



2025:DHC:2982-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: 27.01.2025***  
***Pronounced on: 28.04.2025***

+ W.P.(C) 1976/2020

**PRADEEP KUMAR**

.....Petitioner

Through: Mr. Alamgir, Adv.

versus

**UNION OF INDIA AND ANR.**

.....Respondents

Through: Mr. G. D. Sharma, Adv.

+ W.P.(C) 3717/2022

**PREMWATI DEVI**

.....Petitioner

Through: Mr. Alamgir, Adv.

versus

**THE COMMANDANT SS BAL**

.....Respondent

Through: Mr. G. D. Sharma, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

### **J U D G M E N T**

#### **SHALINDER KAUR, J.**

1. The present writ petitions are filed by the petitioners, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, pertaining to distinct albeit interconnected grievances, thus, are being taken up together for disposal. For the sake of brevity, the petitioner in W.P.(C) 1976 of 2020 shall be hereinafter



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referred to as petitioner no. 1 and the petitioner in WP(C) 3717 of 2022, who is the mother of the petitioner no. 1, hereinafter shall be referred to as petitioner no. 2.

2. The petitioner no. 1 has assailed the Order dated 25.07.2019, *vide* which he was dismissed from the service, and the Order dated 13.12.2019 *vide* which his appeal seeking reinstatement was rejected by the Directorate General (DG), Sahastra Seema Bal. The petitioner no. 2 was impleaded as the legal representative of the petitioner no. 1 in W.P.(C) 1976/2020 *vide* Order dated 02.02.2024, by this Court.

3. The petitioner no. 2 has, upon the demise of her son, sought direction to the respondents to release service benefits, that is, General Provident Fund (GPF), Central Government Employees Group Insurance Scheme (CGEGIS), and all consequential reliefs accruing to her as the legal heir of the petitioner no.1.

### **Brief Facts**

4. The relevant facts for adjudication of the present petitions as emerging from the record are that the petitioner no. 1 was enrolled with the Sahastra Seema Bal (SSB) as a Constable (General Duty) on 09.04.2002 and was posted at the 25th Bn., Ghitorni, New Delhi in pay scale of Rs.2750-70-3800-75-4400. He served the Force at different locations with effect from 09.04.2002 to 25.07.2019.

5. The case of the petitioner no. 1 is that, on 01.03.2019, he was admitted to a hospital, being diagnosed with Cirrhosis of the Liver accompanied by PHT and associated symptoms such as persistent

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vomiting and respiratory distress. He remained hospitalized till 05.03.2019 and was again admitted in the hospital from 16.03.2019 to 19.03.2019. Upon discharge, he was advised complete bed rest to mitigate recurrence of problems. Furthermore, the mother of the petitioner also suffered from heart attack on 15.05.2019, the petitioner had her admitted in the hospital and looked after her.

6. It is further the case of the petitioner that under the prevailing circumstances, he remained absent from his place of duty, that is, Ghitorni with effect from 01.03.019. However, respondents claiming it to be the continued absence of petitioner no. 1 from duty without any sanction of leave, issued three notices dated 04.04.2019, 15.04.2019, and 27.04.2019, at his home address through post and he was directed to report to resume/rejoin his duties. But all such notices were received back 'Unserved'.

7. In light of his prolonged absence, an *ex-parte* Court of Inquiry (COI) was convened by the Commandant, 25th Bn SSB, under the Sashastra Seema Bal Act, 2007 (in short, 'SSB Act'), *vide* order dated 29.04.2019. Thereafter, upon the receipt of the report of the COI, the Commandant 25th Bn SSB, after being satisfied with the opinion of the COI, made a record there under justifying the petitioner's absence without leave, and an inventory of government property in his possession was prepared.

8. Subsequently, Apprehension Roll dated 25.05.2019 and 01.06.2019 were issued to the concerned police authorities to apprehend the petitioner no. 1. The petitioner no. 1 neither



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surrendered to the authorities nor was apprehended by them. Subsequent thereto, *vide* Order dated 17.06.2019, the Commandant, 25th Bn declared the petitioner no. 1 a “Deserter” as per Section 74(2) of the SSB Act.

