

GOA STATE INFORMATION COMMISSION
Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

Appeal No. 288/2019/CIC

Sunil Chauhan,
R/o H. No.103,
near Kanteshwarnath Temple,
Sawarkarnahar, Gandhinager,
Sasmollem Baina,
Vasco da Gama, Goa

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Appellant.

V/s

- 1) The Public Information Officer,
Deputy Labour Commissioner,
O/o the Commissioner labour & Employment,
Shram Shakti, Bhavn 2nd flr patto plaza,
Panaji-Goa.
- 2) The Public Information Officer,
O/o Industrial Tribunal cum Labour Court,
labour court -II,
Shram Shakti Bhavan 1st flr ,
Patto plaza, Panaji-Goa.

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Respondents.

Filed on: 12/09/2019

Disposed on: 10/12/2019

1) FACTS IN BRIEF:

- a) The appellant herein by his application, dated 26/06/2019 filed u/s 6(1) of The Right to Information Act 2005 (Act for short) sought certain information from the PIO, Office of Labour Commissioner, Labour and Employment under several points therein. The said application was transferred to the respondent no.2 herein u/s 6(3) of the act.
- b) On receipt of the said application u/s 6(3), it was replied by PIO on 02/07/2019 calling upon the appellant to pay the fees and thereafter on 11/07/2019 the information was purportedly furnished. However according to appellant the information at points (2) and (3), as sought, was not furnished and hence the appellant filed first appeal to the

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respondent no.2, being the First Appellate Authority (FAA). FAA by order, dated 19/08/2019 directed PIO to give specific reply to the questions.

- c) The appellant being aggrieved by the order of FAA has landed before this commission in this second appeal u/s 19(3) of the act.
- d) Notices were issued to the parties, pursuant to which they appeared. The PIO on 24/10/2019 filed her reply to the appeal. The appellant filed his objection to the said reply.
- e) Oral clarifications were heard. According to the appellant, as per his "objection on statement of affidavit in reply on behalf of respondent no 1 and 2," they have filed a false statement in paras (8) to (12), (14) to (17) and (19) to twist the facts. In his oral submissions it is the contention of the appellant that by the reply of PIO, dated 11/07/2019 which is in the form of annexure, it is admitted that the appellant has sought copy of the order/award passed by the presiding officer. According to him if the award is not ready and existing she could have furnished copy of the orders passed on the application moved by the parties. In said proceedings.

It is also according to him that with reference to point (3) if the award is not ready to be furnished, the PIO could have furnished him copies, if the orders are passed.

- f) On the other hand it is the contention of the PIO that the reference to words the "Order and Award" as referred in points (ii) and (iii) are pertaining to the same pronouncement of the presiding officer. According to him the word "order and award" pertains to the same documents being the award

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passed by the presiding Officer of the Labour Court on a reference dated 12/10/2017. He further pointed out the word "Order and Award" pertains to the final award and that it is evident from the fact that the appellant has sought a copy of the same which is purportedly submitted to the appropriate government. It is further according to the PIO that the final award is not passed as the proceeding is under adjudication before the presiding officer and it is at the stage of recording evidence. According to him this facts are affirmed by the PIO in the affidavit .

- g) When a clarification was sought from the appellant whether the final award has been passed, it was informed by him to the commission that the same is pending but the proceedings are delayed and in view of the delay the extension should have been sought. According to him in the absence of any such extension the award should have been passed within a period of 3 months.

2) FINDINGS:

- a) On perusal of records and considering the submission of the parties, the points which arises from my determination are *i) whether the information sought factually exist for being furnished u/s7(1) and (ii) whether the application of the appellant also required furnishing of the orders passed by the presiding officers from time to time in the course of proceedings.*
- b) Coming to the 1st point, it is not in dispute that by reference no.28/19/2017-LAB/714 dated 12/10/2017 the dispute was referred to the Labour Court. Based on the submission of the parties it is also not in dispute that the said reference

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is not finally disposed but is under adjudication. In these circumstances the information sought viz the award is not in existence and hence the same cannot be termed as information u/s 2(f) as the same is not held yet by the respondent public authority. Such a ratio as laid down by Hon'ble Supreme Court in the case of *Central Board of Secondary Education V/s Aditya Bandopadhyay* relevant portion reads:

“35. *At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of ‘information’ and ‘right to information’ under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such no available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions.”(emphasis supplied)*

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- c) Considering the above circumstances I find that the final order of reference, which is the award, cannot be furnished being not in existence.
- d) In respect of point (ii) as arisen herein, it is the contention of the appellant that if the award was not ready, the PIO should have furnished the copies of the orders passed in the course of proceedings. I am unable to concede to this contention. By the application dated 26/06/2019 u/s 6(1) the appellant has sought "order/award" passed by the presiding officer which is submitted to the appropriate government. In case of point 3 of the application also it is the report of delay "to pass order/award submitted to the appropriate government under provision of section (15) of the Industrial Dispute Act."
- e) Analyzing the said request it is clear that the appellant wants the "order/award" which is submitted to the appropriate government. No interim orders are required to be submit to the government and it is only the final award which to be submitted by PIO. In these circumstances I find no grounds to hold that the word "order" as used in the application also refers to interim orders and it refers to award itself. To the submission of the appellant that he should have been furnished with the copies of the interim order, such a gesture on the part of PIO can be expected after the appellant files appropriate application clearly seeking such interim orders.
- f) In the above circumstances and considering the point of law, I find that the PIO has dealt with the application appropriately and I find no merits in the present appeal. However in case the appellant desires to have the copies of

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the interim order his rights should be kept open. Accordingly I disposed the above appeal with the following :

O R D E R

The appeal is dismissed. However the right of the appellant to seek the copies of the interim orders from the concerned proceedings under the Right to Information Act 2005, by separate application are kept open. Order to be notified to the parties. Proceeding closed.

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(Prashant S. P. Tendolkar)

State Chief Information Commissioner
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Panaji -Goa