

GOA STATE INFORMATION COMMISSION

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

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website:www.gsic.goa.gov.in

Appeal No. 105/2022/SCIC

Shri. John Fernandes,
H.No. 61, Firguem Bhat,
Utorda, Majorda,
Salcete-Goa 403713.

.....Appellant

V/S

1. Public Information Officer-I,
The Headmistress, Government High School,
Baina, Vasco-Da-Gama, Goa.

2. The First Appellate Authority,
South Educational Zone,
Margao-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 07/04/2022

Decided on: 29/08/2022

FACTS IN BRIEF

1. The Appellant, Shri. John Fernandes, r/o. H. No. 61, Firguem Bhat, Utorda-Majorda, Salcete-Goa by his application dated 11/10/2021 filed under Sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought following information from the Public Information Officer (PIO) Director of Accounts, Panaji-Goa:-

"Kindly furnish me details of salaries drawn by Francisco Xavier Fernandes, presently posted in ADEI, Margao Goa in financial year 2013 to 2014 and his wife Laura Pereira, teacher presently working at St. Thereza High School, Mangor, Vasco-Da-Gama, Goa."

2. The said application was transferred to the other PIO's, namely the PIO of South Education Zone, Margao and the PIO, Government High School, Baina, Vasco-Da-Gama under section 6(3) of the Act by Joint Director of Accounts with the request to furnish the information directly.

3. The Respondent No.1, the PIO and Headmistress, Government High School, Baina, Vasco-Da-Gama, Goa by reply dated 15/11/2021 informed the Appellant in the following manner :-

"With reference to your application dated 11th October 2021 received by this office on 28th October 2021 on the subject cited above, I am to state that the information sought in respect of Shri. Francisco Xavier Fernandes, relates to personal information, the disclosure of which has no relationship to any public activity or interest and it would cause unwarranted invasion of the privacy of the individual. Hence the same is denied as per the provision under section 8(1)(j) of the Right to Information Act, 2005."

4. Not satisfied with the reply of the PIO, the Appellant preferred first appeal under section 19(1) of the Act, before the Deputy Director of Education, South Educational Zone, Margao Goa being the First Appellate Authority (FAA).
5. The FAA by its order upheld the reply filed by the PIO and dismissed the first appeal on 21/02/2022.
6. Being aggrieved with the order of the FAA, Appellant landed before the Commission by this second appeal under Section 19(3) of the Act, with the prayer to direct the PIO to furnish correct information and initiate action against the Respondent as per section 19 and 20 of the Act.
7. Notice was issued to the parties, pursuant to which the PIO, Smt. Lira A.V e Souza appeared and filed her reply through entry registry on 08/06/2022, the FAA duly served opted not to remain present in the matter.
8. Perused the pleadings, reply and considered the documents on record and heard the submissions of the Appellant.

9. On perusal of records and upon hearing the Appellant, it is seen that the Appellant by his RTI application dated 11/10/2021 sought the details of salaries drawn by Francisco Xavier Fernandes who is working in Government High School, Baina and his wife Laura Pereira, Teacher presently working at St. Thereza High School, Mangor, Vasco, Goa.
10. The Appellant contended that, since both of them are working in the public office their salaries falls within public domain. Besides under section 4(1)(b)(x) of the Act, the public authority should voluntarily disclosed the salaries of its officers and employees. However, the PIO erroneously considered the same as personal information and denied to disclose the information under section 8(1)(j) of the Act.
11. On the other hand, the PIO denied to disclose information on the pretext that information sought by the Appellant is a personal information and exempted under section 8(1)(j) of the Act.
12. Considering the contention of the rival parties, it may be relevant to go through section 8(1)(j) of the Act, which reads as under:-

"8. Exemption from disclosure of information.

_____ (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,____

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

From the reading of the above provision it is clear that, even though right of the citizen is statutorily recognised the same is not absolute but has reasonable restrictions. Personal information is exempted from disclosure, however such information can be disclosed only when it is in larger public interest and secondly unwarranted invasion of the privacy of individual. In other words, a public authority shall refuse to disclose any record containing personal information when there is no relationship of the information requested to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual.

13. It is a matter of fact that salary paid to the Government servant is sourced from the public exchequer. The scale of salary is also fixed by the public authority based on certain reasonable fixation in an open exercise. Besides that under section 4(1)(b)(x) of the Act, the monthly remuneration received by the officer and employees ought to have voluntarily disclosed by the public authority.

14. The High Court of Uttarakhand in the case **Jasmeet Kaur v/s State of Uttarakhand & Ors. (2017 (5) ALL MR (JOURNAL) 46)** has held that:-

"4..... The salary being given to the petitioner who is a teacher in Government Primary School does not appear to be private in nature, in any manner nor are they exempted under RTI Act. Nothing has been shown by the Petitioner, which may suggest that the information sought by the respondent, relating to the petitioner, is covered under section 8(1)(j) of the RTI Act."

15. Moreover, while analysing the element of public interest and public activity of the teachers working with the public authorities the High Court of Allahabad in the case **Surendra Singh S/o Shanker Singh v/s State of U.P. (AIR 2009 ALL. 106)** has held that:-

"9. The information sought by the appellant in the present case relates to six Assistant teachers of the institution in question and the educational certificates submitted by them for being appointed as Assistant teachers. Since the institution in question and the Committee of Management managing the institution is a public authority as defined in the Act the Assistant teachers working therein are also performing the duties of imparting education to the society. Consequently when the Assistant teachers are performing public activity the information sought by the applicant is with relation to such activity and it cannot be said that the teaching work done by the six Assistant teachers has no relationship to any public activity or interest."

From the above it is revealed that the salary paid to the Government servant cannot be treated as confidential information.

16. The entire proceeding suffers from multiple anomalies. Though by his RTI application, the Appellant sought information with regards to (i) Mr. Francisco Xavier Fernandes working at ADEI, Margao Goa and his wife (ii) Smt. Laura Pereira who is working at St. Thereza High School, Mangor Vasco-da-Gama, Goa. Neither in first appeal, the PIO of St. Thereza High School, Mangor, Vasco- da-Gama, Goa is added as a party nor in this second appeal they are joined as a party. Since the said issue did not raise before the FAA, I am not inclined to give any relief to that effect, particularly when they are not the party in this second appeal.

17. Considering the facts hereinabove, I am of the opinion that, the denial of information was not intentional but due to misinterpretation of provision of law. The High Court of Punjab and Haryana at Chandigarh in **Rajbala V/s State of Haryana and Ors (2008 (1) RTI 295)** has held that:-

"Once the Commission has accepted that there was no malafide intention and the delay was caused only on account of lack of proper appreciation of the provisions of the Act, then it must be construed to be a reasonable cause."

18. In the light of above legal provision and considering the fact and circumstances, I find merit in the appeal and therefore pass following:-

ORDER

- The appeal is allowed.
- The PIO, Smt. Lira A. Ve Souza, Headmistress, Government High School, Baina, Vasco-Goa is hereby directed to furnish the details of salaries drawn by Francisco Xavier Fernandes to the Appellant within the period of **FIFTEEN DAYS** from the date of receipt of the order.
- The appeal disposed accordingly.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner