



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2022

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Coram:

The Honourable Mr. Justice V. PARTHIBAN

W.P.No.24268 of 2017
and
W.M.P.No.25652 of 2017

M.Kaliappan

...Petitioner

Vs

1. Tamil Nadu State Transport Corporation,
Represented by its Managing Director,
Villupuram.
2. Tamil Nadu State Transport Corporation,
Represented by its General Manager,
Vellore.
3. Tamil Nadu State Transport Corporation,
Branch Manager,
Thirupathur.
4. Tamil Nadu State Transport Corporation,
Enquiry Officer,
Vellore -9.

...Respondents

Prayer

This Writ Petition is filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records issued by the 2nd respondent in Ku.No.167447/sa6/TNSTC(v) ve.Ma/2015 dated 27.07.2017 and quash the same as illegal, incompetent, unconstitutional and without jurisdiction.

For Petitioner .. Mr.V.Raghavachari

For Respondents .. Mr.G.Saravanakumar
for R1 to R4



O R D E R

The petitioner was working as conductor in the respondent Corporation. On 05.02.2015, he was in-charge of Bus No.528/b Registration No.TN23N 2219. According to him, when the bus halted at Thirupathur bus depot, he kept the cash bag in the bus and visited the time keeper office. Unfortunately, the bus driver also left the bus to answer nature's call. On his return, the petitioner found that the cash bag was missing and stolen. He immediately informed the 3rd respondent and subsequently, filed a criminal complaint with the jurisdiction police and obtained non-traceable certificate. Despite giving complaint to the police, the FIR was not registered for unknown reason.

2. The Corporation, at this development, issued show cause notice to the petitioner holding that the petitioner was responsible for the lost tickets and recovery was sought to be made from his wages to the tune of Rs. 59,412/-, being the value of the entire ticket book lost, in 59 installments. The petitioner, being aggrieved by the recovery order, filed a writ petition in W.P.No.43693 of 2016 seeking to quash the proceedings of the Corporation dated 21.11.2016. This Court, on 20.12.2016, disposed of the writ petition, directing the petitioner to approach the Corporation by filing an appeal. In pursuance of the direction, the petitioner preferred an appeal. However, the same came to be rejected on 27.07.2017 on untenable grounds. According to the appellate order, there was no F.I.R. registered and therefore, the appeal had no merits. The appeal was rejected without even giving credence to the 'non traceable certificate' issued by the Police Station concerned.

3. According to the petitioner, the Corporation had entered into settlement with the Union representing the workmen providing as to how the lost ticket books by the conductors should be dealt with. Clause 17 of 12(3) Settlement which is binding on the parties is extracted herein.

"Where the corporation bus is involved in an accident and arising out of the accident, the conductor has not put to such condition that he could not save the unsold tickets, the present practice of collecting the value of the lost books shall be avoided. however, in respect of any dispute arising, an appeal may be made to the respective Managing Director for proper settlement."



4. The learned counsel for the petitioner would submit that on the basis of the above clause in the settlement, this Court has allowed number of writ petitions challenging similar action by the Corporation seeking recovery of the value of the bus tickets lost. The learned counsel would refer to a decision of this Court dated 22.03.2019 rendered in W.P.No.30955 of 2012 on the basis of the earlier decision passed by the learned single Judge as confirmed by the Division Bench of this Court. The Courts have repeatedly interfered with the action of the Corporation, seeking to recover the amount from its employees towards value of the loss of bus tickets. The following observations and the ruling would clinch the case, in favour of the petitioner herein.

