THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.15664 of 2007

ORDER:

This writ petition under Article 226 of the Constitution of India is filed impugning the proceedings No.Supt/876(47)/98-RM/O, dated 16.04.2007, issued by the 1st respondent as illegal and arbitrary and to consequently set aside the same and declare that the writ petitioner is entitled to claim charges as per the judgment dated 01.10.2002 rendered in WP.No.31922 of 1998.

2. I have heard the submissions of Sri V. Mallik, learned counsel for the writ petitioner, and of Sri P. Durga Prasad, learned Standing Counsel for APSRTC. I have perused the material record.

4. The facts necessary for consideration, in brief, are as follows:

Ticket Booking Agency at Giddalur Depot was allotted initially to the writ petitioner on tender basis for a period of two years from 26.10.1994 on payment of remuneration/commission at the rate of Rs.0.35 ps per ticket and an agreement was duly entered into between the petitioner and the Officer concerned of the respondents. Later, the remuneration was increased to Rs.1/- from 26.09.1995 and later to Rs.2/- per ticket. The agreement period was further extended by two more years at the request of the writ petitioner from 26.10.1996 to 25.10.1998. The commission for sale of tickets was further increased to Rs.5/-. While so, the writ petitioner herein filed WP.no.31922 of 1998 before this Court questioning the proceedings dated 07.11.1998 issued by the Depot Manager, Giddalur, Prakasam District, directing the petitioner to pay an amount of Rs.52,296/- to the Corporation said to be due as on June, 1998. This Court by order dated 01.10.2002 disposed of the said writ petition holding that as the petitioner was paid the commission of Rs.5/- it is to be held that the action of the respondents in directing the petitioner to refund the excess amount has no force. Further, the Depot Manager, Giddalur, was directed to arrive at the correct figure of the payments made to the petitioner at the rate of Rs.5/- and that the petitioner may refund other excess payment, if any is made, within a period of three months from the date of receipt of a copy of the said order. It was further observed in the said orders that the respondents are at liberty to proceed against the petitioner, if any misappropriation case is pending. As per the directions of this Court, the difference amount payable to the petitioner was arrived at; and, it was found to be Rs.1,35,533/- in view of the enhancement of the rate of commission. Be that as it may, the said amount was not paid to the petitioner as the Regional Audit party, which audited the records, was said to have detected that the petitioner-agent has not remitted the ticket sale amount to the account of the Depot and defrauded the Corporation to its legitimate revenue to a tune of Rs.1,66,644/-. Indeed, on a report of the officers of the respondents, a Calendar Case in CC.No.220 of 1999 was taken on file by the learned Judicial Magistrate of First Class, Giddalur, against the petitioner for misappropriation of Corporation revenue to the above stated extent. However, the petitioner was found not guilty and was acquitted in the said calendar case. Thereafter, the writ petitioner filed W.P.No.3345 of 2007 stating that after his acquittal in the calendar case he made a representation dated 15.07.2006 to the respondents requesting to pay the amounts due to him towards commission and that no orders have been passed on his representation. This Court by order dated 22.02.2007 disposed of the writ petition directing the respondents to pass appropriate orders on the said representation of the petitioner. Pursuant to the afore-stated orders of this Court, the representation of the petitioner was examined and rejected by proceedings dated 16.04.2007, *inter alia*, observing in the said orders that as per the Audit report, the petitioner misappropriated a sum of Rs.1,66,644/- of the Corporation by not remitting the ticket sale amount to the Depot concerned and that after deducting the sum of Rs.1,35,533/- which is payable to the petitioner-agent, the petitioner himself is still due to pay a sum of Rs.31,111/- to the Corporation and that therefore the contention of the petitioner to pay the sum of Rs.1,35,533/- or any other amount cannot be considered. The said proceedings dated 16.04.2007 are now assailed in this writ petition, *inter alia*, contending that the Corporation is not disputing that a sum of Rs.1,35,533/- is payable to the petitioner by the respondents towards commission charges and that the reliance on the audit report and the alleged misappropriation allegedly detected by the audit party is wholly untenable and that the Audit report was marked as exhibit P1 in the calendar case to prove the misappropriation, but, the petitioner was acquitted in the calendar case and that, therefore, the reliance of the Corporation on the said Audit report is arbitrary and untenable and that the impugned proceedings seeking to scuttle the orders of this Court in W.P.No.31922 of 1998 are unsustainable.

5. Per contra, the respondents in the counter while not disputing the chronology of events would contend that as per the Audit report the petitioner involved in misappropriation of the amount of the Corporation to a tune of Rs.1,66,644/- by not remitting the ticket sale amount to the account of the Depot and that mere acquittal of the petitioner in the criminal case does not absolve him from the civil liability to pay the said

amount to the Corporation and that the petitioner is due to pay the misappropriated amount of Rs.1,66,644/- to the Corporation and whereas a sum of Rs.1,35,533/- was only due to the petitioner from the Corporation and that after deducting the said amount of Rs.1,35,533/- from out of Rs.1,66,644/- due to the Corporation from the petitioner, the petitioner is still liable to pay an amount of Rs.31,111/- to the Corporation and that therefore the representation of the petitioner was duly rejected after detailed consideration and that the petitioner was asked to remit the balance amount of Rs.31,111/- to the organisation and hence, the impugned proceedings are valid and sustainable and the writ petition is liable to be dismissed.

6. At the hearing, it is fairly stated that the Corporation admitted its liability to pay Rs.1,35,533/- to the petitioner towards remuneration/commission charges towards sale of tickets by the petitioner as its agent. However, the only contention of the respondents is that a sum of Rs.1,66,644/- is misappropriated by the petitioner and hence, the Corporation is not liable to pay the said amount claimed by the petitioner and that on the other hand, the petitioner is alone liable to pay Rs.31,111/- to the Corporation after setting off the amount due and payable by the Corporation to the petitioner from out of the amount which was misappropriated by the petitioner and which is payable by the petitioner to the Corporation. In the first place, it is to be noted that the Corporation admits its liability insofar as the petitioner's claim is concerned in no uncertain terms. However, the petitioner has denied the Corporation's claim that the petitioner misappropriated Rs.1,66,644/- as per Audit report. Further, the Calendar Case against the petitioner for the offence of misappropriation of the funds of the

Corporation ended in acquittal despite the fact that the Audit report was exhibited as one of the documents in the Calendar Case to prove the alleged misappropriation by the petitioner. The said order of acquittal has become final. Thereafter, the Corporation did not initiate any civil action for recovery of the said amount from the petitioner despite the fact that the petitioner denied his liability. Even before this Court the Corporation could not produce any documents to substantiate its claim of misappropriation of its funds by the petitioner. Moreover, the said aspect which is denied being a question of fact this Court need not go into the said aspect in this writ petition. On the failure of the Corporation to establish its claim against the petitioner, it follows that the Corporation is liable to pay the admitted amount due and payable by it to the petitioner.

7. Viewed thus, this Court finds that the case of the petitioner merits consideration and that the petitioner is entitled to the relief claimed.

8. In the result, the writ petition is allowed and the proceedings No.Supt/876(47)/98-RM/O dated 16.04.2007 issued by the 1st respondent are set aside declaring that the writ petitioner is entitled to the commission charges as prayed for.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

27.01.2017
Vjl