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

RESERVED ON : 06.10.2022

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PRONOUNCED ON: 22.11.2022

+ W.P.(C) 13086/2021, CM APPL. 41287/2021

MOTHER DAIRY FRUIT AND VEGETABLE PVT LTD

..... Petitioner

Through: Mr.Vivek Sood, Sr.Adv. with
Mr.Firoz Khan and Mr.Akash
Godhvani, Advocates

versus

SATPAL SINGH

..... Respondent

Through: Ms Priya Gaur, counsel for the
respondent –workman (through VC)

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present writ petition has been filed challenging the order dated 28.09.2021 passed by the learned Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act').in Gratuity AppealNo.36(02)/2020PA.DYC titled '*M/s. Mother Dairy Fruit and Vegetable Pvt. Ltd. V. Shri Satpal Singh.*' The petitioner/company has also assailed the order of the Controlling Authority dated 12.02.2020 in Claim Petition No.ALC-1/36(23)2019 titled '*Sh. Satpal Singh v. Mother Dairy Fruit & Vegetable Pvt. Ltd.*'

2. The facts, in brief, are that the respondent/workman was an employee of the petitioner/company. On 08.06.2016, he was served with a charge sheet which is as follows:

CHARGE- SH EET

Under certified standing orders applicable in Mother Dairy, you have committed following gross and serious misconduct:

You were allotted a staff quarter no. F-3, letter no. A/Staff Quarter/9563 dated 7th September, 2007. In this regard you also executed a License deed on 10th September, 2007 according to which you were to follow the terms and conditions of Licence deed. But on the basis of received complaints which are as follow, you have violated the terms and conditions of the Licence deed:

1. On the basis of received complaints, it is allegation against you that in violation of terms and conditions of said licence, on 28 November 2015 at about 06:15 pm, you forcefully caught hold with malafide intention, molested and misbehaved with Smt. Neha Choudhary, daughter-in-law of Sh. Umesh Choudhary who is working the managements organisation and lives in E-10 in Staff Quarter Complex, which comes under definition of gross and serious misconduct. Your above said deed comes under violation of terms and condition of Licence deed dated 10th September, 2007 which come under ambit of gross and serious misconduct.

2. According to received complaints, it is allegation against you that on 28.11.2015 at about 6:40 pm you misbehaved with family of Sh. Umesh Choudhary and by which peace and tranquillity in the Staff Quarter Complex have been breached. By this act, you put the lives of family member of Umesh Choudhary in danger and your above acts comes under definition of gross and serious misconduct.

3. Dairy under clause 16 of Licence deed vide letter PER/SP/5059 dated 5th December, 2015, you were directed to vacate the Staff Quarter F-3 within two months i.e. by 5th February, 2016 but you did not vacate staff quarter no. F-

3 despite expiry of said period. In this way you have forcefully and unlawfully occupied the Staff Quarter no. F-3 which comes within the ambit of gross and serious misconduct and gross disobedience of lawful direction of the management.

4. Your above deeds are act of gross and serious misconduct which was committed by you with malafide intentions and knowingly in order to harm the business, interest and image of the management.

5. You, to safeguard yourself, you have inflicted false, fabricated and baseless allegations against management and its officers in order to deviate the main issue of your gross and serious misconducts and in this connection you have sent letters to various department. Your this deed is false, baseless, misleading, self-motivated, deplorable and harmful which is to defame and disrespect the management and you have made attempts to defame the image and character of senior officers of the Dairy.

6. You have done all the said serious misconducts with malafide intentions which are inappropriate to be a worker of the dairy.

Accordingly, you are directed in this regard to submit a written explanation to the management within 48 hours as to why a disciplinary action be taken against you for your abovesaid gross and serious misconducts.

If you fail to submit a written explanation within the said period, it will be presumed that you have accepted all allegations and you have nothing to say about allegations levelled against you. In this situation, Management shall be free to take disciplinary action against you.

3. Pursuant to the charge sheet, a disciplinary enquiry was conducted and the enquiry officer vide order 16.02.2016 *inter alia* found that the respondent/workman had committed various grave acts of misconduct with bad faith thereby rendering himself an unbecoming employee of the petitioner/company. The enquiry officer held the

respondent/workman as guilty of all six charges as mentioned in the charge-sheet No.PER/SP/5935 dated 08.02.2016. Consequent to the enquiry report, the services of the respondent/workman were terminated. The termination letter dated 02.05.2016 reads as under:

Sir

Please take reference of show cause notice letter no. PER/SP/396 dated 22.04.2016 PER/SP/456 dated 26.04.2016.

