

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P. Nos.18787 and 18788 of 2007
and
M.P.Nos. 1 and 1 of 2007

M.K.Babu ...Petitioner in W.P.No.
18787 of 2007

P.Velu ...Petitioner in W.P.No.
18788 of 2007

Versus

1.Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Region,
Rep. by its General Manager,
Kancheepuram.

2.The Deputy Manager (Central Audit Section)
Tamilnadu State Transport (Villupuram) Ltd.,
Kancheepuram Region,
Kancheepuram.

...Respondents in both
W.P.'s

PRAYER in both W.P.'s: Writ petitions filed under Article 226 of
the Constitution of India praying for the issuance of a Writ of
Declaration

declaring that the action of the first respondent in ordering
for recovery of Rs.22,476/- from the salary of petitioners for
the loss of unused ticket bundles caused by Mr.Arugadass,
Conductor, as illegal and consequently to forbear the second
respondent from effecting recovery based on his letter in
No.Ku.No.5160/Ma.Ta.Pi/2007 dated 7.2.2007 from salary of
petitioners.

For Petitioner	:	Mr.V.Porkodi for Mr.V.Ajay Khose
For Respondents	:	Mr.C.S.K.Sathish Standing counsel for Transport Corporation

C O M M O N O R D E R

The petitioners have filed the present writ Petitions challenging the action of the first respondent in ordering for recovery of a sum of Rs.22,476/- from the salary of the petitioners for the loss of unused ticket bundles caused by Mr.Arugadass conductor as illegal and consequently to forbear the second respondent from effecting recovery based on his letter in No.Ku.No.5160/Ma.Ta.Pi/2007 dated 07.02.2007 from the salary of the petitioners.

2. The case of the petitioners is that Mr.M.K.Babu, the petitioner in W.P.No.18787 of 2007 was working as a Driver in the respondent Corporation from 23.08.1986 and at the time of filing of the Writ Petition he was a selection grade driver and was working in the Koyambedu Depot-II of the respondent Corporation and was a regular driver in the route No.114 running between Chennai and Khalasthri. One Mr.Arugadas was employed in the Villupuram region of the respondent corporation as a temporary conductor and he was given only night duty. When temporary conductors were appointed by the respondent to cope up with the work, Mr.Arugadas approached the Branch Manager of the Koyambedu Depot-II as he was given night duty in Villupuram Region. The Branch Manager wanted two reference letters from the serving workmen. As the petitioners knew that he was employed in Villupuram Region, they gave reference letter recording the same and thereafter Mr.Arugadas was given employment as a temporary conductor. It is further stated that while Mr.Arugadas was working as a conductor on 27.01.2007 in the route No.201 running between Chennai and Tirupathi, the bus started from Chennai at 12.30 P.M., by which time the bus was involved in an accident with a two wheeler after the bus crossed Renikunda and the two wheeler rider got injured. Thereafter, both the conductor and driver escaped from the scene for a while and the conductor re-appeared when the police came to spot. Since the police station is at a shorter distance, he informed the police about the accident and when the conductor came to the bus, he found that the unused ticket bundle as well as the cash were stolen. The said fact is certified by the Sub Inspector of Police, Alipiri Police Station, Thirupathi North and a case is registered in Cr.No.15/2007 under Section 337 IPC. It is further stated that the value printed on those unused ticket bundles was Rs.48,915/-. While so, the petitioners were issued a letter dated 07.02.2007 by the second respondent stating that the first respondent passed an order dated 03.02.2007 directing for recovery of a sum of Rs.22,476/- from the salary of each of the petitioners for the loss of unused ticket bundles by Mr.Arugadas on 27.01.2007. Since Mr.Arugadas failed to pay the value of the unused ticket bundles, the petitioners were

made liable to pay a sum of Rs.22,476/- as he gave a reference letter for his employment and the said amount would be recovered in 20 instalments at the rate of Rs.1123.80/- per instalment. It is further stated that as per settlement under Section 12 (3) of the I.D.Act which came into effect from 01.09.1995 to the effect that no recovery could be made against the conductor for the loss of ticket books, if the loss was due to situation, which was beyond his control and therefore no recovery would be made even from Mr.Arugadas. It is further stated that the value of the unused ticket bundles could not be assessed based on the value for travel printed on them. The cost of printing of the unused ticket bundles would not be more than Rs.100/-. It is further stated that no recovery was made from the salary of the petitioners in the February month. Likewise no recovery was made in the salary of the petitioners for March 2007. But, when the petitioners received salary for the month of April 2007, on 01.05.2017, there was a recovery of Rs.750/- from the salary of the petitioners. It is further stated that it is recorded in the pay bill as if there was a shortage of Rs.22,476/- and the said amount would be recovered in 30 instalments. Therefore, he filed the present Writ Petition challenging the recovery order passed by the respondents.

