

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.12.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22865 of 2014
and
MP.No.1 of 2014

R.Mani

... Petitioner

Vs.

1. Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Rep.by its General Manager,
Villupuram Region,
Vazhuthareddy, Villupuram.
2. The Deputy Manager (Revenue Audit)
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Villupuram Region, Villupuram.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that the action of the respondents in refusing to provide the petitioner work/duty, marking absent for the petitioner and ordering for recovery of a sum of Rs.40,100/- towards loss ticket books, as illegal and consequently direct the respondents to treat the period during which the petitioner was not given work, till to petitioner is given work/duty, as duty for all purposes and with wages and all other consequential benefits, Award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.C.S.K.Sathish

ORDER

The Petitioner has come up with this Writ Petition seeking for a declaration declaring that the action of the respondents in refusing to provide work/duty and marking absent for the petitioner and ordering recovery of a sum of Rs.40,100/- towards loss ticket books is illegal and consequently direct the respondents to treat the period during which the petitioner was not given work, till he is given work/duty as duty period for all purposes and pay wages and all other consequential benefits.

2. The case of the Petitioner is that on 17.09.1988, he joined the service of the first respondent/Transport Corporation as a conductor on dailywage basis and he was working in the Villupuram Depot-III in route No.281-A. On 18.03.2014, a bus bearing registration No.TN 32 N 3839 running from Villupuram, arrived at Salem bus stand at 12.30pm. The petitioner was provided with Automatic Ticket Issuing Machine, besides providing one used ticket bundle and one unused ticket bundle so as to use them, if the Automatic Ticket Machine got struck and failed to work properly. One used ticket bundle contains 149 tickets and another unused new ticket book contains 200 tickets and the same were kept in his bag. The petitioner went to the Time Office which is situated inside the Salem Bus Stand to sign the time-chart. After signing the register in the Time Office, he came back and found his bag missing and it was stolen by some body. Immediately the petitioner reported the missing of the ticket books along with his bag to the Branch Manager. He also made a police complaint to Pallapatti Police Station and was issued a receipt after registering the same in CSR No.104/14, dated 18.04.2014. On 10.07.2014, the Sub-Inspector of Police (Crime) Pallapatti Police Station issued a non-traceable certificate/report. Subsequently, the second respondent/Transport Corporation issued a show cause notice dated 05.05.2014, to which the petitioner submitted his explanation, requesting to drop the proposed decision taken in the show cause notice. The second respondent has issued an order dated 21.07.2014, thereby confirming the provisional decision taken by the second respondent and ordered for recovery of a sum of Rs.40,100/- in installments at the rate of Rs.3,500/-per month. Challenging the said order, the petitioner has come up with this writ petition.

3. Mr.V.Ajoy Khose, learned counsel appearing for the petitioner submitted that according to Clause 29 of the Settlement dated 28.09.1995, if the ticket books are lost due to riots, accident, theft or dacoity and if the case is registered before the police station, the amount for the same cannot be recovered from the conductor. In the light of the same, the recovery order passed by the respondents is illegal and unsustainable in law.

4. Mr.C.S.K.Sathish, learned counsel appearing for the respondents/Transport Corporation submitted that there is no dispute that as per said Clause 29 of the Settlement dated 28.09.1995 that if the ticket books are lost due to riots, accident, theft or dacoity and if the case is registered before the police station, the amount for the same cannot be recovered from the conductor. However, the ticket books are lost, due to negligence on the part of the conductor, the said Clause is not applicable. Hence, the order impugned herein need not be interfered with by this Court.

5. The facts in issue are not in dispute. The only question that arises for consideration is whether the bag, which contains the ticket books and the ticket vending machine, which was lost, would fall within Clause 29 of the Settlement.

