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M.S.Yatnatti : Editor and Video Journalist: "Blunt and Sharp Daily News Portal" : Swarnamba .R.L Freelance Video Journalist and Reporter

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DISMISS GOPI (OLD BADGE 911B MHALAXMIPURAM NEW BADGE 66 11 MALLESHWARAM) PK FROM BBMP SERVICE FOR UNAUTHORISED ABSENCE







By : M.S.Yatnatti: Editor and Video Journalist Bangalore : Sri Gopi PK has old Badge Number 911B Mhalaxmipuram and New Badge Number 66 11 Malleshwaram and presently in unauthorized absence in Environment officer Malleshwaram Sub Division Parsi Garden Kabbaddi Maidan 12th cross swimming pool extension Malleshwaram Bangalore-560003 Phone : 080-23469887 Mobile - 9480685461 . I shall file Lokayukta complaint if no action is taken against him as he is in unauthorized absence for several years and proofs were got and given under RTI and till today no action was taken on my application. Request is made to take necessary steps to dismiss him from the BBMP service as per CCA rules. In BBMP anything can happen. Instead of taking actions officers are wasting their time in calling me for an appeal hearing on RTI appeal .Executive engineer Mahalaxmipuram has called for hearing on 20-01-2017 and 28-01-2017 .It is reported that many people remain absent but BBMP officers are not taking any action on them and salaries are paid despite they are notified. One such case is reported here as eye opener for BBMP . I have filed several RTIs and no action is initiated to take action on unauthorized absence despite several notices were issued..But such PK is given and allotted a house despite he is an absentee..Under RTI I had asked to provide me information and his service book extracts with date of appointment and reasons for the delay in taking action as per KCSR and rules against Sri Gopi (911B) for his unauthorized absence and despite several notices were issued and few copies are provided with this application and reasons for releasing his salary July or September 2016 despite his absence. If you failed to take action against Sri Gopi (911B) we shall initiate lokayukta complaint against all officers supporting illegal absence of Sri Gopi (911B).The BBMP officers had replied me that and confirmed that he indeed is an unauthorized absentee according to RTI reply given to me on 30-10-2015 .I had filed one more RTI Applcation too provide me information and reasons for the delay in to cancel the allotment made in the name of Sri Gopi Sheshadripuram house Number 11 old swar lane PK Colony sheshadripuram serial number 7 as per your per order dated 08-09-2016 as he is in unauthorized absence for several years and proofs were got and given under RTI and till today no action was taken on my application..This house was already allotted to Smt Venkatamma vide order dated B 10 IR(N&W) 27 78-79 Dtaed 25-08-1978 and since then she is staying there with her family and she is in possession and all such poura Karmikas were given possession certificates and sale deeds registered in their names and few are pending as per Government order UDD99MNG2000 in respect of Sale of BMP quarters to its occupants.BBMP is the "public authority "is under obligation to provide information "PUBLICLY" under section 4(1) (a) (b) (c) (d) RTI Act 2005 .

According to the Circular No. DPAR 30 SSR 79, dated 17th April 1979 in respect of Un-authorized absence of Government servants, Instructions regarding Quick Disposal of enquiry cases the following instruction was issued by DPAR. It was come to the notice of Government that in several cases in which Government servants have remained absent unauthorisedly, either no action has been taken against them or in some cases where action has been initiated, it is done after a lapse of considerable time. Unless timely, steps are taken in such cases effective disciplinary action cannot be taken against the erring officials and the posts held by these absentees remain vacant causing considerable dislocation of work as it would not be possible to post substitutes in their places. A Government servant does not cease to be a member of the services to which he is appointed or sever connections with the post held by him by reason of his un-authorised absence unless action is taken aganist him by the appointing authority / competent disciplinary authority under KCS (Classification, Control and Appeal) Rules 1957 and he is removed or dismissed from service after conducting an inquiry in accordance with rules 11 and 11A of these rules. Normally it should not take much time to hold an inquiry and finalise action in accoradance with rule 11 and rule 11A of the KCS (Classification, Control and Appeal) Rules. If the Government servant refused to receive notices / orders of the competent authority, the procedure laid down under rule 28-A of the KCS (Classification, Control and Appeal) Rules could be followed conveniently and if necessary, and ex-parte inquiry held aganist him and final orders passed removing or dismissing him from service if the charge of un-authorised absence is established. The Secretaries to Government and Heads of Departments are requested to take necessary action in the matter and bring these instructions to the pointed notice of appointing authorities / disciplinary authorities under their control, and see that delays in instituting / finalising inquiries in such cases are avoided. Any delay in taking action in such cases would be viewed seriously and the concerned officer who has failed to take action or delayed taking action will be held personally responsible and disciplinary action would have to be initiated against him for the lapse.

According to No.DPAR 3 SDE 94 dated 26.2.1994 following directions were issued. The consequences of unauthorised absence are spelt out under Rule 106-A of Karnataka Civil Service Rules. Accordingly, unless leave is granted by the Competent Authority, such Government Servant who absents himself from duty without leave will not be entitled to any salary for the day/days of absence; the period of such absence shall be debited to the account as though it were half-pay leave to the extent such leave is due and as extra-ordinary leave to the extent the period of absence falls short of the half-pay leave at credit. It is also provided that such unauthorised absence will render a Government servant liable for disciplinary action for his conduct except where the Government servant establishes to the satisfaction of the authority competent to sanction leave that he was unable to join duty for reasons beyond his control. According to Rule 108 of K.C.S. Rs, unless Government, in view of the special circumstances of the case, determines otherwise, an officer who remains absent from duty without leave for a period of four months or more may be liable to be dismissed or removed from service after following the procedure laid down in the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. According to Rule 107 leave cannot be claimed as of right. Discretion is reserved to the authority empowered to grant leave to refuse or revoke leave at any time according to the exigencies of the Public Service. While considering the case of repeated absence of a Government Servant, the Karnataka Administrative Tribunal in Narasimharaju Vs. State and another (KSLJ 821/93) has held that such absence is a good ground to consider the applicant as unsuitable for job. This judgement draws support from the judgement of Supreme Court in Samsher Singh Vs. State of Punjab (1974) 2 SCC 831. The instructions issued by Government in O.M. No. DPAR 4 SDE 89, dated 31.1.1989 that a Government Servant who returns after a spell of unauthorised absence should be taken back to duty if in the meanwhile he was not removed from service after holding an enquiry in accordance with rules are in keeping with the judgement of the K.A.T in Dr. Changoli Vs. State and others (1989 KSLJ 1063). The provision of Rules 106-A, 107,108 and 162 of KCSRs give adequate authority to deal with unauthorised absence. If prompt action is taken as contemplated in these rules, a situation where a Government Servant has to be taken back to duty even after prolonged unauthorised absence can be avoided. Government therefore, have considered it necessary to lay down the following guidelines for strictly enforcing the provisions of the Rules and to deal with cases of unautorised absence or overstayal without proper authority:

1) In all cases of unauthorised absence the competent authority should immediately invoke the provisions of Rule 106-A of KCSRs. If this is enforced there will be no occasion for a Government servant to unauthorisedly absent himself even for shorter periods. 2) Where a Government Servant absents himself without prior sanction of leave, the Disciplinary authority concerned should immediately issue a notice of recall to duty. Where the notice is not responded to and the Government Servant continues to be absent without intimation, it should be deemed that the Government Servant has absconded and the Special Procedure prescribed for dealing with such cases as under Rule 14 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, should be invoked. 3) In the meanwhile the authority concerned should also examine why the Government Servant should not be placed under suspension for unauthorised absence. 4) Where the unauthorised absence exceeds four months the Appointing Authority should immediately place the Government Servant under suspension. For this purpose, the head of the Office or other competent authority under whose jurisdiction, the Government Servant was working should send a report promptly. Such report should be sent in all cases where the unauthorised absence exceeds a period of 15 days. The disciplinary authority should also immediately institute proceedings under Karnataka Civil Services (Classification, Control and Appeal) Rules and consider the question of removal or dismissal of the Government Servant under Rule 108 of KCSRs. The Special procedure under Rule 14 of K.C.S (C.C.A) Rules could also be invoked where the officer concerned has absconded, or where the officer concerned does not take part in the Inquiry or where for any reasons to be recorded in writing it is impracticable to communicate to him etc. 5) In such cases where the unauthorised absence is beyond 15 days, if the Head of the Office or other authority fails to give intimation to the authority competent to take disciplinary action, such Head of the Office or other authority to give information of the unauthorised absence will be personally held responsible. Similarly, where the appointing authority or the disciplinary authority as the case may be fails to keep the Government Servant under suspension immediately after expiry of four months of unauthorised absence, the appointing authority or the disciplinary authority as the case may be shall be personally held responsible for this lapse. They would incur similar liability for failure to take suitable proceedings under Rule 108 of KCSRs for removal / dismissal of Government Servant immediately after expiry of the period of four months of unauthorised absence. The Secretaries to Government and Heads of Departments should bring these guidelines to the notice of all authorities concerned and ensure prompt action in dealing with cases of unauthorised absence.