9. Moreover, the learned counsel for the petitioner would also submit that the recovery order has been imposed by the Management is also contrary to the settled legal principle enunciated by this Court on the same subject matter and also the same is contrary to the 12(3) Settlement entered into between the workman and the Management. The learned counsel would draw the attention of this Court to an order passed by the learned Single Judge in W.P.No.647 of 2013, dated 22.09.2017, wherein, in identical circumstances, this Court has intervened and allowed the writ petition. The order passed by the learned Single Judge of this Court was on the basis of the order passed by the Hon'ble Division Bench of this Court. The submissions of the learned counsel therein and the findings of the learned Single Judge as found in paragraph Nos.5 to 10, are reproduced below:-

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



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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



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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 petitioners 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. The learned counsel for the petitioner would submit that the issue raised in the writ petition is no more res integra and fully covered by the decision of this Court in the aforesaid writ petition.



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10. This Court has considered the submissions made on behalf of the learned counsels appearing for the parties and perused the materials and pleadings placed on record. This Court is entirely in agreement with the submissions made by the learned counsel for the petitioner that the present issue raised in the writ petition is squarely covered by a decision of this Court, passed in W.P.No.647 of 2013, dated 22.09.2017. The learned Judge has followed the Hon'ble Division Bench order on the same issue and allowed the said writ petition which dealt with an identical circumstances as that of the present case.

11. In the said circumstances, this Court is of the considered view that the impugned order passed by the second respondent in Pa.No.1/D6/168/Law/TNSTC/ER/2012, dated 01.10.2012, imposing the punishment of recovery of sum of Rs.1,05,966/- cannot be sustained in law and therefore, the same is set aside.

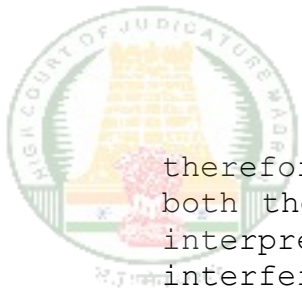
5. The learned counsel would also cite two other decisions on similar ground as under:

i) MANU/TN/3314/2019 (P.Veerappan vs. The Managing Director, Tamil Nadu State Transport Corporation (Madurai) Limited and Ors.) (W.P.(MD)No.1831 of 2015 dt.13.03.2019)

ii) W.P.(MD).No.10922 of 2019 dated 09.12.2019 (J.Abiraham Koyilraj vs. The State Express Transport Corporation (Tamil Nadu)Ltd., represented by its Managing Director, Pallavan Salai, Chennai - 02.)

6. On behalf of the respondents, Mr.G.Saravanakumar, the learned Standing counsel appeared. A counter affidavit has been filed. In the counter affidavit, there are several averments pertaining to the earlier punishments suffered by the petitioner, issue of charge memo against him and the recovery of the amount equal to the value of the bus ticket lost. However, the counter affidavit is materially silent on the past decisions of this Court and the binding settlement as between the parties in respect of such matters. In the course of the oral arguments, the learned Standing Counsel representing the Corporation would not dispute the legal position as aforementioned.

7. In the above circumstances, this Court is of the considered view that the issue is no more res integra and



therefore, fully covered by the settlement which is binding on both the petitioner as well as the Corporation. The Courts have interpreted the settlement in favour of the employee and interfered with the action of the Corporation in seeking recovery of amount from conductors concerned towards loss of bus tickets during the course of discharge of their duties.

8. In this case also, very same hackneyed stand has been adopted by the Corporation in rejecting the claim of the petitioner, failing to appreciate the earlier precedents laid down by this Court on the subject matter. This Court is therefore of the view that the impugned order is liable to be set aside.

9. Therefore, the impugned order passed by the 2nd respondent in Ku.No.167447/sa6/ TNSTC(v) ve.Ma/2015 dated 27.07.2017 is hereby set aside. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

vsi

To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram.
2. The General Manager,
Tamil Nadu State Transport Corporation,
Vellore.
3. The Branch Manager,
Tamil Nadu State Transport Corporation, Thirupathur.
4. The Enquiry Officer,
Tamil Nadu State Transport Corporation, Vellore -9.

+1cc to M/s.G.Saravanakumar, Advocate Sr.25312
+1cc to Mr.V.Raghavachari, Advocate Sr.25246

W.P.No.24268 of 2017

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srg 25/04/2022