

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P. No.9958 OF 2004
and
W.M.P.No.11640 of 2004

S. Ayyasamy

..Petitioner

Vs.

The Management of State Express
Transport Corporation Ltd.,
Rep. by its Divisional Manager(Chennai),
Pallavan Salai,
Chennai-2.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the order dated 11.02.2004 from the respondent and quash the same.

For Petitioner : Mr. V. Ajoy Khose
For Respondent : Mr. Paramasivadoss

O R D E R

Challenging the order dated 11.02.2004, passed by the respondent, the petitioner has filed the present writ petition.

2. The writ petitioner was working as a conductor in the respondent Transport Corporation. While he was working as a Conductor, in route No.426, running between Chennai and Namakkal, the bus started from Chennai at 11 a.m. and reached Namakkal at 8.15 p.m. In Namakkal bus stand, the petitioner, in order to help the driver, who reversed the bus for parking it in the parking bay, went behind the bus and gave signal. After the bus was parked, the petitioner got into the bus and found that the ticket box was lying open and unused loose ticket bundles were stolen. Immediately, the petitioner had lodged a police complaint and a receipt was issued bearing No.85 of 2004. The value of tickets which were stolen was Rs.16,351/-. The stationery and printing cost of the tickets was around Rs.50/-. The petitioner, on the same day, has informed the Branch Manager about the theft. In spite of informing the incident, the respondent, by the impugned order dated 11.02.2004, has ordered

recovery in 16 equal instalments, at the rate of Rs.1,000/-.

3. The petitioner would submit that there is a 12(3) settlement between the Workmen and the Management, wherein as per clause 29 of the settlement, the tickets stolen or missing or robbed during rioting or during accident, while the conductor was on duty and when the police complaint was lodged for the theft, no recovery shall be made from the employee. Therefore, the petitioner challenges the order of recovery, as violation of principles of natural justice and contrary to the terms and conditions of 12(3) settlement.

4. Mr. Paramasivadosh, learned counsel for the respondent would submit that the petitioner has not discharged his duties diligently. He has not stated as to who had stolen the tickets and the manner of theft taken place. It was only stated that the tickets were missing. Thus, the statement of the petitioner is not credible. The petitioner should have taken extra care and more vigilant while discharging his duties. The petitioner has not proved that the tickets were stolen, in order to apply the terms and conditions of 12(3) settlement.

5. Per contra, the learned counsel appearing for the petitioner would submit that the petitioner has immediately lodged the police complaint on 09.02.2004 and informed the Branch Manager on the same day itself that the tickets were stolen. The petitioner would also stated that the respondent Corporation has not provided lock and key to the ticket box to keep it safe. In such circumstances, the benefit of clause 29 of 12(3) settlement shall be given to the respondent.

6. The learned Counsel for the petitioner would also rely on a judgment of this Court in M.PALANISAMY VS. MANAGEMENT OF RANI MANGAMMAL TRANSPORT CORPORATION LTD., DINDIGUL [2002 (4) L.L.N. 1129] wherein, in similar circumstances, the action taken by the Management for recovering the amount was set aside.

7. The aforesaid judgment was confirmed, on appeal, by the Management, in MANAGEMENT OF RANI MANGAMMAL TRANSPORT CORPORATION LTD., DINDIGUL VS. M.PALANISAMY [2008 (1) MLJ 224].

8. The judgment cited supra was followed by the Hon'ble First Bench of this Court in W.A.No.1122 of 2012 dated 18.07.2012.

9. Therefore, I have no hesitation to hold that the impugned order of the respondent for recovering money from the petitioner, without issuing any show cause notice, is bad in law and contrary to clause 29 of 12(3) settlement entered into between the Workmen and the Management.

10. Accordingly, the impugned order dated 11.02.2004 is hereby set aside and the Writ petition stands allowed. Consequently, connected Miscellaneous Petition stands closed. No costs.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

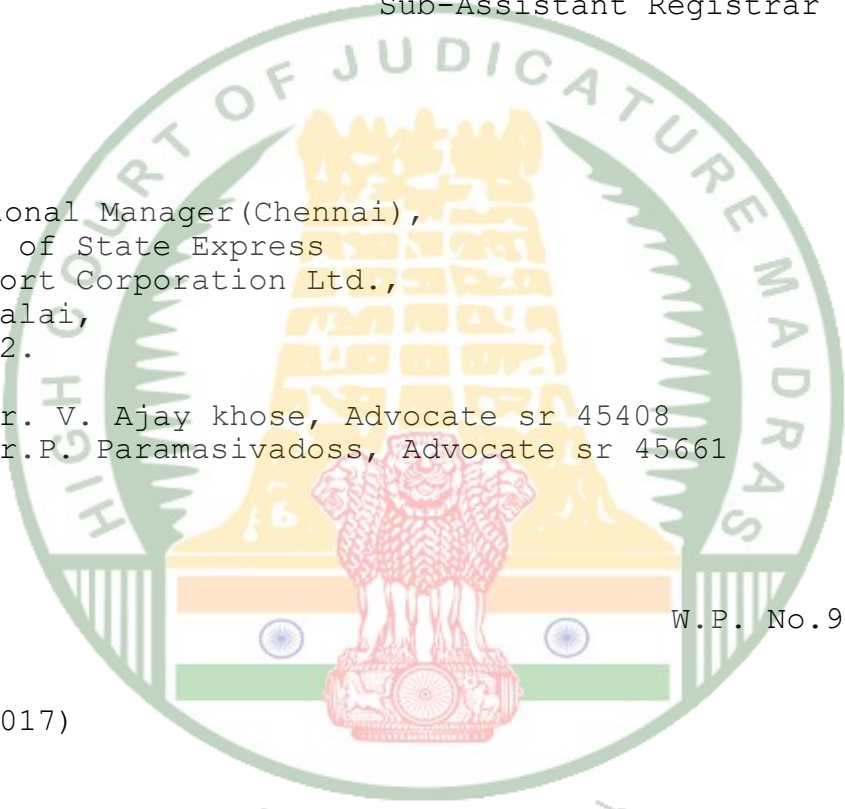
To

The Divisional Manager(Chennai),
Management of State Express
Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 2.

+1 CC to Mr. V. Ajay khose, Advocate sr 45408
+1 CC to Mr.P. Paramasivadoss, Advocate sr 45661

EV(CO)
sp(31/07/2017)

W.P. No.9958 OF 2004

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. Below the lion is a red wheel. The entire emblem is set against a background of green and white stripes. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circle around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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