Difference between Judicial and Quasi-Judicial Function:There are three organs of State – the Legislature, the Executive and the Judiciary. The function of the legislature is to enact the law; the executive is to administer the law and the judiciary is to interpret the law and to declare what the law is.But as observed by the Supreme Court in Jayantilal Amratlal v. F. N. Rana, it is not necessary that legislative functions are exclusively performed by the legislature, executive functions by the executive and judicial functions by judiciary. The executive/administration also performs a judicial function, and act as a quasi-judicial authority.
WHAT IS A JUDICIAL FUNCTION?:A judicial function by any authority presupposes an existing dispute between two or more parties, and it has four requisites: (1) The presentation (not necessarily oral) of their case by both parties to the dispute;(2) If the dispute is a question of fact, the authority must ascertain the fact by means of evidence produced by the parties, with the assistance of argument by (or on behalf of) the parties based on such evidence;(3) If the dispute between them is a question of law, the submission of legal argument by the parties; (4) A decision which disposes of the whole matter by finding upon the facts in dispute and 'an application of the law of the land to the facts found, including, where required, a ruling upon any disputed question of law.'Where the above four elements are present, the decision is a judicial decision even though it might have been made by any authority other than a court, e.g. by Minister, Board, Executive Authority, Administrative Officer or Administrative Tribunal.WHAT IS A QUASI-JUDICIAL FUNCTION? :The word 'quasi' means 'not exactly.' An authority is described as 'quasi-judicial' when it has some attributes of judicial functions, but not all.A quasi-judicial decision may involve (1) and (2) above, but does not necessarily involve (3) and never involves (4). The place of (4) is taken by administrative action, the character of which is determined the individual authority in their official capacity. For instance, a statute may empower a Minister to take certain actions if certain facts are proved, and it may give him an absolute discretion whether or not to take action.In such a case, the minister must consider the representations of parties and ascertain the facts – to that extent the decision contains a judicial element. But, the facts once ascertained, his decision does not depend on any legal or statutory direction, because he is free within the statutory boundaries to take any administrative action as he may think fit: that is to say that the matter is not finally disposed of by the process of (4).The element of discretionary power is necessarily present in all authorities and all decisions, whether quasi-judicial, judicial or purely administrative. The courts of law also exercise discretion. A quasi-judicial function stands mid-way between a judicial function and an administrative function. A quasi-judicial decision is nearer the administrative decision in terms of its discretionary element and nearer the judicial decision in terms of procedure and objectivity of its end-product.Characteristics no (1) and (2) may also vary in quasi-judicial decisions. In many cases, the authority may decide a matter NOT BETWEEN TWO OR MORE CONTESTING PARTIES BUT BETWEEN ITSELF AND ANOTHER PARTY, e.g. an authority effecting compulsory acquisition of land. Here the authority itself is one of the parties and yet it decides the matter. It does not represent its case to any court or authority. Also, there may be cases in which NO EVIDENCE IS REQUIRED TO BE TAKEN AND YET THE AUTHORITY HAS TO DETERMINE THE QUESTIONS OF FACT after hearing the parties, e.g. ratemaking or price-fixing. Finally, even after ascertainment of facts, unlike a regular court, A QUASI-JUDICIAL AUTHORITY DOES NOT FEEL BOUND TO APPLY THE LAW TO THE FACTS SO ASCERTAINED, and the decision can be arrived at according to other considerations (such as public policy or administrative discretion) which are unknown to an ordinary court of law.

