

GOA STATE INFORMATION COMMISSION

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

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Appeal No.81/2021/SCIC

Engr. Subhash Laxman Nerurkar,
Vice Principal I/C (Vocational),
D.M's PVS Kushe Higher Secondary School,
Assagao, Bardez-Goa. 403507

.....Appellant

V/S

1. Public Information Officer,
Mr. Devendra Kenavdekar, Principal,
D.M's PVS Kushe Higher Secondary School,
Assagao, Bardez-Goa. 403507.

2. First Appellate Authority,
Dr. S.S. Ghadi,
Dy. Director of Education,
North Zone Education Office
Near Hanuman Temple,
Mapusa-Goa 403507.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 06/04/2021

Decided on: 22/10/2021

ORDER

1. The Appellant, Engr. Subhash Laxman Nerurkar, Vice Principal I/C (Vocational), D.M's PVS Kushe Higher Secondary School, Assagao, Bardez-Goa, 403507, by his application dated 09/12/2020 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer, D.M's PVS Kushe Higher Secondary School, Assagao, Bardez-Goa:-

1. A copy of Roster register maintained by the D.M's PVS Kushe Higher Secondary School of the recruited teaching staff.
2. A Roster register maintained by the D.M's PVS Kushe Higher Secondary School of the teaching staff promoted to Principal.

3. Seniority list of D.M's PVS Kushe Higher Secondary School of Teaching staff as per the sec 87-A read with sec 87 of Goa Education Rules, 1986
 4. The list of candidates considered in the Zone of consideration for the DPC meeting for the post of Principal of D.M's PVS Kushe Higher Secondary School on superannuation of Principal, Mrs. Zinia Esteves.
 5. The minutes of DPC meeting held in November 2020 for the promotional post of the Principal of D.M's PVS Kushe Higher Secondary School.
 6. The minutes of DPC meeting held for the grant of Senior scale of Subhash L. Nerurkar.
2. The said application was responded by PIO on 05/01/2021 in the following manner:-
- 1) Copy is enclosed.
 - 2) Copy is enclosed.
 - 3) Copy is enclosed.
 - 4) List of the candidates considered in the North Education Zone for the regular post for the post of Principal.
 - i) Mr. Devndra D. Kenavdekar (Selection Scale)
 - ii) Mr. Subhash Y. Kauthankar (Selection Scale)
 - iii) Mrs. Sheila E. Souza (Selection Scale)
 - 5) Copy is enclosed.
 - 6) Copy is enclosed.
3. Not satisfied with the reply of PIO, Appellant preferred first appeal, before Deputy Director of Education, North Zone, Mapusa Goa being the first Appellate Authority (FAA).

4. The FAA by its order dated 05/03/2021 upheld the reply of PIO, thereby dismissed the first appeal.
5. Aggrieved with the order of FAA, the Appellant has landed before this Commission in the second appeal under sec 19(3) of the Act, with the following prayers:-
 - 1) Grant a personal hearing to the Appellant.
 - 2) The Respondent No. 1, PIO should be asked to furnish reasons as to why he declined to provide complete and correct information that was sought by the Appellant.
 - 3) Direct the Respondent No. 1, PIO to provide correct and complete information by issuing a fresh seniority list as per the Rule 87A read Rule 87 of the Goa Education Rules, 1986 to the Appellant free of cost at the earliest.
 - 4) Impose penalty on the Respondent No. 1, PIO as per sec 20 of RTI Act, 2005.
 - 5) Impose penalty on Respondent No. 2, FAA as per sec 20 of RTI Act, 2005 for having disposed off the First appeal without passing a reasonable order and for supporting the Respondent No. 1, PIO in submitting false, misleading and incomplete information to the Appellant.
 - 6) Set aside the faulty DPC already conducted for the promotional post of the Principal by the Respondent No. 2.
 - 7) The Respondent No. 1, PIO should be asked to prepare a fresh list of candidates to be considered in the list of Zone of consideration for the promotional post of the Principal by including the Appellant in that list.
 - 8) Direct the Department of Education to conduct a Review DPC.

