

appellant for promotion be accorded consideration in terms of the policy.

3. *We find substance in the objection of the respondents, inasmuch as transfer cannot be insisted upon by a teacher as a matter of right. Consideration regarding smooth functioning of the educational institutions would be of paramount importance. It is otherwise not disputed that persons senior to the appellant since are continuing at Lucknow as Assistant Teacher; her claim of transfer as Headmistress would create unnecessary heart burn. Giving up claim of promotion also creates complications as very often such claims are revived. It may otherwise lead to more similar claims being raised by other teachers. It is otherwise undisputed that the cadre of teacher/headmistress under the Rules is a district cadre post and transfer, outside the district, can only be allowed in terms of the policy.*

4. *In that view of the matter, we find no good ground to interfere in the matter and, consequently, the present appeal is consigned to records. It goes without saying that as and when fresh transfer policy is floated by the department, it shall be open to the appellant to apply and her claim would be examined in accordance with the policy."*

6. *For the reasons recorded in the order dated 16.2.2024 and the controversy being identical, this*

writ petition is also disposed of on same terms."

22. Against the judgment in the Special Appeal in the case of **Smt. Radha** (supra), a special leave petition being **Special Leave to Appeal (C) No(s). 10912 of 2024 [Radha Vs. State of U.P. & Others]** was preferred, which stood dismissed by an order dated 13.05.2024.

23. Accordingly, even if the grounds which are now sought to be urged on behalf of the appellants are taken into consideration the controversy involved in the present case is fully covered in terms of the judgment dated 28.02.2024 passed in Special Appeal Defective No.159 of 2024 (Shradha Yadav Vs. State of UP through Secretary, Department of Basic Shiksha).

24. We are not inclined to take a different view in the matter.

25. The special appeal, therefore, stands **dismissed**.

(2025) 1 ILRA 747
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.01.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 4769 of 2022

Anand Kumar	...Petitioner
State of U.P. & Ors.	...Respondents
Versus	

Counsel for the Petitioner:
Rajesh Yadav, Ruchi Mishra

Counsel for the Respondents:
C.S.C., Jagannath Maurya

Civil Law- The Constitution of India, 1950- Article 226 - The Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974-Rule 5(1) -

Petitioner claimed compassionate appointment on account of his mother's demise as well as payment of the ex gratia sum of Rs.50 lacs which was directed to be provided by the St. Government to the dependents of employees, engaged in the prevention, control and treatment of the Covid19 disease, who died in consequence of contracting the virus--- A deceased government servant's dependent is eligible for a consideration for appointment under the Rules of 1974, if the deceased's spouse is not a government servant or already employed under the Central Government or a St. Government or a Corporation, owned or controlled by the Central Government or the St. Government.

The respondents have by one stroke of pen, changed all entries of 'P's in the attendance register for the petitioner's mother from 15th April to 26th to 'A's. It is a case of unmistakable forgery to the naked eye. There is not even an initial made to show if this is some kind of correction with a note indicating by which authority and under what circumstances, the correction, if any, was done. The inescapable inference, therefore, is that the petitioner's mother attended her duty in the month of April until 26th, when she was taken ill and admitted to the hospital--- The petitioner's mother was similarly exposed, contracted the virus and apparently died of the deadly disease--- Mandamus is issued to the 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. (Para 10, 52 & 54)

Petition allowed. (E-15)

List of Cases cited:

1. Reepak Kansal Vs U.O.I. & ors., (2021) 9 SCC 251
2. Mayuri Krishna Jabare Vs General Manager, BEST & anr., 2022 DGLS (Bom) 3782

3. Nisha & anr. Vs St. of U.P. through Additional Chief Secretary, Panchayat Raj Department, 2022:AHC-LKO:27037

4. Sunita Prajapati Vs St. of U.P. through Principal Secretary (Home) & ors., 2023:AHC-LKO:33575

5. Priyanka Vs St. of U.P. through Principal Secretary, Finance Department, Lucknow & ors., 2024:AHC-LKO:69440.

(Delivered by Hon'ble J.J. Munir, J.)

1. The Covid-19 pandemic, that ravaged humanity during the years 2020-21 across the world, is unprecedented for its destruction, death, loss of livelihood, business and many such things in the history of mankind. While it brought on immense tragedy for those who lived on to see another day, the misery was sought to be alleviated by the Government of India and the State Governments, lending a helping hand to support the survivors. Whatever could serve as measures of relief were taken by Governments to bring life back on track for various classes of people. There were certain classes of men and women, according to their profession, who had to work for others by the nature of their calling, even when most others, for the sake of dear life, were virtually confined to their homes due to lock-downs. These classes of persons, who had to still work on for humanity's sake, comprised not only of a certain category of government servants, but also employees of corporations, the private sector and the self-employed. They shared a common genre to their calling, whosoever was their employer. They were generally doctors, health workers other than doctors, policemen, and, particularly, workers engaged in the task of maintaining cleanliness, like sweepers by whatever name called. These classes of persons were at the time called 'Corona Warriors'. They

were so called because they worked at a time for the sake of others when the larger part of humanity stayed away. They risked their lives. As a token of acknowledgment and to keep up their morale, they were hailed as Corona Warriors.

2. At the centrestage of the cause in this writ petition is Smt. Asha, a Sweeper with the Nagar Panchayat, Khaga, District Fatehpur. She is the petitioner Anand Kumar's mother, who died on 27.04.2021, during the peak of the Covid-19 pandemic. According to the petitioner, she died in consequence of the Covid-19 disease that she contracted while discharging her duties in the Nagar Panchayat office. It is the petitioner's case that Smt. Asha discharged her duties up to 24.04.2021 in the office, going about her task as a sweeper, when she was suddenly taken ill. She was otherwise healthy. She experienced chest pain and discomfort. She was taken to the nearby clinic for medical aid. The doctor gave her first aid, but that did not bring relief. The following day, she showed symptoms of Covid-19 and was admitted on 26.04.2021 to the L2 Facility Raisina Hospital, Allahabad Institute of Medical Sciences, Purein Mod, Khaga, Fatehpur. She was admitted on 26.04.2021 to the said hospital at 5:00 p.m. and died on 27.04.2021 at 10 minutes past eight in the morning hours. The death summary/ death certificate issued for the petitioner's mother, annexed at page No.20 of the paper-book, in the column of diagnosis, says, "? Covid 19 Pneumonitis". The column, that reads death summary, is blank. The certificate is signed by the Medical Officer on duty at L2 Facility Raisina Hospital, Allahabad Institute of Medical Sciences, Fatehpur.

3. The petitioner's case is that his mother died of Covid-19. After the

petitioner's mother passed away, as he says, on account of the Covid-19 pandemic, he lodged two claims with the respondents. The first was one, seeking compassionate appointment for himself, and the other for the payment of *ex gratia* sum of Rs.50 lacs, that was directed to be provided by the State Government to the dependents of employees, engaged in the prevention, control and treatment of the Covid-19 disease, who died in consequence of contracting the virus. The petitioner claimed compassionate appointment on account of his mother's demise as well as payment of the *ex gratia* sum of money by an application dated 08.07.2021, accompanied by ten documents in support of the claim. The petitioner, in the said application, referred to an earlier application dated 28.06.2021 that he had made to the Nagar Panchayat, Khaga, claiming the *ex gratia* sum of Rs.50 lacs. He said that the application was withheld for a week and then rejected. The petitioner, in his application dated 08.07.2021 under reference, which was addressed to the Director, Local Bodies, U.P., Lucknow, claimed both payment of the *ex gratia* sum of Rs.50 lacs and appointment on compassionate grounds as a dependent of the deceased, Smt. Asha.

4. When the petitioner's twin claims, as aforesaid, were not decided, he instituted Writ-A No.11949 of 2021 before this Court, seeking a direction to the respondents to consider his claim for compassionate appointment. This Court disposed of the last mentioned writ petition vide order dated 20.09.2021, directing respondent No.4 to that writ petition to decide the petitioner's application for grant of compassionate appointment expeditiously, preferably within a period of three months from the date of receipt of the

application along with a web-generated copy of the order. After the service of the said order, the Executive Officer, Nagar Panchayat, Khaga proceeded to reject the petitioner's twin claim to compassionate appointment as well as payment of the *ex gratia* sum of Rs.50 lacs, for reasons indicated in the order dated 11.11.2021 passed by the said Officer.

5. Aggrieved, this writ petition has been instituted.

6. On 25.11.2022, a counter affidavit was filed on behalf of the Executive Officer and the Chairman of the Nagar Panchayat, Khaga, District Fatehpur, to which the petitioner filed a rejoinder on 09.08.2023. In compliance with this Court's order dated 31.10.2023, when the petition was admitted to hearing and certain directions issued, asking the District Magistrate, Fatehpur to file her personal affidavit, a personal affidavit of the District Magistrate, dated 15.11.2023 has been filed. In compliance with the further order dated 12.12.2023 passed by this Court, the Additional Chief Secretary, Revenue Department, Government of U.P., Lucknow, filed a personal affidavit on 18.01.2024, reiterating the Government's stand. A counter affidavit was then put in on behalf of respondent No.3, the District Magistrate, Fatehpur on 29.04.2024.

7. During the course of hearing, on 29.04.2024, it was pointed out by the Court that the stand taken by the Additional Chief Secretary, Revenue Department in his affidavit was not *prima facie* tenable. However, since the matter appeared to be sensitive and one relating to the award of *ex gratia* sum of money to a Covid-19 victim, a Safai Karmi, where an event against the State, would entail substantial

financial consequences, the Court thought it appropriate to grant opportunity to the Principal Secretary to appear in person and explain matters. On 25.07.2024, Guru Prasad, Principal Secretary, Revenue, Government of U.P., Lucknow appeared in person and explained the conditions attending the policy for grant of *ex gratia* relief to Covid-19 victims at the relevant period of time. We have noted in our order dated 25.07.2024 whatever the Principal Secretary had to say, and to which, necessary allusion would be made during the course of this judgment. On 25.07.2024, the learned Counsel for all the parties were heard finally and judgment reserved.

8. Heard Mr. Rajesh Yadav, learned Counsel for the petitioner and Mr. Jagan Nath Maurya, learned Chief Standing Counsel assisted by Ms. Monika Arya, learned Additional Chief Standing Counsel appearing on behalf of the State.

9. We have duly considered the submissions advanced by learned Counsel for the parties and examined the records.

10. So far as one limb of the petitioner's claim, to wit, his request to be granted compassionate appointment as a dependent of his deceased mother is concerned, it was rejected by the respondent–Nagar Panchayat on ground that the petitioner's father, that is to say, the deceased's husband, Gopal Das, was a *Naib Moharrir* with the Nagar Panchayat. The attention of the Court was invited to Rule 5(1) of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (for short, 'the Rules of 1974'), as amended up to date, to point out that a deceased government servant's dependent is eligible for a

consideration for appointment under the Rules of 1974, if the deceased's spouse is not a government servant or already employed under the Central Government or a State Government or a Corporation, owned or controlled by the Central Government or the State Government. Here, the deceased's spouse, her husband being employed with the Nagar Panchayat as a Naib Moharrir, the claim under the Rules of 1974 for a compassionate appointment was not maintainable. A bare reading of Rule 5 of the Rules of 1974 does not brook doubt that the petitioner's father and the deceased's husband being in the employ of the Nagar Panchayat on the date of the petitioner's mother's demise, he does not possess a valid candidature at all for compassionate appointment. This part of the petitioner's claim was, therefore, rightly rejected by the respondents. No exception can be taken to it.