DISTINCTION BETWEEN JUDICIAL AND QUASI-JUDICIAL FUNCTIONS:A quasi-judicial function differs from a purely judicial function in the following respects (a) A quasi-judicial authority has some of the trappings of a court, but not all of them; nevertheless there is an obligation to act judicially.(b) A dispute between two parties is an essential characteristic of a judicial function, but this may not be true of a quasi-judicial function.(c) A court is bound by the rules of evidence and procedure while a quasi-judicial authority is not.(d) While a court is bound by precedents, a quasi-judicial authority is not.(e) A court cannot be a judge in its own cause (except in ontempt cases), while an administrative authority vested with quasi-judicial powers may be a party to the controversy but can still decide it.IN DECIDING CASES, COURTS APPLY PRE-EXISTING LAW WHEREAS ADMINISTRATIVE AUTHORITIES EXERCISE DISCRETION. However, in order to maximize the scope of our rights as citizens, we need to understand where the limits of those discretions lie. This excellent Bombay High Court judgment in 2009 draws some much-needed lines as to the due procedures to be followed by quasi-judicial authorities. If they go wrong in such matters, we may challenge them in High Court – and that is the power of a citizen.

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EXCERPTS FROM BOMBAY HIGH COURT JUDGMENT ON WRIT PETITION NO. 4101 OF 2007 [Smt. Savitri Chandrakesh Pal. V/s. State of Maharashtra & others] "14. This Court, having seen the mode and manner of decision making process and the procedure adopted for deciding the appeals, revisions, review and/or stay applications, this Court was compelled to pass the order dated 4th September 2008 directing the State Government to place on record the PROCEDURE, NORMALLY, FOLLOWED AND ADOPTED BY ALL THE DEPARTMENTS OF THE STATE GOVERNMENT OF MAHARASHTRA while hearing and deciding quasi-judicial proceedings.15. The State Government, after the aforesaid order dated 4th September, 2008, appeared through Shri V.A.Gangal, Special Counsel and informed that a committee has been constituted consisting of the Chief Secretary, Law and Judiciary with the officers of General Administration Department with Shri V.A.Gangal, Advocate and Special Counsel for the State of Maharashtra, to streamline the procedure of hearing and deciding quasi-judicial proceedings by the officers of the State of Maharashtra including the Hon'ble Ministers of the respective departments. On the suggestion of this Court, Mr.Anand Grover, who was appointed as Amicus Curie to assist this Court, was also included in the said committee.16. The aforesaid committee was granted time to submit their report. The said committee submitted its report on 7th January, 2009 whereunder the guidelines were framed and the procedure was laid down prescribing the mode and manner of hearing the revisions, appeals, review applications including application for interim reliefs by the State Government and its functionaries so as to streamline the decision making process. The said report was accepted by this Court by consent of the parties.