9. Subsequent thereto, a Show Cause Notice dated 19.06.2019 was issued, granting the petitioner no. 1, 15 days from the receipt of the notice to resume the duty failing which he would be dismissed from service. However, the petitioner no. 1 failed to resume his duty. Thereafter, a second Show Cause Notice dated 05.07.2019 was issued and the same was also published in the *Economic Times* (English) and *The Hindustan* (Hindi) on 09.07.2019, directing the petitioner no.1 to resume duty within a period of 15 days, failing which he will be dismissed from service, but the petitioner no. 1 again failed to resume his duty.

10. In the face of persistent opportunity given to the petitioner, the respondents, in accordance with the powers under Rule 21 read with Rule 18 of the Sashastra Seema Bal Rules, 2009 (in short, 'SSB Rules'), dismissed the petitioner no. 1 from service and struck him off the strength of the Unit with effect from 25.07.2019 *vide* Order dated 25.07.2019.

11. The petitioner no. 1, post his dismissal from service, *vide* an application dated 07.08.2019, intimated the respondents of his change of address, and cited medical problems as the reason for his failure to notify them earlier. Upon being apprised of the new address, the respondents forwarded a copy of the dismissal order to the petitioner



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no. 1, along with necessary enclosures, to his new address through a special messenger.

12. Being dissatisfied by the order of the dismissal from service, the petitioner no. 1 preferred an application addressed to the Directorate General (DG) SSB, and thereafter, an appeal dated 30.09.2019 addressed to the Deputy Inspector General (Administration), FHQ, seeking reinstatement in the service. The DG rejected his appeal *vide* Order dated 13.12.2019.

13. Aggrieved by the said dismissal, the petitioner no. 1 then approached this Court by way of W.P.(C) 1976/2020. Unfortunately, during the pendency of said petition, the petitioner no. 1 passed away on 15.04.2021.

14. The petitioner no. 2, *vide* an application dated 21.06.2021, informed the respondents about the demise of her son, that is, petitioner no. 1, and sought disbursal of service-related benefits and other consequential relief arising therefrom.

15. Being aggrieved by the inaction and partial disbursement of the funds by the respondents, the petitioner no. 2 preferred the petition, being W.P.(C) 3717/2022, before this court, seeking release of the service benefits of the deceased petitioner no. 1 to her.

16. The respondents have released the final payment of GPF, that is, Rs. 6,89,013/-, and final payment of CGEGIS, that is, Rs. 8,783/-, to the petitioner no. 2 on 22.02.2022 and 16.03.2022 respectively.

17. Not satisfied with the release of the aforesaid sums, the petitioner no. 2 continued to press her claims, asserting the release of



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benefits being short by Rs. 7 lakhs approximately.

### **Submissions on behalf of the Petitioners**

18. The learned counsel appearing on behalf of the petitioners has questioned the correctness of the view as expressed in the Impugned Orders dated 25.07.2019 and 13.12.2019, asserting that the respondents gravely erred in failing to take into consideration the critical medical condition of the petitioner no. 1, who was under continuous treatment during the relevant period and also that of petitioner no. 2 who suffered heart attack on 15.05.2019.

19. He further submitted that owing to his deteriorating health and the requisite period of convalescence, the petitioner no. 1 was unable to communicate the change in his residential address. Despite these challenges, and upon receipt of the second Show Cause Notice, petitioner no. 1, even in the midst of severe illness, endeavoured to make representations by personally approaching the respondents. However, these *bona fide* efforts were brushed aside by the respondents and the same went unacknowledged.

20. The learned counsel submitted that the Impugned Order of dismissal erroneously records that the petitioner no. 1 was untraceable and declared him a Deserter. In fact, the respondents made no serious efforts to serve to Show Cause Notice upon the petitioner.

21. He further submitted that the petitioner continued to reside at Molarband Extension, situated in Badarpur, New Delhi, the same locality in which he was residing earlier. Although there has been a



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change in the house number and Gali number, the petitioner and his family are well known to the residents of the area. Therefore, any notice issued to his address would have been duly received at his new address, as the locality remains unchanged, but it never came to his house.

22. He further submitted that the respondents have failed to accord full and fair recognition to the legitimate claims of the petitioner no. 2. It was urged that the petitioner no. 1 had rendered nearly sixteen years of unblemished service, prior to the unfortunate turn of events. The respondents have disbursed the service benefits to petitioner no. 2, which falls short by an amount of approximately Rs. 7,00,000/-, and that such an omission has caused undue hardship to her.

