

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.30955 of 2012

S.chinnasamy

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Limited),
27, Mettupalayam Road,
Coimbatore 641 002.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Erode Region (Head Office),
Chennimalai Road,
Erode 638 001.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records connected with the impugned order of recovery dated 01.10.2012, made in Pa.No.1/D6/168/Law/TNSTC/ER/2012 passed by the 2nd respondent and quash the same and also direct the respondent to recover only the printing charges for the loss of ticket books.

For Petitioner : Ms.S.Girija
For Respondents : Mr.S.Sairaman

O R D E R

Heard Ms.S.Girija, learned counsel for the petitioner and Mr.S.Sairaman, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records connected with the impugned order of recovery dated 01.10.2012, made in Pa.No.1/D6/168/Law/TNSTC/ER/2012 passed by the 2nd respondent and quash the same and also direct the respondent to recover only the printing charges for the loss of ticket books."

3. The case of the petitioner is as follows:-

The petitioner is a Conductor, employed in the first respondent Corporation. A Charge memo was issued against him on 29.03.2012, alleging that on 25.02.2012, he was allotted duty as Conductor in Bus No.TN 33/N/2498 in Erode - Mysore Bus

Route. He was given printed Muffusil Bus ticket books along with additional route collection sheet. However, the ticket books along with route collection sheets had been lost and the same was valued at Rs.1, 00,366/-, in addition to that, free ticket books valued at Rs.5,400/- was also lost because of the negligence on the part of the petitioner.

4. According to the first respondent Corporation, the negligence was an act of misconduct under Section 14(1) of the Standing Orders. In response to the charge memo, an explanation was submitted by the petitioner on 10.04.2012, stating that the ticket books and trip sheet books and all his belongings were kept in the front of the Driver seat and when the passengers alighted from the bus in Erode Bus Stand on 25.02.2012, he suddenly noted that the ticket books along with his belongings were missing. On the same evening itself, the petitioner lodged a complaint about the theft of ticket books in the Erode Police Station. The Police Authorities after a detailed investigation, submitted a report that the ticket books and other belongings could not be traced and a certificate was issued by the Sub-Inspector of Police, Erode Town police Station, Erode.

5. In view of the above circumstances, an enquiry was ordered. In the enquiry, the petitioner reiterated that he was not responsible for the loss of ticket books and he was not negligent. However, the Enquiry Officer, on conclusion of the enquiry, submitted the findings holding the charge proved against him. Thereafter, an explanation was submitted by the petitioner on 24.07.2012, objecting to the findings of the Enquiry Officer, stating that he did not accept the act of misconduct during the enquiry.

6. Thereafter, the Corporation issued a second show cause notice on 13.08.2012, proposing the punishment of recovery of Rs.1,05,966/-, being the estimated value of the ticket books lost. According to the petitioner, there was no monetary loss to the Corporation except the printing charges incurred for printing ticket books and therefore, the recovery proposed for the entire estimated value of the lost ticket books was unreasonable. However, notwithstanding the said position, the respondent Corporation imposed the penalty of recovery as proposed vide order dated 01.10.2012, which is impugned in the present writ petition.

7. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit.

8. The learned counsel for the petitioner would submit that it is not open to the Management to recover the entire cost of the ticket books lost, since, sometimes it was beyond the control of the workman when such loss occurs. Sometimes, even without an act of negligence, the belongings could be

lost and therefore, there cannot be any presumption on the part of the Management that it was only on the basis of negligence on the part of the petitioner, the ticket books were lost.

9. Moreover, the learned counsel for the petitioner would also submit that the recovery order has been imposed by the Management is also contrary to the settled legal principle enunciated by this Court on the same subject matter and also the same is contrary to the 12(3) Settlement entered into between the workman and the Management. The learned counsel would draw the attention of this Court to an order passed by the learned Single Judge in W.P.No.647 of 2013, dated 22.09.2017, wherein, in identical circumstances, this Court has intervened and allowed the writ petition. The order passed by the learned Single Judge of this Court was on the basis of the order passed by the Hon'ble Division Bench of this Court. The submissions of the learned counsel therein and the findings of the learned Single Judge as found in paragraph Nos.5 to 10, are reproduced 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.Paramasivadosh, 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 petitioner's 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."

The learned counsel for the petitioner would submit that the issue raised in the writ petition is no more res integra and fully covered by the decision of this Court in the aforesaid

writ petition.

10. This Court has considered the submissions made on behalf of the learned counsels appearing for the parties and perused the materials and pleadings placed on record. This Court is entirely in agreement with the submissions made by the learned counsel for the petitioner that the present issue raised in the writ petition is squarely covered by a decision of this Court, passed in W.P.No.647 of 2013, dated 22.09.2017. The learned Judge has followed the Hon'ble Division Bench order on the same issue and allowed the said writ petition which dealt with an identical circumstances as that of the present case.

11. In the said circumstances, this Court is of the considered view that the impugned order passed by the second respondent in Pa.No.1/D6/168/Law/TNSTC/ER/2012, dated 01.10.2012, imposing the punishment of recovery of sum of Rs.1,05,966/- cannot be sustained in law and therefore, the same is set aside.

12. With the above observation, the writ petition stands allowed. No costs.

SD

ASSISTANT REGISTRAR (CS IX)

TRUE COPY

SUB ASSISTANT REGISTRAR

To

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore Limited),
27, Mettupalayam Road,
Coimbatore 641 002.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Erode Region (Head Office),
Chennimalai Road, Erode 638 001.

1CC TO MR. S. SAIRAMAN, ADVOCATE SR.NO. 21694
1CC TO MS.S. GIRIJA, ADVOCATE SR.NO. 21830

W.P.No.30955 of 2012

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