PROCEDURAL GUIDELINES FOR QUASI-JUDICIAL AUTHORITY:17. This Court in exercise of powers conferred under Articles 226 and 227 of the Constitution of India prescribes the following procedure to be adopted by quasi-judicial authorities including the Ministers, Secretaries, officials and litigants while hearing and determining appeals, revisions, review applications and interim applications etc.: (1) Memo of appeal or revision, review and or any application shall specifically mention under which enactment and/or under what provisions of law the said appeal/ review/ revision or application is filed. (2) The appellant/ applicant shall give a synopsis of concise dates and events along with the memo of appeal or revision. (3) The appeal, revision and/or application shall be filed within a period stipulated under the law governing the subject from the receipt of the order/ decision which is impugned in the above matter. In the event of delay, it should only be entertained along with application for condonation of delay. (4) At the time of presentation of the appeal, review or revision, the applicant shall, if, filed in person, establish his identity by necessary documents or he shall file proceedings through authorised agent, and/or advocate.(5) The application shall be accompanied by sufficient copies for every opponents/ respondents and also supply 2 extra copies for the authorities..(6) For issuance of summons to the opponents/ respondents, court fees/ postal stamps of sufficient amount shall be affixed on the application form/ memo of appeal or revision as the case may be.(7) In addition to service through the authority, appellant/ applicant may separately send the additional copies to each of the opponents/ respondents by registered post acknowledgement due and may file affidavit of service along with evidence of despatch. The postal and acknowledgment alone should be treated as evidence of service in the event of service through postal authority.(8) In the event of an urgency of obtaining an interim relief like stay, injunction/ other interim order or direction or status-quo etc, a specific case of urgency should be made out in the application, which the authority may entertain subject to the brief reasons recorded. The said order shall also be communicated immediately to all the effected persons. The proof of timely despatch of the Registered A.D.s and all the acknowledgments shall be separately maintained.(9) If there is real urgency, the concerned authority may grant ex parte interim/ ad-interim relief for the reasons to be recorded for a particular period only within which time the service on the concerned opponents/ respondents shall be effected. Appellant/ applicant should file affidavit of service, if such party requires early hearing or continuation for interim relief or of an appeal, revision or review.(10) The competent authority shall also communicate the next date of hearing to all the parties along with time and place and shall, as far as possible, adhere to the said date and time of hearing.11) The concerned official in every department should be asked to remain present at the time of hearing and assist the concerned authority in the matter.(12) Reasonable sufficient time be provided between the date of receipt of notice and the actual date of hearing. If any party is unable to remain present at the time of hearing for a sufficient cause, one further opportunity should be given to such party for hearing.(13) The authority hearing quasi-judicial matters shall duly fix a date, time and venue for such hearing. Such authority shall refrain from interacting with third party during the course of hearing either in person or on phone and shall not do any act which would tend to affect or prejudice fair hearing.(14) A speaking order shall be passed by the authority hearing the matter as early as possible after the hearing is concluded and, as far as possible, within a period of four to eight weeks from the conclusion of the hearing, on the basis of the record before it as well as the submissions made at the hearing. The order must contain reasons in support of the order.(15) The authority shall not receive information or documents after the hearing is concluded and/or shall not pass the speaking order on the basis of such documents and/or information unless such material is brought to the notice of the parties to the proceedings following rules of natural justice.(16) The order passed by the quasi-judicial authority on the hearing shall be forthwith communicated to all the parties by Registered A.D.(17) No application or request or prayer from the political worker, Member of Legislative Assembly, Member of Parliament or third party shall be entertained in the quasi-judicial proceedings unless such person is a party respondent or intervenor in the proceedings.(18) The order pronounced shall be communicated to the parties immediately.(19) Record of hearing shall be meticulously maintained in a separate Roznama.(20) The notings of concerned officials/ law assistants to assist the authority shall include only content of facts and legal provisions along with case laws, if any.(21) The notings made by the law officials/concerned officials shall not be in the form of order.18. In addition to the above guidelines, the quasi-judicial authorities shall also follow the parameters laid down by this Court in the case of Lokmanya Nagar Priyadarshini v. State of Maharashtra, 2007 (1) Bom.C.R. 929, which read as under:PARAMETERS: "(a) While considering the stay application, the authority concerned should at least briefly set out case of the applicant/ appellant, as the case may be.(b) While granting the ex parte order, it should be granted for a shorted duration with short notice to the opponent(s).(c) If ex parte stay is to be granted, then the authority passing the order should specify the reasons in short for grant of ex parte order.(d) The Authority passing the order should, (i) record its findings as to whether or not a prima facie case is made out with short reasons in support of the finding;(ii) record its finding as to in whose favour balance of convenience lies, and (iii) record its finding whether non-grant of interim relief would cause any prejudice to the person seeking interim relief. (e) The ingredients at (d) (i) to (iii) should be discussed and positive finding should be recorded while granting or refusing to grant interim relief."19. The aforesaid procedural guidelines shall also be applicable to all quasi-judicial authorities in respect of hearing of appeals, revisions, review applications/ interlocutory applications, where there are no specific rules prescribed for hearing under a specific law like Maharashtra Co-operative Societies Act, Bombay Tenancy and Agricultural Lands Act, etc. Grateful acknowledgement: I have derived lots of matter from the many websites:

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M.S.Yatnatti , Editor and Video Journalist Consultant Mobile: 9945116476 E-Mail: msyatnatti@yahoo.com propertypolitics@gmail.com

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Editor –In –Chief M.S YATNATTI E-mail :sunnytimes.in@gmail.com Phone : 9945116476