### **Submissions on behalf of the Respondents**

23. The learned counsel for the respondents, while refuting the pleas raised on behalf of the petitioners, submitted that the petitioner no. 1 was dismissed from service after being given ample opportunity to rejoin the duty, even whereafter he failed to resume the duty. He submitted that the respondents had issued three rejoining Notices and Show Cause Notices to petitioner no. 1, but the petitioner no. 1 failed to respond to the notice or to join his duties.

24. He submitted that it was the bounden duty of the petitioner no. 1 to intimate any change of his address to the respondents, which he failed to do and in the face of these circumstances, after following the due process as per law, the petitioner no. 1 was dismissed from



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service.

25. The learned counsel further submitted that the petitioner no. 1 was a habitual offender, with a prior record of overstaying leave without sanction. Such repeated infractions, he submitted, undermined the integrity of service discipline, and his dismissal was, therefore, not only warranted but imperative.

26. The learned counsel lastly submitted that the primary prayer made by petitioner no. 2 in her petition, has already been satisfied with settlement of GPF and CGEGIS amounts of Rs. 6,89,013/- and Rs. 8,763/- respectively, having been duly released to her. He submitted a government servant who has been dismissed or removed from his service, forfeits his entitlement to pension, gratuity, and the cash equivalent of leave salary, therefore, the same could not be released to petitioner no. 2.

### **Analysis and Findings**

27. Having heard the learned counsels for the parties and after carefully considered the material available on record, the short issues which arises for consideration is whether the competent authority was justified in dismissing the petitioner no. 1 from service *vide* Order dated 25.07.2019 and the Appellate Authority had correctly upheld the Impugned Order passed by the competent authority.

28. We may proceed to note that there is no dispute that the punishment of dismissal imposed upon the petitioner was pursuant to the COI convened by the respondents on the ground of unauthorized





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absence of the petitioner no. 1 from his duties.

29. It is further not disputed that the petitioner no. 1 absented himself from his place of posting with effect from 01.03.2019, and no leave was either applied for or sanctioned by the Competent Authority in respect of the said period of absence.

30. The learned counsel for the respondents vehemently submitted that prior to convening of COI, three rejoining notices dated 04.04.2019, 15.04.2019, and 27.04.2019 were issued to the petitioner at his address. Upon no response, the Commandant 25th Bn. SSB directed that a COI be convened. Subsequently, Apprehension Rolls were issued on 25.05.2019 and 01.06.2019 to the concerned police authorities with a request to apprehend the petitioner and hand over his custody to the Commandant SSB. Even thereafter, when the petitioner didn't resume his duties, the petitioner was declared a deserter under Section 74(2) of the SSB Act. After the said declaration, the respondents proceeded to issue show cause notices to the petitioner on 19.06.2019 and again on 05.07.2019, this notice was also published in *The Economic Times* (English) and *The Hindustan* (Hindi) on 09.07.2019. It was only in the absence of any communication from the petitioner, the Order dated 25.07.2019 dismissing him from service was passed. He submitted that the respondents had made every endeavor that petitioner no. 1 should join back his duty, but he remained adamant to be on unauthorized leave.

31. The plea of the petitioner is that his continued absence was on the ground that he was admitted to a hospital from 01.03.2019 to



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05.03.2019, and again from 16.03.2019 to 19.03.2019, following which he was advised to observe bed rest. Moreover, his mother suffered heart problem, and he was also taking care of her, thus, owing to these medical exigencies, he was unable to rejoin his duties and to intimate the respondents about the change of his address.

32. We note from the certificate dated 19.03.2019 issued by the Holy Family Hospital, that the petitioner no. 1 was unfit for work for only five days. Thereafter, it is reasonable to presume that he would have been in a condition to either inform the respondents of his health condition or notify them of any change in address, if not to resume duties. There is no material on record to indicate that the petitioner, subsequent to his discharge on 19.03.2019, either applied for leave or informed the respondents of his inability to resume duties.

33. The respondents did everything to reach the petitioner no.1 and afforded him multiple opportunities to resume duties, first by issuing rejoining notices, then requesting apprehension of the petitioner no.1 by the local police, and finally issuing show cause notices, and even publishing them in the newspapers.

