IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.18895 of 2004

C.Deivakkan ...Petitioner

Vs

1. The State of Tamil Nadu
   Rep. by the Secretary to Govt.,
   Transport Department,
   Fort St.George,
   Chennai - 9.

2. The Managing Director,
   Kattabomman Transport
   Corporation Ltd.,
   Thirunelveli
   Now Tamil Nadu State Transport
   Corporation (Madurai Division II) Ltd.,
   No.19, Thiruvanthapuram Road,
   Vannarpettai Post,
   Thirunelveli - 627003.

3. The General Manager,
   Kattabomman Transport
   Corporation Ltd.,
   Thirunelveli
   Now Tamil Nadu State Transport
   Corporation (Madurai Division II) Ltd.,
   No.19, Thiruvanthapuram Road,
   Vannarpettai Post,
   Thirunelveli - 627003. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the relevant records relating to the impugned dismissal order issued in proceedings No.3677/Law 6/KTC/95 dated 02.07.1996 passed by the General Manager, Kattabomman Transport Corporation Ltd., Thirunelveli the 3rd respondent herein and the appeal rejection order issued in No.3677/Ka 6/TNSTC/Thili/96 dated 26.05.2004 passed by the 2nd respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, against the rules and regulations of the respondents and thereby direct the respondents to reinstate the petitioner into service as a conductor under the respondent Transport Corporation, with all backwages, continuity of the service and with all consequential and other monetary benefits.

For Petitioner : Mr.K.Venkatramani, SC
for Mr.S.Srinivasan

For Respondents: Mrs.Rajeni Ramadoss, SC for TNSTC

O R D E R

The petitioner, who was appointed as a Conductor in the respondent Corporation on 20.07.1983, was issued with a charge memo on 05.12.1995 with the following two charges:

"Charge No.1 - On 29.11.1995 in route No.505, Bus No. TN 72 N 0372 while working as Conductor sold 2 tickets to the passengers who travelled from Thirunelveli to Virudhunagar and received the ticket charge of Rs.22.80 on selling the invalid ticket in No.N.P.538-86155 and half valid ticket in No.83182 and tried to misappropriate Rs.15.20 under Rule 16(4).

Charge No.2 - Failed to issue ticket as per the rules of Transport Corporation, attempted to misappropriate the Transport Revenue on selling the refunded ticket issued on earlier trip - reissued (Sold) in present trip Rule 16(8)."

2. He was placed under suspension on 01.12.1995. The petitioner had submitted his explanation on 11.01.1996, stating that he had sold 1 ticket for Rs.26.40 to the passenger, who intended to travel from Nagercoil to Virudhunagar. Since there were some disturbance in the road and the conductor was advised not to ply the bus after Thirunelveli for short time. The passenger, who intended to travel to Virudhunagar, de-boarded the bus and got a refund of Rs.15.20 after deduction of Rs.11.20, which was the fare for the travel from Nagercoil to Thirunelveli. At Thirunelveli, when a lady and her child had boarded the bus and intended to travel to Virudhunagar, the petitioner had collected Rs.15.20 from the passenger and issued the re-funded ticket. Since there was no revenue loss to the Transport Corporation, the petitioner had sought for dropping the charges.

3. Nevertheless, the respondent Corporation has proceeded with the enquiry and both the charges came to be proved and by an order dated 02.07.1996, the petitioner was dismissed from his services. As against the same, he had filed an appeal and a mercy petition, both of which came to be rejected. Aggrieved by

the same, the present writ petition has been filed.

4. The misconduct alleged against the petitioner is that he had tried to misappropriate the Corporation funds by issuing old tickets. The Corporation has also come out with a specific stand that as per the instructions, the petitioner herein was not expected to sell the refunded tickets.

5. When the petitioner had come out with a specific case that he had refunded a sum of Rs.15.20 after deducting Rs.11.20 from 1 passenger and likewise, collected Rs.15.20 from the subsequent passenger and issued the same ticket of Rs.26.40, there could not have been any revenue loss to the Corporation. As such, this act may not amount to misappropriation. Nevertheless, when the petitioner was not expected to issue the ticket which has already been refunded, it can be said that it was a irregularity and contrary to the standing instructions given to the Conductors.

6. All these aspects have not been considered by the enquiry officer during the course of enquiry. When the petitioner had raised these grounds that he had no intention of misappropriating the revenue of the Corporation, the appellate authority had not gone into these aspects while rejecting the appeal.

7. While that being so, the next question raised for consideration is as to whether the punishment of dismissal from services imposed on the petitioner is proportionate to the charges levelled against him. Since this Court has held that the question of misappropriation or intention to misappropriate may not arise in the present case, the punishment of dismissal from services may not be proportionate to the charges levelled.

8. For all the foregoing reasons, this Court is of the considered view that the punishment of dismissal from services is not disproportionate to the gravity of the charges and the punishment of dismissal of services requires to be interfered with. In my view, if the punishment is modified to one of compulsory retirement, the ends of justice would be met.

9. In the light of the above observations, the dismissal order issued in proceedings No.3677/Law 6/KTC/95 dated 02.07.1996 passed by the General Manager, Kattabomman Transport Corporation Ltd., Thirunelveli and the appeal rejection order issued in No.3677/Ka 6/TNSTC/Thili/96 dated 26.05.2004 passed by the 2nd respondent herein, is set aside. Consequently, the punishment imposed on the petitioner is modified to one of compulsory retirement, with effect from the date of original order of dismissal and all the monetary benefits which the petitioner may be entitled, shall be disbursed to him as

expeditiously as possible, in any event, within a period of 8 weeks from the date of receipt of copy of this order.

10. Accordingly, the writ petition stands ordered. No costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Govt.,
Transport Department,
Fort St.George, Chennai - 9.

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+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.27570
+1cc to Mr.S.Srinivasan, Advocate, S.R.No.26676

PP(CO)

RRS(31/05/2019)