

BEFORE THE GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA

Proceeding No. 61/2020

Shri ShantaramHaldankar,
Cottarbath, Aldona,
Bardez-Goa 403508.

.... Complainant

V/s

1) The Registrar,
O/o the Registrar of
Co-operative Societies,
Panaji-Goa.

2) The Managing Director,
Goa State Co-operative Bank,
Panaji-Goa.

... Respondents

INQUIRY REPORT/ORDER

(17th February, 2021)

An email dated 06/04/2020 from the Complainant was received in this Commission, whereby the Complainant stated that he retired from services with the Respondent No.2 in August 2005 and for last 15 years, his dues have not been received.

2. On perusing the complaint, the Commission, by Order dated 27/05/2020, called for the report from the Respondents.

3. The Respondent No.2 filed their report on 29/06/2020. The Respondent No.1 filed their report on 01/07/2020.

4. Written arguments on behalf of the Complainant were filed on 28/01/2021 and so also on behalf of the Respondent No.2.

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5. On going through the proceedings, the Commission finds that the Complainant was an employee of the Respondent No.2 and he retired on 31/08/2005. He had been charge sheeted and the inquiry report dated 15/09/2006 held that 9 out of 10 charges were proved against the Complainant.

6. So also, replies of the Respondents indicate that the Complainant has been charge sheeted before the Court of Adhoc Civil Judge Senior Division & CJM, Panaji under Case No.IPC/293/2015 and the same is pending.

7. The Respondent No.2 admits that the dues of Leave encashment of Rs.1,55,241/- and Gratuity of Rs.4,95,273/- are not released to the Complainant.

8. From the records and proceedings, the Commission finds that the dispute raised by the Complainant is in respect of payment of the retiral dues of Rs.6,50,514/-, being the amount due towards Leave encashment and Gratuity, which non-payment is a continuing cause of action.

9. As already pointed out in the reply of Respondent No.2 on 29/06/2020, they have admitted that the said dues are not released to the Complainant. However, they have not stated the reasons for not doing so.

10. The issue raised in this Commission is in respect of "**RETIRAL DUES**" of the Complainant.

In "**RETIRAL BENEFITS AS HUMAN RIGHTS**", a book published by the NHRC in 2014, in the concluding remarks, it

has been stated as under :-

“ India is a country, which is ripe to enter into the category of developed nations, with its advancements in the field of information, Technology, Defence, etc. However, no scientific or industrial advancement can ensure the happiness of its people until and unless their rights are promoted and protected. Right to receive retiral benefits, as per entitlement, has evolved into one of the most important human rights. The pioneering role of the Supreme Court of India and institutions, like the NHRC, has given impetus to this right. However, the role of the Executive for proper implementation of the social security legislations, ensuring timely payments to the concerned beneficiary, is of paramount importance.

NHRC India plays the role of a facilitator, which ensures that when a victim of violation of rights to retiral benefits approaches the Commission, his matter is inquired into by the concerned State functionary and adequate relief is provided to the victim.

The Commission expects that the Executive in India will understand their important role in strengthening the social security regime in the country and take all necessary steps to promote and protect the rights of the entitled persons to receive retiral benefits. NHRC has a strong belief that when all the stakeholders contribute in this resolve, a happy and developed India will not be a distant dream”.

12. As highlighted above, the right to receive retiral benefits has evolved into one of the most important human rights and the Commission plays the role of a facilitator. The NHRC has been taking pioneering strides in the elucidation of retiral

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benefits as a human right, as non-payment and delayed payment is a violation of the human rights of the victim.

13. It is very important to refer to the landmark judgment of the Supreme Court, in the case of **Union of India v. Tarmen Singh, (2008) 8 SCC 648**, wherein it was observed that if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties.

It held as under :-

“That the right of a retired employee to get his retiral dues on the date of attaining superannuation is a valuable right which accrues in his favour on the date of his attaining superannuation. Further, pension is no more considered to be a bounty to be handed out by the State at its whim. An employee has a right to receive pension upon retirement. If payment of such pension is delayed, the retired employee is surely entitled to get some interest for such delayed payment. Pension and gratuity are aimed at maintaining the life of a retired employee and his/her dependents, these are welfare provisions and even if there is delay on the part of a retired employee to approach the Court claiming interest on delayed payment of pensionary benefits, the delay per se should not be the ground for rejection of the writ petition. No third party interest will be affected by a direction on the State to compensate the retired employee for delayed payment of pensionary benefits by paying interest at a reasonable rate.”

Guided by the above, Courts have been directing to pay interest to the pensioners at the rate of Eight per cent per annum on the arrears of pension/retiral benefits calculated on and from the due date till actual date of payment.

14. Guided by the above, the Commission, under Section 18(a)(i), of the Protection of Human Rights Act, 1993, recommends that the Respondent No.1 facilitate that the Respondent No.2 pays to the Complainant the “Retiral Benefits” of Rs.6,50,514/- (Rupees Six lakhs Fifty thousand Five hundred Fourteen only) which are outstanding, along with simple interest thereon at 8% per annum from 01/09/2005 till actual payment, within 30 days from today.

Accordingly, the Proceedings stand disposed of.

Date :17/02/2021

Place :Panaji-Goa.

Sd/-
(Justice U.V. Bakre)
Chairperson

Goa Human Rights Commission

Sd/-
(Desmond D'Costa)
Member

Goa Human Rights Commission

Sd/-
(Pramod V. Kamat)
Member

Goa Human Rights Commission