34. In view of the above, two things emerge, *first*, even if the petitioner's plea is accepted as being correct that he was undergoing medical treatment and was admitted to a hospital, it was incumbent upon him, post-surgery, to apprise the respondents of his medical condition and to seek leave from them. This is a failure to discharge an obligation placed on him, being an employee of a disciplined Force. *Secondly*, we find no merit in the petitioner's contention that he



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could not respond to the notices sent by the respondents as he had vacated his previous place of residence and thus, the notices were not served upon him. The date of such alleged change of address has not been disclosed. Be that as it may, it was the petitioner's duty to intimate the respondents, either personally or through his kin and kith, of the said change of address. The omission to do so cannot, therefore, be held against the respondents, and no fault can be attributed to them for effecting service of notices etc. at the petitioner's address available as per his service record. The respondents, being unaware of the petitioner's circumstances, could not have been expected to do more and they had rightly proceeded for holding COI and the following proceedings as per Rules.

35. Another submission on behalf of the petitioner(s) is that, upon receipt of the second Show Cause Notice, petitioner no. 1, despite being ill, approached the respondents. It is not in dispute that the petitioner no. 1, along with his mother, visited the office of the Commandant at Ghirtoni on 29.07.2019. However, it is pertinent to note that this visit occurred subsequent to the passing of the Impugned Order of dismissal, which was passed on 25.07.2019. In our considered view, such a submission cannot be sustained as the petitioner cannot be permitted to approach the Commandant, 25th Bn SSB at a belated stage, after the Impugned Order had already been passed without seeking setting aside of the said order.

36. Additionally, it is not the case of the petitioner that there is any procedural irregularity or perversity in the manner in holding the COI



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or the proceedings *vide* which the petitioner was declared a deserter and subsequently dismissed from service.

37. Now, the question which requires determination is whether the penalty imposed was disproportionate in the facts and circumstances of the present case.

38. It is to be noted that 'unauthorized absence' from Service is a grave misconduct that warrants initiation of Departmental Inquiry. When such a misconduct is willful or prolonged, coupled with a pattern of similar behavior, it may lead to dismissal from service. The petitioner no. 1 being a Constable serving in a disciplined force, was required to strictly adhere to rules and procedures, more than an employee of any other department. Any responsible member of the Force could not be absent from service without permission and must show a high level of discipline and accountability. Longer period of absence from duty and repeated absence reveals indiscipline and non-seriousness towards the service. Such a conduct is unwarranted on part of any member of the Armed Forces.

39. Keeping in view the above, this Court notes the previous conduct of remaining absent from duty of the petitioner no. 1 and other misconduct, which is reproduced as under:-

Sl. No.	Misconduct Type	Sanctioned Leave From	Sanctioned Leave To	Incident Date(s)	Actual Return Date	Overstay (Days)	Additional Details
i	Overstay of sanctioned casual leave	18.07.2011	03.08.2011	—	13.09.2011	41	—

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ii	Found under influence of alcohol	—	—	31.10.2011	—	—	—
iii	Overstay of sanctioned earned leave	03.11.2012	17.11.2012	—	05.05.2013	168	—
iv	Overstay of sanctioned earned leave	18.11.2013	28.11.2013	—	11.06.2014	195	—
v	Overstay of sanctioned earned leave	07.01.2015	08.02.2015	—	01.02.2016	358	—
vi	Found under influence of alcohol	—	—	23.02.2016 , 13.05.2016 , 16.05.2016	—	—	—
vii	Absent from fall-in & misbehavior under influence	—	—	14.05.2016 to 16.05.2016	—	—	Misbehaved with Si/Admn, 38 Bn SSB, Tawang; medical exam confirmed intoxication
viii	Found under influence of alcohol	—	—	19.08.2016 , 19.09.2016 , 23.09.2016	—	—	—
ix	Overstay of sanctioned 1-day casual leave	13.05.2017	14.05.2017	—	17.08.2017	97	—

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x	Absent from duty without leave	—	—	22.08.2017	23.08.2017	1	Offence under Section 21(a) of SSB Act, 2007
xi	Left guard room without permission	—	—	12.07.2018	30.07.2018	19	Proceeded to native village
xii	Absent from mess duty	—	—	08.09.2018	11.09.2018	3	Did not report for mess duty; went to Bn HQ
xiii	Overstay of sanctioned casual leave	01.01.2018	08.01.2018	—	11.06.2018	153	—

