



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP (MD) No. 5001 of 2017

and

WMP (MD) no.5567 of 2017

S.Somasundaram

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd,
TNSTC Head Office,
No.27, Railway Station New Road,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd,
Nagapattinam Zonal,
No.140, Public Office Road,
Velippalayam,
Nagapattinam District - 611 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders in TNSTC/T14/TTP/174/2016 dated 22.11.2016 passed by the 2nd respondent, quash the same and consequently to direct the respondents to return the amount already deducted by the 2nd respondent from the wages of the petitioner from the month of February, 2017 with 18% of interest per annum.

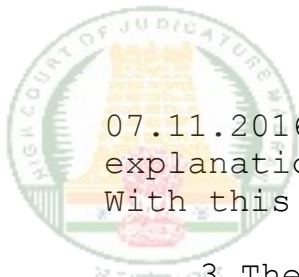
For Petitioner : Mr.SP.Vijay Nivas

For Respondents : Mr.D.Sivaraman

ORDER

This writ petition has been filed seeking to quash the orders in TNSTC/T14/TTP/174/2016 dated 22.11.2016, passed by the 2nd respondent and consequently, to direct the respondents to repay the recovered amount with interest to the petitioner.

2.According to the petitioner, he was a Conductor in the State Transport Corporation Bus. While on duty, he lost his bag and to that effect he lodged a complaint in CSR No.318 of 2016, before the Inspector of Police, Thiruvavarur. Since there was no safety locker available in the Bus, the bag was kept in the dash board and beyond the control of the petitioner, the same was lost, which prompted the Authorities to proceed with recovery to the tune of Rs.43,286/-, despite explanation submitted by the petitioner on



07.11.2016. The impugned order is not dealing with such an explanation and hence, the same is liable to set aside. With this prayer, the petitioner is before this Court.

3. The learned Standing Counsel appearing for the respondents, on the other hand, submitted that the petitioner did not file proper reply to the charge memo and hence, it was ordered to recover Rs.43,286/-, in eight equal monthly installments.

4. The learned Counsel appearing for the petitioner submitted that as per the wages settlement 12(3), dated 28.09.1995, if the ticket bag has been lost on duty, the cost of printing the tickets alone shall be recovered and the total value of the tickets shall not be recovered. A different view cannot be adopted treating the loss of the bag as 'missing', instead of, 'stolen'. Further, he relied on the judgment of a Division Bench of this Court, in the case of **the Management of Rani Mangammal Transport Corporation Ltd (Now as TNSTC Ltd), Vs. M.Palanisamy**, reported in (2008) 1 MLJ 224, the relevant portion whereof, is extracted hereunder:

"4. Having heard the learned Counsel we find force in submissions of the learned Counsel for the respondent. From the respective submissions made and on a perusal of the affidavits filed on behalf of the respondent as well as the counter affidavit filed by the appellant in the writ petition, we find that the respondent cannot be held to have acted in a negligent manner as far as the loss of unused ticket books entrusted with him while he was assigned the duty on 26.04.1992. According to the respondent he reported about the loss of the ticket books through wireless to the higher authorities. There was nothing to suggest that no such message was ever sent by the respondent. In fact, on his way back in the next trip, he was issued with two new ticket books at Ottanchatram Depot. If really there was not intimation, authorities at the Ottanchatram Depot would not have readily come forward to issue the two new ticket books to the respondent. The fact that the respondent made a police complaint immediately after the conclusion of the duty hours on 26.04.1992, also impresses us to hold that the respondent took all diligent steps to duly inform the appellant about the loss of the tickets. In this context, while we peruse the proceedings referred to by the learned Counsel for the appellant namely, the proceedings dated 26.06.1991 and 05.08.1991, we find that the cumulative effect of the proceedings were to ensure that necessary enquiry should be done in case where loss of unused ticket books is reported, either to defraud the appellant Corporation or such reporting



discloses that the concerned conductor was diligent in performance of his duty and the loss of ticket books were beyond his control and at the instance of some other extraneous circumstances or by other unscrupulous persons. Therefore, if such was the contemplation of the appellant Corporation, in adopting such a course of holding an enquiry, in respect of the loss of unused ticket book is reported, we are of the view that the very purpose would be defeated, if the recovery of the value of unused ticket books is automatically made whenever loss is reported. In fact, subsequently in 1995 Settlement namely Clause 29 of the said Settlement makes it clear that in the event of loss of ticket books is reported by way of complaint to the Police and such loss had occurred due to accident, theft or robbery, no recovery should be made from the concerned Conductor. The same point of view was very much existing in the earlier proceedings when the appellant corporation prescribed the procedure of holding an enquiry, wherever loss of tickets books are reported."

5.The above submission has not been seriously objected to by the learned Standing Counsel appearing for the respondents.

6.In agreement with the above cited judgment as well as the submission made on behalf of the petitioner, I am inclined to set aside the order of recovery and accordingly, the impugned order passed on 22.11.2016, by the 2nd respondent in TNSTC/T14/TTP/174/2016, is hereby set aside. The respondents are directed to repay the recovered amount to the petitioner, of course, without interest, within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS)

dsk

To

1.The Managing Director,
TNSTC (Kumbakonam) Ltd,
TNSTC Head Office,
No.27, Railway Station New Road,



2.The General Manager,
TNSTC (Kumbakonam) Ltd,
Nagapattinam Zonal,
No.140, Public Office Road,
Velippalayam,
Nagapattinam District - 611 001.

+1CC TO MR.SP.VIJAY NIVAS, Advocate Sr. No.52110
+1CC TO MR.D.SIVARAMAN, Advocate Sr. No. 52352

ORDER MADE IN
WP (MD) No. 5001 of 2017
06.03.2019

TR (02.04.2019) 4P 5C