

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.43693 of 2016
and
WMP.No.37498 of 2016

M.Kaliappan

..Petitioner

Vs.

1.Tamil Nadu State Transport Corporation,
Represented by its Managing Director,
Villupuram.

2.Tamil Nadu State Transport Corporation,
Represented by its General Manager,
Vellore.

3.Tamil Nadu State Transport Corporation,
Branch Manager,
Thirupathur.

4.Tamil Nadu State Transport Corporation,
Enquiry Officer,
Vellore-9.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the second respondent in Proceeding 167447/sa6/TNSTC/Ve.Ma/2015 dated 21.11.2016 and quash the same as illegal, incompetent, unconstitutional, wholly without jurisdiction and for other consequential orders.

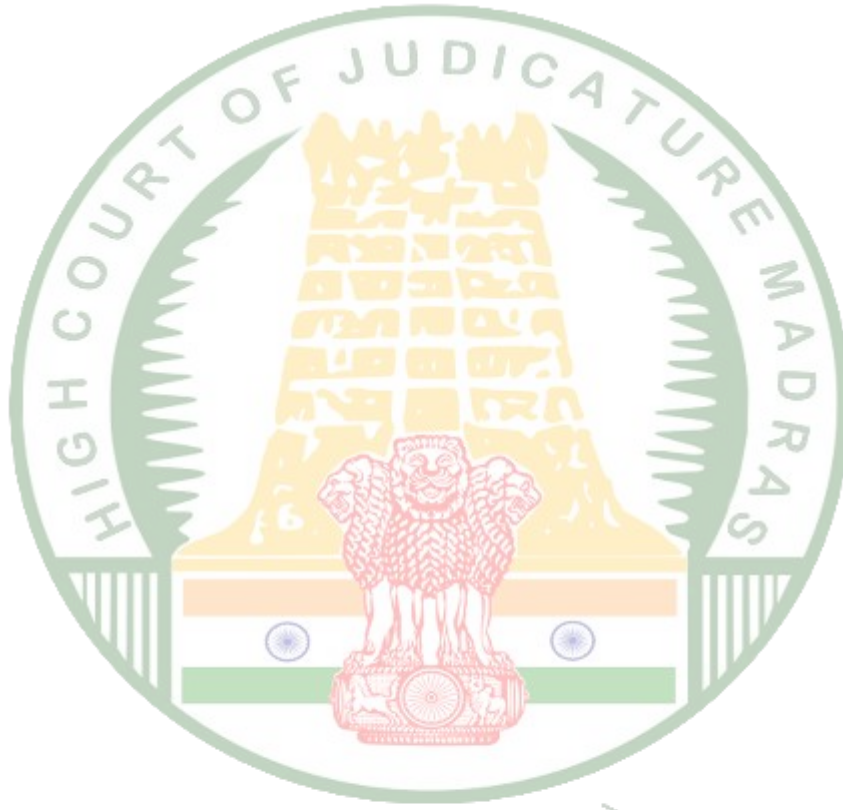
For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.P.Paramasivadoss
Special Government Pleader

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner was appointed as Conductor in the services of the Tamil Nadu State Transport Corporation in the year 1988 and rendered 29 years of unblemished service to the satisfaction of the superior officers. The petitioner would



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state that on 05.02.2015, he was put in-charge of bus No.528/B, Registration No.TN23N 2219 and the said bus halted at Thirupathur bus depot and the petitioner left the cash bag in the bus and went to the Time Office at the depot to note the arrival of the bus and the driver of the bus also went to attend nature call. When the petitioner returned to the bus, he found that the cash bag was missing and immediately, he informed the same to the third respondent and a criminal case was also lodged and subsequently, the petitioner obtained Non-Traceable Certificate on 19.02.2016. The petitioner was issued with a show cause notice dated 12.03.2015 calling upon him to pay the sum of Rs.59,412/- being the value of the loss of ticket book. The petitioner appeared for enquiry on 30.06.2015 and subsequently sent a representation to the fourth respondent by enclosing a copy of the C.S.R as well as the Non Traceable Certificate stating that he is noway responsible for the loss. However, the Enquiry Officer held that the charges framed against the petitioner has been proved and the petitioner was called upon to submit further explanation and the petitioner also submitted further explanation and taking into consideration of the same, the second respondent has passed an order, ordering recovery of a sum of Rs.59,412/-, being the value of the ticket book lost, in 15 instalments from his salary, vide order dated 21.11.2016. Challenging the legality of the same, the petitioner has come forward with this writ petition.

3. Mr.V.Raghavachari, learned counsel appearing for the petitioner would contend that the cash bag was stolen when the petitioner went to Time Office at the depot to note the arrival of the bus and immediately, criminal complaint was lodged and the police also issued a Non-Traceable Certificate and it was also furnished to the concerned respondent and therefore, the act of the petitioner cannot be considered as neither willful nor wanton and further added that without conducting proper enquiry, the impugned order came to be passed and prays for quashment of the same.

4. Per contra, Mr.P.Paramasivadosh, learned Standing Counsel, who accepts notice for the respondents 1 and 2 would contend that the explanation of the petitioner has been taken into consideration and admittedly, while the petitioner discharging the duties the bag was lost and the value of the ticket book lost was quantified as Rs.59,412/- and taking into consideration the occupation of the petitioner, the amount was ordered to be recovered in instalments and would further add that the petitioner is having effective alternative remedy in the form of appeal before the first respondent and prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the entire materials available on record.



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6. Whether the petitioner, on account of negligence and careless attitude, had lost the bag which contains bus ticket book ? is a question of fact to be considered and adjudicated by the Appellate Authority. In the considered opinion of the Court, the points urged by the learned counsel appearing for the petitioner can be agitated before the Appellate Authority in the form of appeal and in the impugned order itself it is indicated that the petitioner is having effective alternative remedy before the first respondent and therefore, this Court, in the light of the above facts and circumstances, permits the petitioner to file an appeal before the first respondent, challenging the impugned order passed by the second respondent in Proceedings 167447/Sa6/TNSTC/Ve.Ma/2015 dated 21.11.2016 within a period of two weeks from the date of receipt of a copy of this order and the first respondent, on receipt of the same, shall entertain the appeal, if the papers are otherwise in order, without putting the question of limitation and pass orders on merits and in accordance with law within a period of three weeks thereafter and communicate the decision taken to the petitioner and till such disposal of the appeal by the first respondent, shall defer the recovery proceedings.

7. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.
jvm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram.
- 2.The General Manager,
Tamil Nadu State Transport Corporation, Vellore.
- 3.Tamil Nadu State Transport Corporation,
Branch Manager, Thirupathur.
- 4.Tamil Nadu State Transport Corporation,
Enquiry Officer, Vellore-9.

+ 1 cc to Mr.P.Paramasiva Doss, Advocate Sr 74976
+ 1 cc to Mr.V.Raghavachari, Advocate Sr 74426

KR/01/03/17