



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

W.P. (MD)No.1831 of 2015

and

M.P. (MD)No.1 of 2015

P.Veerappan

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
ByePass Road, Madurai-16.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Dindigul Region, ByePass Road,
Dindigul-4.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the impugned order passed by the second respondent in his proceedings Parvai Sa.Du.A1/2669, dated 26.12.2014 and quash the same and consequently direct the respondents to refund the already recovered amount of Rs.10,000/- towards the loss of alleged value of Ticket books from the petitioner and to stop the recovery of Rs.54,236/- and to treat the period of suspension for 37 days from 25.11.2013 to 31.12.2013 as duty with pay.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.A.Jeyaram

ORDER

This writ petition has been filed to quash the order dated 26.12.2014 passed by the second respondent and consequently, direct the respondents to refund the recovered amount of Rs.10,000/- and to stop the recovery of Rs.54,236/- towards the value of lost ticket books from the salary of the petitioner, and to treat the period of suspension from 25.11.2013 to 31.12.2013 as duty with pay.

2.The case of the petitioner is that while he was working as a Conductor in the respondent Corporation, on 23.11.2013, when he was on duty for a trip from Palani to Thiruchendur in the bus bearing Regn.No.TN 57/N 2001, at Thiruchendur Bus Stand, he kept the cash



bag containing unused ticket books and the collection amount of Rs.7,032/- in the toilet window and went to toilet for attending nature's call. At that time, there was power cut and he asked the driver of the bus to stand near the toilet. After attending the nature's call, when he was about to take the bag, it was found missing. Immediately, he searched for it. However, he could not trace it. Hence, he lodged a police complaint at once. He also reported the same to the second respondent. Due to the said incident, the petitioner was subjected to disciplinary proceedings and was placed under suspension. Subsequently, an enquiry was conducted and the Enquiry Officer submitted a report holding that the charges framed against the petitioner were proved. Based on the same, the petitioner was issued with a show cause notice dated 30.11.2013 proposing to recover the value of the missed ticket books to the tune of Rs.64,236/-. On receipt of the same, he submitted his explanation. Not satisfied with the same, the second respondent passed the impugned order dated 26.12.2014 to recover a sum of Rs.54,236/- towards the missing of unsold ticket books from the salary of the petitioner in equal instalments. In the meanwhile, the petitioner was directed to remit a sum of Rs.10,000/- as a pre-condition to join duty. Aggrieved over the said order, the petitioner is before this Court with the present writ petition.

3.The first respondent filed a detailed counter affidavit *inter alia* stating as follows:

"6.I humbly submit that the wage settlement in 1995, stated that recovery proceedings shall be initiated against Conductors for loss of ticket book due to non accident, theft, etc. The clause 29 of the 1995 Wage Settlement is extracted hereunder:

29)பணி செய்துகொண்டிருக்கின்ற போது கலவரம், விபத்து, களவு, கொள்ளை போன்றவை நடைபெற்று அதன் காரணமாக போலீஸ் நிலையத்தில் வழக்கு பதிவு செய்யப்பட்டிருந்தால் அந்த சூழ்நிலையில் பயணச்சீட்டுப் புத்தகங்கள் தொலைந்திருக்குமேயானால் சம்பந்தப்பட்ட நடத்துனரிடம் பயணச்சீட்டு புத்தகங்களுக்கான தொகை பிடித்தம் செய்யப்படமாட்டாது.

7.I humbly submit that the above incident happened purely due to the petitioner/conductor's carelessness and negligence in duty not come under head of "Theft" as the case bag and unused tickets are kept not in safe custody.

8.I humbly submit that the respondent Transport Corporation is a Essential Public Utility Service and all of the functions routed thro' a Public Money. Due to the carelessness and negligence in duty of employee, the Respondent Corporation has not beard such type of loss. Further such type of missing ticket books will be used in wrong way by some other crew and there is possibilities of further loss will be caused to the Respondent Corporation.

9.I humbly submit that the Respondent Corporation was taken action against the petitioner by the procedure followed in the Disciplinary Standing Orders proviso. By which implementation of punishment of such type of



misconducts to the crew, there will be a possibility of improve the awareness among the crew while on duty."

4. According to the learned counsel for the petitioner, the alleged loss of ticket books was beyond the control of the petitioner and that, as per the 1995 Wage Settlement entered into under Section 12(3) of the Industrial Disputes Act, if the ticket bag has been lost on duty, the cost of printing the tickets alone shall be recovered and not the total value of the tickets and hence, the order imposing recovery of the entire value of the ticket books lost, is not sustainable in law. The learned counsel also submitted that in identical situation, this Court vide order dated 22.09.2017 in WP.No.647 of 2013, allowed the said writ petition by setting aside the order of recovery passed by the respondent therein. Thus, he submitted that following the aforesaid order, this writ petition may be allowed.

5. Per contra, the learned counsel for the respondents submitted that the alleged incident took place solely due to the petitioner's carelessness and negligence in duty and based on the enquiry report, the second respondent passed the order of recovery and hence, the same warrants no interference by this Court. However, he has not disputed the order of this Court relied on by the learned counsel for the petitioner.

6. Heard both sides and perused the records.

7. The challenge made in this writ petition is to the order of recovery passed by the second respondent dated 26.12.2014, in and by which, the alleged value of ticket books lost to the tune of Rs.54,236/- was directed to be recovered from the salary of the petitioner in 20 installments.

8. Clause 29 of the 1995 Wage Settlement under Section 12(3) of the Industrial Disputes Act, states that if loss of ticket books is reported by way of a complaint to the police and such loss had occurred due to accident, theft or robbery, no recovery should be made from the concerned Conductor.

9. Concededly, the petitioner reported the alleged loss of bag containing collection of money of Rs.7,032/- and unused ticket books immediately i.e., on 23.11.2013 at Thiruchendur bus stand, by way of complaint to the police as well as to the second respondent. Further, there is no charge against the petitioner that he works dishonestly or commits fraud, theft, malpractice or misappropriation of cash or property. As such, it cannot be alleged against the petitioner that he was negligent in discharging his duties.

10. That apart, it is not the case of the respondents that the valuation of ticket books lost, had not resulted into fetching the amount from the passengers and hence, the petitioner could not have



been made liable for such imaginary loss, which the second respondent thought, while passing the impugned order.

11. Further, in the order dated 22.09.2017 made in WP.No.647 of 2013, relied on by the learned counsel for the petitioner, this Court considered the similar issue and decided the same in favour of the petitioner therein. For better appreciation, the relevant portion of the same is reproduced hereunder:

"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.Paramasivados, 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. Consequently, connected miscellaneous petition is closed."

12.In the ultimate analysis, this Court is of the view that the order passed by the second respondent, imposing the punishment of recovery, cannot be sustained in law and the same is hence, liable to be set aside.

13.Accordingly, this writ petition stands allowed by setting aside the order of recovery passed by the second respondent. The second respondent is directed to refund the recovered amount to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

cmr

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
ByePass Road, Madurai-16.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Dindigul Region, ByePass Road,
Dindigul-4.

+1CC TO MR.S.GOVINDAN, Advocate Sr. No. 53831

ORDER MADE IN
W.P.(MD)No.1831 of 2015
13.03.2019

SVN(CO)
TR (18.06.2019) 6P 4C