

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

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

Complaint 13/SCIC/2015

Shri Vivek Nilkant Amonkar,
H.No. 366, Betal Prasad,
Nr. Marutigad Curchorem Goa
V/s.

.....Complainant

1. State Public Information Officer (PIO),
Department of Information & Publicity,
Udyog Bhavan,
Panaji Goa.

.. ..Opponent

Decided on: 17/01/2018

O R D E R:- On application of Opponent dated :- 26/04/2017

1. This order dispose the application filed by PIO Shri Prakash Naik, on 26/04/2017.
2. Brief facts of the present application are as under.
3. The Complainant Shri Vivek Nilkant Amonkar had filed complaint before this Commission which came to be register as Complaint No. 13/SCIC/2015. The said complaint was filed against then PIO for not responding his application dated 20/01/2015 filed under section 6(1) of Right To Information Act 2005 within the time as contemplated under the RTI Act.
4. This Commission had disposed the said Complaint by an order dated 01/03/2017 wherein the Public Information Officer (PIO) was directed to pay Rs. 5000/- as penalty. In the said complaint though the Respondent PIO was served remained absent and neither filed his reply.
5. After the disposal of this Complaint the present application dated 26/04/2017 addressed to the Chief Information Commissioner was filed by the PIO with the Registry of this Commission which was inwards by entry No. 965 dated 26/04/2017.

6. The said application was marked to the undersigned Commissioner by the Chief Information Commissioner on 27/09/2017 as the Complaint No. 13/SCIC/2015 was decided by the undersigned Commissioner.
7. Notice were issued to both the parties. The Complainant appeared during only one hearing that is on 22/11/2017 and for rest of the hearing he was absent.
8. Affidavit was also filed by PIO, Prakash Naik alongwith the enclosures on 2/01/2018. Opportunity was given to the Complainant to collect the same and to file his written synopsis before the next date of hearing and the matter was fixed for orders.
9. Vide application dated 26/04/2017 and affidavit dated 2/01/2018 it was contended by the PIO Prakash Naik that he was not officiating as PIO at the time of filing of the Application by the Complainant under section 6(1) and Shri Ratnakar Desai was officiating as PIO who has been retired from services on superannuation. Further Shri Prakash Naik vide his affidavit has tried to justify the reasons for non appearance before this Commission during the Complaint proceedings. It was contended by him that he was posted on duty for the general assembly elections.
10. The Office order dated 31/03/2015 is also placed on record substantiating that Shri Ratnakar B. Desai have retired and relieved of his duties w.e.f. 31/03/2015.
11. As such the point arises for my determination is whether the penalty can be imposed after the retirement of PIO?
12. 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.

13. In the present case undisputedly the then PIO Shri Ratnakar Desai has retired. He has received his salaries during his service. As of today he is entitled for pension. Section (11) of pension Act 6 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"

14. On 60 (1) (g) of civil procedure code which is reproduced here under Iso 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."*

15. 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.....”

16. 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” .

17. 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.

18. In the above back ground I find that the proceedings for imposition of penalty as sought by the complainant herein are not maintainable and hence are liable to be dismissed since then PIO Shri Ratnakar V. Dessai has retired on superannuation and as such order dated 01/03/2017 stands recalled. Proceeding disposed accordingly.

Pronounced in the open court.

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

