

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2017

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THE HON'BLE Mr. JUSTICE V.PARTHIBAN
W.P.No.20093 of 2012 and M.P.No.1 of 2012

S.Swaminathan

...Petitioner

Vs.

Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Rep. By its General Manager,
Villupuram Region, Vazhudhareddy,
Villupuram.Respondent

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified mandamus, calling for the records pertaining to the order dated 16.06.2012 in letter No.16/011025/Va.Th.PI-5/TNSTC/2012 passed by the respondent, quash the same and consequently direct the respondent to refund the amount recovered with 12% interest, awards costs and pass orders.

For Petitioner	..	Mr.V.Ajoy Khose
For Respondent	..	Mr.P.Paramasivadosh

ORDER

The petitioner has approached this Court seeking the following relief:

"To issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 16.06.2012 in letter No.16/011025/ Va.Th.PI-5/TNSTC/2012 passed by the respondent, quash the same, consequently direct the respondent to treat the period from 12.02.2012 till the petitioner given work, as duty for all purposes with all other attendant and consequential benefits together with interest and award costs."

2. The case of the petitioner is that he was an employee of the respondent Corporation joined as a Conductor in the year 1993. On 11.02.2012, the petitioner was assigned duty in Route No.308 C in the bus bearing Registration No.TN 32 N 2301. The petitioner was issued one ticket bundle containing 500 tickets and another ticket book containing 178 tickets. He kept the ticket bundles in his personal bag since there was no sufficient

space in cash bag to place ticket bundles and there was no other provision made by the Corporation to keep the ticket bundles safely.

3. The petitioner after completing his trip, went to a nearby tea shop situated inside the bus stand for refreshment and thereafter, when he returned to the bus, to his shock and surprise, he did not find his bag where he left and found that the same had been stolen by some unknown persons. In spite of his thorough search, he could not locate the bag containing ticket bundles.

4. In the above circumstances, on 13.02.2012, the petitioner filed a complaint before the Inspector of Police, Koyambedu Police Station, regarding loss of tickets and personal belongings of the petitioner and the complaint was registered in CSR No.31/CSR/K10PSX/12.

5. These facts cumulatively were informed to the Branch Manager of the respondent Corporation. In spite of the above position, the petitioner was not allowed to join duty on the following day on the ground that he was responsible for the loss of ticket bundles. Since, he was not allowed to join duty, the petitioner had made representation on 06.06.2012 and requested not to deduct the loss towards ticket amount from his salary.

6. Thereafter, the petitioner was issued a show cause notice dated 06.06.2012 and directed that if the ticket bundles are lost by the conductor while he was in work, the value of those lost tickets should be paid by the conductor concerned and they should be given work only after the payment of the value of the lost ticket books. The petitioner gave his explanation. However, the respondent, vide impugned proceedings dated 16.6.2012 ordered recovery of a sum of Rs.41,302/- towards the value of loss of tickets, from the monthly salary of the petitioner.

7. 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 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.

8. 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."

9. 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 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.

9. Mr.P.Paramasivadosh, 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.

10. 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 16.06.2012 in Letter No.16/011025/Va.Th.PI-5/TNSTC/2012 is therefore set aside. The

respondents are also directed to treat the period of the petitioner's 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.

11. The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To.

Tamil Nadu State Transport Corporation
(Villupuram) Ltd., Villupuram Region,
Vazhudhareddy, Villupuram.

+lcc to Mr.V.AJOKHOSE, Advocate, S.R.No. 81866

+lcc to Mr.P.PARAMASIVA DOSS, Advocate, S.R.No. 81588

W.P.No.20093 of 2012
and M.P.No.1 of 2012

KAN(CO)
TR(18/01/2018)

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