11. During the course of hearing, learned Counsel for the parties candidly said that the real issue in this petition is about the petitioner's entitlement to receive the *ex gratia* sum of Rs.50 lacs on account of her mother's demise in harness while detailed to duty for the prevention, control and treatment of the Covid-19 infection.

12. It is true that being essentially a fiscal matter, and a fortiori, a pure policy decision for the State Government in such cases, it was for the Government to take stock of their resources before extending relief to victims of the Covid-19 pandemic, even of the petitioner's class. This Court cannot direct the State Government to provide financial relief by way of *ex gratia* or pay a particular sum of money *ex gratia* to the dependents of victims, who perished on account of Covid-19 while detailed to duty for the prevention, control and

treatment of the Covid-19. This is not a case where the Court is called upon to judge a case of negligence against the employers or a failure to protect the employee's right to life, the employers being functionaries of the State, entitling the dependents to damages or compensation. It is about the grant of *ex gratia* sum of money to a particular class of employees, to which the petitioner claims to belong, who have been extended that benefit under the Government's policy. It is in this context said that the Court cannot thrust a policy upon the Government, burdening the exchequer.

13. The position is, however, different if a State Government indeed formulates a policy to compensate the Covid-19 victims of a particular class and subjects it to certain conditions, which are then applied by the officers of the State Government responsible to implement the policy or the Government themselves in a manner that makes application of the policy, either arbitrary or discriminatory, or may be even whimsical. If that is the case, this Court can certainly step in to ensure that the benefit of the policy is made available to all victims of the scourge, free from arbitrariness, discrimination or the whim and caprice of officers charged with the responsibility to extend benefits under the policy. This should take us straight to what this policy of the State Government is about the payment of *ex gratia* sum of money to the dependents of employees, who have perished in the Covid-19 pandemic, contracting the virus after being detailed to duty in aid of prevention, control and treatment of the Covid-19 disease.

14. The policy, that provides for the payment of an *ex gratia* sum of Rs.50

lacs to the dependents of such employees, has been introduced by the State Government through Government Orders; and, through subsequent Government Orders, it has evolved to more definitive terms for its application, involving procedure. The most in regard to the policy applicable for the payment of Rs.50 lacs ex gratia relief to the dependents of employees of the Government, autonomous bodies etc., is to be found in the personal affidavit of the District Magistrate, Fatehpur as well as the Additional Chief Secretary, Revenue Department, Government of U.P., Lucknow. Both these affidavits carry a copious detail of the Government Orders issued from time to time, introducing and refining the policy as also copies of the relevant Government Orders, annexed as annexures to these affidavits. We would, for the most, rely on the District Magistrate's personal affidavit.

15. The policy to compensate dependents of victims of the class of employees under consideration was introduced vide Government Order No.249/एक-11-2020-04(जी)/2015-टी0सी0 dated 11.04.2020. The Government Order dated 11.04.2020 reads:

"उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि वर्तमान में वैश्विक महामारी कोविड-19 से प्रभावित सम्पूर्ण प्रदेश में इस महामारी की रोकथाम, उपचार एवं उससे बचाव के लिये चिकित्सा विभाग के अलावा भारी संख्या में विभिन्न विभागों के कार्मिक दिन-रात ड्यूटी में लगे हुए हैं।

2. कोविड-19 की रोकथाम, उपचार व उससे बचाव के लिये कार्यरत कार्मिकों में कोविड-19 के संक्रमण की आशंका सदैव बनी रहती है। कोविड-19 की रोकथाम, उपचार व उससे बचाव के लिये कार्यरत कार्मिक की कोविड-19 के संक्रमण से मृत्यु की दशा में उसके आश्रितों को सामाजिक सुरक्षा देने के

लिये राज्य द्वारा उस मृतक के आश्रितों को 50.00 लाख की एकमुश्त अनुग्रह धनराशि स्वीकृति किये जाने का निर्णय लिया गया है।

3. उपर्युक्त स्वीकृति हेतु संबंधित जनपद के जिलाधिकारी अधिकृत होंगे। इस हेतु कार्यालयाध्यक्ष का इस आशय का प्रमाण-पत्र कि संबंधित कार्मिक कोविड-19 की रोकथाम, उपचार व उससे बचाव के कार्यों के लिये नियुक्त था तथा साथ ही पोस्टमार्टम रिपोर्ट के आधार पर मुख्य जिकित्साधिकारी का इस आशय का प्रमाण-पत्र कि संबंधित कार्मिक की मृत्यु कोविड-19 के संक्रमण से हुई है, अपेक्षित होगा।

4. उक्त व्यवस्था का लाभ चिकित्सा अनुभाग-1 के शासनादेश संख्या-533/पांच-1-2020-आर0(533)/2020 दिनांक 07.04.2020 से आच्छादित कार्मिकों से भिन्न समस्त विभागों, निगमों स्वायत्तशासी संस्थाओं प्राधिकरणों आदि अन्य सभी सरकारी, अर्द्ध-सरकारी, संविदा कर्मी, दैनिक वेतन भोगी, आउटसोर्स स्थायी/अस्थायी कार्मिकों के आश्रितों को अनुमन्य/देय होगी, जो कोविड-19 रोकथाम, उसके उपचार व उससे बचाव के लिये कार्यरत हैं।

5. उक्त व्यय वित्तीय वर्ष 2020-2 के आय-व्यय के अनुदान संख्या-51 के अंतर्गत लेखाशीर्षक "2245-प्राकृतिक विपत्ति के कारण राहत-05-स्टेट डिजास्टर रेस्पांस फण्ड-800-अन्य व्यय-06-स्टेट डिजास्टर रेस्पांस फण्ड से व्यय-09-राज्य सरकार द्वारा घोषित अन्य आपदाओं हेतु स्टेट डिजास्टर रेस्पांस फण्ड से व्यय-41 अन्य व्यय" के नामे डाला जायेगा।

उपर्युक्त आदेश वित्त विभाग के अशासकीय संख्या-646/दस-5-2020 दिनांक 11 अप्रैल 2020 में प्राप्त उनकी सहमति से जारी किये जा रहें हैं।"

16. The Government Order dated 11.04.2020 was promptly amended by Government Order No.249(2)/एक-11-2020-04(जी)/ 2015-टी0सी0, also dated 11.04.2020. The amending Government Order dated 11.04.2020, in its material part, provides:

“2. इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि उक्त शासनादेश संख्या-249/एक-11-2020-04(जी)/2015-टी0सी0 दिनांक 11 अप्रैल, 2020 के प्रस्तर-3 को निम्नानुसार संशोधित किया जाता है:-

उपर्युक्त स्वीकृति हेतु संबंधित जनपद के जिलाधिकारी अधिकृत होंगे। इस हेतु कार्यालयाध्यक्ष का इस आशय का प्रमाण-पत्र कि संबंधित कार्मिक कोविड-19 की रोकथाम, उपचार व उससे बचाव के कार्या के लिये नियुक्त था तथा साथ ही मुख्य चिकित्साधिकारी का इस आशय का प्रमाण-पत्र कि संबंधित कार्मिक की मृत्यु कोविड-19 के संक्रमण से हुई है, अपेक्षित होगा।”

17. The next Government Order, that further evolved the policy for payment of the ex gratia sum to dependents of employees of the specified class, was issued on 22.06.2021. The material part of the Government Order dated 22.06.2021 reads:

“2. इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि विर्तमान वित्तीय वर्ष 2021-22 में भी कोविड-19 के रोकथाम, बचाव व उपचार में चिकित्सा विभाग के कार्मिकों के अलावा ऐसे कार्मिकों को जिनकी ड्यूटी कार्यालयाध्यक्ष/जिलाधिकारी द्वारा कोविड की रोकथाम, बचाव अथवा उपचार में लगायी गयी है, को कोविड संक्रमण से मृत्यु की दशा में उनके आश्रितों को रु० 50.00 लाख की एकमुश्त अनुग्रह धनराशि दिये जाने का निर्णय लिया गया है।

3. जिलाधिकारी द्वारा सम्बन्धित कार्मिक की कोविड संक्रमण से मृत्यु पर उसके आश्रितों को अनुग्रह धनराशि की स्वीकृति करके सभी अभिलेखों सहित धनराशि अवमुक्त करने हेतु शासन को संस्तुति प्रेषित की जायेगी। जिलाधिकारी द्वारा केवल उन्हीं कार्मिकों के आश्रितों को अहेतुक सहायता राशि (रु० 50.00 लाख) स्वीकृत की जायेगी, जिनकी ड्यूटी कार्यालयाध्यक्ष/जिलाधिकारी द्वारा कोविड की रोकथाम, बचाव अथवा उपचार में लगायी गयी है एवं कोविड संक्रमण से उनकी मृत्यु हुई है। इस हेतु

कार्यालयाध्यक्ष द्वारा संलग्न प्रारूप-1 पर इस आशय का प्रमाण-पत्र उपलब्ध कराया जायेगा कि संबंधित कार्मिक कोविड-19 की रोकथाम, बचाव अथवा उपचार के कार्यों के लिये नियुक्त था एवं मुख्य चिकित्साधिकारी द्वारा संलग्न प्रारूप-2 पर इस आशय का प्रमाण-पत्र उपलब्ध कराया जायेगा कि सम्बन्धित कार्मिक की मृत्यु कोविड-19 के संक्रमण से हुयी है। सम्बन्धित कार्मिक की सेवा पुस्तिका में दर्ज सभी आश्रितों को बराबर-बराबर अहेतुक सहायता की धनराशि जिलाधिकारी द्वारा वितरित करायी जायेगी। यदि सेवा पुस्तिका में आश्रितों के नाम दर्ज नहीं है तो मृतक कार्मिक के उत्तराधिकारियों में अहेतुक सहायता की धनराशि बराबर-बराबर जिलाधिकारी द्वारा वितरित करायी जायेगी।

4. उक्त व्यवस्था का लाभ चिकित्सा अनुभाग-1 के शासनादेश संख्या-533/पांच-1-2020-आर०(533)/2020 दिनांक 07.04.2020 से आच्छादित कार्मिकों से भिन्न समस्त विभागों, निगमों स्वायत्तशासी संस्थाओं, प्राधिकरणों आदि अन्य सभी सरकारी, अर्द्ध-सरकारी, संविदा कर्मी, दैनिक वेतन भोगी, आउटसोर्स, स्थायी/अस्थायी कार्मिकों के आश्रितों को अनुमन्य/दिय होगी, जिनकी ड्यूटी कार्यालयाध्यक्ष/जिलाधिकारी द्वारा कोविड-19 की रोकथाम, बचाव व उपचार में लगायी गयी हो।

5. कोविड-19 की द्वितीय लहर के दौरान अब तक मृत सरकारी कार्मिकों का विवरण एवं संगत अभिलेखों को राहत आयुक्त कार्यालय की वेबसाइट rahat.up.nic.in पर दिनांक 30 जून, 2021 तक अनिवार्य रूप से फीड एवं उपलोड करा दिया जाय और भविष्य में भी उक्त वेबसाइट पर कोविड से मृत सभी कार्मिकों का विवरण फीड किया जाता रहेगा।

6. उक्त वय वित्तीय वर्ष 2021-22 के आय-व्यय के अनुदान संख्या-51 के अन्तर्गत लेखाशीर्षक "2245-प्राकृतिक विपत्ति के कारण राहत-05-स्टेट डिजास्टर रेस्पांस फण्ड-800-अन्य व्यय-06-स्टेट डिजास्टर रेस्पांस फण्ड से व्य-09-राज्य सरकार द्वारा घोषित अन्य आपदाओं हेतु स्टेट डिजास्टर रेस्पांस फण्ड से व्यय-42 अन्य व्यय" के नामे डाला जायेगा।

उपर्युक्त आदेश वित्त विभाग के अशासकीय
संख्या-591/दस-5-2021 दिनांक 18 जून,
2021 में प्राप्त उनकी सहमति से जारी किये जा रहे
हैं।"

18. Forms-1 and 2, appended to
the Government Order dated 22.06.2021,
are set out hereinbelow:

**"शासनादेश संख्या-411/एक-11-
2021-04(जी)/2015 टी0सी0, दिनांक 22
जून, 2021 का संलग्नक-1**

प्रारूप-1

प्रमाण पत्र संख्या- दिनांक

कोविड-19 इयूटी प्रमाण-पत्र

प्रमाणित किया जाता है कि श्री/श्रीमती
..... की इयूटी कोविड-19 की रोकथाम बचाव
अथवा उपचार के कार्यों में लगायी गयी थी। उक्त
कार्मिक की कोविड संक्रमण से दिनांक
को असामयिक मृत्यु हो गयी है।

कार्मिक का विवरण निम्नवत है:-

1- मृतक कार्मिक का नाम

.....