Vide abovesaid letter PER/SP/456 dated 26.04.2016, you were given opportunity to give reply, if any, to the punishments contained in the said letter within 48 hours from receipt of said letter to which your reply was received on 28.04.2016. On examination of the said reply, management found your reply unsatisfactory as your reply was baseless, devoid of merits, irrelevant and defamatory to the image of Dairy and its officers.

In relation to the said subject, connected documents, enquiry proceedings and enquiry reports have been examined and it has been concluded that the allegation levelled against you have been completely proved. Therefore, Dairy has decided to punish you by terminating your services and by this letter dated 02.05.2016 you are dismissed from your services.

In this regard please take notice of the followings:

- 1. Hand over vacant possession of Staff Quarter No. F-3 to the in-charge of Estate Deptt. It is reminded to you that you are still forcibly and unlawfully living in Mother Dairy F-3 Staff Quarter despite the expiry of two months of notice period.*
 - 2. For any dues please contact Security Deptt. Regards:*
4. While the matter rested thus, the respondent/workman filed a claim petition No.ALC-I/36(23)2019 titled **‘Satpal Singh vs. Mother Dairy Fruit & Vegetable Pvt. Ltd.’** before the Controlling Authority under the payment of gratuity Act, 1972. Petitioner/company filed a written statement before the controlling authority and stated that the services of the respondent/workman were terminated vide termination letter dated 02.05.2016 for disorderly behaviour, misconduct, disobedience and

illegal occupation of staff quarter after conducting a domestic enquiry on charge-sheet dated 08.02.2016. It was alleged that the respondent/workman sexually harassed the daughter-in-law of another co-employee and an FIR No.107 under Section 354 IPC dated 24.02.2016 was lodged in PS Mandawali Fazalpur against him. It was further alleged that the said act of the respondent/workman amounted to an offence of disorderly conduct as well as an act of violence in the Mother Dairy Complex. Further, it has been pleaded that as per the License deed the act of holding threats to neighbours, noisy behaviour and quarrelling with neighbours, disturbing the tranquillity of community life of the said staff quarters complex constitutes a breach of the condition of the deed and it was on the said basis that vide letter dated 05.12.2015 the allotment of the respondent/workman was cancelled by the petitioner/company and he was directed to vacate the quarter within two months. On the account of failure of the respondent/workman to vacate the premises, he was served with a charge sheet for disorderly behaviour, misconduct, disobedience and misconduct and illegal occupation of the quarter and after holding a domestic enquiry, his services were terminated vide letter dated 02.05.2016. It was pleaded that since the respondent has caused wrongful loss by not handing over the possession of the staff quarter to the petitioner/company after his termination, therefore in view of Section 4 (6) of the Act the petitioner/company was justified in forfeiting the gratuity of the applicant.

5. In this claim petition an order dated 12.02.2020 under Section 7 (4) (C) of the payment of gratuity Act, 1972 read with Rule-11 (4) of the

payment of gratuity (Central) Rules, 1972 was passed whereby the Controlling Authority *inter alia* found that the petitioner company withheld gratuity illegally, unauthorisedly and without obtaining permission from the Controlling Authority for the forfeiture. Thus, the petitioner/company was directed to make the payment of gratuity as per Section 4 (1) of the Act on the date of termination of service along with simple interest on the gratuity amounting to Rs.3,84,034/- @ 10% per annum as per sub-section (3-A) of Section 7 of the Act with effect from 02.05.2016 till the date of realization.

