

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 221/2017/SIC-I

Shri Jesus Victoria,
Add. 28, Khairikatem,
Sanguem- Goa .

.....Appellant

V/s

1) The Public Information Officer (PIO),
Our lady of Fatima High School,
Rivona, Goa.

2) First Appellate Authority (FAA),
The Central Education Zone,
Directorate of Education,
Panaji Goa.

.....Respondents

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

Filed on: 14/12/2017
Decided on: 03/5/2018

ORDER

1. The facts in brief which arises in the present appeal are that the appellant Shri Jesus Victoria herein by his application dated 14/7/2017 filed under section 6(1) of Right to Information Act, 2005 sought from the Public Information Officer (PIO), Office of Directorate of Education, Porvorim , Goa, certain information on 14 points as stated therein in the said application.
2. According to the appellant the PIO of Director of Education office transferred the said application on 18/7/2017 u/s 6(3) to the Respondent No. 1 PIO of Our lady of Fatima High School, Rivona - Goa with the request to supply the said information directly to the appellant.
3. It is contention of the Appellant that the said application was not responded by Respondent No. 1 PIO, as such he preferred 1st appeal on 28/8/2017 before the Director of Education, Porvorim, Goa, being First appellate Authority (FAA) who is the Respondent No. 2 herein.

4. The Respondent No. 2, The First appellate authority by an order, dated 3/10/2017, allowed the said appeal and directed PIO to furnish the information as sought by the appellant vide his application dated 14/7/2017 within weeks time from the receipt of the order.
5. It is contention of the Appellant that the Respondent PIO did not comply the order of the First Appellate authority and as such he was forced to approach this Commission by way of second appeal filed under section 19(3) of the RTI Act 2005 on 5/12/2017.
6. Notices were issued to both the parties. In pursuant to which appellant was represented by his brother Shri Savio Victoria. Respondent No. 1 PIO was represented by Advocate Atish Mandrekar.
7. Copy of the information came to be furnished on 19/3/2018 and the reply filed by Respondent PIO on 19/4/2018. The copy of the same was furnished to the representative of appellant.
8. Appellant filed his say on 10/4/2018 on the information furnished to him and during the course of hearing on 19/4/2018 submitted that he is satisfied with the information furnished to him at point No.3,4,8,9,10,12& 14 and his grievance is with respect to information at point No. 1,2,5,6,7,11 & 13.
9. Since the appellant was not satisfied with the information on the above point, the representative of PIO Shri Peter Sequiera showed his willingness for providing once again information by clarifying the above points.
10. On subsequent date of hearing i.e on 25/4/2018 Advocate Atish Mandrekar submitted that the present PIO has resigned from the post of Head Master and PIO and presently no PIO have been appointed for Our Lady of Fatima High School, Rivona Goa. He further submits that for the above reasons, even though the information is ready, he is unable to provide the same under RTI Act . He further submitted that he can provide the certified copy of the same information under the

signature of Manager of the School , which was disagreed by the representative of appellant. However the above contention of resignation of PIO is not supported by any documentary evidence.

11. Advocate for Respondent further submitted that, the application dated 14/7/2017 addressed to the PIO of Director of Education filed by the appellant under the RTI Act was transferred to him u/s 6(3) vide letter dated 18/7/2017 and the same was received by him only on 31/7/2017 under inward No. 1337.
12. He further submitted that appellant preferred the first appeal prematurely before the completion of 30 days. It was further submitted that the order of first appellate authority dated 3/10/2017 was complied by them and in pursuant to the said order they have sent a letter dated 11/10/2017 by ordinary post to appellant requesting him to collect the information/reply on 16/10/2017 or on 17/10/17 between 11.00 am to 12.00 Noon
13. It is his further contention that the appellant did not visit their office as such he immediately dispatch the information to the appellant vide letter dated 16/10/2017 which was sent by the ordinary post .
14. The Respondent PIO in support in his above contention have relied upon the letter dated 18/7/2017 addressed to them by Asst. Director of Education(ACAD) bearing the inward stamp 1337 dated 31/7/2017 , the RTI Application dated 14/7/2017 bearing inward stamp 53 dated 17/7/2017 of Director of Education Porvorim , the Xerox copy of the envelop bearing the address of appellant, the reply dated 11/10/2017 given in terms of section 7(1) of the RTI Act, 2005, letter dated 16/10/2017 furnishing the information to the appellant .
15. In the nutshell it is the contention of the Respondent that there was no any delay caused in furnishing the information on their part

but rather there are lapses on the part of the appellant to collect the information in time. It was further contended that there was no willful intention on his part either to hold any information or deny the information sought by the appellant . It is further contended that he have acted bonafidely in discharging his duties under the RTI Act .

16. It was contended by the representative of the appellant that the stand taken by the Respondent PIO of having received RTI application dated 18/07/2017 only on 31/07/2017 and the reply filed by the Respondent PIO before this Commission is false, fabricated and manipulated as the Respondent neither produce the copy of the inward register nor the postal envelope. It was further contended that respondent PIO did not challenge the first appeal which was premature before the FAA and that the order of FAA reveals that the PIO had admitted that he has not given in writing the information to the appellant. It was further contended that the reply dated 11/10/2017 was sent by ordinary post in compliance with the order of FAA is fabricated and false as there is no evidence to prove that the letter was actually posted. It was further contended that the reply dated 16/10/2017 and 16/03/2018 are contrary to each other and that the Respondent intentionally denied him information at the initial stage itself. He further submitted that Fr. Anthony M. Fernandes was the Headmaster from 2/05/2015 till 16/03/2018. The Representative of appellant vehemently pressed for invoking penal provisions as against the PIO.

17. The appellant has not disputed that the Father Anthony M. Fernandes was headmaster and PIO when he made the RTI application under section 6(1) of RTI Act and when the order passed by the FAA. The appellant has also not disputed that Father Anthony M. Fernandes has resigned from the post of Headmaster of our lady of Fatima High School.

18. As such the point for my determination is

- a. Whether the penalty can be imposed after the retirement/resignation of the PIO.

19. 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 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.

20. In the present case undisputedly the then PIO has resigned. 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.

"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".

21. 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."*

22. 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....."

23. 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" .

24. 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.

22. In the above given circumstances I find the ends of justice will meet with following order.

ORDER

1. Appeal partly allowed.
2. PIO is hereby directed to provide information to the appellant at point No. 1, 2, 5, 6, 7, 11 and 13 as sought by appellant vide his application dated 14/7/2017
3. In case of there is no PIO, as submitted by the Advocate for respondent No. 1, then in exercise of powers conferred upon Commission interms of section 19(8)(a)(ii) I hereby direct, Public authority i.e Our Lady of Fatima High School, Rivona-Goa to appoint PIO maximum within 30 days from the receipt of the order and newly designated PIO shall provide the information within 8 days thereafter.
4. Liberty is given to the appellant to seek any additional information with respect to same subject matter if he so desires.

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