

# **STATE INFORMATION COMMISSION**

Kamat Towers, seventh Floor, Patto, Panaji, Goa

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

**Penaty No. 42/2018/SCIC**

**In**

**Appeal No.06/SIC/2013**

Savio Britto,  
P/10, Portais,  
Reis Magos,  
Bardez, Goa.

**....Appellant**

**V/s**

The Public Information Officer,  
Principal,  
Fr. Carlos Fernandes (Ex-Principal)  
C/o. Fr. Andrew Silveira (Present Principal)  
Pillar-Goa 403203.

**.....Respondent**

**Disposed On: 21/02/2019**

## **O R D E R**

- 1) This Commission while deciding the above referred appeal by order dated 11/12/2014, was prima facie of the opinion that the PIO, Fr. Carlos Fernandes, has committed acts punishable u/s 20(1) and/or 20(2) of the Right to Information Act 2005 (Act). Accordingly notice dated 25/09/2018 was issued to Fr. Carlos Fernandes, then PIO.
- 2) Pursuant to said notice, one Shri Madhukeshwar Hegde appeared and filed reply to the show cause notice which reply was signed by Fr. Andrew Silva, Principal Fr. Agnel H.S.S. Pillar Goa. Copy of the said reply was served on the representative of the appellant. On said date said Shri Hegde was directed to secure the presence of then PIO, Fr. Carlos on the next date of hearing.

...2/-

Sd/-

- 3) On the next date of hearing i.e. on 23/01/2019 Fr. Andrew Silveira, Principal appeared and submitted that said Fr. Carlos has retired. He was therefore directed to file evidence of retirement of Fr. Carlos.
- Accordingly on 14/02/2019, Shri Madhukeshwar Hegde appeared and filed records of retirement of Fr. Carlos Fernandes. Said records contains copies of verification of service, letter from Education Department to the Principal of School enclosing the service book and pension case sheet, memorandum issued by Dy. Director of Accounts, Pension payment order.
- 4) On perusal of the above papers it is evident that then PIO, Fr. Carlos Fernandes had retired from the services. Hence the present proceedings will be required to be considered in the back ground of his retirement.
- 5) Section 20(1) and 20(2) of the act, under which the notice is issued is enforceable only against the PIO's and not the authorities. PIOs are the employees of the Public Authority and any penalty would be deductible from the salary of the PIO. In the present case any penalty, if levied, would be deductible if salaries are paid. In the present case Fr. Carlos Fernandes is not liable to receive any salaries but only pension.
- 6) 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*

Sd/-

...3/-

*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”.*

7) Again 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.”*

8) Hon’ble Supreme Court in the case of **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.....”.*

Sd/-

...4/-

9) 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 retrial 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” .*

10) The ratio laid down by the Hon'ble Supreme court in various decisions as above, leaves no room to attach retirement benefit. 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.

11) In the above back ground I find that the proceedings for imposition of penalty, as was notified to said PIO, are not maintainable.

In the circumstances the notice, dated 25/09/2018 is withdrawn. Proceedings closed.

Order to be communicated to the parties.

Sd/-

**(Shri. P. S.P. Tendolkar)**

Chief Information Commissioner  
Goa State Information Commission  
Panaji -Goa