respondents to pay the petitioner due compensation for his mother's death, treating it to be death for which compensation is payable under the Government Orders dated 11.04.2020, 22.06.2021 and 26.07.2021. This mandamus shall be carried out by the respondents within six weeks of the date of communication of this order.

55. There shall be no order as to costs.

56. Let a copy of this order be communicated to the Secretary, Local Bodies, Government of U.P., Lucknow, the Additional Chief Secretary, Finance Department, Government of U.P., Lucknow, the Director, Local Bodies, U.P., Lucknow, the District Magistrate, Fatehpur and the Executive Officer, Nagar Panchayat Khaga, District Fatehpur by the Registrar (Compliance).

(2025) 1 ILRA 775
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.01.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

Writ A No. 10247 of 2024

Smt. Anju Srivastava ...Petitioner
Versus
U.P. State Agro Indus. Corp. Ltd. & Ors. ...Respondents

Counsel for the Petitioner:
Birendra Kumar Yadav, Amit Kumar

Counsel for the Respondents:
Rajeeva Kumar Sinha, Akhilesh Pratap Singh

(A) Service Law - Payment of Gratuity - Payment of Gratuity Act, 1972 - Section 4 - Gratuity is payable to an employee on the termination of his employment after he has rendered service for not less than five years either on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease. (Para -19,22)

(B) Service Law - Payment of Gratuity Act, 1972 - Section 4(6) - An employee's gratuity can be fully or partially forfeited if their services are terminated due to - (i) Willful damage or loss to employer's property ,(ii) Riotous or disorderly conduct, (iii) Acts or violence or (iv) Offences involving moral turpitude - Termination of service is required for gratuity forfeiture - Termination of service is the sine-qua-non to forfeiture, fully or partly, of the gratuity.(Para -20)

Petitioner's husband, a storekeeper in the respondent corporation - died in harness - Employer sought to recover Rs. 6,20,101.56 from his gratuity - alleging a shortage in stores - petitioner challenged the deduction - arguing that gratuity could not be withheld as her husband was never terminated - no disciplinary proceedings were ever initiated - failed to pay the Employees' Deposit Linked Insurance (EDLI) amount to the petitioner - hence petition. (Para - 2 to 17)

HELD: - Employer cannot withhold gratuity unless the employee was terminated . As the deceased was never terminated but died in harness, recovery from gratuity is impermissible. Orders impugned, forfeiting /making deductions from gratuity of the petitioner's husband, are legally not tenable in the eyes of law and merit to be quashed. Employer must pay the full gratuity within eight weeks with interest and must also decide on the EDLI payment within the same period. **(Para -21,23,26,27)**

Petition allowed. (E-7)

<u>List of Cases cited</u>:

1. Bankey Bihari Chauhan Vs St. of U.P. & ors. Special Appeal Defective No.101 of 2015

2. Secy., ONGC Ltd. & anr. Vs V.U. Warrier, AIR 2005 SC 3039

(Delivered by Hon'ble Abdul Moin, J.)

1. Heard learned counsel for the petitioner, Shri Rajeev Kumar Sinha, learned counsel appearing on behalf of respondents No.1 to 3 and Shri Akhilesh Pratap Singh, learned counsel appearing on behalf of respondent No.4.

2. The instant petition has been filed praying for the following reliefs:

> *"(i). To issue a writ, order or direction in the nature of certiorari quashing the letter / order No. 28/EPF/24-25 dated 16.05.2024 and letter No. 175/DEL- sthapna/ 2023-2024 dated 30.03.2024 for recovery / adjustment of Rs.6,20,101.56/- from gratuity and other dues of the petitioner's deceased husband, copies of which are annexures 1 & 2 to the writ petition.*
>
> *(ii). To issue a writ, order or direction in the nature of mandamus commanding the respondents to release the gratuity amount along with interest @12% and further directing the respondent No.4 to release the employees deposit link insurance amount (EDLI) along with interest at the market rate."*

3. Learned counsels for the parties state that the facts of the case have already been set forth in detail in the order dated 11.11.2024.

