

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.16815 of 2012

& M.P. No.1 of 2012

T.K.Sampath

... Petitioner

Versus

The General Manager(Administration),
State Express Transport Corporation,
(Tamilnadu) Ltd,
Pallavan Salai,
Chennai-600 002.

... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Certiorarified mandamus to call for the records relating to the order No.448/51288/DL 5/SETC/2009 dated 21.02.2012 of the respondent, quash the same and consequently direct the respondents to return the already recovered amount with 12% interest to the petitioner.

For Petitioner : Mr.S.T.Varadarajulu

For Respondent : Mr.P.Paramasivadoss

ORDER

The petitioner has approached this Court seeking the following relief:

'To issue a Certiorarified mandamus to call for the records relating to the order No.448/51288/DL 5/SETC/2009 dated 21.02.2012 of the respondent, quash the same and consequently direct the respondents to return the already recovered amount with 12% interest to the petitioner'.

2.The case of the petitioner is as follows:

The petitioner joined the service of the respondent Corporation as Conductor on 19.04.1986. On 16.08.2009, the

petitioner was allotted duty in Route No.303, running between Chennai and Kumbakonam. During the course of journey, near Dindivanam, one of the bus tyres got burst and therefore, the driver stopped the vehicle near Dindivanam. The petitioner was directed by the driver to bring a technical person from Dindivanam Depo for changing the tyre. While going to the Depo, the petitioner kept the ticket bundles in the Box at the dash board of the vehicle. After the tyre was replaced, the petitioner came to know that the ticket bundles kept in the box were missing. After reaching Chennai, the petitioner informed about the missing of the ticket bundles to the Branch Manager and the Branch Manager has also by a letter dated 18.08.2009 recorded the loss of ticket bundles. A complaint was registered in CSR No.309 of 2009 on 19.08.2009 before the Inspector of Police, Mailam. After enquiry, the Inspector of Police gave a letter on 09.09.2009 stating that ticket bundles were not traceable. In the meanwhile, a charge memo was issued to the petitioner on 20.08.2009 for the loss of ticket bundles worth Rs.53,604/-. Thereafter, the petitioner was denied employment. Therefore, the petitioner had given a representation on 10.09.2009 requesting for grant of employment again. When the petitioner received salary for the month of September 2009, after being granted employment, he was paid salary after making deduction towards the loss of ticket bundles.

3. According to the petitioner, such deduction is contrary to the settlement arrived at between the Corporation and the employees, particularly, Clause 29, in which, it is agreed between the workmen and the Management that no deduction ought to be made in case of loss of ticket bundles, which could not be traceable. It was 12(3) settlement and therefore, the same is binding on the parties.

4. The learned counsel for the petitioner at the out set, would submit that since the deduction is contrary to the agreement and also contrary to the law laid down by this Court, the impugned action by the respondent is liable to be interfered with. The learned counsel would draw the attention of this Court to the decision passed by this Court dated 22.09.2017 in WP.No.647 of 2013, wherein, the similar issue came up for consideration. This Court, while dealing with the identical situation allowed the writ petition on the basis of the earlier decisions of this Court. The relevant portions of the order dated 22.09.2017, passed by this Court, in paragraph Nos.5 to 10, are extracted below:

" 5. Mr.V.Ajoy Khose, learned counsel appearing for the petitioner would submit that the issue is directly covered by Clause 17 of 12(3) settlement dated 29.08.2005 in and by which the Corporation had accepted and agreed that no recovery

will be made from the conductors towards the value of those ticket books which were lost. According to the learned counsel for the petitioner, the agreement is still in force and the same was applied wherever there is a loss of ticket bundles, for which no recovery action was initiated. 12(3) settlement between the workers and the Corporation in respect of the said issue has not been disputed by the learned counsel for the Corporation.

6.Learned counsel appearing for the petitioner would further draw the attention of this Court that in similar circumstances, this Court has time and again held that no recovery could be made from the conductors, if ticket bundles were lost. He would draw the attention of this Court to the order passed by the learned single Judge dated 23.06.2011 in W.P.No.9686 of 2011. The learned Judge of this Court, after following the Division Bench decision, directed the return of the recovery amount from the conductor concerned. The operative portion of the order is extracted below:

4.In the light of the said categorical pronouncement made by the Division Bench particularly in paragraphs 4 and 5 holding that the said demand is contrary to Clause 29 of the Settlement and the fact that the similar settlement is now in force, the impugned order is set aside and the writ petition is allowed. The amount already recovered to the tune of Rs.5,693/- is directed to be returned to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

7.The said decision of the learned single Judge has been confirmed in W.A.No.1122 of 2012 dated 18.07.2012. Learned counsel would also draw the attention of this Court to yet another decision of this Court in Management of Rani Mangammal Transport Corporation Ltd., Vs. M.Palanisamy ((2008) 1 MLJ 224), wherein a Division Bench of this Court has clearly held that no amount can be recovered from the bus conductor when there was loss of bus ticket books not due to any negligence on the part of the conductor. These decisions squarely cover the case in favour of the petitioner.

