

GOA STATE INFORMATION COMMISSION

‘Kamat Towers’, Seventh Floor, Patto, Panaji – Goa

Penalty No.53 of 2016
In Appeal No. 65/SIC/2010

Shri Kashinath Shetye,
R/O Bambino Building,
Alto Fondvem,
Ribandar ,Goa

.....Appellant

V/s.

The Public Information Officer/Secretary,
Village Panchayat Secretary,
Penha de France,
Britona, Goa

.....Opponent

CORAM : Shri. Prashant S. P. Tendolkar ,
State Chief Information Commissioner
Smt. Pratima K. Vernekar,
Chief Information Commissioner.

Decided on: 16/2/2017

ORDER

1. This commission, while disposing the above appeal, vide order, dated 29/11/2016, had directed the then PIO, to show cause as to why penalty case under sec.20(1) and 20(2) should not be started against him for denying the information.
2. In pursuance to the said notice Advocate A. Mandrekar appeared on behalf of then PIO i.e. the respondent herein on 5/1/2017 and filed application to withdraw the notice on the ground that the respondent has retired, along with copy of order relieving the respondent along with form under part I applicable after retirement. Adv Mandrekar further submitted that as then PIO no longer in service, having retired and that pension payable to him is not liable for attachment in view of the provisions of section 60(1) (g)of Civil Procedure Code and prayed that the present proceedings may be dropped against him.

...2/-

3. The appellant, inspite of notice, failed to remain present for the hearing.

4. Perused the material on records. The Point for our determination is:-

a) Whether the penalty can be imposed after retirement of the PIO?

5. The PIO appointed by the public Authority is its employee. In case of default on the part of PIO, sec. 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 of 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.

6. 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:

“ 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 pension 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-attach ability of pension , gratuity etc.

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

“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 pension or from gratuity amount of the PIO after his retirement as penalty or compensation. Thus we hold that present proceedings for penalty has become in fructuous and hence is required to be closed.

The proceedings therefore stands closed.

Notify the parties.

Sd/-
(Mr. Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa

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

