

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.01.2020
CORAM
THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No. 34325 of 2018
and
W.M.P. Nos. 12020, 39905 and 39906 of 2020

G.Jayamoorthy

... Petitioner

Vs

1.The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram Ltd),
Villupuram - 605 602.

2.The Branch Manager,
Tamil Nadu State Transport
Corporation (Villupuram Ltd)
Koyambedu Branch,
Chennai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order in Ka.No.23/Va Tha P-5/V.Ma/TNSTC (V)/2018 dated 27.08.2018, passed by the first respondent and quash the same and consequently direct the first respondent to provide duty to the petitioner as Conductor.

For Petitioner : Mrs.S.Vijaya
For Respondents : Mrs.Rejeni Ramadoss
Standing Counsel.

O R D E R

The present Writ Petition has been filed challenging the impugned order passed by the first respondent dated 27.08.2018 and for consequential direction to the respondents to permit the petitioner to continue his duty as Conductor.

2. The case of the petitioner is that he joined in the respondent Corporation in the year 2005 as Conductor and he has been working since then. On 22.08.2018, he was on duty as

conductor in a bus which was plying between Trichy to Chennai. This bus reached Tindivanam Bus Stand on 23.08.2018 at about 03.30 A.M. The petitioner found that an unused ticket bag which was kept under his seat was stolen. The petitioner tried his best to trace out the bag and he was not able to trace it. The petitioner gave a complaint to the Police on 24.08.2018, about the theft of the unused ticket bags and the complaint was taken on file in CSR No.362 of 2018 and the Police issued a non traceable certificate on 20.09.2018.

3. In view of this incident, the first respondent by his proceedings dated 27.08.2018 passed an order to the effect that the unused tickets were lost only due to the negligence of the petitioner and it is valued to the tune of Rs.2,27,990/-. This amount was directed to be recovered from the petitioner. This order passed by the first respondent has been made a subject matter of challenge in the present Writ Petition.

4. It is the further grievance of the petitioner that the petitioner was not allowed to join duty as Conductor and therefore, a further relief has been claimed before this Court for direction to the first respondent to permit the petitioner to continue his duty as Conductor.

5. Learned counsel for the petitioner submitted that the unused tickets were stolen from the bus and it was not lost due to the negligence of the petitioner. Learned counsel further submitted that the issue involved in the present case is squarely covered by the judgments of this Court wherein this Court after referring to various settlements arrived between the Union and the respondent Corporation, has held that such recovery cannot be made only on the ground that the unused tickets were lost and could not be traced. Learned counsel specifically relied upon the judgment of the Division Bench of this Court reported in (2008) 1 MLJ 224 [Management of Rani Mangammal Transport Corporation Ltd. (now known as Tamil Nadu State Transport Corporation Ltd.) Dindigul represented by its Managing Director Vs. M.Palanisamy].

6. Learned counsel also placed reliance upon the judgments of learned Single Judges who had passed similar orders by following the judgment of the Division Bench. Learned counsel submitted that the impugned order passed by the first respondent is liable to be interfered with since it was passed even without conducting an enquiry. Learned counsel further submitted that the respondent Corporation must be directed to permit the petitioner to continue his duty as a Conductor in the Corporation.

7. Per contra, learned Standing Counsel appearing for the respondent submitted that, it is clear from the complaint given by the petitioner to the Police as well as the averments made in the affidavit filed in support of the Writ Petition that, it was only due to the negligence on the part of the petitioner, the unused tickets were lost. Learned counsel submitted that the judgments relied upon by the learned counsel for the petitioner will not apply to the facts of the present case since the loss of unused tickets was caused purely due to the negligence of the petitioner. Learned counsel further submitted that even as per the settlement that is relied upon by the petitioner, the loss must have occurred due to accident, theft or robbery and in the present case, the loss did not happen due to any of these causes and it had happened only due to the negligence on the part of the petitioner.

8. Learned Standing Counsel further submitted that the petitioner had unauthorisedly absented himself for the period from 20.11.2018 to 20.06.2019 and therefore, a charge memo has already been given to the petitioner on 01.07.2019, calling upon him to give his explanation. Learned counsel submitted that the petitioner has also given his explanation and departmental proceedings are pending as on date. Learned counsel, therefore, concluded her arguments by submitting that there are no merits in this Writ Petition and the same is liable to be dismissed.

9. This Court has carefully considered the submissions made on either side and perused the entire materials available on record.

10. The specific case of the petitioner is that he was on duty as Conductor in the vehicle belonging to the Transport Corporation, which was plying between Trichy to Chennai. On 23.08.2018, when the bus was halted at Tindivanam bus stand, the petitioner realised that the unused tickets which he kept in a bag under his seat was stolen. The petitioner was not able to trace the bag and ultimately he gave a complaint to the Police and the Police has given a non traceable certificate on 20.09.2018.

