



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.10651 of 2011

and

M.P (MD)No.1 of 2011

WEB COPY

P.Rengaraj

... Petitioner

vs.

1)Tamil Nadu State Transport Corporation,
Kumbakonam Limited,
represented by its Managing Director,
Railway Station Road, Kumbakonam.

2)The General Manager,
Tamil Nadu State Transport Corporation,
Tiruchirapalli Division,
No.1, Peria Milaguparai,
Tiruchirapalli-1.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the second respondent dated 16.05.2011, quashing the same and to declare the petitioner's confirmation on the completion of 240 days of continuous service under the first respondent Corporation.

For Petitioner: Mr.S.K.Mani

For R1 : Mr.D.Sivaraman

For R2 : No appearance

ORDER

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceeding of the second respondent dated 16.05.2011, quash the same and to declare the petitioner's confirmation on the completion of 240 days of continuous service under the first respondent Corporation.

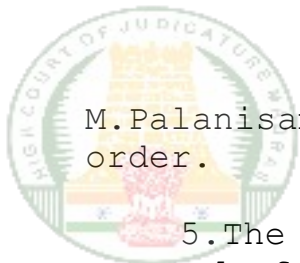
2.Learned counsel for the petitioner would submit that the petitioner joined duty in the respondent corporation on 24.04.2009 as a Conductor on temporary basis and on completion of continuous service of 240 days, he will be made permanent. But, unfortunately on the 240th day, that is, 26.06.2004 at 03.45 a.m, while the petitioner was on duty in a bus bearing registration No.TN-45-N-1870 plying from Palani to Villupuram, near Illuthurpet, the bus rammmed into a stationed lorry, in which, many



passengers sustained grievous injuries and the petitioner also sustained grievous injuries and was taken to Ulunthurpet Government Hospital and thereafter he was admitted in Geethanjali Private Nursing Home at Tiruchirapalli, for treatment and the Doctor had recorded in the Accident Register that the petitioner was semi conscious. According to the petitioner, at the time of accident, he was in possession of a mobile phone, cash bag containing the collection amount of Rs.6,685/-, ticket machine, ticket book and his identity cards. Since the accident had taken place at 03.45 a.m., due to dark condition, except the ticket machine, other belongings possessed by the petitioner could not be traced out by the police and the police found out a ticket machine and handed over the same to a Conductor by name, Tr.T.M.Ganesan who handed over the same to the respondent corporation.

3.It is further submitted that on 02.03.2010, while in hospital, the petitioner made a complaint to the Inspector of Police, Crime Branch, Edaikkal Police Station, Ulunthurpet Circle, with copies marked to the respondents regarding loss of ticket books, collection invoice paper and collection amount. Despite receipt of the complaint, the respondents initiated enquiry and on 09.07.2010, the petitioner was issued with a charge memo as to why action should not be taken against him for the misconduct committed by him as per Section 24(4) of the Standing Order of the respondent corporation for the alleged loss of collection amount and ticket book. The petitioner submitted his explanation stating that after the accident, he was unconscious and was taken to hospital by others and he had no knowledge of whereabouts of the materials referred to in the show cause notice and even prior to the charge memo, he made complaint to the police with copies marked to the respondents regarding the missing of cash bag and ticket books and invoices etc and the above materials were not traced out by the police. However, rejecting the petitioner's explanation, the 2nd respondent has passed the impugned order dated 16.05.2011, holding the petitioner guilty of the charges in the charge memo and ordered for recovery of total loss amount of Rs.22,363.25/- from his salary in 15 instalments.

4.Challenging the said order, the petitioner has filed this writ petition stating that while the actual loss of collection amount was only Rs.6,685/-, face value of the ticket book amount at Rs.15,678.25/- has also been added erroneously and while the Accident Register clearly discloses that the petitioner was unconscious, the 2nd respondent ought not to have held the petitioner guilty of the charges thereby violated the human rights and also the rights guaranteed under Article 14 of the Constitution. In support of his contentions, learned counsel relied on a decision of this Court reported in (2008) 1 MLJ 224, Management of Rani Mangammal Transport Corporation Ltd., vs.



M.Palanisamy. Thus, he would pray for setting aside the impugned order.

5.The respondents filed counter and the learned standing counsel for the respondents would submit that at the time of accident, the petitioner in a careless manner missed the ticket book and collection amount and therefore, he was issued with charge memo and since the explanation was not satisfactory and considering his past punishment for various misconducts, the 2nd respondent has rightly awarded punishment of recovery of Rs.22,363.25/- being the average value of misplaced tickets and loss of collection amount. Thus, he would pray for dismissal of the writ petition.

6.Heard both sides.

7.It is the admitted fact that the petitioner has met with the accident and he was hospitalised for two months and a complaint has also been lodged before the police for loss of ticket book and collection amount. It is not the case of misappropriation of the amount nor it is a case of negligence. It is due to the accident and even under 12(3) settlement, if loss of tickets is reported by way of complaint to the police and such loss had occurred due to the accident, no recovery can be made from the concerned Conductor. Here, even during the accident, the Conductor himself sustained injury and he was in hospital for 2 months and therefore even the money which he was holding which was lost in the accident in my considered opinion cannot be recovered as it was beyond the control of the petitioner. The judgment relied on by the petitioner is applicable to the facts of this case. Therefore, the impugned order passed by the 2nd respondent dated 16.05.2011 is liable to be set aside and accordingly set aside. As far as the second prayer is concerned, the petitioner is at liberty to move the Labour Court for appropriate remedy.

8.In the result, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS)

BALA



To

1)Tamil Nadu State Transport Corporation,
Kumbakonam Limited,
represented by its Managing Director,
Railway Station Road, Kumbakonam.

2)The General Manager,
Tamil Nadu State Transport Corporation,
Tiruchirapalli Division,
No.1, Peria Milaguparai,
Tiruchirapalli-1.

+1 CC to MR.D.SIVARAMAN, Advocate (SR-103410[F] dated
04/12/2019)

+1 CC to MR.S.K.MANI, Advocate (SR-103861[F] dated 06/12/2019)

ORDER MADE IN
W.P(MD)No.10651 of 2011
DATED : 04.12.2019

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