



W.P(MD)No.6173 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 03.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.6173 of 2018 and
WMP(MD) No.6020 of 2018

The Managing Director,
The Thanjavur Consumers Co-operative Wholesale Stores T-878,
Thanjavur,
Thanjavur District. ... Petitioner

Vs

- 1.Sivanesan(Died),
- 2.The Joint Commissioner of Labour,
Tiruchirappalli,
Tiruchirappalli District.
- 3.The Assistant Commissioner of Labour,
Tiruchirappalli,
Tiruchirappalli District.
- 4.Angayarkanni
- 5.Rajesh Kumar
- 6.Meena ...Respondents

(R4 to R6 are impleaded vide Court order, dated 11.03.2025 in WMP(MD) No. 4766 of 2025 in WP(MD) No.6173 of 2018 by MSKJ)



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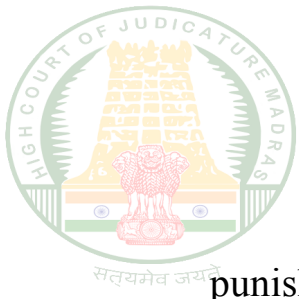
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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to quash the order passed in P.G.A.No.126 of 2017, on the file of the APPELLATE TRIBUNAL constituted under the PAYMENT OF GRATUITY ACT, dated 29.11.2017, by calling for the records from the 3rd respondent and quash the same consequentially direct the 2nd respondent to refund the amount deposited by the establishment.

For Petitioner	: Mr.V.Chandrasekar
For R2 & R3	: Mr.C.Venkatesh Kumar Special Government Pleader
For R4 to R6	: Mr.T.A.Ebenezer

ORDER

The petitioner, namely, Thanjavur Consumers Co-operative Wholesale Stores T-878, Thanjavur, is running a fair price shop, distributing materials under the Public Distribution System. They have found that one of its employees, by name Sivanesan has sold kerosene in the open market, which is meant for public distribution. A charge memo was issued as against the said Sivanesan and on completion of enquiry, he was imposed with



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punishment of termination from service. The revision petition filed by the employee before the Revisional Authority/ the Joint Registrar of Co-operative Societies was also dismissed, confirming the order of punishment. Challenging the order of punishment and its confirmation by the Appellate Authority, the employee has moved writ petitions in WP(MD) Nos. 224 & 8598 of 2010 and the same was dismissed by this Court, by its order, dated 26.11.2019. While so, the request of the employee for gratuity under the Payment of Gratuity Act has been rejected by the third respondent / the Assistant Commissioner of Labour, Trichy in P.G.No.559 of 2016, dated 22.02.2017, by referring to the provision under Section 4(6) of the Payment of Gratuity Act, 1972, as against which, the employee has filed an appeal before the Appellate Authority in PGA No.126 of 2017. The Appellate Authority has reversed the order passed by the authority under the Payment of Gratuity Act, by its order, dated, 29.11.2017. Challenging the same, the employer/ Co-operative Stores has filed this writ petition.

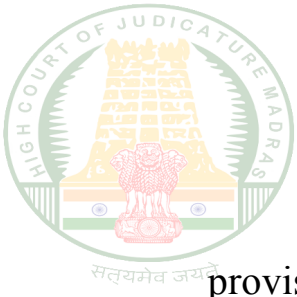


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2. Pending this writ petition, the employee Sivanesan died and therefore, his legal heirs have been impleaded as respondents 4 to 6 in this writ petition.

3. The learned counsel appearing for the petitioner/the Managing Director of the Co-operative Stores submits that the employee was entrusted with the work of distribution of essential commodities like, Rice, Wheat, Kerosene and edible oil etc., under Public Distribution System to the marginalized sector at subsidized rates. The kerosene meant for public distribution has been sold by the employee in the open market and the same was identified during the inspection conducted by the officials of the petitioner stores. Therefore, a charge memo was issued and enquiry was conducted and after due inquiry, he was terminated from service. The conduct of the employee in selling the kerosene meant for public distribution in the open market amounts to involving moral turpitude and therefore, he is not entitled for any gratuity as per Section 4(6) of the Payment of Gratuity Act, 1972. However, without considering this



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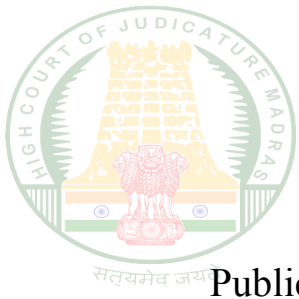
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provision, the Appellate authority has allowed the appeal filed by the employee and therefore it needs to be interfered.

4.The learned counsel appearing for the respondents 4 to 6/the legal heirs of the deceased employee submits that the writ appeals filed by the employee in WA(MD) Nos.1430 and 1432 of 2021, as against the order of punishment is still pending before the Division Bench of this Court. Therefore, according to him, the punishment imposed by the petitioner Society has not reached its finality.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The employee, Sivanesan was terminated from service, on the charges that he has sold kerosene meant for public distribution in the open market. The employee, who was entrusted with the work of distribution of essential commodities under the



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Public Distribution System is not the in charge of the entire fair price shop concerned. There are higher officials also and their duty is to ensure that the system works in the proper manner. While so, the employee alone has been penalized, by way of termination from service. The main object of the Public Distribution System is to ensure the food security and protecting the marginalized sector from price hikes and making the essential items easily accessible to them. However, the fact remains that the pilferage in the Public Distribution System has not been addressed by the Government till date. Here, in the present case, the employee, who was entrusted with the work of distribution of essential commodities alone cannot be fixed with the responsibility that he has acted in a manner involving moral turpitude. Most of the employees in the retail outlets are also doing this type of mischiefs on the instructions of the higher officials. In this scenario, this Court is not inclined to accept the case of the petitioner that the employee has acted involving in a moral turpitude. Therefore, this Court is not inclined to interfere with the order passed by the Appellate Tribunal, constituted under



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the Payment of Gratuity Act, in P.G.A.No.126 of 2017, dated
29.11.2017.

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7. Accordingly, this writ petition is dismissed. No Costs.

Consequently, connected Miscellaneous Petition is closed.

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Index:Yes
Internet:Yes
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To

- 1.The Joint Commissioner of Labour,
Tiruchirappalli,
Tiruchirappalli District.
- 2.The Assistant Commissioner of Labour,
Tiruchirappalli,
Tiruchirappalli District.



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B.PUGALENDHI, J.

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Order made in
W.P(MD)No.6173 of 2018 and
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