6. Being aggrieved of the order dated 12.02.2020 of the Controlling Authority, the Petitioner/company preferred an appeal before the Appellate Authority under the Payment of Gratuity Act, 1972. The Appellate authority framed the following issues:

1. *Whether the action of the appellant management to forfeit gratuity of the respondent on the ground of not vacating the quarter allotted to him is in conformity to the provision of sec. 4(6) of the Payment of Gratuity Act?*
2. *Whether the Respondent is eligible for the gratuity along with interest for delay in payment?*

7. The Appellate Authority held that Section 4 (6) of the Act is not attracted to the present case and gratuity payable to the respondent under the act cannot be withheld or forfeited. In support of this finding, reliance was placed on the judgment of this Court in ***Mohd. Shabbir Nadvi vs. Jamia Millia Islamia*** 56 (1994) DLT 583, ***Texmaco Limited vs. Ram Dham and Anr.***, Civil Writ Petition No.1110 of 1989, ***Gella Ram Vaswani and Anr. Vs. Municipal Corporation of Delhi*** 2005 (104) FLR 643 (Del.HC) as well as the judgment of Calcutta High

Court in *Eastern Coal Fields Ltd. Vs. Kripa Sankar Somany and others* (Reported in LLJ IIIp. 375 2004), judgment of Bombay High Court in *AS Iyer vs. Union of India & Ors.* 2004 I LLJ 885 and finally, the judgment of the Supreme Court in *Dr. Shittla Prasad Vs Gorakhpur University* –SCC1589 (1994). Appellate Authority confirmed the order of the Controlling Authority and *inter alia* held that the action of the petitioner/company to forfeit the gratuity was not correct. Respondent/workman was found to be eligible for gratuity on the date of termination of service i.e. 02.05.2016. It was further held that since the payment of gratuity was not made, the period was to be treated as a delay in payment of gratuity and therefore the award of interest was also upheld.

8. The petitioner/company has assailed the orders of the Controlling Authority and the Appellate Authority by way of the present writ petition on the ground that the authorities below have passed the impugned order contrary to the facts and the law.
9. In the writ petition, it has been stated that the authorities below have not conducted a detailed and proper examination of the material and the orders under challenge are pervert orders. It has also been pleaded that the Appellate Authority has ignored and failed to appreciate that the respondent's services were terminated on four main grounds that run parallel and simultaneously independent of each other. The fulfilment of any of these grounds entitles the petitioner/company to forfeit the gratuity of the respondent/workman. The following are the four main alleged grounds for termination:

- (i) Commission of an offence of sexual harassment and molestation against the daughter-in-law of another employee Sh.Umesh Choudhary in Mother Dairy Complex;
 - (ii) Causing violence and disturbance of peace and tranquility and putting lives of Sh. Umesh Mishra and his family members under danger;
 - (iii) Levelling false and baseless allegation against the management and its officers; and
 - (iv) Disobedience of the direction to vacate staff quarter.
10. It has been stated that the charges against the respondent/workman constitute violence and disorderly conduct and thus he has made himself liable to get his gratuity forfeited by the petitioner/company under Section 4 (6) (b) (i) of the Act. It has also been stated that as per Section 4 (6) (b) (i) of the Act no additional or conditional requirement is needed for forfeiture of gratuity of Respondent/workman. The petitioner /company has also stated that gratuity is not a fundamental right of the employee and the management has a right to withhold or forfeit the gratuity either wholly or partially for disorderly behaviour. Reliance has been placed upon ***B.R. Sharma Vs. Syndicate Bank***, LPA No.1780/2016 (Delhi High Court) and ***Management of Tournamulla Estate Vs. Workmen*** AIR 1973 SC 2344.
11. In ***Management of Tournamulla Estate*** (*supra*), the Supreme Court has held that in case of serious misconduct such as violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment which though not directly causing damage is conducive to grave indiscipline. In view of this, the

petitioner/company has stated that the gratuity of the respondent/workman can be forfeited in its entirety

12. Further, it has been stated that the Appellate Authority has also failed to appreciate that the gratuity of Respondent/workman was liable to be forfeited by the Petitioner/company under Section 4(6)(b)(ii) Payment of Gratuity Act, 1972 as the act of sexual harassment by the Respondent/workman amounting to an offence involving moral turpitude was committed in Mother Dairy Complex which consists of the plant, offices and quarters.
13. The petitioner in the writ has also stated that the appellate authority ignored the findings of Learned ACMM (Spl. Acts) (Central), Tis Hazari, in the criminal complaint bearing C.C. No. 2928/2017 titled '**Mother Dairy Fruit & Vegetable Pvt. Ltd. Vs. Satpal Singh**' whereby the respondent/workman was found guilty under Section 452 r/w Section 435 Companies Act, 2013 and was directed to vacate the premises. Similarly, learned ADJ-03 (South) Saket Court, Delhi, in the suit bearing Civil Suit no. 3228/2016 for eviction, possession and recovery titled as **Mother Dairy Fruit & Vegetable Pvt. Ltd. Vs. Satpal Singh** has also passed an order of eviction vide order dated 27.01.2020. It has been submitted that in pursuance to the order dated 27.01.2020 in Civil Suit No.3228/2016, the proceedings for recovery of mesne profits are still in progress. It has been submitted that since the quantum of mesne profit is still to be ascertained and after quantification, the loss of mesne profit can only be recovered from the gratuity of the respondent/workman thus the Petitioner is entitled and justified in withholding the gratuity. The petitioner has relied on the order passed