- 9) Direct the Department of Education to issue immediately a circular to all the Schools and Higher Secondary Schools both Government and Aided to prepare a fresh Seniority list of teaching staff and non-teaching staff as per the Rule 87A read with Rule 87 of the Goa Education Rules, 1986.
 - 10) Pass any other order deemed fit proper and necessary in the interest of justice.
6. Notice was issued, pursuant to which the PIO appeared, FAA duly served opted not to remain present for hearing. However none of them filed the reply in the matter.
 7. I have perused the pleading, scrutinised the records and considered the arguments of Appellant.
 8. Considering the relief sought by the Appellant as reproduced at para No. 5, hereinabove, it appears that, Appellant wants this Commission to set-aside the alleged faulty Departmental Promotion Committee (DPC) conducted for the promotional post of the Principal of Respondent No. 2, to direct the Education Department to conduct the review of DPC, directing PIO to prepare fresh list of candidates for the promotional post of the Principal, directing the Department of Education to issue circular to all schools and Higher secondary schools both Government and Aided to prepare a fresh Seniority list of teaching staff and non-teaching staff as per the Rule 87A read with Rule 87 of Goa Education Rules, 1986 etc and other allied prayers.
 9. The Commission has to function within the provision of the Right to Information Act, 2005. This Commission is constituted under the said Act with powers, more particularly under sec 18, 19 and 20 of the Act . Such powers consist of providing existing information held in any form and in case of non compliance of said mandate

without reasonable cause then to penalise PIO. No powers are granted to the Commission to deal with any grievance beyond the said Act.

10. By the present proceeding the Appellant requires this Commission to grant the relief as prayed which include, interalia matters not connected with this provision. In other words the Appellant wants this Commission to inquire and investigate the alleged into illegality in DPC of public authority and grant relief to him. Such reliefs are beyond the powers of this Commission.

11. Hon'ble High Court of Gujarat in case of **State of Gujarat & Anrs v/s Pandya Vipulkumar Dineshchandra (AIR 2009 Guj.12)** has held that:-

"5..... The power of the Chief Information Commissioner is a creation of the statute, and his power is restricted to the provisions of the Act. He has power to direct for supplying of the information, and he may in some cases, if the information are not correctly supplied, proceed to direct for correction of such information, and to supply the same. However, his power would end there, and it would not further exceed for adjudication of the rights amongst the parties based on such information. Such powers for adjudication of the rights inter se amongst party on the basis of such information are not available to him. The aforesaid is apparent from the object and the provision of the Act."

12. Under the RTI Act, the authority has a basic function to be performed either to give the information or to deny to furnish the information. Additional prayers like directing the public authority to prepare fresh list of candidates for the promotional post of the Principal cannot be granted by the authority under the Act. In

another judgement by Hon'ble High Court of Gujarat in case of **Gokalbhai Nanabhai Patel v/s Chief Information Commissioner & Ors (AIR 2008 Guj.2)** has held that:-

"Whenever additional prayers are made, than to get information, it may not be granted by the authority, without following due procedure of law. To pass an order of demolition is completely out of jurisdiction of Chief Information Commissioner. Moreover whether there is encroachment or not is a civil dispute. It cannot be decided by Chief Information Commissioner.

The impugned order is passed without any power, jurisdiction and authority vested in Chief Information Commissioner under RTI Act. The order of removal of encroachment passed by Chief Information Commissioner is absolutely illegal and dehors of provision of RTI Act."

If the Appellant feels that any official is not performing his duty in proper manner or doing something that is contrary to law, he can approach the concerned competent authority on the basis of information furnished to him. This view is fortified by Hon'ble High Court of Allahabad in case of **Subhash Chandra Vishwakarma v/s Chief Information Commission U.P & Ors in case No. Misc. Bench No. 69/2016.**

13. While considering the extend and scope of information that could be disposed under the Act, the Hon'ble Supreme court in the case of: **Central Board of Secondary Education & another v/s Aditya Bandopadhyya (Civil Appeal no. 6456 of 2011)** at para 35 has observed:-

"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 non- 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. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

14. The PIO, by his reply dated 05/01/2021 provided all information that is available and exist with public authority within time limit. The FAA also upheld this fact in its order dated 05/03/2021, therefore Commission feels that whatever information available has been furnished to the Appellant.

15. Considering the above facts, I hold that Commission has no jurisdiction to grant the relief prayed in the proceeding. Hence appeal is dismissed being not maintainable.

- Proceedings closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-
(Vishwas R. Satarkar)
State Chief Information Commissioner