6. There is no dispute that Clause 29 of the Settlement dated 28.9.95 covers contingencies relating to loss of ticket books are lost due to riots, accident, theft or dacoity and if the case is registered before the police station, the amount for the same cannot be recovered from the conductor. The contingencies noted in the said clause relate to theft or dacoity when the ticket books are in possession of the petitioner. However, in the case on hand, it is not the case of the petitioner that the bag was in his possession when the same was robbed from him. But, it is the admitted case that after receiving the ticket books and the ticket vending machine, the petitioner had placed the same and gone over to perform some other work. This is clearly carelessness on the part of the petitioner. Therefore, the said clause 29 would not stand attracted to the petitioner, as the fault for the loss lies on his shoulders. But equally it is also an admitted fact that the said bag was within the premises of the bus depot inside the office from where it was stolen. It is the equal responsibility of the respondent to have the place guarded against any theft or dacoity, which is a lacunae on the part of the respondent for which the respondent has also to shoulder some responsibility. In such view of the matter, this Court is of the view that the recovery of an amount of Rs.40,100/- imposed on the petitioner requires modification.

7. For the reasons aforesaid, this writ petition stands disposed of and the order directing the petitioner to pay a sum of Rs.40,100/- stands modified and instead an amount of Rs.20,000/-, shall be recovered from the petitioner in six equal instalments towards cost of the lost tickets. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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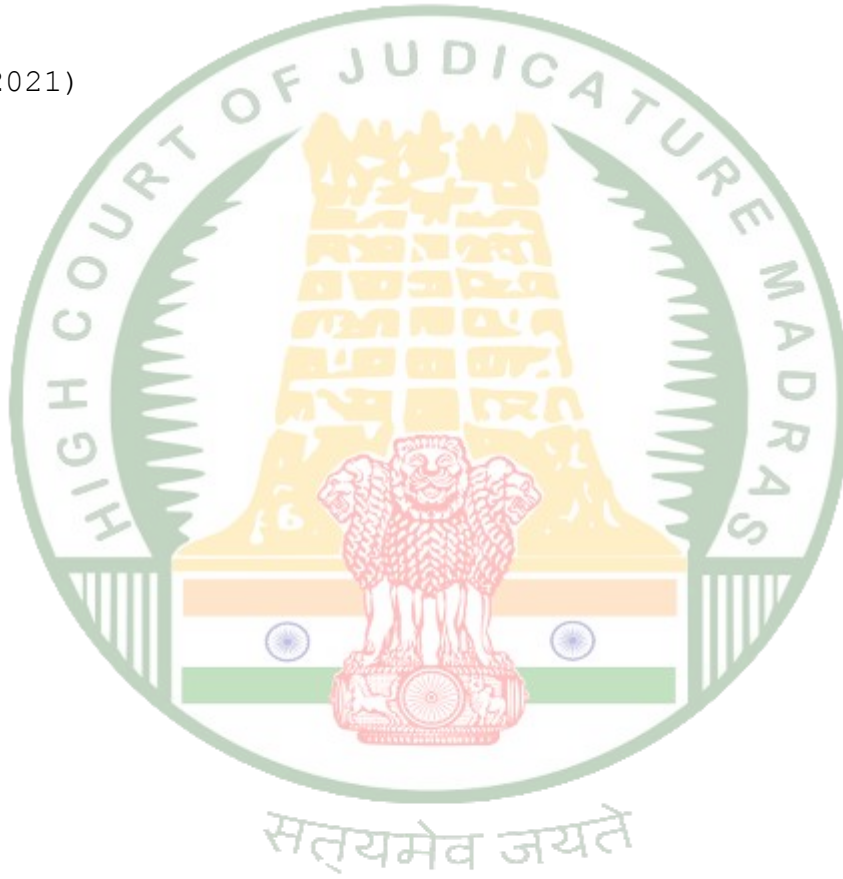
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+1cc to Mr.V.Ajoy Kumar, Advocate, S.R.No. 41665

W.P.No.22865 of 2014
&
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MGR (CO)
GN(11/02/2021)



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