2- विभाग का नाम

3- पदनाम

4- कोविड की रोकथाम, बचाव अथवा
उपचार से सम्बन्धित कार्य का विवरण

.....

5- कोविड से सम्बन्धित कार्य का इयूटी
स्थल

6. कोविड से सम्बन्धित कार्य की अवधि
दिनांक से तक कोविड इयूटी
आदेश दिनांक की छायाप्रति संलग्न है।

दिनांक:-

हस्ताक्षर जिलाधिकारी/कार्यालयाध्यक्ष

नाम

विभाग का नाम

जनपद का नाम

(सील मुहर)

संलग्नक-"

"शासनादेश संख्या-411/एक-11-
2021-04(जी)/2015 टी0सी0, दिनांक 22 जून,
2021 का संलग्नक-2

प्रारूप-2

प्रमाण पत्र संख्या- दिनांक

कोविड-19 मृत्यु प्रमाण-पत्र

प्रमाणित किया जाता है कि श्री/श्रीमती
..... की मृत्यु कोविड-19 के संक्रमण से दिनांक
..... को हुयी है।

1- मृतक कार्मिक का नाम

.....

2- पिता का नाम

3. मृतक का पता

4- अस्पताल का नाम (भर्ती की दशा में)

.....

5- RTPCR/एण्टीजनेन टेस्ट का
दिनांक, जिससे कोविड की पुष्टि हुयी

.....

6. कोविड टेस्ट लैब/अस्पताल का नाम

.....

7. यदि कोविड की जांच उपरोक्त क्रमांक5
में वर्णित पद्धति से नहीं की गयी तो कोविड प्रमाणित
करने का अन्य स्रोत (विवरण अंकित करें)

.....

दिनांक:-

हस्ताक्षर

मुख्य चिकित्साधिकारी का नाम

जनपद

(सील मुहर)

संलग्नक-"

19. The last to be issued on the
subject is a Government Order dated
26.07.2021. This further details
requirements for the grant of benefit under
the policy and specifies what documents
would be required to be furnished to extend
the necessary ex gratia relief to the
dependents of an employee of the specified
class, becoming a victim of the Covid-19.

The Government Order dated 26.07.2021, in its material part, reads:

"उपरोक्त विषयक कृपया राजस्व अनुभाग-11 के शासनादेश सं0-411/एक-11-2021-4(जी)/2015 टी0सी0 दिनांक 22 जून का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा वित्तीय वर्ष 2021-22 में कोविड-19 की रोकथाम, बचाव व उपचार में लगाये गये कार्मिकों की कोविड संक्रमण से मृत्यु की दशा में उनके आश्रितों को रू0 50.00 लाख की एकमुश्त अनुग्रह धनराशि दिये जाने के संबंध में विस्तृत दिशा-निर्देश जारी किये गये हैं।

2- जनपदों द्वारा आनलाईन अपलोड किये गये प्रस्तावों की समीक्षा में यह पाया गया है कि <https://rahat.up.nic.in> पर जिलाधिकारियों द्वारा अपलोड किये गये प्रस्ताव अपूर्ण हैं तथा शासनादेश दिनांक 22 जून 2021 के साथ प्रेषित प्रारूपों पर सूचना यथा अधिकांश कार्मिक का ड्यूटी आदेश, जिलाधिकारी की संस्तुति आदि अभिलेख अपलोड नहीं किया गये है, सभी अपर जिलाधिकारी, वित्त एवं राजस्व से जूम मीटिंग एवं कंट्रोल रूप के माध्यम से सभी वांछित अभिलेख अपलोड करने हेतु कई बार निर्देश दिये गये हैं।

3- उक्त के संबंध में मुझे यह कहने का निदेश हुआ है कि उपरोक्त शासनादेश दिनांक 22.06.2021 के क्रम में निम्नलिखित अभिलेख राहत आयुक्त कार्यालय की वेबसाइट <https://rahat.up.nic.in> पर दिनांक 07.08.2021 तक अपलोड कराना सुनिश्चित करें:-

1. सक्षम अधिकारी द्वारा निर्गत मृत्यु पंजीकरण प्रमाण पत्र।

2. मृतक कार्मिक की आर0टी0पी0सी0आर0/एंटीजन/सी0टी0 स्कैन की पठनीय प्रति।

3. कोविड ड्यूटी आदेश की पठनीय प्रति।

4. जिलाधिकारी/कार्यालयाध्यक्ष का कोविड ड्यूटी प्रमाण पत्र (शासनादेश दि0 22.06.2021 में निर्धारित प्रारूप -1 पर)

5. मुख्य चिकित्सा अधिकारी द्वारा निर्गत कोविड मृत्यु प्रमाण पत्र (शासनादेश दि0 22.06.2021 में निर्धारित प्रारूप -2 पर)।

6. अपर जिलाधिकारी वित्त एवं राजस्व का उपरोक्त सभी अभिलेखों के सत्यानोपरान्त अभिलेख सत्यापन प्रमाण पत्र (संलग्न प्रारूप-3 पर)।

7. जिलाधिकारी का संस्तुति पत्र।

अपर जिलाधिकारी क्रमांक 01 से 05 तक के सभी प्रमाण पत्रों/अभिलेखों की सत्यता का प्रमाणित करके ही वेबसाइट पर उपलोड करेंगे। सभी वांछित अभिलेखों पर सक्षम अधिकारी के हस्ताक्षर, सील/मोहर तथा निर्गत करने वाले कार्यालय का पत्रांक भी स्पष्ट अंकित होना चाहिए। सम्बन्धित अपर जिलाधिकारी सभी अभिलेखों की सत्यता की जांच स्वयं करने के उपरान्त ही वेबसाइट पर अपलोड कराना सुनिश्चित करें।"

20. Now, the District Magistrate says in her personal affidavit that after this Court made the order dated 31.10.2023, requiring her to put in her personal affidavit, she, with a view to ascertain the correct facts, vide her order dated 10.11.2023, constituted a three-member committee, headed by the Additional District Magistrate (Judicial), Fatehpur along with the Chief Medical Officer, Fatehpur and the Chief Treasury Officer, Fatehpur, directing them to submit an inquiry report within two days. It is said in paragraph No.9 of the District Magistrate's personal affidavit that the Committee as aforesaid, constituted by her, submitted their report, after receiving reports from the Executive Officer, Nagar Panchayat Khaga, Fatehpur, the Chief Medical Officer, Fatehpur and a written statement dated 14.11.2023 from the petitioner. In paragraph No.9 aforesaid, as regards the petitioner's claim for the ex gratia sum of Rs.50 lacs, the report of the Executive Officer, Nagar Panchayat, Khaga, that was

taken into consideration by the Committee appointed by the District Magistrate, is quoted for the material part of it. The quoted portion of the report in paragraph No. 9(a) of the District Magistrate's personal affidavit reads:

"इस प्रकार नगर पंचायत, खागा के अधिशासी अधिकारी/कार्यालय अध्यक्ष की हैसियत से मृतक श्रीमती आशा देवी पत्नी गोपालदास, सफाई कर्मी, नगर पंचायत, खागा की डियूटी कोविड-19 की रोकथाम, उपचार व उससे बचाव के कार्यों में डियूटी नहीं लगायी गयी थी तथा कोविड-19 के संक्रमण से मृत्यु होने का साक्ष्य एल-02 सी0एच0सी0 के चिकित्सा प्रभारी द्वारा अथवा याची आनानंद कुमार द्वारा भी नहीं उपलब्ध कराया गया है।

उक्त के क्रम में निर्गत शासनादेश संख्या: 411/एक-11-2021-04(जी)/2015-टी0सी0 दिनांक 22.06.2021 में दिये गये दिशा-निर्देशों के आलोक में मृतक श्रीमती आशा देवी के परिवारिक जनों को मु0 50.00 लाख रु0 की सहायता राशि देय नहीं है।"

21. The Chief Medical Officer's report, on the basis of which the Additional District Magistrate (Judicial)'s Committee submitted their report, also quoted in paragraph No.9(b) of the District Magistrate's personal affidavit, reads:

"उक्त प्रकरण को संज्ञान लेते हुये मुख्य चिकित्सा अधिकारी द्वारा 03 चिकित्सकों की संयुक्त टीम को गठित कर जांच कर जांच आख्या 03 दिवस के अन्दर प्रस्तुत करने के निर्देश दिये गये थे। जांच समिति द्वारा प्रकरण की जांच कर मृतका आशा पत्नी राम गोपाल के उपचार सम्बन्धित सभी अभिलेख सामु0स्वा0 केन्द्र हरदो, खागा से प्राप्त करके जांच समिति द्वारा अभिलेखों का अवलोकन किया गया, जांच में जो तथ्य प्रकाश में आये वह बिन्दुवार निम्नवत है-

1. मृतिका आशा देवी पत्नी गोपालदास निवासी न्यूनगढी खागा फतेहपुर उम्र लगभग 55 वर्ष

दिनांक 26.04.2021 को समय सांय 5.00 बजे एल0-2 कैशलिटी, रायसीना हॉस्पिटल, इलाहाबाद इन्स्टिट्यूट मेडिकल साइन्सेज पुराईन मोड खागा फतेहपुर में भर्ती हुई थी उसकी मृत्यु दिनांक 27.04.2021 को सुबह 8.10 बजे उपरोक्त हास्पिटल में हुई थी। मृतिका महिला पिछले एक सप्ताह से बिमार थी किन्तु उसका कोविड-19 एण्टीजन टेस्ट भी नहीं कराया गया था जबकि एण्टीजन टेस्ट जनपद में सभी चिकित्सा इकाईयों व मोबाइल टीम द्वारा घर पर भी हो रहा था, फिर भी मृतिका महिला के परिजनों द्वारा एण्टीजन जांच नहीं करायी गयी और इस प्रकरण में आर0टी0पी0सी0आर0 जांच/सी0टी0 स्कैन चेस्ट भी नहीं कराया गया है। जिस कारण मुख्य चिकित्सा अधिकारी द्वारा प्रारूप-2 पर इस आशय का प्रमाण पत्र उपलब्ध नहीं कराया जा सकता की कार्मिक की मृत्यु कोविड-19 के संक्रमण से हुई है। जो कि इस प्रकरण में अनुग्रह राशि का लाभ लेने हेतु अतिआवश्यक है।

