

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

Penalty No. 16/2018
In
Appeal No.129/2015

Ms. Lida Joao,
r/o H.No. 390,
Baga, Velim Salcete
Goa.

..... Appellant

V/s.

1. Public Information Officer,
District and Session Court,
South Goa Margao Goa.

..... Respondent

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Decided on: 02/04/2018

ORDER

1. This Commission while disposing above appeal vide order dated 16/3/2018 had ordered for inquiry and also had directed PIO to showcause as to why penalty as contemplated under section 20(1) of the RTI Act 2005 should not be imposed on her.
2. In view of the said order passed by this Commission on 16/3/2018 the present appeal converted into penalty proceedings.
3. In pursuant to the showcause notice dated 21/3/2018, the PIO's Mrs. Fatima Mascarenhas is present alongwith Advocate Kishore Bhagat who filed reply on 2/4/2018 alongwith the enclosures.
4. The copy of the reply could not be furnished to the Appellant on account of her absence.
5. Vide reply, the PIO is contended that the then PIO was Shri Dhananjay Redkar who has been retired from the services on 29/2/2016, on superannuation. The copy of the order dated

29/2/2016 issued by Principal District and Sessions Judge was annexed to her reply in support of her 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....."

11. 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" .

12. 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.

13. 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

Ak/-