by the Supreme Court in *Steel Authority of India Vs. Raghendra Singh & Ors* in SLP No. 11025/ 2020 wherein it was held that if an employee occupies a quarter beyond the specified period, the penal rent would be the natural consequence and such penal rent can be adjusted against the dues payable including gratuity. Reliance has also been placed on the judgement in *Secretary ONGC vs. V.C Warrior* AIR 2005 SC 3039, wherein the Supreme Court has *inter alia* held that the High Court was unjustified in holding that appropriation of gratuity amount for unauthorized occupancy of the quarter was illegal and that penal rent would be charged from the employee. It has been stated in the writ petition that the Appellate Authority has erred in holding that the non-vacation of the staff quarters cannot be ground for denial of gratuity solely on the basis of some inapplicable judgments in the present case.

14. The petitioner/company has distinguished the judgements relied on by the Appellate Authority on the ground they are either relating to gratuity for unauthorized occupation of quarter after retirement or death of the workman or otherwise whereas in the present case one of the grounds for termination of service was the unauthorized occupation of the property i.e. quarter of the petitioner/company and such unauthorized occupation amounts to damage or loss to the petitioner/company and thus the gratuity of the respondent/workman is liable to be forfeited by the petitioner as per Section 4 (6) (a) of the Act.
15. Learned counsel for the petitioner has submitted that during the pendency of the proceedings, the judgement of conviction of the

learned ACMM dated 18.01.2020 in C.C. No. 2928/2017 under Section 452 read with Section 435 of Companies Act, 2013 has also been upheld vide order dated 17.12.2021 by the learned ASJ (Spl Acts) (Central), Tis Hazari in Crl.Appeal No.75/2020. Learned counsel for the petitioner has further submitted that unauthorized occupancy of the quarter causes loss to the employer and the respondent/workman is in unauthorised occupation of the staff quarters to date and has not paid penal market rent as required under clause 17 of the License Deed. It has been submitted that the loss of prevailing market rent since 06.02.2016 is still pending and is increasing. The Market Rent was 7000/- pm in 2016 which has now increased by around 14000/- to 15000/- pm. It has been submitted that in Suit no. 3228/2016 a prayer for mesne profit against the unauthorized occupation of the quarter by Respondent/workman was made. The said suit was filed in 2016 while the Respondent had filed the application for recovery of gratuity later in 2019.

16. Learned counsel has submitted that one of the grounds for the termination of Respondent's services was his commission of an offence of sexual harassment and molestation against the daughter-in-law of another employee of Petitioner/company living in Mother Dairy Complex causing violence and disturbance of the peace and tranquillity in the complex. It has been submitted that the respondent/workman has also levelled false and baseless allegations against the petitioner/company and despite repeated requests did not vacate the staff quarter. The said acts of the respondent/workman constitute violence and disorderly conduct on the part of the

Respondent/workman and thus the Respondent/workman has made himself liable to get his gratuity forfeited by the petitioner/company under section 4 (6) (b) (i) of Payment of Gratuity Act, 1972. It has been submitted that in terms of Section 4(6)(b)(i), no additional or conditional requirement is needed for forfeiture/ withholding of gratuity of Respondent

17. It has been submitted that the case of the petitioner also falls under Section 4(6)(b)(ii) of Payment of Gratuity Act as the offence of sexual harassment committed by the Respondent/workman in the enclosure of Mother Dairy Complex consisting of plants, offices and staff quarters amounts to an offence involving moral turpitude being committed in the complex of staff quarter which was allotted to him by virtue of his employment and which is near the workplace. An FIR u/ sec 354 IPC has also been lodged by the victim against the Respondent/workman.
18. Learned counsel for the petitioner has also submitted that the application for payment of gratuity was filed at a belated stage therefore the rate of interest should not have been awarded more than the interest notified by the Central Government, which is much lower than the awarded rate of interest @ 10% p.a.
19. *Per contra*, learned counsel for the respondent/workman has submitted that Controlling Authority and Appellate Authority have returned a concurrent finding that Section 4 (6) of the Act is not attracted in the present case and therefore the gratuity payable to the employee cannot be withheld. It has been submitted that in absence of perversity in the concurrent findings given by the two authorities, the present writ petition is not maintainable.