2. मृतिका महिला पहले से ही मधुमेह रोग से ग्रसित थी जिसमें शरीर की प्रतिरोधक क्षमता कम हो जाती है जिससे मरीज के अन्य रोगों से संक्रमित होने की सम्भावना बढ़ जाती है जिससे मरीज की मृत्यु हो भी सकती है।

3. मृतिका आशा देवी की भर्ती फाइल (केश सीट) पर DIAGNOSIS सम्भावित Covid 19 PNEUMONITIS लिखा गया है किन्तु मृतिका महिला का सी0टी0 स्कैन चेस्ट नहीं हो सका, जिस कारण मृतिका महिला के कोविड-19 PNEUMONITIS से ग्रसित होने की पुष्टि नहीं की जा सकती है।

4. मृतिका आशा की भर्ती फाइल के अनुसार उक्त मृतिका आशा एक हफ्ते से बुखार से पीडित थी तथा उसे सांस लेने में कठनाई हो रही थी यह लक्षण अन्य बीमारियों जैसे- सी0ओ0पी0डी0, न्यूमोनिया, सांस नली का संक्रमण आदि रोगों में भी हो सकता है।

5. चूँकि उस समय कोविड-19 की लहर चल रही थी ऐसी स्थिति में कोई भी मरीज जिसको बुखार आ रहा हो और सांस लेने में दिक्कत हो और आक्सीजन सैचुरेशन कम हो तो ऐसे सभी मरीजों को कोविड-19 से ग्रसित मानकर एल0-2 हॉस्पिटल में भर्ती करके उनका इलाज किया जाता था किन्तु

कोविड-19 इन्फेक्शन आर0टी0पी0सी0आर जांच/सी0टी0 स्कैन / एण्टीजन की रिपोर्ट के आधार पर पॉजिटिव माना जाता था।

6. अपर मुख्य सचिव शासन के शासनादेश संख्या-1394/एक-10-2021-33 (08)/2021 लखनऊ दिनांक 26 जुलाई 2021 के द्वारा वर्ष 2021-22 में कोविड-19 की रोकथाम बचाव व उपचार में लगाये गये कार्मिकों की कोविड संक्रमण से मृत्यु की दशा में उनके आश्रितों को 50.00 लाख की एकमुश्त अनुग्रह धनराशि दिये जाने के सम्बन्ध में योजना के लाभ करने हेतु शासनादेश बिन्दु संख्या-2 पर अंकित मृतक कर्मी की आर0टी0पी0सी0आर0/ एण्टीजन/ सी0टी0 स्कैन की रिपोर्ट की पठनीय प्रति आवश्यक है जो इस प्रकरण में उपलब्ध नहीं है।

निष्कर्ष- मेरे द्वारा गठित जाँच समिति द्वारा उपलब्ध करायी गयी जाँच आख्या का अवलोकन किया गया। मैं जाँच समिति की आख्या/निष्कर्ष से सहमत हूँ। मेरा भी यही मानना है कि यह सुनिश्चित नहीं किया जा सकता है कि मृतिका महिला की मृत्यु कोविड-19 से हुई थी। मृतिका महिला पहले से ही मधुमेह रोग से ग्रसित थी जिस रोग में मरीज की प्रतिरोधक क्षमता कम हो जाती है जिससे मरीज में अन्य संक्रमण होने की सम्भावना अधिक रहती है और संक्रमण तेजी से बढ़ता है और रोगी की मृत्यु भी हो सकती है। उपरोक्त प्रकरण में मृतिका महिला की न तो आर0टी0पी0सी0 आर0 जाँच / एण्टीजन टेस्ट / सी0टी0स्कैन चेस्ट कराया गया जिस कारण से शासनादेश दिनांक 22.06.2021 के साथ संलग्न प्रारूप-02 पर मुख्य चिकित्साधिकारी, फतेहपुर द्वारा इस आशय का प्रमाण पत्र भी उपलब्ध नहीं कराया जा सकता कि कार्मिक की मृत्यु कोविड-19 के संक्रमण से हुई है।"

22. The statement of the petitioner dated 14.11.2023 before the Inquiry Committee, that the District Magistrate appointed, has been quoted in the District Magistrate's personal affidavit in paragraph No.9(c), which reads:

"प्रार्थी की माता आशा देवी पत्नी गोपालदास, नगर पंचायत खगा में सफाई कर्मचारी के पद पर कार्यरत थी। कोविड-19 के दौरान डियूटी करते समय बीमार हो गयी थी। इलाज हेतु कोविड-19 L-2 हास्पिटल छिमी पुरइन में दिनांक 26.04.2021 को भर्ती करायी गयी थी। दिनांक 27.04.2021 को L-2 हास्पिटल में ही उनकी मृत्यु हो गयी। मृत्यु उपरान्त शासन से मिलने वाले 50.00 लाख अनुदान राशि के लिये मेरी माता के पक्ष में जो अभिलेख थे। मेरे द्वारा स्थानीय निकाय, लखनऊ जिलाधिकारी, फतेहपुर अधिशाषी अधिकारी, नगर पंचायत, खगा तथा मा0 उच्च न्यायालय, इलाहाबाद को प्रस्तुत किये जा चुके हैं।"

23. The Committee, that the District Magistrate appointed, headed by the Additional District Magistrate (Judicial), submitted its report, also dated 14.11.2023, whose findings as to the petitioner's claim for the ex gratia sum of money on account of his mother's death, extracted in paragraph No.10 of the District Magistrate's affidavit, read:

"(2) अनुग्रह राशि दिये जाने के सम्बन्ध में समिति का निष्कर्ष

याची को अनुग्रह राशि दिये जाने के सम्बन्ध राजस्व अनुभाग-11 शासनादेश संख्या-249/एक-11-2020-04 (जी) / 2015-टी0सी0 दिनांक 11.04.2020 शासनादेश संख्या-411/एक-11-2021-04 (जी)/ 2015-टी0सी0 दिनांक 22 जून 2021 तथा उ0प्र0 राजस्व लखनऊ अनुभाग-10 से निर्गत शासनादेश संख्या-1394/एक-10-2021-33 (08)/2021 दिनांक 26 जुलाई 2021 में अनुग्रह राशि दिये जाने की व्यवस्था दी गयी है तथा शासनादेश संख्या -411/एक-11-2021-04 (जी) / 2015-टी0सी0 दिनांक 22 जून 2021 में स्पष्ट उल्लेख है कि "कि चिकित्सा विभाग के कार्मिकों के अलावा ऐसे कार्मिकों को जिनकी डियूटी कार्यालयाध्यक्ष / जिलाधिकारी द्वारा कोविड की

रोकथाम, बचाव अथवा उपचार में लगायी गयी है की कोविड संक्रमण से मृत्यु की दशा में उनके आश्रितों को ₹0 50.00 की एकमुश्त अनुग्रह धनराशि दिये जाने का निर्णय लिया गया है।

जिलाधिकारी द्वारा सम्बन्धित कार्मिक की कोविड संक्रमण से मृत्यु पर उसके आश्रितों को अनुग्रह धनराशि की स्वीकृति करके सभी अभिलेखों सहित धनराशि अवमुक्त करने हेतु शासन को संस्तुति प्रेषित की जायेगी। जिलाधिकारी द्वारा केवल उन्हीं कार्मिकों के आश्रितों को अहेतुक सहायता राशि (₹0 50.00 लाख) स्वीकृत की जायेगी, जिनकी डियूटी कार्यालयाध्यक्ष / जिलाधिकारी द्वारा कोविड की रोकथाम, बचाव अथवा उपचार में लगायी गयी है एवं कोविड संक्रमण से उनकी मृत्यु हुई है। इस हेतु कार्यालयाध्यक्ष द्वारा संलग्न प्रारूप-1 पर इस आशय का प्रमाण पत्र उपलब्ध कराया जायेगा। कि सम्बन्धित कार्मिक कोविड-19 की रोकथाम, बचाव अथवा उपचार के कार्यों के लिए नियुक्त था एवं मुख्य चिकित्साधिकारी द्वारा संलग्न प्रारूप 02 पर इस आशय का प्रमाण पत्र उपलब्ध कराया जायेगा कि सम्बन्धित कार्मिक की मृत्यु कोविड-19 के संक्रमण से हुई है।"

1. इस सम्बन्ध में मुख्य चिकित्साधिकारी, फतेहपुर की जाँच आख्या दिनांक 13.11.2023 में स्पष्ट किया गया है कि मृतिका आशा देवी पत्नी गोपालदास निवासी न्यूनगढी खागा फतेहपुर उम्र लगभग 55 वर्ष दिनांक 26.04.2021 को समय सांय 5:00 बजे एल0-2 कैशलिटी, रायसीना हॉस्पिटल, इलाहाबाद इन्स्टिट्यूट मेडिकल साइन्सेज पुराईन मोड खागा फतेहपुर में भर्ती हुई थी उसकी मृत्यु दिनांक 27.04.2021 को सुबह 8:10 बजे उपरोक्त हास्पिटल में हुई थी। मृतिका महिला पिछले एक सप्ताह से बीमार थी किन्तु उसका कोविड-19 एण्टीजन टेस्ट भी नहीं कराया गया था जबकि एण्टीजन टेस्ट जनपद में सभी चिकित्सा इकाईयों व मोबाइल टीम द्वारा घर पर भी हो रहा था, फिर भी मृतिका महिला के परिजनों द्वारा एण्टीजन जांच नहीं करायी गयी और इस प्रकरण में आर0टी0पी0सी0आर0 जांच/सी0टी0 स्कैन चेस्ट भी नहीं कराया गया है तथा मृतिका महिला पहले से ही मधुमेह रोग से ग्रसित थी, जिसमें शरीर की प्रतिरोधक क्षमता कम हो जाती है। जिससे मरीज के अन्य रोगों से संक्रमित होने की सम्भावना बढ़ जाती है, जिससे मरीज

की मृत्यु भी हो सकती है। मृतिका आशा की भर्ती फाइल के अनुसार उक्त मृतिका आशा एक हफ्ते से बुखार से पीडित थी तथा उसे सांस लेने में कठनाई हो रही थी यह लक्षण अन्य बीमारियों जैसे- सी0ओ0पी0डी0, न्यूमोनिया, सांस नली का संक्रमण आदि रोगों में भी हो सकता है। चूंकि उस समय कोविड-19 की लहर चल रही थी ऐसी स्थिति में कोई भी मरीज जिसको बुखार आ रहा हो और सांस लेने में दिक्कत हो और आक्सीजन सैचुरेशन कम हो तो ऐसे सभी मरीजों को कोविड-19 से ग्रसित मानकर L-2 हस्पिटल में भर्ती करके उनका इलाज किया जाता था। किन्तु कोविड-19 इन्फेक्शन आर0टी0पी0सी0आर0 जांच/सी0टी0 स्कैन / एण्टीजन की रिपोर्ट के आधार पर पॉजीटिव माना जाता था। जिस कारण मुख्य चिकित्सा अधिकारी द्वारा प्रारूप-2 पर इस आशय का प्रमाण पत्र उपलब्ध नहीं कराया जा सकता कि कार्मिक की मृत्यु कोविड-19 के संक्रमण से हुई है तथा मृतक कार्मिक की डियूटी न तो जिलाधिकारी द्वारा और न ही कार्यालयाध्यक्ष (अधिशायी अधिकारी नगर पंचायत, खागा) द्वारा कोविड-19 के रोकथाम, बचाव अथवा उपचार के कार्यों के लिए डियूटी लगायी गयी थी, जिससे इस आशय का भी प्रमाण पत्र प्रारूप-01 पर निर्गत नहीं किया गया है। राजस्व अनुभाग-11 शासनादेश संख्या-411/एक-11-2021-04 (जी) / 2015-टी0 सी0 दिनांक 22 जून 2021 में अनुग्रह राशि प्राप्त करने हेतु प्रारूप-01 तथा प्रारूप-02 पर प्रमाण-पत्र उपलब्ध कराया जाना जिलाधिकारी द्वारा कोविड संक्रमण से मृत्यु पर उनके आश्रितों को अनुग्रह धनराशि की स्वीकृति करके सभी अभिलेखों सहित धनराशि अवमुक्त करने हेतु शासन को संस्तुति प्रेषित करने हेतु आवश्यक है।

