



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.2661 of 2015 and
M.P(MD).No.1 of 2015

M. Sherfudeen

:Petitioner

..VS..

The management of

Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region,
Rep. by its General Manager,
Madurai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 12.01.2015 passed by the respondent in Ref.O.Na.Thu/D6/SIP/837, quash the same and consequently to direct the respondent to refund the amount already recovered from the monthly wages of the petitioner to him and further direct the respondent to treat the period from 22.09.2012 to 12.10.2012 as his duty period with pay for all purpose.

For Petitioner : Mr. S. Arunachalam

For Respondent : Mr. Senthil Kumaraiah

O R D E R

The Writ Petition is filed to quash the order dated 12.01.2015 passed by the respondent in Ref.O. Na.Thu/D6/SIP/837 and consequently to direct the respondent to refund the amount already recovered from the monthly wages of the petitioner to him and further direct the respondent to treat the period from 22.09.2012 to 12.10.2012 as his duty period with pay for all purpose.

2. The petitioner was appointed in the respondent Corporation on 02.07.1997 and was given promotion as Senior Grade Conductor and also Special Grade Conductor. On 08.09.2012, while the petitioner was on duty in the Registration No. TN 58 N 1913

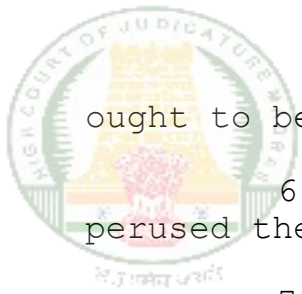


running between Madurai and Tuticorin and the duty period is from 07.09.2012 to 08.09.2012 by 1.30 am on the next day. The petitioner was given Electronic Ticket Machine to issue tickets to the passengers. The petitioner has issued 38 ticket books with different denominations apart from ETM machine. In case of failure in ETM machine the petitioner was directed to use tickets from the ticket books.

3. The contention of the petitioner is that the bus started by 10.45 pm at Tuticorin Bus Stand to go to Madurai and the bus reached the Madurai Mattuthavani Bus stand at 1.30 am and the passengers got down from the bus and the petitioner left the bag in the bus and found that the bag in which the ticket books were kept missing and the 38 ticket books were stolen. The petitioner immediately informed the police and complaint was registered in Receipt No.404 of 2012, dated 09.09.2012. Thereafter, the petitioner informed the Branch office and also produced CSR receipt to the office of the respondent. On 22.09.2012 the petitioner was declined work and in turn orally directed to remit Rs.37,364/- towards the stolen tickets. Thereafter, the petitioner was continuously denied "work". The petitioner submitted a representation dated 04.10.2012 to allow him to work. The petitioner raised a industrial dispute before the Labour officer, Madurai by a petition dated 11.10.2012. Thereafter, the respondents issued a charge memo dated 10.10.2012. The petitioner submitted an explanation dated 22.10.2012 and thereafter, the petitioner was allowed to work from 13.10.2012.

4. The contention of the petitioner is he was illegally denied work from 22.09.2012 to 12.10.2012. An enquiry was initiated and the petitioner was granted an opportunity to prove his case and the enquiry officer submitted his report dated 19.04.2013 alleging the charges are proved. Thereafter, the respondent issued notice dated 28.11.2013 directing the petitioner to submit an explanation as to why the findings of the enquiry officer should not be accepted and also why should not imposed the punishment of stoppage of increment for one year with cumulative effect along with recovery from his wages. The petitioner submitted a detailed explanation dated 23.12.2013. The respondents considered the same and passed the impugned order dated 12.01.2015 imposing the punishment of stoppage of increment without cumulative for three months and recovery of Rs.37,256/- in 20 instalments from monthly wages. The petitioner has challenged the said impugned order and prayed for consequential relief to refund the amount already recovered and to directing the respondents to treat period from 22.09.2012 to 12.10.2012 as duty period and to pay salary for the said period.

5. The respondents have filed counter stating that it is not the case of the theft but it is a case of negligence on the part of the petitioner. The domestic enquiry was initiated by granting an opportunity to prove the case and there is no violation of natural justice. Hence, the case of the petitioner



ought to be dismissed.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The learned counsel for the petitioner relied on Clause 29 of the Settlement under Section 12(3) entered in the year 1995, wherein it has been stated “பணி செய்துகொண்டிருக்கின்ற போது கலவரம், விபத்து, களவு, கொள்ளை போன்றவை நடைபெற்று அதன் காரணமாக போலீஸ் நிலையத்தில் வழக்கு பதிவு செய்யப்பட்டிருந்ததால் அந்த சூழ்நிலையில் பயணச்சீட்டு புத்தகங்கள் புத்தகங்களுக்கான தொகை பிடித்தம் செய்யப்பட மாட்டாது”.. It has been specifically stated 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.

8. The petitioner also relied on the Division Bench judgment rendered by this Court in W.A. No. 142 / 2012 dated 16.11.2014 in K.C.Palanisamy Vs TNSTC (Coimbatore) Limited and the relevant portion is culled out hereunder:

"As far as the case in hand is concerned also, the appellant has intimated instantaneously about the loss of unused ticket books both to the police station as well as to the respondent Corporation. Hence no negligence can be attributed against the appellant. Therefore the matter in issue is covered by the Division Bench Judgment referred above. The Learned Single Judge has not considered the said aspect. In the light of the said Division Bench Judgment the order of the Learned Single Judge cannot be sustained."

9. In another Division Bench Judgment in Rani Mangammal Transport Corporation Limited Vs M. Palanisamy reported in (2008) 1 MLJ 224, has held as under:

"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 no intimation, authorities at the Ottan-chatram 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."

10. In this present case, the petitioner had preferred police complaint immediately about the loss of tickets due to theft. Therefore, this Court is convinced that the petitioner preferred an FIR immediately after the incident and had intimated the loss of tickets in the FIR also. Therefore, the petitioner is protected under Clause 29 of the 12(3) settlement. Therefore, this Court is setting aside the impugned order and consequently directing the respondents to refund the amount already deducted. As far as the balance amount is concerned respondents are directed not to collect since the petitioner is protected under Clause 29.



11. The Court confirms the punishment of stoppage of increment for three months without cumulative effect, since the petitioner has acted in negligent manner. The punishment of recovery is set aside since the same is against 12(3) settlement. The respondents are directed to regularize the period from 22.09.2012 to 12.10.2012 as duty period since it is the respondent who did not allow the petitioner to work.

12. Accordingly, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp

TO:

The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region,
Madurai.

W.P(MD) No.2661 of 2015 and
M.P(MD) .No.1 of 2015
11.01.2022

RD(07.03.2022) 5P 2C