3. The learned counsel for the petitioners would submit that as per 12(3) settlement, which came into effect from 01.09.1995, the respondents cannot make recovery even from Mr.Arugadas as the loss was beyond his control. It is further stated that even if recovery could be made against Mr.Arugadas, the respondents could recover the cost of the lost unused ticket bundles and not the value of the amount printed on those tickets as the printed value denotes the value for the travel and further it is stated that such recovery is against the provisions of Payment of Wages Act, 1936 and is violative of Article 14 of Constitution of India. He would further submit that in this case admittedly the bus met with an accident and the case was registered in Crime No.15/2007 and therefore the recovery made from the salary of the petitioners is against 12 (3) Settlement and hence the order of recovery is liable to set aside.

4. The learned standing counsel for the respondents would submit that admittedly Mr.Arugadas was working as a temporary conductor and further it is admitted fact that the petitioners had given a reference letter and as per the reference letter in case of any loss caused to the corporation by the said Arugadas and if he failed to pay, they are liable for the said loss and therefore for the loss caused by Mr.Arugadas who was engaged as a conductor on 27.01.2007 in the route No.201 running between Chennai and Tirupathi, on which date the bus was involved in an accident, the petitioners who were given reference to him are

liable to pass the loss. He would further submit that as soon as the bus hit the two wheeler both the driver and conductor escaped from the bus due to fear of assault from the public but as a dutiful employee, the conductor should have taken along with him the cash as well as ticket but instead he left from the bus without taking the same, which clearly shows the negligence on the part of the said Arugadas. Even in the certificate issued by the Sub-Inspector of Police, Alipiri Police Station, Tirupathi north, it is clearly seen that the Arugadas being the conductor of the bus escaped from the bus by leaving service ticket worth about Rs.48,915/- (Rupees Forty eight thousand nine hundred and fifteen only) and thereafter on arrival of the police to the place of occurrence, he came to the bus and found the above tickets as per way bill are missing. He would further contend that when the bus met with an accident and while he escaped from the bus as a dutiful conductor, he ought to have taken ticket bundles along with him but he has not done so. It is further stated that though the police station is nearer to the place of accident, the conductor has not approached the police and informed about the accident. Under such circumstances loss of the ticket bundles is not beyond the control of the conductor and further Mr.Arugadas Conductor has not made any payment. Therefore, in these circumstances since Mr.Arugadas conductor has not made any payment, as per the undertaking given by the petitioners, they are liable to pay the amount and therefore the order of recovery came to be passed and therefore, this Writ petition is liable to be dismissed.

5. Heard both sides. Perused the materials available on record.

6. Admittedly under the reference of the petitioners one Mr.Arugadas was appointed as a temporary conductor and was working with the respondent corporation and on 27.01.2007, while he was working as a conductor in the route running between Chennai and Thirupati North, the bus was involved in an accident with the two wheeler after the bus crossed Renikunda and the two wheeler rider got injured. It is admitted that both the driver and the conductor escaped from the scene of the accident. Further a perusal of the F.I.R clearly shows that before the investigating officer, the conductor has stated that immediately after the accident the driver and the conductor escaped from the bus by leaving the service tickets worth about Rs.48,915/- (Rupees Forty Eight Thousand Nine hundred and Fifteen only) Therefore, it has to be noted that when the driver and conductor of the bus flew away from the bus as a dutiful conductor Mr.Arugadas would have taken the ticket bundles with him, but without doing so, he simply escaped from the bus in order to

