

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

Shri Prashant S.P. Tendolkar,
State Chief Information Commissioner

Complaint No: 04/SCIC/2018

Ramchandra Manjrekar,
R/o 452, Tisca, Usgao,
Ponda-Goa.

..... Complainant.

V/s

1) PIO/Executive Engineer,
Works Division VI, PWD,
Fatorda-Goa

2) FAA/Superintending Survey of Works,
PWD, Altinho,
Panaji -Goa.

..... Opponents

Decided on: 15/5//2018.

ORDER

1. This commission, vide notice dated 31//1/2018 had directed the respondent being the then PIO, to show cause as to why penalty as provided under sec.20(1) and 20(2) should not be started against him for denying the information.

2. In pursuance to the said notice then PIO, Shri Ratnakaran Challan filed reply through his representative. The presence of the then PIO was secured through his representative and accordingly Shri Challan appeared on 27/4/2018. As it was also his contention in the said reply that he has retired he was directed to produce on record his order of retirement. Accordingly he filed his relieving order on 2/5/2018. The parties filed their arguments.

3. In view of the retirement of the then PIO and considering the fact that the reliefs which can be granted in a complaint are akin to criminal proceedings as held by the Hon'ble High Court of Bombay, Goa bench in ***Writ petition No. 205/2007, Shri A. A. Parulekar, V/s Goa State Information Commission and others***, and considering the view taken by this commission in several cases involving penalty, before dealing with the other aspects of the complaint, I find it necessary to consider whether the present complaint is maintainable.

4. The PIO appointed by the public Authorities 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 receivable by him/her during his/her services. Similarly recommendation of disciplinary action u/s 20(2) can also be issued during the period of service. Any recommendations after retirement becomes redundant. After the retirement, what is payable to the employee are the pensionary benefits only.

5. In the present case undisputedly the then PIO has retired and may be entitled for pension. Section 11 of The 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”*

6. Section 60 (1) (g) of civil procedure code, which governs the proceedings under the act and which is reproduced hereunder 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.

From the reading of above provisions there leaves no doubt on the point of non-attach ability of pension , gratuity etc.

7. 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.....”

8. In the above circumstances this commission cannot order any deduction from pension or from gratuity amount of the PIO after his retirement either as penalty or compensation. Thus I hold that present proceedings for penalty has become in fruituous and hence is required to be closed.

The proceedings therefore stands closed.

Notify the parties.

Sd/-

(Prashant S. P. Tendolkar)

State Chief Information Commissioner

Goa State Information Commission

Panaji –Goa