11. According to the petitioner, the unused tickets were stolen from the bus and therefore it squarely falls within the settlement that has been reached between the Transport Corporation and the Union in the year 1995 to the effect that in the event of loss of ticket books due to accident, theft or robbery, no recovery can be made from the concerned Conductor.

This settlement has been relied upon by this Court and number of judgments have been delivered where this Court has held that such recovery cannot be resorted to on the mere ground of the loss of unused tickets. Even though, several judgments were relied by the learned counsel for the petitioner, it will be relevant to take note of the judgment of the Division Bench referred supra. The relevant portions of the judgment are extracted hereunder:

"...The State owned Transport Corporation is the appellant. The challenge is to the order of the learned single Judge dated 30.11.2001 passed in W.P. No. 12709 of 1994. The respondent preferred the above Writ Petition challenging the order of the appellant dated 27.06.1994, in and by which the appellant ordered for recovery of a sum of Rs.13,400/- in forty eight installments from the salary payable to the respondent from the month of July, 1991. The said sum of Rs.13,400/- was arrived at towards the value of the unused ticket contained in two ticket books issued to the respondent, while he was assigned the duty of Conductor in the appellant Corporation vehicle plying between Madurai and Coimbatore. The brief facts which resulted in the issuance of the above order of punishment dated 27.06.1994 was that the respondent was assigned the duty of Conductor on 26.04.1992 in the bus running between Madurai and Coimbatore. On that day, when the bus left Palani at 4.30 a.m., he was entrusted with three ticked books. It is stated that while he was in the process of issuing tickets on 26.04.1992 in the first trip between Palani and Madurai, he noticed that two unused ticket books kept in his personal bag along with his other wearing apparels and money purse with cash of Rs.120/- were stolen. According to the respondent, he informed the same to Palani Depot through wireless message and that on 27.04.1992, he lodged a complaint with Palani Police Station for the above loss of ticket books. The respondent was issued with a charge sheet dated 21.09.1992 alleging negligence in performance of his duty. The respondent submitted his explanation. Not satisfied with the explanation, an enquiry was also held. The enquiry officer submitted his report finding the respondent guilty of the charges. Based on the finding of the enquiry officer, the impugned order dated 27.06.1994 of Rs.13,400/-. Challenging the same, the respondent preferred the above Writ Petition, which came to be allowed by the learned single Judge.

....

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 respondents 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 no 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 police complaint immediately after the conclusion of 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 books 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 ticket books are reported.

5. Viewing in that respect, we are in full agreement with the conclusion of the learned single Judge as has been set out in paragraph 8 and 9 of the order impugned in this appeal. For all the above stated reasons, we are convinced that the order impugned in this appeal does not call for interference. We therefore do not find any merit in this appeal."

It is clear from the above judgment that the respondent Corporation cannot resort to recovery from the Conductor for the loss of unused tickets if the same had occurred due to accident, theft or robbery. In the present case, the respondents are claiming that the loss of unused tickets has occurred due to the negligence of the petitioner. This issue can be resolved only after proper enquiry is conducted by the first respondent. However, in the present case it is seen that the first respondent has directly proceeded to pass the impugned order dated 27.08.2018 and has valued the unused tickets and directed to recovery of a sum of Rs.2,27,990/- from the petitioner. This order is liable to be interfered only on the ground that it was passed without affording any opportunity to the petitioner and it has resulted in civil consequences to the petitioner. This order could have been passed only after affording opportunity to the petitioner. The impugned order passed by the first respondent dated 27.08.2018 is clearly in violation of principles of natural justice.

12. In view of the above discussion, the impugned order passed by the first respondent on 27.08.2018 is liable to be interfered with and accordingly the same is quashed. If at all, the first respondent wants to proceed further against the petitioner for the loss of tickets, the same can be done only by giving a charge memo and affording an opportunity to the petitioner and after ensuring that such recovery does not fall within a settlement arrived between the Union and Transport Corporation.

14. In so far as the consequential relief that has been sought for by the petitioner, it was brought to the notice that a charge memo was issued against the petitioner on 01.07.2019 on the ground that the petitioner had unauthorisedly absented himself from 20.11.2018 to 20.06.2019. For this charge memo, the petitioner has already given his reply. Therefore, for the present, this Court directs the disciplinary proceedings to be

concluded within a period of four weeks from the date of receipt of copy of this order and after affording sufficient opportunity to the petitioner.

15. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram Ltd),
Villupuram - 605 602.

2.The Branch Manager,
Tamil Nadu State Transport
Corporation (Villupuram Ltd)
Koyambedu Branch,
Chennai.

+1cc to M/s.Vijaya & Anandh, Advocate sr.4259
+1cc to Mrs.Rejeni Ramadoss, Advocate sr.4931

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and
W.M.P. Nos. 12020, 39905 and 39906 of 2020

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