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### GIVING VRS SALARIES IS DUTY UNDER 4(1) (A) (B) (C)(D) RTI ACT 2005 &KCS ACT & CIRCULARS AND CANNOT BE DISPUTE UNDER SECTION 70 OF KCS ACT



By : M.S.Yatnatti: Editor and Video Journalist Bengaluru : Giving VRS salaries by Liquidator Malleshwaram Co-operative Society Limited cannot be dispute under section 70 of KCS Act but it is duty under 4(1) (a) (b) (c)(d) RTI Act 2005 and co-operation department under KCS Act and liquidation rules and circulars The amount receivable on account of voluntary retirement of the employee does not exceed the amount equivalent to three months' salary for each completed year of service, or salary at the time of retirement multiplied by the balance months of service left before the date of retirement on superannuation of the employee Voluntary retirement scheme is a method used by Government companies and co-operative societies to reduce surplus staff similarly 66 Employees of Malleshwaram Co-operative Society Limited are eligible for VRS scheme .Not giving salaries is human right violation. If RCS JRCS DRCS ARCS salaries are stopped then they will know the pain of 66 Employees of Malleshwaram Co-operative Society Limited who are deprived of their lively hood and VRS salaries .Liquidator is Winding-up Authority of co-operation department need to pay VRS Salaries on priority.When they are taking salaries why they are reluctant to pay the salaries of employees of 66 Employees of Malleshwaram Co-operative Society Limited and delaying salaries in the guise of section 70 of the Act which is not applicable to them . What is applicable is liquidation law and circulars .According to the Act and Liquidation circulars VRS salaries and employees dues retiral benefits comes first priority but co-operation department has first settled other creditors and not cared to give VRS salaries till today even after 15 years. Department has violated priority clause in respect of employees The object of the provisions in S. 118(2) of the Karnataka Co-operative Societies Act, 1959, is to protect the interests of all the creditors of the Society and to ensure an equitable distribution in respect of several claims against the Society by the Winding-up Authority. There cannot be dispute with the liquidator and employees of the society under section 70 of the co-operative society Act .It is not dispute, it is clear violation of law and circular to be followed by Liquidator is which is Winding-up Authority of co-operation department . The co-operation department RCS JRCS DRCS ARCS altogether under a conspiracy not releasing the VRS salaries to 66 employees of Malleshwaram co-operative society and other dues with last 15 years interest but they have released money to creditors and doing other expenditure in violation OF act and liquidation rules which have kept priority to be given to employees first and then others . Employees are dying and JRCS did nothing .He cares two hoot to CM orders and NHRC directions. The amount receivable on account of voluntary retirement of the employee does not exceed the amount equivalent to three months' salary for each completed year of service, or salary at the time of retirement multiplied by the balance months of service left before the date of retirement on superannuation of the employee Voluntary retirement scheme is a method used by Government companies and co-operative societies to reduce surplus staff similarly 66 Employees of Malleshwaram Co-operative Society Limited are eligible for VRS scheme . Let the department stop this injustice otherwise things might go out of control or employees who are any way dying out of old age may come and die before RCS JRCS DRCS ARCS offices as reportedly they are talking about this openly in Public.Reportedly there are many authorities in India and in each state, where the complainant can himself file the complaint without the aid of a lawyer. They are not courts. The orders of these bodies are typically passed in a shorter time as compared to the judiciary, i.e. the courts. If people are not satisfied, the aggrieved parties can appeal in Tribunals and High Courts. We need to know what their lawful powers are while conducting hearings, following various procedures for ascertaining facts and giving orders. These points are relevant to all states of India. They are the officers Karnataka Co-Operation department doing injustice and they are the judge of quasi-judicial authorities to continue injustice but they are forgetting that they are officers to follow the rule of law and follow the guidelines given by high court in deciding the matters of quasi-judicial nature, . Not following high court guidelines in adjudicating matters. How many years it needs JRCS to decide to pay VRS salaries to 66 persons many of them are dying every day? Why they need so many days to decide about this simple issue rules are very clear .According to the Act and Liquidation circulars VRS salaries and employees dues retiral benefits comes first priority but co-opration department has first settled other creditors and not cared to give VRS salaries till today even after 15 years. Department has violated priority clause in respect of employees. For the cases he gets bribe he decides on day today basis. Poor people who do not pay him he drags the cases like this one . Employees are dying and JRCS did nothing .He cares two hoot to CM orders and NHRC directions. The amount receivable on account of voluntary retirement of the employee does not exceed the amount equivalent to three months' salary for each completed year of service, or salary at the time of retirement multiplied by the balance months of service left before the date of retirement on superannuation of the employee Voluntary retirement scheme is a method used by Government companies and co-operative societies to reduce surplus staff similarly 66 Employees of Malleshwaram Co-operative Society Limited are eligible for VRS scheme . This mode has come about in India as labour laws do not permit direct retrenchment of unionized employees .The amount receivable on account of voluntary retirement of the employee does not exceed the amount equivalent to three months' salary for each completed year of service, or salary at the time of retirement multiplied by the balance months of service left before the date of retirement on superannuation of the employee. It is the last salary drawn which is to form the basis for computing the amount of payment .Most public and private sector companies have implemented VRS in recent years. Wiegthage of 5 year service is given and consequently employee will get five years additional gratuity and other benefits and get five year additional bonus .

