



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.08.2020

DELIVERED ON : 19.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.2052 of 2015 and
M.P(MD).No.1 of 2015

P. Gopalakrishnan

... Petitioner

Vs.

Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
rep. by its General Manager,
Dindigul Region,
Bye Pass Road,
Dindigul.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the order dated 31.01.2015 in Ref.No.ச.து.எ7:5854 passed by the respondent and quash the same.

For petitioner : M/s. G.M. Xavier

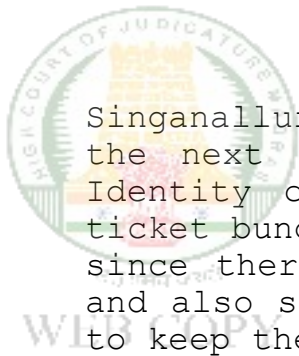
For Respondents : Mr. J. Senthil Kumaraiah
Standing Counsel

ORDER

The petitioner, who was working as a Conductor in the Transport Corporation, challenging the recovery proceedings passed by the respondent in Ref.No.ச.து.எ7 5854, dated 31.01.2015, has filed the Writ Petition.

2. The service matrix of the petitioner's case are as follows:

(i) The petitioner joined the service of the respondent Transport Corporation as a Conductor in the year 2009. He was made as a Conductor on daily wages with effect from 20.11.2009 and subsequently, he was made permanent from the date of completion of 240 days of service on 06.11.2010. While he was working at Periyakulam Depot, on 29.06.2014, he was given duty in Route No.26Z and in bus bearing No.TN 57 N 1834 and they started their trip at Periyakulam to Theni and then to Madurai. Again they restarted their trip from Madurai at about 11.00 pm and they arrived



Singanallur Bus Stand and halted the bus there at about 4.00 am on the next day i.e., on 30.06.2014. He has put his Cell Phone, Identity card and ATM card in his bag and also kept the unused ticket bundles and ticket collection amount of Rs.8,500/- in his bag since there was no sufficient space in his cash bag to place them and also since there was no other provision made by the Corporation to keep the ticket bundles safely.

(ii) After the arrival and after alighting of all the passengers, the petitioner and Driver viz., M.Deivendran by keeping the cash bag under the petitioner's head and took rest. At about 7.00 am, he woke up and found that his cash bag was missing and it was stolen by somebody. He could not find out the bag in spite of his thorough check and search. He has reported the missing of the ticket books along with his personal articles to the Branch Manager and also made a police complaint dated 30.06.2014 to the B-5 Singanallur Police Station and the Police Officials in the said police station traced out and recover only the unused ticket books to the fare value of Rs.41,644/-. Hence, he submitted a letter dated 20.08.2014 to the respondent and handed over the ticket books, which were recovered by the police officials.

(iii) He informed the management that the ticket books were lost only due to theft. But, the respondent has issued a show cause notice dated 24.11.2014, wherein it was stated that he has caused a loss to the corporation due to the loss of ticket books.

3. The Writ Petition was admitted. Rule Nisi was issued and interim stay was granted by this Court.

4. The learned counsel appearing for the petitioner submitted that while the petitioner was working as a Conductor in the respondent / Transport corporation, he has misplaced the unsold ticket books and the cash for sold tickets along with a bag. Hence, he has given a complaint before the concerned Police station and a case has been registered in Crime No.523/2014 on 30.06.2014 for the offence under Section 379 IPC. Subsequently, the bag was traced out and the same was returned with the unsold ticket to the tune of Rs.41,644/- and the same was received by the respondent Corporation. Thereafter, the respondent has issued a show cause notice as to why the quantum of unsold ticket viz., Rs.67,384/- should not be deducted through the salary of the petitioner.

5. The petitioner counsel submitted his explanation stating that the unsold ticket was subsequently, found and traced out and handed over the ticket worth about Rs. 41,644/-. Furthermore, relying upon upon the terms of settlement entered between the Union and respondent Management under Section 12(3) settlement, he has stated that the respondent Corporation cannot proceed in respect of the theft of bag or unsold ticket and he has also relied upon



Rani Mangammal Transport Corporation Ltd., Vs. M. Palanisamy).

6. Per contra, the learned Standing Counsel appearing for the respondent Corporation would submit that it is not a theft on duty. While the petitioner was on duty, he slept by keeping the ticket bag as a pillow and consequently, he has stated that it is a misplaced and hence, prayed for remittal of the case.

7. After hearing the rival submissions and also perusing the documents it is seen that while the petitioner was working as a Conductor in the Transport Corporation, he was assigned duty of Conductor on 29.06.2014 on the route Periyakulam to Madurai - Coimbatore and at Coimbatore he has missed the bag with unsold tickets along with ATM Card and other ID Cards and accordingly, he lodged a complaint before the competent jurisdiction Police Station and a case has been registered in Crime No.523/2014 on 30.06.2014 for the offence under Section 379 IPC. Subsequently, bag and some of the unsold tickets were traced out and handed over to the Conductor. The petitioner in turn handed over the same to the Management by the letter dated 20.08.2014, whereby the unsold tickets to the fare value of Rs.41,644/- was returned.

8. It appears that the respondent / Transport Corporation has issued a impugned proceeding dated 31.01.2015, after the issuance of a show cause notice to the petitioner, claiming a sum of Rs.67,384/- as the value of unsold tickets, as said to have been missed on that day and for regularization of the leave in respect of suspension period. Hence, the Writ Petition is filed.

9. In support of his contention, the learned counsel appearing for the petitioner relied upon the Judgment of this court reported in **2008(1) MLJ 244 (Management of Rani Mangammal Transport Corporation Ltd., Vs. M. Palanisamy) and W.A.No. 1122 of 2012** dated 18.07.2012.

10. In view of the settlement entered into between the Union and Management dated 28.09.1995, which deals with the same that in the event of loss of ticket book is reported by way of complaint to the police and such loss had occurred due to accident, theft or robbery, no recovery proceeding should made from the concerned conductor.

11. Considering the factual position as stated supra and also the settlement entered into between the Union and Management it is a settled proposition of law as held in the above two decisions of the Hon'ble Division Bench of this Court. Hence, I am of the considered view that the case of the petitioner is squarely covered under the ratio laid down in the Division Bench Judgment of this Court and hence, this Writ Petition is deserved to be allowed.



12. Accordingly, this Writ Petition is allowed and consequently, the impugned order is set aside. No costs. The Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

ORDER MADE IN
WP(MD).No.2052 of 2015 and
M.P(MD).No.1 of 2015
19.08.2020

AP(28/08/2020) 4P 1C