4. For the sake of convenience, the order dated 11.11.2024 is reproduced below:-

> *"1. Heard learned counsel for the petitioner, Shri Rajeeva Kumar Sinha, learned counsel for respondents and Shri Akhilesh Kumar Singh, learned counsel for respondent No.4.*
>
> *2. Under challenge is the order dated 16.05.2024, a copy of which is Annexure-1 to the petition, whereby the respondents No.1 to 3 have indicated about recovering of a certain amount from the gratuity payable to the petitioner in the capacity of being the widow of Late Sarvesh Srivastava, who died on 10.04.2021.*
>
> *3. The contention is that there cannot be any occasion for the respondents to withhold the amount of gratuity in order to make recovery of certain amounts which might be payable by the deceased employee.*
>
> *4. Shri Sinha, learned counsel appearing for respondents No.1 to 3 states that certain amount is sought to be recovered from the gratuity payable to the petitioner in the capacity of being widow of the deceased employee on account of there being shortage of stores that were noted in the stores which were required to be maintained by the husband of the petitioner inasmuch as he was working as Store Keeper in-charge at the time of his death and thus it has been found feasible to withhold the aforesaid amount.*
>
> *5. Shri Sinha has referred to the provisions of sub section 6 of Section 4 Payments of Gratuity Act,*

1972 to contend that in respect of any loss, willful omission or negligence causing any damage or loss or destruction of the property belonging to the employer the gratuity can be withheld.

6. The contention is that once the Act, 1972 itself empowers the respondents to make deduction from the amount of gratuity consequently there is no error in the order impugned.

7. However, bare perusal of the Sub Section 6 of Section 4 of the Act, 1972 indicates that prima facie withholding of gratuity would only be there in case of termination of an employee in certain circumstances and not otherwise. Even otherwise alleged shortage of stores is sought to be recovered from the gratuity of the deceased employee that too without affording any opportunity of hearing inasmuch as once the employee is already deceased there cannot be any occasion for issuance of any notice. However, Shri Sinha prays for and is granted 10 days' time to file a short counter affidavit to which reply may be filed within next three days.

8. List thereafter as fresh.

9. Meanwhile, learned counsel for respondent No.4 shall seek instructions as to why Employee Deposit Link Insurance (EDLI) has not been paid to the petitioner and in case there is no legal impediment in payment, the said amount should be paid to the petitioner.

10. Whenever the case is next listed, name of Shri Akhilesh Pratap Singh, Advocate be shown as Counsel for Respondent."

5. From perusal of the aforesaid order, it emerges that the petitioner-widow is before this Court raising a claim for being paid the Gratuity under the provisions of the Payment of Gratuity Act, 1972 (**hereinafter referred to as "Act, 1972"**) on account of her husband having died in harness on 10.04.2021. The respondents have passed an order dated 16.05.2024, a copy of which is annexure 1 to the petition, whereby they have indicated about recovering of certain amount from the Gratuity payable to the petitioner in the capacity of being the widow of Late Sarvesh Srivastava i.e. the husband of the petitioner. Also, by means of order dated 30.03.2024, a copy of which is annexure 2 to the petition, the respondents have indicated that an amount of Rs.6,20,101.56/- worth stores / material being found less.

6. Learned counsel for the petitioner has placed reliance on the provisions of the Sub-section (6) of Section 4 of the Act, 1972 to contend that a recovery from gratuity can only be made in case of termination of an employee.

7. The contention is that services of the husband of the petitioner were never terminated rather he died in harness on 10.04.2021 and consequently, the respondents are not within their right of passing the order impugned for withholding of the certain amount which is allegedly due to be recovered from the husband of the petitioner towards shortage in stores, which was the alleged responsibility of the husband of the petitioner.

8. In this regard, reliance has also been placed on the judgment of Division Bench of this Court passed in the case of

Bankey Bihari Chauhan vs. State of U.P. & Ors. in Special Appeal Defective No.101 of 2015 decided on 06.02.2015.

9. It is thus contended that the respondents have patently erred in passing the orders impugned and for adjusting the amount as specified in the order impugned.

10. The further contention is that the respondent No.4 has failed to pay the Employees' Deposit Linked Insurance (EDLI) amount to the petitioner.

11. On the other hand, Shri Sinha, learned counsel appearing for respondents No.1 to 3 has stated that once there was a shortage in stores found subsequent to the death of the husband of the petitioner, consequently, the respondents are within their right of recovering the said amount from the Gratuity which is payable to the petitioner under the provisions of the Act, 1972.

12. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of Secretary, **ONGC Ltd. and Anr. vs. V.U. Warrier AIR 2005 SC 3039**.

13. It is contended that once the respondents are within their right of recovering the amount of shortage in stores which stores were the responsibility of the husband of the petitioner consequently, in case shortage is found they can very well recover the said amount from the Gratuity which is payable to the petitioner in the capacity of being the widow of Late Sarvesh Srivastava.

14. On the other hand, Shri Akhilesh Pratap Singh, learned counsel appearing on behalf of respondent No.4 states that regular amount was not deposited by the respondent-establishment towards the EDLI. The records are being traced out and every endeavour would be made to pay the aforesaid amount, as due to the petitioner, and a final decision in this regard would be taken within the shortest possible time.

15. Heard the learned counsels for the parties and perused the record.

16. From a perusal of the record, it emerges that the husband of the petitioner, who was working under the respondents No.1 to 3, died in harness on 10.04.2021. The respondents have passed the order impugned dated 16.05.2024 whereby the petitioner has been informed that the amount of Gratuity, as due to her, is Rs.4,83,000/- and odd but there is a shortage in stores of approximately Rs.6,20,000/-, which were the responsibility of the husband of the petition, which is sought to be recovered.

17. Raising a challenge to the aforesaid orders, the instant petition has been filed.

18. The sheet anchor of the argument of the learned counsel for the petitioner is Sub-section (6) of Section 4 of the Act, 1972. For the sake convenience, Section 4 of the Act, 1972 is reproduced below:

> *"Section 4. Payment of Gratuity.*
>
> *(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,--*

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.] [Substituted by Act 22 of 1987, Section 4 (w.e.f. 1.2.1991).]

Explanation.-- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year] [Substituted by Act 25 of 1984, Section 3, for " an employee employed in a seasonal establishment" (w.e.f. 1.7.1984).], the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation.-- In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen. [Inserted by Act 22 of 1987, Section 4 (w.e.f. 1.2.1991).]

(3) The amount of gratuity payable to an employee shall not exceed [such amount as may be notified by the Central Government from time to time]. [Substituted 'ten lakh rupees' by Act No. 12 of 2018, dated 28.3.2018.]

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during

that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),--

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited] [Substituted by Act 25 of 1984, Section 3, for " shall be wholly forfeited" (w.e.f. 1.7.1984).]—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

[Sub-Section (7) omitted by Act 34 of 1994, Section 3 (w.e.f. 24.5.1994).]"

19. A perusal of Section 4 of the Act, 1972 indicates that Gratuity is payable to an employee on the termination of his employment after he has rendered service for not less than five years either on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease.

20. Sub-section (6) of Section 4 of the Act, 1972 provides that notwithstanding anything contained in Sub-section (1), which pertains to payment of Gratuity, the Gratuity of an employee whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused and that the gratuity payable to an employee may be wholly or partially be forfeited if the services of such employee have been terminated for his riotous or disorderly conduct for any act or violence on his part or if the services of the employee have been terminated for any act which constitutes an offence involving moral turpitude. Thus, termination of service is the sine-qua-non to forfeiture, fully or partly, of the gratuity.

21. Admittedly, the services of the husband of the petitioner were never terminated rather he died in harness on 10.04.2021. Thus the only provision per which the respondents could have forfeited the gratuity, i.e. Sub-section (6) of Section 4 of the Act, 1972, is clearly not attracted in the instant case as the services of the husband of the petitioner were never terminated rather he died in harness after having rendered continuous service of more than five years. Thus, the petitioner clearly became entitled for gratuity.