A false statement made with deliberate intent to deceive 66 Employees of Malleshwaram Co-operative Society Limited in respect of their VRS The amount receivable on account of voluntary retirement of the employee does not exceed the amount equivalent to three months' salary for each completed year of service, or salary at the time of retirement multiplied by the balance months of service left before the date of retirement on superannuation of the employee and additional retirement benefits like Gratuity for five years Wiegthage , Additional leave encashment for five years Wiegthage , additional bonus for five years Wiegthage and Strike Period Salary and Balance salary as on retrenchment date with fifteen years interest .Whereas Taking a serious view of delay in disbursement of retirement benefits, including pension and gratuity, to an employee of the Bharat Sanchar Nigam Limited (BSNL), the National Human Rights Commission (NHRC) has issued directions for an inquiry into the matter for fixing responsibility of the officials concerned. But Karnataka State Human Rights Commission has registered a case against liquidator and cooperation department for human right violations under HRC 1759/14 B-II But till today it has not passed orders against liquidator and cooperation department for human right violations and had not issued directions for an inquiry into the matter for fixing responsibility of the officials concerned for non payments of VRS retirement benefits like Gratuity, leave encashment, bonus and Srike Period Salary and Balance salary as on retrenchment or compulsory retirement or forced retirement benefits and any other benefit payable at the time of the retirement in the year 2000 and interest payments for 15 years of delay in paying Retrial Benefits since the years 2000 till date .Joint Registrar co-operative Societies and Liquidator has not paid Pension or retirement benefits like Gratuity, leave encashment, bonus and Srike Period Salary and Balance salary as on retrenchment or compulsory retirement or forced retirement benefits and any other benefit payable at the time of the retirement in the year 2000 to Malleshwaram Co-operative Society Limited. As Supreme Court orders interest is not paid since 2000 and Revised Gratuity payments is not paid as per Karnataka high court order (Three Benches) on 17-11-2003 in N.S. Srinivasamurthy And Ors. vs The Registrar Of Co-Operative ... on 17 November, 2003 in respect of Malleshwaram Co-operative Society Limited And Joint Registrar co-operative Societies and Liquidator need to pay interest for about 15 years on delayed payments as per Supreme Court of India H. Gangahanume Gowda vs Karnataka Agro Industries ... on 5 February, 2003 and The citations have been filed before Deputy Director court with separate memo on 13-05-2016 with citations and report of National Human Rights Commission of India in respect of "Retiral Benefits as a Human Right: NHRC Initiatives".The Supreme Court's influence in the socio-political sphere of our country is undeniable and almost hallowed in quality. It is predominantly with the tool of a broadened jurisprudence in enforcing the fundamental rights, guaranteed in the Constitution of India, that it has been able to uphold the ideals enumerated in the Indian Constitution The cardinal responsibility of the State to provide post-retirement benefits to the entitled employee or his family, in full and on time, has come under the scrutiny of the Supreme Court of India in many cases. The decisions of the Supreme Court of India has given the institutions in India an insight into the methods and means to uphold the sanctity of the right to receive pensionary benefits in India. It is with this spirit that the National Human Rights Commission reads the denial of retirement benefits as a violation of the right to life and dignity, thus leading the country's nodal agencies in the understanding that pension or the retiral benefits may be the only source of livelihood and means of survival for a family; hence nonpayment of these benefits has devastating effects on their lives. If these retirement benefits are not paid to them, the very survival of the retired employee or next-of-kin, and/or family members of the National Human Rights Commission deceased employees comes under question, in blatant violation of their human rights. The following are Pension or retirement benefits like Gratuity, leave encashment, provident fund or any other benefit payable at the time of the retirement is to be made on the day of retirement or within a stipulated time period, in case of termination of the contract of employment due to voluntary retirement, retrenchment, layoff etc., to the employees, and in case of death of the employees during the course of employment or in employment, to his nominee or next of kin, within a stipulated or reasonable time period, where it is not stipulated. If not provided within this time period, interest is to be paid on the delayed payments. Retirement benefits are the accumulated savings of a lifetime of service. Denial, non-payment or delayed payment of the same is not only tantamount to denial of an individual's rightful property, but is also a violation of the human rights of the victim and their next of kin wherein their livelihood is affected, often times resulting in untold misery, starvation and poverty.

**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 contempt 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.**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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