

GOA STATE INFORMATION COMMISSION

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

Penalty No. 30/2018
In
Appeal No.108/2018/SIC-I

Shri Jawaharlal T. Sheye,
H.No. 35/A, Ward No. 11,
Khorlim, Mapusa Goa.

....Appellant

V/s

- 1) The Public Information Officer,
Mapusa Municipal Council,
Mapusa Goa .
- 2) First Appellate Authority,
Chief Officer, Mapusa Municipal Council,
Mapusa Goa.

.....Respondents

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

Decided on: 2/08/2018

ORDER

1. This Commission , vide order dated 4/7/2018, while disposing the above appeal, had directed the Respondent no.1 , PIO to show cause as to why penalty should not be initiated against him for not responding the application of the appellant within stipulated time as contemplated under the RTI Act and for delaying the information .
2. In view of the said order passed by this commission, on 4/7/2018 the proceedings stood converted into penalty proceedings.
3. The showcause notice were issued to the PIO on 5/7/2018. In pursuant to the showcause notice, the PIO Shri Shivram Vaze was present alongwith Advocate M. D'Souza. Reply to show cause notice was filed by PIO Shri Venketesh Sawant on 2/8/2018 alongwith enclosures. The copy of the same could not be furnished to the appellant on account of his continuous absence.

4. Arguments were advanced on behalf of respondent No. 1 PIO by Advocate M. D'Souza.
5. Vide reply, the PIO contended that the then PIO Shri Shivram Vaze has retired from the services on 31/07/2018, on superannuation. The copy of the order dated 31/07/2018 issued by Chief Officer, Mapusa Municipal Council was annexed to reply in support of his above contention.
6. As such the point for my determination is
 - a. Whether the penalty can be imposed after the retirement of the PIO?
7. 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 during his services. After the retirement, what is payable to the employee are the pensionary benefits only.
8. 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.

"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”.

9. 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."*

10. 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....."

10. 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”.

11. 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.
12. 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