20. It has also been submitted that the dismissal order passed by the petitioner company is pending adjudication before the learned CGIT in LIR No.291/2018. It has also been submitted that the respondent/workman has an injunction order passed by the Ld. Senior Civil Judge (East), Karkardooma Court, Delhi in Civil Suit No. 05/2016 regarding his possession of the Staff Quarters. He has therefore continued to be in the possession of the staff quarters by virtue of the said interim injunction.
21. Learned counsel for the respondent has submitted that he has not been convicted by any court of law and the trial in FIR No.107/2016 is pending adjudication. Further, the said incident which is the subject matter of FIR no.107/2016 never belonged to the workplace of the respondent/workman in any manner nor was committed during the course of employment with the petitioner. It has further been submitted that the alleged act of quarrel was committed with the neighbour while off duty, and therefore cannot be treated as an act done during the course of his employment for the purposes of section 4 (6) (b) of the Payment of Gratuity Act, 1972.
22. Learned counsel for the respondent has submitted that Controlling Authority and Appellate Authority has rightly relied upon the judgments of *Mohd. Shabbir Nadvi (supra)*, *Texmaco Limited (supra)*, *Gella Ram Vaswani (supra)* and *Dr. Shittla Prasad (supra)*. It has been submitted that occupation of a staff quarter (accommodation provided by the employer) even though in an unauthorized manner is not a valid ground to forfeit the gratuity. Learned counsel has submitted that it has been held in *H.*

Gangahanume Gowda vs Karnataka Agro Industries Corpn. Limited, (2003) 3 SCC 40 that payment of gratuity with or without interest, as the case may be does not lie in the domain of discretion and it is a statutory compulsion. Learned counsel has submitted that benefits given through socially beneficial legislation cannot ordinarily be denied and employees on retirement have the right to get gratuity. Any delay in payment of gratuity must be visited with the penalty of payment of interest.

23. I have considered the submissions made by both parties. At the outset, it is essential to discuss the scope of judicial review by this court in the exercise of the writ jurisdiction. The jurisdiction of the writ court under Article 226 has been laid down in **Swaran Singh & Anr. Vs. State of Punjab & Ors** 1976 (2) SCC 868. The Supreme Court has inter alia held as under:

“12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the High Court in writ proceedings under Article 226. It is well-settled that Certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of Certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (supra) 'this limitation necessarily means that findings of fact reached by the inferior court or Tribunal as a result of the appreciation of evidence cannot be re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ but not an error of fact, however grave it may appear to be.

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of Certiorari can be issued only if in recording such a finding the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends, only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.”

24. It is a settled proposition that the High Court while exercising power under Article 226 of the Constitution of India does not sit as an Appellate Authority in the matter arising out of the Labour Courts, Tribunals and Quasi-Judicial authorities. The High Court only has the power of superintendence over such courts, tribunals and authorities. The power of judicial review does not include re-appreciation of the whole dispute afresh and does not empower the High Courts to reach a different conclusion if the tribunal below has given sufficient reason for reaching to its conclusion. Repeatedly, it has been held that while exercising power under Article 226, the Court only has to see whether there is an error of jurisdiction or whether there is an excess of jurisdiction. The High Court can also examine the order under challenge if there is any perversity in the findings challenged before it but it cannot replace its view only because another view is possible.
25. The Controlling Authority and Appellate Authority have no doubt relied upon various judgments wherein it has been held that the gratuity cannot be withheld for non-vacation of the accommodation allotted to

an employee. However, the precedents have to be applied and seen in the peculiar facts and circumstances of the cases.