इस प्रकार मुख्य चिकित्साधिकारी, फतेहपुर की जाँच आख्या दिनांक 13.11.2023 तथा अधिशायी अधिकारी नगर पंचायत, खागा की जाँच आख्या दिनांक 11.11.2023 एवं शासनादेशों में दिये गये दिशा-निर्देशों में दी गयी विधि व्यवस्थाओं के आधार पर मृतिका आशा देवी पत्नी गोपालदास सफाई कर्मी नगर पंचायत, खागा की मृत्यु के सम्बन्ध में - उनके आश्रितों को अनुग्रह राशि के रूप में मु0 50.00 लाख ₹0 की सहायता नियमानुसार देय नहीं

है। परन्तु मृतक महिला आशा नगर पंचायत, खागा में सफाई कर्मी के रूप में कार्यरत था तथा चिकित्साधिकारी द्वारा कोविड-19 मानते हुए मृतका आशा देवी का उपचार किया जा रहा था। ऐसी स्थिति में मानवीय दृष्टिकोण अपनाते हुए मृतका के पारिवारिक जनों को अनुग्रह राशि दिये जाने के सम्बन्ध में शासन से उचित मार्ग दर्शन प्राप्त किया जाना भी उचित प्रतीत होता है।"

24. The stand of the District Magistrate in paragraph Nos.12, 13, 14 and 15 of her personal affidavit to negate the petitioner's claim, in the first place, is that there is no evidence to show, such as a certificate of the Office Superintendent concerned, that the deceased was detailed to any duty for the prevention, control and treatment of the Covid-19 disease; and, in the second, there is no lab report/ test report or certification by the Chief Medical Officer, Fatehpur, that the deceased, Smt. Asha died of Covid-19 infection. In the absence of these documents, there is no fulfillment of the conditions stipulated in the Government Orders dated 11.04.2020, as amended on the selfsame date, the Government Order dated 22.06.2021 and the Government Order dated 26.07.2021, entitling the petitioner to receive the ex gratia sum of Rs.50 lacs on account of his mother's demise. The Additional Chief Secretary (Revenue), Government of U.P., Lucknow has refuted the petitioner's claim more or less on the same grounds as those set forth in the District Magistrate's personal affidavit. In addition, the Additional Chief Secretary has appended along with his affidavit a copy of the order dated 16.12.2023 passed by the District Magistrate, Fatehpur, rejecting the petitioner's claim for payment of the ex gratia sum of Rs.50 lacs on grounds already indicated. The order dated 16.12.2023 has been brought into existence pending this

writ petition. If the stand of the respondents is not accepted by us, the order dated 16.12.2023, annexed as Annexure No.8 to the Additional Chief Secretary's affidavit filed on 18.01.2024, would have to be quashed, notwithstanding the fact that this order has not been challenged by the petitioner through an amendment. The order is one that has come into existence pendente lite after we passed orders dated 31.10.2023. It would be too technical to insist upon pain of fatal consequences to the petitioner's claim that the petition ought have been amended to challenge the District Magistrate's order dated 16.12.2023. The validity of this order would have to be judged within the frame of the writ petition that the petitioner originally instituted.

25. Since the matter involved financial consequences and it was about the application of the Government's policy to pay ex gratia uniformly, we gave opportunity to the Principal Secretary (Revenue) to come forward in person and explain the Government's stand, if he so desires. Guru Prasad, Principal Secretary (Revenue), Government of U.P., appeared before this Court in person and explained the conditions of the policy for award of ex gratia compensation to the dependents of Covid-19 victims at the relevant period of time. He highlighted that feature of the policy, which says that ex gratia compensation is to be awarded to those employees who were detailed to duty in connection with prevention, control and treatment of Covid-19. He said before us that the petitioner's mother, though a Safai Karmi, was not assigned to duty in connection with prevention, control and treatment of the Covid-19 disease. He explained at length features of the policy,

which are more or less the same, that have been said on affidavit.

26. Now, as is apparent, the petitioner's claim has been rejected on two counts substantially. The first is the lack of evidence to show that his mother was detailed either by the Head of Office or the District Magistrate to any duty involving the prevention, control and treatment of the Covid-19 disease; and, secondly, the lack of evidence to show in the manner prescribed or by other evidence aliunde that she died of Covid-19 infection. As already remarked, it is not our province to formulate policies for the Government, particularly, those entailing financial burden on the exchequer. If the State Government had not formulated the policy carried in the Government Orders dated 11.04.2020, 22.06.2021 and 26.07.2021, it would be no business of ours to say that a policy be framed for extending financial aid ex gratia even to those dependents of victims of the Covid-19 pandemic, who were detailed to duty for the prevention, control and treatment of the Covid-19 disease and died in consequence. But, once the State Government have come up with a policy to extend this aid, as already remarked in this judgment, it is our bounden duty to ensure that the policy is applied in an evenhanded, fair and reasonable manner. We have to ensure that no one entitled under the policy is arbitrarily or whimsically excluded by resort to any irrational demand or standard, or in any other similar fashion, when substantially entitled in terms of the policy.

27. It is true that in the successive Government Orders, the application of the policy has been honed through progressive refinement of standard paper work, including documents required to support a

claim for the ex gratia sum of Rs.50 lacs for a dependent of an employee, covered by the policy. It would, in our clear opinion, be very arbitrary to exclude genuine and bona fide claims from consideration, merely because the necessary documents or papers in punctilious detail are not available. Of course, it has to be ascertained if indeed the deceased fulfilled the substantial criteria prescribed by the three Government Orders, entitling his/ her dependents to the ex gratia monetary relief. The twin substantial requirements for the entitlement are the facts that the employee concerned was detailed to duty regarding prevention, control and treatment of the Covid-19 disease and that he/ she, while discharging such duty, contracted the virus, leading to his/ her death.

28. There are two prescribed forms appended to the Government Order dated 22.06.2021. The first relates to the Covid-19 Duty Certificate, either signed by the District Magistrate or the Head of Office of the deceased, and the other is Form-2, appended to the said order, which is the Covid-19 Death Certificate required to be issued by the Chief Medical Officer of the District, where the deceased was posted. These requirements have been further enlarged and refined by the Government Order dated 26.07.2021, making it a total of seven documents to be annexed to any claim by the dependent(s) of a deceased for award of the ex gratia sum payable under the Government Order dated 11.04.2020. The Government Order dated 11.04.2020, as amended by the subsequent order of the selfsame date, required the production of a certificate issued by the Head of Office that the employee concerned was engaged in the prevention, control and treatment of the Covid-19 disease and a certificate from the Chief Medical Officer that he/ she died of

Covid-19 infection. Though, certificates in Forms 1 and 2 could have been granted after the Government Order dated 22.06.2021 came to be issued and even documents drawn up for the deceased Asha, that are the requirement of the Government Order dated 26.07.2021, later on, but these could not have been there at the time when Asha died. She died on 27.04.2021, that is to say, after the issue of the Government Order dated 11.04.2020 and its amendment of the same date. The later orders had not yet come into existence. Still, that may not be very decisive, as already remarked.

29. It has been mooted with great emphasis on behalf of the State that in the absence of a duty certificate from the Head of Office to show that the deceased was assigned to duty relating to prevention, control and treatment of the Covid-19 and the other certificate regarding her death issued by the Chief Medical Officer, caused by Covid-19 infection, there is absolutely no way that the benefit of the policy can be given to the petitioner. It has to be remembered that the policy that the State Government framed was a beneficial measure introduced at a time when uncertainty about life was in the winds. This was time when the deadly Delta variant of the Covid-19 had struck our country and people perished without a clue about of how they got infected. It was in the air, a truly virulent and deadly infection. We take judicial notice of these facts as all of us have lived through it. This was time when doctors were doing their best to cure everyone brought to hospital in distress, but not much was known how to manage the patient. Some survived; others died. We also take judicial notice of the fact, and the respondents too have not denied it, that patients were admitted to hospital, who were in distress with symptoms of Covid-

19 on the presumption that they have been struck by the deadly virus. In the deceased Asha's death summary/ death certificate, it is written by the Medical Officer on duty at the L2 Facility Raisina Hospital, Khaga, Fatehpur for a diagnosis that she was a suspected case of Covid 19 Pneumonitis. Now, the Chief Medical Officer has not certified in Asha's death certificate that she died on account of Covid-19 infection.

30. We are dealing with the second requirement of the Government Orders first, that is to say, the certification if Asha indeed died on account of the Covid-19 infection. We have already indicated the circumstances that prevailed at the time when Asha died. We also must take notice of the report dated 19.08.2021 submitted by the Medical Officer, In-charge, L2 Facility Raisina Hospital, Allahabad Institute of Medical Sciences, Fatehpur (Superintendent, Community Health Centre, Khaga, Fatehpur) quoted in the order impugned dated 11.11.2021 passed by the Executive Officer, Nagar Panchayat, Khaga, District Fatehpur, rejecting the petitioner's claim, which reads:

"आशा देवी दिनांक 26.04.2021 समय 5:00 PM को सांस लेने की तकलीफ एवं ऑक्सीजन लेवल कम होने के कारण L-2 हास्पिटल में भर्ती करायी गयी थी। उनका इलाज कोविड-19 का केस मानकर किया गया। दिनांक 27.04.2021 को R.T.P.C.R. सेम्पल लेने से पूर्व 8:10 AM पर मृत्यु हो गयी, फलस्वरूप कोविड-19 से सम्बन्धित जांच नहीं की जा सकी।"

31. Now, the stand in the impugned order dated 11.11.2021, rejecting the petitioner's claim, reasons on this count that since no sample for the RT-PCR test could be taken before Asha died, it cannot be inferred that she died on account of

disease, caused by the Covid-19 infection. There are similar remarks recorded by the District Magistrate, Fatehpur in the latter's order dated 16.12.2023, that she made during the pendency of the writ petition, rejecting the petitioner's claim. It is said there that from the report of the Executive Officer, Nagar Panchayat, Khaga, District Fatehpur dated 11.11.2021 and the inquiry report dated 14.11.2023 submitted by the Joint Committee, comprising the Additional District Magistrate (Judicial), Fatehpur, the Senior Treasury Officer, Fatehpur and the Chief Medical Officer, Fatehpur, it is evident that Asha was admitted to the hospital on 26.04.2021 at 5:00 p.m. with breathing difficulty and poor oxygen level. It is, particularly, said that she was admitted to the L2 Facility Raisina Hospital, Khaga, Fatehpur (Community Health Centre, Khaga, Fatehpur). She was treated, assuming her to be a patient of Covid-19 disease. But, on 27.04.2021, before her sample for the RT-PCR test could be taken, she died in the morning hours at 8.10.