40. From the above, it is manifest that the petitioner no. 1 was habitual in overstaying the leaves and was also found under the influence of alcohol multiple times. It has to be noted that as per the petitioner no. 1, he suffered from Liver Cirrhosis, which would lead to an irresistible conclusion that his ailment could be attributed to his drinking habits. Furthermore, the petitioner no. 1 had a history of multiple misconducts for which minor punishments have been imposed upon him. We are constrained to say that the antecedents of the petitioner no. 1 are highly unbecoming of a member of an Armed Force.

41. In this regard, we may refer to the decision in *State of UP v. Ashok Kumar Singh & Another*, (1996) 1 SCC 302, wherein, the Supreme Court of India held that the absence of the respondent from



duty would amount to grave misconduct and there was no justification for the High Court to interfere with the punishment and holding that the punishment is not commensurate with the gravity of the charge. Paragraph 8 of the said judgment reads as under:-

*"8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that his absence from duty would not amount to such a grave charge'. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No. case for interference with the punishment is made out."*

42. The petitioner no. 1 absented himself from duty on several occasions coupled with his failure to inform the respondents of his medical condition even after his discharge, specifically during the period from 19.03.2019 till 25.07.2019. Also, he did not think it proper to intimate the respondent about change of his address.

43. On overall consideration of above facts and circumstances, it is evident that the petitioner was a habitual absentee for long periods on several occasions unauthorizedly, leading to grave misconduct. The



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view taken by the Disciplinary Authority is justified and the penalty of dismissal from service in the present case is not disproportionate.

44. Accordingly, the W.P.(C) 1976/2020 is dismissed.

### **W.P.(C) 3717/2022**

45. The primary question that arises in the present petition is whether the petitioner no. 2 is entitled to release of service benefits, that is, GPF, CGEGIS, and all consequential reliefs accruing to her as the legal heir of the petitioner no.1.

46. The primary grievance of the petitioner no. 2 is that her son was dismissed from service after serving the Force for almost 17 years, thus, she is entitled to all retirement benefits of the deceased son, being his legal heir.

47. The learned counsel for the petitioner submitted that the respondent has erred in claiming that it has cleared all her dues regarding retirement benefits of her son. She has been paid some amount but that is not as per Rules for the final payment of retirement benefits. The learned counsel, therefore, pressed for the relief of gratuity, pension and other benefits.

48. Controverting this claim, the learned counsel for the respondents submitted that the individuals dismissed from Service are not entitled to the benefit of pension and cash equivalent of leave salary. He submitted that the eligibility of an employee for payment of gratuity is governed as per provisions of Payment of Gratuity Act,





1972 (in short, 'Gratuity Act'). Since the petitioner no. 1 had been dismissed from service by way of misconduct, therefore, he is not entitled to get gratuity, which can also not be claimed by petitioner no. 2 after the death of petitioner no. 1.

49. He submitted that the primary prayer of the petitioner no. 2 in the writ petition has been satisfied, as it is an admitted position that the petitioner no. 2 has received the final payment of GPF, that is, Rs. 6,89,013/- and final payment of CGEGIS, that is, Rs. 8,783/-, and no further due remains to be disbursed to her.

50. Before examining the submission of the parties, in this regard, it may be apposite to note the Rule 24 of the Central Civil Service (Pension) Rules, 1972, which is reproduced as under:

***“24. Forfeiture of service on dismissal or removal.-***  
*Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.”*

51. It emerges from above Rule and is also settled position in law that upon dismissal from service, a member of the Force forfeits his pensionary entitlements. Consequently, the petitioner no. 1, having been dismissed from service, was not entitled to any pensionary benefits. As a consequence, the deceased petitioner no. 1's mother, that is, petitioner no. 2 also cannot lay claim to such benefits.