22. This aspect of the matter has also been considered by the Division Bench

of this Court in the case of **Bankey Bihari Chauhan (supra)** wherein the Division Bench has held as under:

> *"Section 4 (6) of the Act provides for the circumstances in which the gratuity of an employee, whose services have been terminated, can be forfeited. Section 4 (6) is in the following terms:*
>
> *"4. Payment of gratuity. - (1) ... ...*
>
> *(6) Notwithstanding anything contained in sub-section (1), -*
>
> *(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;*
>
> *(b) the gratuity payable to an employee may be wholly or partially forfeited, -*
>
> *(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*
>
> *(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."*
>
> *In the present case, it is not in dispute that the services of the appellant were never terminated. The appellant continued to be in service and retired on attaining the age of superannuation. In the circumstances, the basic pre-condition for the forfeiture of gratuity under Section 4 (6) of the Act was not fulfilled."*

23. From a perusal of the provision of Sub-section (6) of Section 4 of the Act, 1972 and the Division Bench's judgment of this Court passed in the case of **Bankey Bihari Chauhan (supra)**, it is apparent that the gratuity of the petitioner's husband could only have been forfeited had he been terminated from service, may be for shortage of stores. However, the services were never terminated rather the petitioner's husband died in harness on 10.04.2021 and no disciplinary proceedings were ever initiated against him while he was in service and thus, the sine-qua-non for forfeiture of gratuity or making deductions from gratuity, as specified in Sub-section (6) of Section 4 of the Act, 1972, never arose and thus the orders impugned, forfeiting / making deduction from gratuity of the petitioner's husband, are legally not tenable in the eyes of law and merit to be quashed.

24. So far as the judgment of the Hon'ble Supreme Court in the case of **V.U. Warrier (supra)** is concerned, it would be suffice to state that the Hon'ble Supreme Court in the said judgment has clearly held that the services of the retired employee in that case were not governed by the provisions of the Act, 1972 rather the Oil & Natural Gas Commission (ONGC), of which the person was an employee, had its own rules pertaining to recovery of dues. Thus, the said judgment would have no applicability in the facts of the instant case.

25. So far as the non payment of the EDLI is concerned, it has fairly been

stated by learned counsel appearing for the respondent No.4 that the respondents are examining the records and an endeavour would be made to take a final decision in the matter pertaining to the same. The aforesaid statement is recorded.

26. Accordingly, the writ petition is **allowed**. The order impugned dated 16.05.2024, a copy of which is annexure 1 to the petition, and the order dated 30.03.2024, a copy of which is annexure 2 to the petition, are **quashed**. The respondents No.1 to 3 are directed to pay the entire amount of gratuity due to the petitioner within a period of eight weeks from the date of receipt of certified copy of this order along with admissible interest.

27. The respondent No.4 shall also take a final decision pertaining to the payment of EDLI as due to the petitioner within the aforesaid period of time.

(2025) 1 ILRA 782
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.01.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Writ -A No. 12422 of 2024

Union of India & Ors. ...Petitioners
Versus
Central Administrative Tribunal Lko. & Anr. ...Respondents

Counsel for the Petitioners:
Ajit Kumar Dwivedi

Counsel for the Respondents:
Praveen Kumar

A. Service Law – Disciplinary Enquiry – Sexual Harassment – Conspiracy - CCS (CCA) Rules, 1965 - Rule 11(i), 29 - The action (revisional power) could not have been set aside merely for want of the order having been passed by an authority other than the President. Petitioners have submitted that a bare perusal of the Rule 29 indicates that besides the President, the Head of Department and the appellate authority are also empowered to exercise the revisional power under the Rule. In the present case, the fresh action has been instituted by an order passed by the appellate authority. (Para 12)

B. None of the allegations levelled in the complaint make out a case "sexual harassment" as defined in the guidelines issued by the Government of India. (Para 18)

C. The complainant has already written to the Additional Director, G.S.I. stating that the dispute between her and the opposite party no. 2 stands settled. In these circumstances, **before directing any action to be taken against the opposite party no. 2, the authorities ought to have satisfied themselves whether any *prima facie* case of commission of sexual harassment by the opposite party no. 2 was made out.** The authorities have not recorded any satisfaction before instituting proceeding afresh against the opposite party no. 2. After examination of record, it can be concluded that no case for instituting any fresh proceeding on the allegation of sexual harassment is made out against the opposite party no. 2. (Para 19)

D.(i) The opposite party no. 2 has sent a complaint dated 07.05.2023 to the Director General, GSI against two officers, reproducing a transcript of a conversation showing that they had instigated the complainant to file a false complaint against the opposite party no. 2 and in response to this suggestion the complainant had stated that the opposite party no. 2 had not said anything to her. **The opposite party no. 2 has requested the Director General to take action against the aforesaid two officers but it appears that no action has been taken against those two officers.** (Para 20)