32. There is often, if not always, a decisive difference between a mathematical inference from facts and a legal one. The respondents have gone by the letter of the Government Orders under reference to find against the petitioner on this count, as there is no certificate issued by the Chief Medical Officer of the District, saying that she died on account of Covid-19 infection. The Government Order issued later on would require the fact to be verified by the Chief Medical Officer in the prescribed proforma based on the RT-PCR or the Rapid Antigen test with its date; or else certify the fact on the basis of some other source, which the Chief Medical Officer would have to mention in the certificate. The other source, as suggested in paragraph No.23 of the counter affidavit filed on

behalf of the District Magistrate, Fatehpur (in her personal affidavit) would indicate that it could be a CT Scan of the chest. This too has apparently not been done. The Chief Medical Officer has, therefore, not issued the required certificate that Asha died on account of disease caused by Covid-19 infection.

33. There are two robust and sound lines of reasoning, on the basis of which, one would reach the inescapable conclusion that Asha indeed died of Covid-19 disease. The first is the fact that Asha, according to the report of the Medical Officer, L2 Facility Raisina Hospital, Khaga, Fatehpur, where she breathed her last, was admitted on 26.04.2021 at 5:00 p.m. with breathing difficulty and a low oxygen level. She was treated as a Covid-19 patient, assuming her to be so. She died on 27.04.2021 at 8.10 a.m., before her RT-PCR test sample could be secured. Now, this description of Asha's condition, together with the fact that the month of April, 2021 was time when the Delta variant had wreaked havoc with a widespread Covid-19 disease and death, would lead anyone, even a doctor in those times, to infer, short of a tangible medical test, that she most probably died of Covid-19 infection. The symptom of respiratory distress with low oxygen levels, followed by death within a few hours of her admission to the hospital, are unmistakable symptoms of the Covid-19 disease.

34. It is true that the standard set by the three Government Orders and strict medical protocol would require verification by means of the RT-PCR test or the Rapid Antigen, or may be a CT Scan of the chest, but that was not done. In the absence of the prescribed medical tests, the clinical condition of the deceased at the time when she fell sick and died, would lead any man

of ordinary prudence and even a doctor to infer that she most probably, as we remarked above, died of Covid-19.

35. Now, the other reason, on the foot of which we may conclude that the respondents are indeed liable to compensate the petitioner under the Government Orders, is the fact that Asha was admitted to the hospital with all symptoms of Covid-19 disease and a suspected case thereof. She was treated also as a patient of Covid-19, going by the protocol then in force. It then defies all understanding that if Asha was admitted to hospital on 26.04.2021 at 5:00 p.m., where she lived to see only the next day i.e. 27.04.2021, passing away at 8:10 a.m., what prevented the doctors at the L2 Facility Raisina Hospital, Khaga, Fatehpur, a dedicated Covid-19 Government facility, from doing her Rapid Antigen test or taking a sample for the RT-PCR test, or still more, doing a CT Scan of her chest. Once, in the care of the Government Covid-19 dedicated hospital, it was the first duty of the doctors there to test her for Covid-19 infection according to the prescribed protocol. In not doing the requisite test for the next 15 hours or more, the doctors not only neglected their duty by not adhering to the prescribed medical protocol, but have led the State and the respondents into a position, where burden would rest upon them to show that Asha did not die of Covid-19 disease. After all, the petitioner or the other members of the family conveyed the deceased to the government medical facility for Covid-19 patients with extreme symptoms of respiratory distress and poor blood oxygen level. She was treated as a Covid-19 patient, but never tested for it. What else could the deceased or her attendants have done in the circumstances? It was for the doctors at the

Government Covid-19 dedicated L-2 Hospital to test Asha for the virus. This case is not about medical negligence, but about the State's answerability in paying ex gratia (according to their policy) to the petitioner, for Asha's death, in a fair and evenhanded manner. A lapse of this kind by doctors at a Government Covid-19 Facility Hospital would certainly saddle the respondents with the burden to show that Asha did not die of Covid-19 disease. Else, in the totality of circumstances, it has to be inferred that Asha indeed died of Covid-19 infection.

36. We have already remarked that the policy carried in the Government Orders dated 11.04.2020, 22.06.2021 and 26.07.2021 is a welfare measure of the State to bring succor to the dependents of a certain class of citizens, that is to say, employees of the Government, the Public Sector Undertakings, the Local Bodies, detailed to duty in connection with prevention, control and treatment of the Covid-19, who contracted the virus during the course of their duty and died. In applying a policy of this kind, which is essentially a keen welfare measure adopted by the State, a purposive approach has to be adopted. It cannot be a literal, mathematical or a precise one, like that while interpreting a fiscal statute. If circumstances do suggest strongly that the death of an employee, otherwise entitled, happened on account of the Covid-19 disease, a strict adherence to the necessary certificates, would be utterly out of place. More often than not, it is difficult in such trying times for the dependents of a genuine victim to secure the necessary documents or ensure every medical test. If the approach of literal insistence on every detail of the three Government Orders is countenanced, the most genuine claims, which appear to be

the case with the petitioner, in all likelihood, would be defeated. We think that the Government, the District Magistrate and the Executive Officer of the Nagar Panchayat, ought to have drawn a reasonable inference from the report of the Medical Officer, L2 Facility Raisina Hospital, Allahabad Institute of Medical Sciences, Khaga, Fatehpur dated 19.08.2021, to find for the petitioner that his mother (Asha) indeed died of Covid-19 disease.

37. There are some other reasons as well to reach the same conclusion, that is to say, in addition to the 'two lines of reasoning', adverted to hereinbefore.

38. We must remark in connection with the certification of death and its cause, apart from all that we have said above about the breach of medical protocol in testing Asha for her suspected infection, that it was the duty of the Medical Officer, L2 Facility Raisina Hospital, Khaga, Fatehpur or the Chief Medical Officer of the District to issue an accurate and correct death certificate, clearly certifying the fact if she died due to Covid-19 disease. If there was any other cause, that too should have been mentioned clearly in Asha's death certificate. In not doing that also, the Medical Officer, L2 Facility Raisina Hospital, Khaga, Fatehpur and the Chief Medical Officer have failed to discharge their duties, further making the State liable under their existing policy for the payment of ex gratia sum of money on ground that Asha died due to Covid-19. The duty of the appropriate authority of the State, which we think, in this case, would both be the Medical Officer, L2 Facility Raisina Hospital, Khaga, Fatehpur and the Chief Medical Officer in certifying the cause of death being on account of Covid-19 disease

or some other cause, in cases where Covid-19 relief is expected, has been laid down by the Supreme Court in **Reepak Kansal v. Union of India and others, (2021) 9 SCC 251**, where it is observed:

“48. Now so far as the prayer to issue appropriate direction to the respondent State Governments to issue an official document stating Covid-19 related as cause of death, to the family members of the deceased who died due to Covid-19 is concerned, it is required to be noted that it is the duty of the every authority to issue accurate/correct death certificates stating the correct and accurate cause of death, so that the family members of the deceased who died due to Covid-19 may not face any difficulty in getting the benefits of the schemes that may be declared by the Government for the death of the deceased, who died due to Covid-19. In the death certificate also, if a person has died due to Covid-19 and/or any other complications/disease due to Covid-19, it should be specifically mentioned in the death certificate.

49. We have gone through the counter-affidavit filed on behalf of the Union Government on the aforesaid and the guidelines issued by the ICMR as well as the format and the guidelines issued to the Registering Authorities of the State Governments concerned. However, we feel that the procedure should be as simplified as it can be. Therefore, a simplified procedure/guidelines is/are required to be issued by the Central Government and/or appropriate

authority for issuance of an official document/death certificate stating the exact cause of death i.e. “Death due to Covid-19”, to the family members of the deceased who died due to Covid-19. For guidance, such guidelines may provide if a person has died after he was found Covid positive and he has died within two to three months, either in the hospital or outside the hospital or at home, the death certificate/official document must be issued to the family members of the deceased who died due to Covid-19 stating the cause of death as “Died due to Covid-19”. He/she might have died even due to other complications, however, due to Covid-19. In the guidelines, it may also be provided that if the family member(s) of the deceased who died due to Covid-19 has/have any grievance that in the death certificate/official document the correct/exact cause of death is not mentioned, he/she must be provided with some remedy to approach the appropriate authority to get the death certificate/official document corrected.”

39. There is yet another aspect of the matter. It is not a case, where the petitioner’s claim, on the basis of record, whatever available, has been considered by a designated committee of doctors and other officers of the State, to take a decision on behalf of the primary decision maker, which is invariably done in such cases. After all, a claim under the Government Orders dated 11.04.2020, 22.06.2021 and 26.07.2021 should have been objectively considered by a committee with doctors and some officers of the State,

who could review the entire material and take an informed decision, if the petitioner was entitled to the benefit of the ex gratia sum of money. Here, what has happened is that the petitioner’s claim has been rejected by two Authorities, to wit, the Executive Officer of the Nagar Panchayat, where the deceased served, and pending this petition, by the District Magistrate, holding it virtually not maintainable – not maintainable because the requisite certificates were not appended or produced by the petitioner. We have already shown that the grant or issue of the requisite certificate or necessary action to form the basis of those certificates, had to be undertaken by doctors, serving the respondents’ establishment themselves. If they have not issued those certificates, a committee ought have been there, to review the entire material and circumstances, to judge if the petitioner’s case was indeed one, where he was entitled to the ex gratia sum.

40. The standard that a forum, if created by the State Government to review such claims, would have to apply, is preponderance of probability. If certificates necessary under the Government Orders were not there, not on account of the petitioner’s fault or the deceased’s, there are a number of other circumstances that we have already noticed, which a committee appointed for the purpose, or in the absence of a committee of that kind, the officers of the respondents, who passed the impugned order, ought have considered to reach a definitive conclusion, if the deceased, in fact, died on account of Covid-19 infection. This would include the symptoms of the deceased, when admitted to hospital, the time of death, the fact if there was anything to show that she died of some other disease, the contemporary time

during which the deceased fell sick and died with reference to proliferation of the Covid-19 infection and like factors. Absent a committee that we have spoken of to decide such claims, the Authorities, who passed the orders impugned, ought have reviewed the entire evidence about the petitioner's claim, whatever available on merits, and, not thrown it out mechanically for the want of supporting certificates prescribed under the Government Orders. In this connection, reference may be made to a Bench decision of the Bombay High Court in **Mayuri Krishna Jabare v. General Manager, BEST and another, 2022 DGLS (Bom) 3782**. The facts necessary to understand the principle in **Mayuri Krishna Jabare** (supra) can best be recapitulated in the words of their Lordships of the Division Bench:

"1. The petitioner is the daughter of late Krishna Daulat Jabare (hereafter "Krishna", for short). Krishna had been employed by the Brihanmumbai Electricity Supply and Transport Undertaking (hereafter "BEST", for short) as a bus conductor since 1998. After serving BEST for about 22 years, Krishna breathed his last on 6th August, 2020. That was the time when the first wave of COVID 19 was wreaking havoc in the country. Krishna, prior to his death, had been regularly attending his duty as bus conductor. The "cause of death certificate" issued by Dr. R. V. Metkari of Brihanmumbai Mahanagarpalika (hereafter "MCGM", for short) clearly suggests that an acute respiratory distress syndrome together with influenza like illness led to Krishna's death. Dr. Metkari also

certified that it was a suspected case of COVID 19 death and such certificate was being issued as per Circular dated 9th April, 2020 of the Government of Maharashtra (GoM) detailing "Medical Guidelines for death declaration and procedural methods in diagnosed Suspected COVID 19 cases, brought dead cases, unknown and unclaimed bodies, and inquest procedures.

