.

..... Appellant

V/s.

1. Public Information Officer,
Addl. Collector-I,
South Goa District,
Collectorate South building,
Margao Goa.
2. The APIO/Dy. Collector (DRO),
CAB Section,
Collectorate South Building,
Margao Goa.
3. First Appellate Authority,
Collector (South),
Collectorate South Building,
Margao Goa.

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 25/07/2017

ORDER

1. This commission While disposing the above appeal, vide order dated 16/5/2017 had directed then PIO to showcause as to why penalty should not be imposed for not providing the required information within stipulated time . In view of the said order passed by this commission , on 16/5/2017 , the proceedings stood converted in to penalty proceedings .
2. In pursuant to showcause notice dated 7/6/2017 the PIO Shri L.S.R. Pereira was present who filed his reply to Showcause notice on 12/6/2017, thereby contending that available information was

provided to the petitioner including inspection of the file vide their letter dated 11/4/2016 . The Respondent No. 1 PIO also contended that there was no intentional delay and malafide on their part to conceal or hide the said information.

3. The appellant was represented by his son Shri Rajendra Pagui who filed reply on 23/06/2017.
4. On 12/7/17 Shri Francisco Carvello appeared on behalf of respondent PIO and submitted that the then PIO Shri L.S.R.Pereira has retired from service on attaining the age of superannuation and accordingly on the next date of hearing i.e. 25/7/2017 Shri I.S.R. Pereira appeared and filed application enclosing certificate of transfer of charge.
5. Perused material on record the point for my determination is
 - a. Whether the penalty can be imposed after the retirement of the PIO.
6. The PIO appointed by the Public Authority is its employee. In case of default on the part of PIO, Section 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 to PIO. Such penalty, which is levied in terms of monies, being personal in nature is recoverable from the salaries payable to such employee payable during his services. Similarly recommendation o disciplinary action U/s 20(2) can also be issued during the period of service. After the retirement, what is payable to the employee are the pensionary benefits only.
7. In the present case undisputedly the then PIO has retired. He has received his salaries during his service. As of today he is entitled for pension. Section (11) of pension Act 1871, grants immunity to the pension holder against its attachment in following words.

Pension Act 1871, which governs pension of retired employees, at section (11) grants immunity to the pension holder against its attachment. Said section 11 of The Pension Act 1871 reads:

" 11)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"

13. 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)

(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."*

14. Hon'ble Apex Court in ***Gorakhpur University and others V/s Dr. Shilpa Prasad Nagendra Appeal (Civil) 1874 of 1999***, has 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....."

15. The Hon'ble Apex court in yet another case viz. ***civil appeal NO 6440-41 of 2008,Radhe shyam Gupta v/s Punjab National Bank*** has held

" even after the retiral benefits such as pension and gratuity had been received by the any person, they did not lose their character and continued to be covered by the proviso (g) to section 60 (1) of the code of civil procedure" .

16. From the reading of above provisions and from the ratio laid down by the Hon'ble Supreme court in various decisions , leaves no doubt that the benefits received under pension, gratuity by a retired person are immune to attachment. Under the circumstances this commission is neither empowered to order any deduction from his pension or from gratuity amount for the purpose of recovering penalty or compensation if awarded.
17. In the above back ground I find that the proceedings for imposition of penalty as sought by the appellant herein are not maintainable and hence are liable to be dismissed.

Proceedings 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