8.Mr.P.Paramasivadoss, learned counsel appearing for the respondents would vehemently oppose the grant of any relief to the petitioner on the ground that unless the loss is compensated by the conductor concerned, there would not be any responsibility on the part of any conductor for keeping ticket book in safe custody. However, he would not dispute the settlement arrived at between the workers and the management in this regard. He would also have no quarrel with the legal proposition laid down by this Court both by the learned single Judge and by the Division Benches as relied on by the learned counsel for the petitioner.

9.In view of the admitted position that the issue is directly covered by the aforesaid decisions and also in view of the binding agreement between the workmen and the management, this Court has no hesitation in allowing the writ petition. The impugned order dated 06.12.2012 is therefore set aside. The respondents are also directed to treat the period of the petitioners non-employment as duty for the aforesaid reasons and pay the admissible wages for the said period. The respondents are directed to pass orders in compliance with these directions within a period of four weeks from the date of receipt of a copy of this order.

10.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Since the issue is squarely covered by the aforesaid order and the Corporation was represented by the same counsel, he cannot have any objections for passing similar orders in the present writ petition.

5. In view of the same, the impugned order passed by the respondent in No. No.448/51288/DL 5/SETC/2009 dated 21.02.2012 is set aside. The respondent is directed to consider the period of petitioner's non employment as duty for the aforesaid reasons and pay the wages for the said period. The respondent is also directed to refund the amount which was deducted from the salary of the petitioner. The said exercise shall be completed

by the respondent within a period of two months from the date of receipt of a copy of this order.

6. The writ petition is disposed of, with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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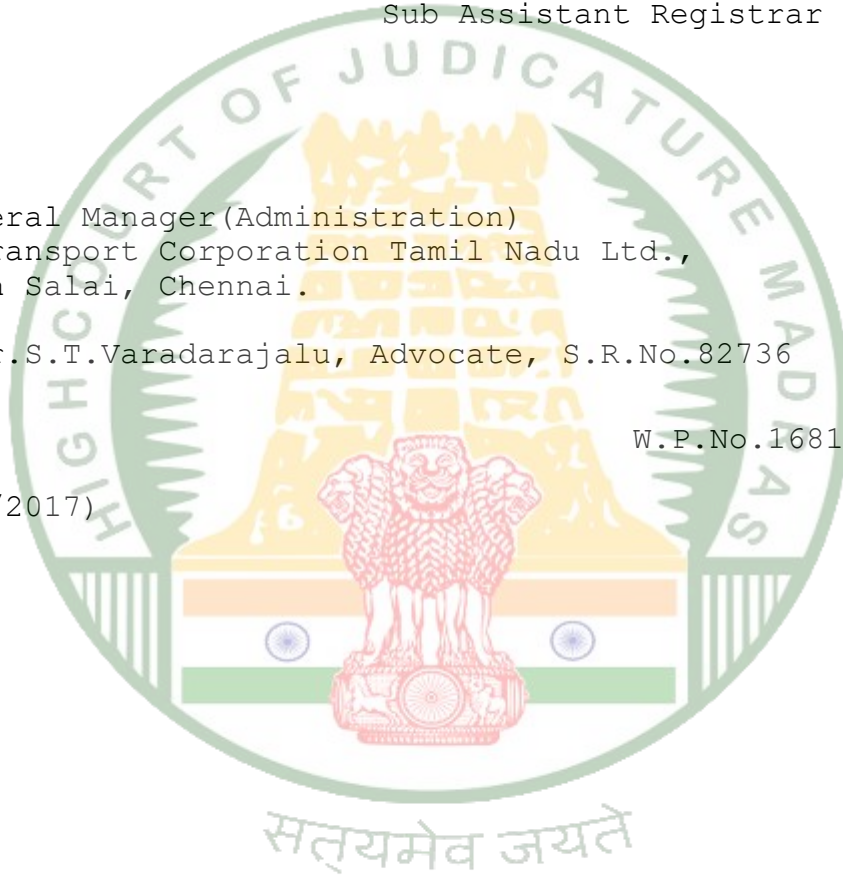
To

1.The General Manager(Administration)
State Transport Corporation Tamil Nadu Ltd.,
Pallavan Salai, Chennai.

+1cc to Mr.S.T.Varadarajalu, Advocate, S.R.No.82736

W.P.No.16815 of 2012

RRK(15/12/2017)



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