2. To mitigate the hardship of family members of Government employees and other public servants who died of COVID 19 while being on active duty, the GoM conceived and brought into force through Government Resolution dated 29th May, 2020 certain benevolent measures. One of these was payment of one-time ex gratia compensation of Rs.50 lakh to the bereaved family members of the employee. One other was accelerated compassionate appointment to any one eligible family member, notwithstanding that there exists the normal procedure for compassionate appointment in terms whereof the petitioner is required to stand in the long queue.

3. It is not in dispute that after the death of Krishna, the petitioner applied for accelerated compassionate appointment together with a prayer for ex gratia compensation of Rs.50 lakh. The petitioner's application was rejected by BEST by the impugned order dated 25th November, 2021 on the ground that the Committee of doctors constituted by the MCGM did not certify clearly that

Krishna's death was caused by COVID 19. We find from the report of the Committee that there is a reference to absence of any RT-PCR test having been conducted by Krishna while he was alive.

5. To appreciate to what extent the contents of paragraph 11 are trustworthy, we did have the occasion to look into the attendance record of Krishna during July, 2020, i.e., the month preceding his death forming part of Exhibit D. It is evident therefrom that except for the weekly off days and a couple of other days, Krishna was present to discharge his duties as bus conductor. It is also evident from other documents forming part of the paper-book that Krishna had attended duty for the last time on 1st August, 2020 and had ultimately left for his heavenly abode in the very early hours of 6th August, 2020. These were the days of nationwide restrictions which each and every citizen was required to abide by. The inference that can legitimately be drawn from paragraph 11 as well as the relevant documentary evidence is that Krishna was quite fit to discharge his duty during the one-month period preceding his death notwithstanding innumerable deaths being recorded in the State of Maharashtra which was running neck and neck with the State of Kerala. The dreaded pandemic brought about by COVID 19 was the reason which threw normal life out of gear, yet, employees like Krishna were called upon to answer the call of duty and report. The time gap between the last date

he attended duty and the date of his untimely death together with the cause of death as certified by Dr. Metkari is something which could not have been brushed aside by BEST only on the ground that the Committee of doctors constituted by the MCGM had not conclusively declared that Krishna died as a result of COVID 19 infection.

8. Cause of death can be ascertained upon an autopsy being conducted on a cadaver, which is known in common parlance as the post-mortem examination. No postmortem examination on the cadaver of Krishna could be conducted since the circular dated 9th April, 2020 issued by the Directorate of Medical Education and Research prohibited any post-mortem in suspected COVID 19 deaths. The 'cause of death certificate' issued by Dr. Metkari clearly refers to the said circular dated 9th April, 2020 and also makes a note that no post-mortem had been conducted. In the absence of any post-mortem, the real cause of death of Krishna may not surface at all. The petitioner cannot, therefore, be blamed for absence of a 'post mortem' report. However, what was required in the circumstances was strict adherence to the circular dated 9th April, 2020."

41. In Mayuri Krishna Jabare, the claim for ex gratia was considered by a committee of doctors, who were experts, but they opined against the claim on account of the absence of an RT-PCR test done while Krishna, the deceased, in that case was alive. Therefore, it seems that in

the case under reference, the committee almost did the same kind of a rejection as the two Authorities have done here in passing the impugned order, to wit, the insistence on formal certificates or medical test reports, comprising the RT-PCR test etc. Upon these facts, it was held by the Bombay High Court in **Mayuri Krishna Jabare**:

“10. Having read the aforesaid clauses together with the ‘cause of death certificate’ issued by Dr. Metkari, what can reasonably be inferred is this. Dr. Metkari did not consider it necessary to obtain nasopharyngeal swab from the cadaver because he suspected Krishna to have died of COVID 19. That apart, what is significant is the absence of any noting made by Dr. Metkari in the ‘cause of death certificate’ about any history of suspected foul play as mentioned by the relatives or bystanders. If indeed Dr. Metkari had suspected any foul play on the part of Krishna’s family members for setting up a fraudulent claim of benefits not otherwise due, we would have expected him to say so in clear words in the ‘cause of death certificate’. Absence of any such note goes a long way to suggest that he had no reason to suspect any foul play and based on external examination of the cadaver of Krishna in terms of the provisions of the Circular dated 9th April, 2020, he was of the view that Krishna had died of acute respiratory distress syndrome together with influenza which, at that period of time, was closely associated with COVID 19

infection being contracted by an individual.

12. The Committee consisted of expert doctors. We cannot sit in appeal over their decision. But certainly, in exercise of the power of judicial review, we can and should examine the manner in which such decision was arrived at.

13. The Committee met on 24th August 2021. Krishna had died more than a year back. We discern from the minutes of the meeting not a very serious approach on the part of the members thereof. Judicial notice can be taken of what the situation was in Mumbai in July and August, 2020. Social distancing and other restrictive measures enforced by the Government of India as well as the GoM made it mandatory for citizens not to leave their residences except for urgent nature of work. Hospitals were packed and unable to admit patients. Doctors were not readily available. Even for RTPCR tests, one had to wait for his turn to arrive. In such abnormal circumstances, what was required is taking into consideration all relevant factors. The minutes of the Committee’s meeting, which was signed nearly 40 (forty) days after the meeting, does not reveal any consideration of the relevant factors at all. Obviously, it had not been taken into consideration that Krishna attended duty on 1st August, 2020 and died in the early hours of 6th August, 2020, i.e., only 4 (four) days thereafter which was quite normal for COVID 19 death cases. That apart, Krishna

suddenly died after having rendered duty almost for the entirety of July, 2020. At least, there was no material to suggest prior history of Krishna suffering from respiratory distress. He was yet to attain 50 years of age. Having regard to the lapse of time since the death of Krishna, the minimum that was required of the Committee was to either accept or reject the 'cause of death certificate' issued by Dr. Metkari on the basis of their collective wisdom instead of being ambivalent. The Committee ought to have realized that much depended on their report. However, its report is such that much left to be desired. We are conscious that the members of the Committee, as doctors trying to save lives of other COVID 19 affected patients, might have also been hard-pressed for time and, therefore, did not assign sufficient reasons. Nonetheless, without being too critical of the Committee's deliberations, what emerges clearly is that the Committee at least did not proceed to specifically record that Krishna did not die of COVID 19 infection. In the absence of any such clear finding, the reasonable course for the Committee could have been to accept the report of Dr. Metkari who was the only doctor having the occasion to externally examine the cadaver of Krishna. The 'cause of death certificate' issued by Dr. Metkari not having been disbelieved, it is considered creditworthy. We are of the view, bearing in mind the preambular promise of securing, inter alia, social and economic justice to all our citizens, that benefit has to be

given in case of a real doubt in favour of the weaker class for whom the policy decisions to provide ex gratia compensation and accelerated compassionate appointment were conceived by the authorities.

14. Krishna, despite the first wave of COVID 19 being at its peak in Mumbai, had been discharging his duty as a bus conductor without having any prior history of respiratory distress. No material has been annexed by BEST in its counter affidavit to disprove the contents of paragraph 11 of the petition memo. In such circumstances, the scales would obviously tilt in favour of the petitioner for us to conclude that Krishna, in all probability, died of COVID 19. The standard of proof applicable in a case of this nature cannot be 'proof beyond reasonable doubt' but the 'preponderance of probability' tending to draw an inference that the fact of death of Krishna due to COVID 19 must be more probable. Thus, merely because there was no RT-PCR report or adequate medical documentation could not have afforded ground to refuse the benefits flowing from the Government Resolution dated 9th May 2020. It would indeed be inhuman on our part if we refrain from interfering in this case and fold our hands to decline relief to the heirs of Krishna who died while answering the call of duty."

(emphasis by Court)

42. In **Nisha and another v. State of U.P. through Additional Chief Secretary, Panchayat Raj Department, 2022:AHC-LKO:27037**, the first

petitioner's husband, Ramesh Kumar Yadav was an Assistant Teacher. He had joined service on 08.12.2020 at a Primary School in the district of Sultanpur. He was detailed to training for election duty on 10.04.2021. He did election duty on 18.04.2021 and 19.04.2021. Immediately, thereafter, he fell sick. On 21.04.2021, he was treated at the Community Health Centre, Baldirai in District Sultanpur for fever and breathing difficulty. As his condition worsened, he was referred to the District Hospital, Sultanpur for emergency treatment. At the Sultanpur District Hospital, a sample for doing Yadav's RT-PCR test was taken. While the lab report had yet to arrive, Yadav died in the night intervening 23/24.04.2021. He died at the young of age of 28 years, just after about four months of joining service. The lab said in their report that they had never received the sample. It is for the said reason that Yadav was not treated as a Covid-19 patient and the petitioner there refused compensation, as it seems under a Government Order dated 01.06.2021, relating to persons, who died within 30 days of Covid-19 infection, while detailed to election duty. The Government Order provided for the payment of an ex gratia sum of money to the dependents. The moot point was if in the absence of the RT-PCR test result, said to be necessary to consider the dependent's claim of a Covid-19 victim, detailed to election duty, ex gratia could be granted under the Government Order dated 01.06.2021. The State said that it could not be. In rejecting the State's contention in **Nisha** (supra), Vivek Chaudhary, J. held:

“5. Clause-12 of the Government Order dated 01.06.2022 specifically provides that any person who has expired on election duty within 30 days from

Covid-19 would be entitled for ex-gratia payment. The facts of the case clearly shows that deceased was suffering from Covid-19 symptoms and initially treated as normal patient of cold and fever. Later due to breathlessness and developing emergency situation he was referred to district hospital, Sultanpur where he expired. Symptoms of the deceased itself shows that he was suffering from Covid-19. Merely non receiving of sample from the lab would not make any difference whatsoever.”

43. The principle in **Nisha** was followed by another Single Judge of this Court at Lucknow in **Sunita Prajapati v. State of U.P. through Principal Secretary (Home) and others, 2023:AHC-LKO:33575**, where too, the RT-PCR report was not there. On similar principle, there was a remand for reconsideration of the claim to the State Authorities in **Priyanka v. State of U.P. through Principal Secretary, Finance Department, Lucknow and others, 2024:AHC-LKO:69440**.

44. Here, in addition to whatever that we have remarked above, we must come back to the death summary/ death certificate, where the diagnosis is apparently ‘suspected Covid-19 pneumonitis’. Also, we must hark back to the report dated 19.08.2021 submitted by the Medical Officer, In-charge, L2 Facility Raisina Hospital, Khaga, Fatehpur, which says that the deceased was admitted to the hospital on 26.04.2021 at 5:00 p.m. with breathing difficulty and low oxygen level and treated presuming her to be a Covid-19 patient. Also, the report says that on 27.04.2021, before an RT-PCR test sample

could be taken, the deceased died at 8:10 a.m., in consequence whereof, her Covid-19 test could not be done. These symptoms and the fact that the doctors presumed her to be a Covid-19 patient, clinically assessing and treating her as such, can reasonably give rise to the inference that in all probability, Asha died of Covid-19. The diagnosis too was suspected Covid-19 pneumonitis. The cause of death is not mentioned in the relevant column of the death summary. There, the certificate is in breach of the principle laid by the Supreme Court in **Reepak Kansal** (supra).