52. Now coming to the claim of Gratuity by petitioner no. 2, it is apt to refer to the Section 4(6) of Gratuity Act, which reads as under:

*“(6) Notwithstanding anything contained in sub-section (1), -*  
*(a) the gratuity of an employee, whose services*



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*have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.*

*(b) the gratuity payable to an employee may be wholly or partially forfeited -*

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

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

53. From the foregoing provision, it is evident that gratuity may be forfeited in the event an employee's services are terminated upon being found responsible for causing damage, loss, or destruction to property belonging to the employer. The gratuity may also be liable to forfeiture in instances where the employee is found to have engaged in riotous or disorderly conduct, or to have committed an act of violence, or where termination is on the ground of an offence involving moral turpitude.

54. In the light of the above statutory provision, the question that arises for determination is as to whether petitioner no. 2 is entitled to payment of gratuity or not?

55. In the case of ***Union Bank of India v. C.G. Ajay Baby***, (2018) 9 SCC 529, it has been held by the Supreme Court that forfeiture of gratuity is subject to Sub-Section (5) and (6) of Section 4 of the Gratuity Act, and is not automatic on dismissal from service. We may



quote from the said judgment as under:

*"15. Under sub-section (6)(a), also the gratuity can be forfeited only to the extent of damage or loss caused to the Bank. In case, the termination of the employee is for any act or wilful omission or negligence causing any damage or loss to the employer or destruction of property belonging to the employer, the loss can be recovered from the gratuity by way of forfeiture. Whereas under clause (b) of sub-section (6), the forfeiture of gratuity, either wholly or partially, is permissible under two situations: (i) in case the termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part, (ii) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in the course of his employment. Thus, clause (a) and clause (b) of sub-section (6) of Section 4 of the Act operate in different fields and in different circumstances. Under clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. Clause (b) operates either when the termination is on account of: (i) riotous, or (ii) disorderly, or (iii) any other act of violence on the part of the employee, and under clause (ii) of sub-section (6)(b) when the termination is on account of any act which constitutes an offence involving moral turpitude committed during the course of employment.*

*16. "Offence" is defined, under the General Clauses Act, 1897, to mean "any act or omission made punishable by any law for the time being in force" [Section 3(38)].*

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**21. To sum up, forfeiture of gratuity is not automatic on dismissal from service; it is**



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**subject to sub-sections (5) and (6) of Section  
4 of the Payment of Gratuity Act, 1972."**

56. From the above decision, it emerges that to claim forfeiture of gratuity, an employer has to show that they suffered loss or damage on account of 'an act' of the employee and gratuity would be forfeited to the extent of damage or loss caused. The respondents, however, have merely stated that since the petitioner no. 1 was dismissed from service, he would not be entitled to gratuity, without showing any other reason to justify the forfeiture of the gratuity payable to the petitioner no. 1.

57. Needless to state, the petitioner no. 1 was not held guilty for the misconduct of an offence that involved moral turpitude. His dismissal is on account of unauthorized absence from service. Therefore, the forfeiture of gratuity on the ground of such misconduct is not justified. The forfeiture of gratuity has to be as per the provision of Gratuity Act. More so, the forfeiture of gratuity is not automatic on dismissal of a person from service.

58. Furthermore, in view of the settled proposition of law, the gratuity of petitioner no. 1 could not have been forfeited without following the principles of natural justice, that is, in absence of issuance of a show cause notice to petitioner no. 1. The respondents have failed to show that at the time of passing of dismissal order of petitioner no. 1, they had categorically mentioned about the forfeiture of gratuity and leave encashment of the petitioner no. 1 on his dismissal. As the case of the petitioner no. 1 does not fall within any



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of the conditions of Section 6 of the Gratuity Act, thus, the gratuity as well as the leave encashment of petitioner no. 1 could not have been automatically forfeited by the respondents in absence of having issued any notice petitioner no. 1. The amount standing to the credit of the petitioner no. 1 towards leave encashment, was the property of the petitioner no. 1 which could not have been forfeited without authority of law. In this regard, reference may be made to the Judgment of this Court in ***Dalel Singh v. Union of India & Ors.***, 2025 SCC OnLine Del 2145.

59. Considering the above facts and circumstances, the writ petition is disposed of with directions to the respondents to release the gratuity and leave encashment (if leave encashment amount is due) benefits of petitioner no. 1 in favour of petitioner no. 2 within 12 weeks from today with an interest @ 6% per annum.

60. The present petition is disposed of in the above terms.

**SHALINDER KAUR, J**

**NAVIN CHAWLA, J**

**APRIL 28, 2025**

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