avoid assault from the public. As per Clause 29 of 1995 wage settlement it was agreed that if the ticket books are lost due to riots, accident, theft or dacoity and if the case is registered before the police station, the amount for which cannot be recovered from the conductor. Though the petitioners have stated that the loss is beyond the control of the conductor and though the case was registered with the police station in Crime No.15/2007, a reading of the FIR shows that leaving of the service ticket books bundle is not beyond the control of the conductor and it is purely due to negligence on the part of the conductor. Therefore, settlement 12 (3) is not made applicable to the present case on hand. Since, admittedly when the petitioners have given reference to one Mr.Arugadas, they have given an undertaking at the time of his appointment in the Transport Corporation as a temporary conductor, to the effect that if any loss is caused to the corporation by the conductor and he failed to pay the same, the petitioners are liable to compensate the same, the amount was ordered to be recovered from the salary of the petitioners. Though the learned counsel for the petitioners relied on the order of this Court in W.P.No.2335 of 2005 dated 24.04.2007 as well as the decision of this Court in Palanisamy Versus Management of Rani Mangammal Transport Corporation Ltd., Dindigul reported in 2002 (4) L.L.N. 1129, wherein it is held that no recovery proceedings shall be initiated against conductors for the loss of ticket-book due to theft, riot, accident, etc., the facts and the circumstances of the said cases are not identical to the facts and circumstances of the present case. In the decision above cited, there was an attack against the bus and all the passengers of the bus were driven out by certain antisocial elements and petrol was poured on the bus and the bus got burnt and in that process the ticket books were lost and in the decision second cited the ticket books were stolen away while the petitioner was issuing the tickets. In this case the certificate issued by the Sub Inspector of Police, Alipiri Police Station, Tirupathi north clearly shows that the conductor of the bus escaped from the bus by leaving the service ticket worth about Rs.48,915/- and if the conductor was careful and not negligent, he would have avoided loss caused to the Corporation. Thus the citations referred to by the learned counsel for the petitioners are not applicable to the present case. Therefore, this Court finds that since the petitioners gave reference letter to the Corporation at the time of appointment of Mr.Arugadas as a temporary conductor and in the reference letter they gave an undertaking that in case of any loss caused by the said Arugadas and if he failed to repay the same, the petitioners would be held liable, the order of recovery came to be passed and therefore the same cannot be faulted with.

7. In view of the same, this Court finds that there is no merit in the Writ Petitions and same are liable to be dismissed. Accordingly, the writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

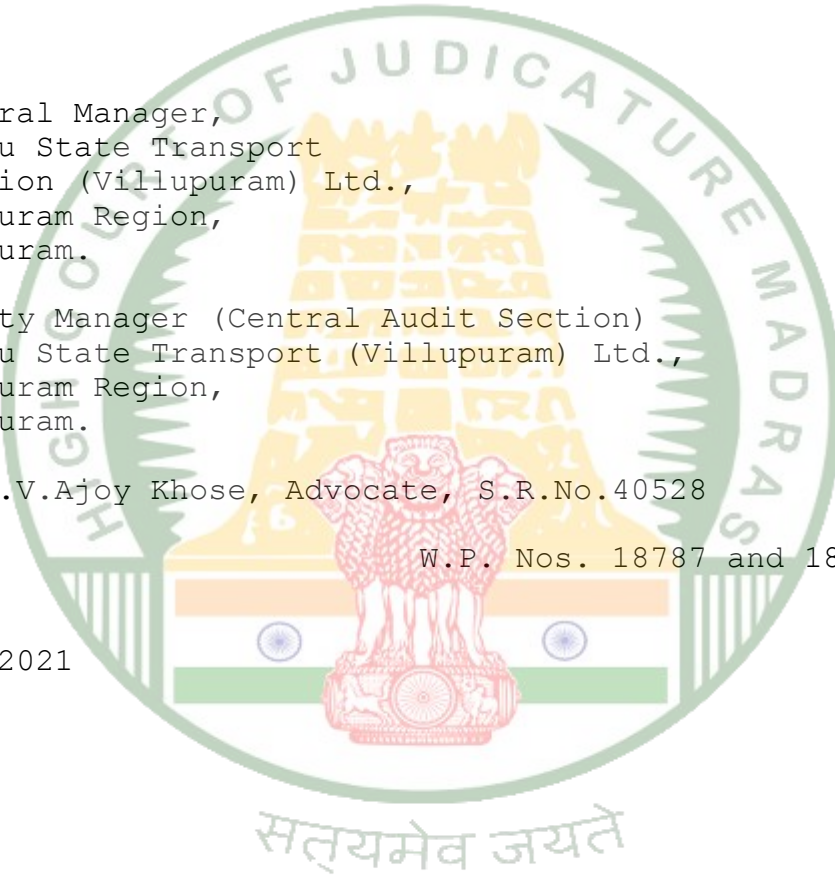
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2.The Deputy Manager (Central Audit Section)
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+2cc to Mr.V.Ajoy Khose, Advocate, S.R.No.40528

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LN(CO)
KKV/05/01/2021



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