45. We also think on the same lines as the reasoning of their Lordships of the Division Bench of the Bombay High Court in **Mayuri Krishna Jabare** that the fact that the Medical Officer, who admitted the deceased Asha on 26.04.2021, surely diagnosed her clinically to be a Covid-19 patient and treated her accordingly, and that for the said reason, did not do an RT-PCR test promptly. It is quite another matter that he ought have taken an RT-PCR test sample immediately and his inaction in not doing the same would also go against the State, ultimately, about non-fulfillment by the petitioner of the criteria to produce a Covid-19 death certificate, supported by an RT-PCR or Rapid Antigen test report. Apparently, the medical officer, attending on Asha in the month of April, 2021, considering the clinical presentation of the disease, thought that Asha needed immediate attention to treat her Covid-19 disease, rather than waste time in doing an RT-PCR test, because it was too obvious to him. The conditions prevalent at the time, the symptoms that Asha presented and the course of treatment undertaken by the Medical Officer at L2 Facility Raisina Hospital, Khaga, Fatehpur, regarding or presuming her to be a Covid-19 patient, is

evidence enough, by any standard of preponderance of probability, to accept the petitioner's case that Asha died of Covid-19 infection. To throw out the claim merely on account of the absence of an RT-PCR or Rapid Antigen test, going by strict letter of the Government Orders, providing for the ex gratia sum of money, betrays an approach on the respondents' part, that is both arbitrary and perverse. Also, to insist on fulfillment of the technical requirements of furnishing the necessary certificates, based on the RT-PCR test report etc., would be to permit the respondents to place premium on their wrong, as it was they, under the circumstances, who could have secured the necessary RT-PCR test, for which there was ample time between the deceased's admission to the dedicated hospital and her demise on the following morning.

46. This would take us to the next and the only surviving question of seminal importance, to wit, if the deceased was detailed to Covid-19 duty. It must be remembered that the month of April, 2021 was time when there was widespread lockdown and all offices were closed. The trains were offtrack and planes away from the skies. All business had closed down and the country was staggering under the scourge. Those, who were detailed to any kind of duty, like doctors, policemen, sweepers, the professionals and volunteers apart, were certainly assigned duties to act in aid of prevention, control and treatment of the Covid-19. The petitioner's mother was a Sweeper, employed with the Nagar Panchayat. The job of sweepers at that time was inextricably connected, wherever they were serving, with prevention and control of Covid-19 proliferation, if not cure. It was this class of workers, who would come in contact with all kind of waste, garbage

and dust, that would carry the deadly virus. It is for this reason that sweepers were hailed as Corona warriors.

47. The only question, that is one of fact, is if the petitioner's mother was detailed to duty in connection with control and prevention of Covid-19 infection. If she was assigned her routine duties as a sweeper and worked during the time, to which the event relates, it matters little, given the nature of the petitioner's job, if an order was made, expressly saying that she was assigned to render duty in connection with Covid-19 control and prevention. After all, a sweeper's work, as already remarked, would inherently involve her exposure to the cleaning and sanitation of all that, which, at that time, carried the Coronavirus virus. It was carried on aerosol, sat on metallic surfaces and all other kinds of objects and surfaces, that a sweeper would, but per necessity, have to clean as an inherent part of the job. There is, thus, no point in the case of a sweeper to insist upon the production of a formal order, assigning an employee of this class to duties in connection with Covid-19 prevention and control. The requirement in the Government Order, that postulates production of an order assigning duties in connection Covid-19 prevention and control, has to be understood in the context of a sweeper's job. For a sweeper, the formal order, whether issued by the competent Authority, that is to say, the Head of Office or the District Magistrate, may not matter at all, so long as it can be shown that the sweeper concerned was rendering duty.

48. Now, it was argued at this stage by Mr. J.N. Maurya, the learned Chief Standing Counsel that a Sweeper, who was voluntarily rendering service, would not

satisfy the requirement of the Government Order. This was time, which we have noticed earlier in the judgment, as one when all life had come to a standstill. No one was asked to attend office or do any work, except those required in connection with prevention, control or cure of Covid-19 infection. This, of course, does not include volunteers and it is not the respondents' case that the petitioner's mother had volunteered to do her duty. If this was their case, they would have to produce some evidence about it, which is utterly not there. Therefore, the irresistible conclusion is that if the petitioner's mother was rendering duty at the time she fell sick or within the short span of a few days or a week or so before she fell ill, it was under the directions of the respondents and in connection with control and prevention of Covid-19 infection. There is another aspect of the matter. The stipulation in the Government Orders dated 11.04.2020, 22.06.2021 and 26.07.2021, requiring production of a Covid duty order from the Head of Office or the District Magistrate in one form or the other, which underwent change with successive Government Orders, if insisted upon, would defeat the policy. The ill-fate, that befell the petitioner's mother, was at a time when the scourge of Covid-19 was at its peak, with people perishing all around. In a scenario such as this, it would be overzealous, if not fantastic, to expect that a Sweeper would proceed to duty, after securing a Covid-19 duty order from the Head of Office or the District Magistrate. It was a time when duties were being assigned and workers detailed to their task in the frontline of Covid control, like an emergency. There was little time for all this kind of paper work, which we think in each subsequent Government Order, has been introduced as a requirement, based more on hindsight.

These are matters, again, of which judicial notice must be taken in order to render justice to the dependant(s) of a Covid-19 victim. After all, the very limited things, of which judicial notice can be taken, cannot blind the Court's vision to what happened all around and with everyone witnessing the fearsome face of the Covid-19 pandemic between the years 2020-21. What we, therefore, conclude is that all that an employee of the class of a Sweeper, or for that matter, a Paramedic, a Doctor or a Policeman, would have to show is that they were on active duty at the time when there was a Covid-19 peak and they got infected. The requirement of producing a Covid-19 duty order cannot be strictly insisted upon, if there is evidence that a worker of the class engaged in frontline control and prevention of Covid-19 was in fact doing his/ her duty. The absence of a Covid-19 duty certificate cannot be regarded as fatal to the petitioner's cause for this reason.

49. All that now remains to be seen is, if the petitioner's mother, in fact, attended duty at the time when she fell sick or a short time before that. This, again, is of seminal importance, because it seems that in order to further the respondents' case that the petitioner's mother was not assigned to duties in connection with prevention, control and treatment of the Covid-19, she has been attempted to be marked absent from 15.04.2021 to 26.04.2021 in the attendance register, maintained by the Nagar Panchayat, a photostat copy of which is annexed as Annexure No.10 to the writ petition. In paragraph No.13 of the writ petition, the petitioner has asserted that his mother expired on account of contracting the Coronavirus and that he was surprised to find that by practice of forgery, the respondents marked her absent in the

attendance register, interpolating an 'A' for 'P'. This assertion about the allegation of forgery done in the attendance register in paragraph No.13 of the writ petition, relating to the marking of the deceased's attendance has not been denied specifically in paragraph No.13 of the counter affidavit filed on behalf of respondent Nos.4 and 5 by the Executive Officer of the Nagar Panchayat. He has not pleaded to the said fact specifically at all.

50. In the counter affidavit filed on behalf of the District Magistrate too, contents of paragraph No.13 of the writ petition have not been specifically denied in paragraph No.27. In the preceding paragraphs of the said affidavit also, this particular plea about forgery has not been pleaded to by the District Magistrate. In the rejoinder affidavit, nevertheless, a better photostat copy of the attendance register has been annexed as Annexure No. RA-3. There is no case by any of the respondents that the copy of the attendance register, annexed as Annexure No.10 to the writ petition, is not a copy of the Nagar Panchayat's attendance register, where the deceased would mark her attendance. A perusal of the document at Annexure No.10 and the other copy thereof annexed as Annexure No. RA-1 to the rejoinder affidavit, shows that it is an attendance register of employees relating to the Nagar Panchayat (as the fact has not been denied) for the month of April, 2021. There are, in all, names of ten employees mentioned serially. The name of the petitioner's mother finds mention at serial No.7. It shows that up to the 14th of April, all employees, including the petitioner's mother, have signed this register. From the 15th onwards, the petitioner's mother, who was marked present, has been marked absent by some interpolation, as it seems.

The employees at serial No.6, Nand Lal, one at serial No.5, Soordas and others from 1 to 4, 8, 9 and 10, have been marked present with a 'P'. After 15th, there are no signatures of employees on the register, except for the employee at serial No.1.

51. There was no satisfactory answer given by the learned Counsel appearing for the respondents, particularly the Nagar Panchayat, why after 14th, except for the employee at serial No.1 of the register, others were not signing their attendance of the day, and instead, marked present with a 'P'. Since this system was followed in a case of number of employees, the only possible explanation could be that the establishment were trying to prevent employees from touching the attendance register or coming in contact with it, as it would be handled by the clerical staff and officers as well. This seems to be a measure to eschew contagion or infection of Covid-19. In any event, this is not of much consequence. What, however, is relevant is that a perusal of the attendance register makes it evident to the naked eye that the petitioner's mother was marked present from 15th to 26th with a 'P', but this 'P' was changed to an 'A' by very crudely extending a line from the curve of the 'P' to make it look like 'A'.

52. We have no doubt in our mind that the respondents have by one stroke of pen, changed all entries of 'P's in the attendance register for the petitioner's mother from 15th April to 26th to 'A's. It is a case of unmistakable forgery to the naked eye. There is not even an initial made to show if this is some kind of correction with a note indicating by which authority and under what circumstances, the correction, if any, was done. The inescapable inference, therefore, is that the petitioner's mother

attended her duty in the month of April until 26th, when she was taken ill and admitted to the hospital. Even if one were to assume that the respondents did not forge the attendance records, showing that the petitioner's mother did not attend duties after 14th April, there is no denial of the fact that she was on duty until 14th April. If she contracted the virus on about 13th or 14th or a couple of days earlier and fell sick after 15th, there was just a period of 12 days until her admission to the hospital and her death the following day i.e. 27.04.2021. Unmistakably, therefore, the petitioner's mother was actively doing her duties as a Sweeper with the Nagar Panchayat until the 26th of April, the day she was admitted to the hospital, or for the worst, until 14th April, 2021, after which she fell sick and admitted to hospital with respiratory distress and low oxygen level, dying the following day. We have already remarked in ample measure that the duties of a Sweeper profoundly exposed him/ her at the relevant time to the deadly virus. The petitioner's mother was similarly exposed, contracted the virus and apparently died of the deadly disease, like the multitude of people, who met the same fate at the time.

53. In the perspective of whatever we have found, this petition deserves to succeed.

54. In the result, this petition succeeds and is **allowed**. The impugned order dated 11.11.2021 passed by the Executive Officer, Nagar Panchayat, Khaga, Fatehpur and the order of the District Magistrate, Fatehpur dated 16.12.2023, annexed as Annexure No.8 to the personal affidavit of the Additional Chief Secretary, Revenue Department, Government of U.P., Lucknow are hereby **quashed**. A mandamus is issued to the

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)

List of Cases cited:

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