26. In the present case before proceeding further it is desirable to take note of a few facts. The charge sheet was served upon the respondent/workman on 08.02.2016 which culminated in an enquiry report dated 16.02.2016 vide which all the charges against the respondent/workman were held to be proved. This led to the termination of the respondent/workman vide order 02.05.2016. The dismissal order is pending adjudication before learned CGIT vide LIR No.291/2018. The respondent/workman has also filed a Civil Suit no.5/2016 seeking relief of declaration, mandatory and permanent injunction in which an interim injunction was granted vide order dated 28.10.2017. The petitioner/ management on the other hand had filed a complaint under Section 452 read with Section 433 of the Companies Act, 2013 wherein the respondent/workman was held guilty and was convicted for the offence. He was sentenced to pay a fine of Rs.2 lakhs and in default to undergo SI for six months vide order dated 18.01.2020. The appeal filed against this order i.e. Crl.Appeal 75/2020 was dismissed vide order dated 17.12.2021 and is now under challenge before this court in Crl.Revision No.83/2020 filed by the respondent/workman.
27. Thus, it is clear from the record that the respondent/workman has not vacated the staff quarter allotted to him despite various directions of the authorities. Though it cannot be denied that he has all the opportunities to pursue the legal remedies provided to him by law but this court

while deciding a lis pending before is also required to see the practical realities and the difficulties faced by a common man.

28. It is a matter of common knowledge that the accommodations provided to the employees by employers are limited in number. Such accommodations are allotted subject to certain conditions and the number of available accommodations is always far below than the requirement. Therefore, there are numerous persons in the queue awaiting the allotment of accommodation. This court will not make any comment on the termination order or the grounds for the termination as it is pending disposal before learned CGIT. However, one fact is clear on the record that as of now the respondent/ workman has not vacated the quarter allotted to him to date. The proceedings for quantification of mesne profit and damages are still under progress. If ultimately the dismissal order is upheld in the judicial forum and the respondent/workman is found liable to pay market penal rent/market rent, certainly, there will be proceedings for the recovery of the same. The courts have said time and again that the payment of the gratuity is a statutory right and it is not subservient to the common law rights of the employer to terminate the service of an employee.

29. I consider that this matter is also required to be seen from another perspective. Section 4 (6) (a) and (b) provides as under:

*“Section 4 - **Payment of gratuity.***

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

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the

employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee 5 [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.*

30. In ***Union Bank of India and vs. D.C.Chaturvedi and anr.*** W.P.(C) 4486/2021, this court dwelt upon the procedure for forfeiture of gratuity wherein it has been *inter alia* held that the payment of gratuity is the rule and not the exception. It was further *inter alia* held that for the exception to be applied, the pre-condition of notice, quantification and hearing would have to be followed and satisfied.
31. In ***Hindalco Industries Ltd. Vs. Appellate authority and anr.*** 2004 (101) FLR 1063, the Allahabad High Court following ***Remington Rent of India vs. Workman*** 1970 SC 1421 has also *inter alia* held that in order to forfeit the statutory right of gratuity qualified by expression to the extent of damage or loss so caused in Action 4(6)(b), the quantum of forfeiture has to be determined, and thus it requires an order which can only be passed after giving an opportunity to the employee.
32. It is pertinent to mention here that in the present case no notice was served upon the workman before forfeiture of the gratuity. Similarly, the loss caused to the petitioner/management is also unquantified.

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Further, the principles of natural justice have to be followed and complied with in every proceeding. Non-compliance with the principles of natural justice results in enormous prejudice.

33. Thus, in absence of compliance with principles of natural justice, the decision of the petitioner management of forfeiture of gratuity cannot be sustained in the eyes of law.
34. In view of the discussion hereinabove, the present writ petition is disposed of with the following directions:
 - (i) The petitioner management shall quantify the loss caused to the petitioner/company for non-vacation of the government accommodation,
 - (ii) The petitioner/company shall afford an opportunity of hearing to the respondent/workman before taking the decision of forfeiture of gratuity in accordance with the law.
 - (iii) Any order passed thereafter shall certainly be subject to the review by the Controlling Authority and the Appellate Authority as provided under the law.
 - (iv) The orders under challenge i.e. order dated 12.02.2020 passed by the Controlling Authority and the order dated 28.09.2021 passed by the Appellate Authority are set aside.
35. With the above directions, the petition along with the pending application stands disposed of.

DINESH KUMAR SHARMA, J

NOVEMBER 22, 2022/rb