



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.01.2022

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE **S. SRIMATHY**

W.P. (MD)Nos.5068 and 12115 of 2015
and
M.P. (MD)Nos.1 and 2 of 2015

W.P. (MD)No.5068 of 2015:

A.Vijayan ... Petitioner

vs.

1.State Express Transport Corporation
(Tamil Nadu) Limited,
represented by its Managing Director,
Pallavan Salai, Chennai - 02.

2.The General Manager,
State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai, Chennai - 02.

3.The Assistant Manager,
Invoice Audit Section,
State Express Transport Corporation
(Tamil Nadu) Limited,
Central Workshop,
Tiruchirapalli - 23.

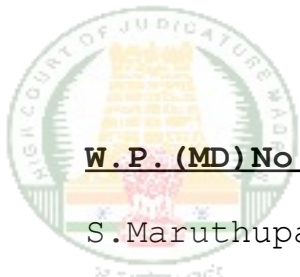
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in ref: Ka No.002/VaPaTha3/AaViPoKa/Thiru/13, dated 13.11.2014, to quash the same and consequently to direct the respondents refund the petitioner the amount already recovered from his salary towards loss of unused ticket books in road traffic accident which occurred during his duty on 13.10.2014 and towards charges for recovering the bus by engaging a crane.

For Petitioner : Mr.A.Rahul

For R1 and R2 : Mr.K.Sathiya Singh

For R3 : No appearance



W.P. (MD) No.12115 of 2015:

S.Maruthupandian

... Petitioner

vs.

1.The Tamil Nadu State Transport Corporation
(Madurai) Limited,
represented by its Managing Director,
Bye-pass Road, Madurai.

2.The General Manager,
Tamil Nadu Transport Corporation (Madurai)
Limited,
Bye-pass Road, Madurai..

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in Ref: ONaThu/D2/SIP/1067, dated 30.04.2015, to quash the same and consequently to direct the respondents refund the petitioner the amount already recovered from his salary towards loss of unused ticket books, which occurred during his duty on 07.12.2013.

For Petitioner : Mr.A.Rahul
For Respondents : No appearance

COMMON ORDER

The Writ Petition in W.P.(MD)No.5068 of 2015, is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent in ref:Ka No.002/VaPaTha3/AaViPoKa/Thiru/13, dated 13.11.2014 and consequently to direct the respondents refund the petitioner the amount already recovered from his salary towards for loss of unused ticket books in road traffic accident which occurred during his duty on 13.10.2014 and towards charges for recovering the bus by engaging a crane.

2.The Writ Petition in W.P.(MD)No.12115 of 2015, is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent in Ref:ONaThu/D2/SIP/1067, dated 30.04.2015 and consequently to direct the respondents refund the petitioner the amount already recovered from his salary towards loss of unused ticket books, which occurred during his duty on 07.12.2013.

3.The petitioner in W.P.(MD)No.5068 of 2015, Mr. A. Vijayan was a Conductor. While in duty from Madurai to Chennai on



12.10.2014, the Bus bearing Registration No. TN 01-AN 0034, met with an accident at 04.30 a.m. on 13.10.2014. The Driver of the bus hit the center median of the National Highway and the Bus went to the opposite road and fell inside a pit. The petitioner, the Driver and few passengers sustained injuries. The petitioner sustained head injury and was treated in the hospital and he had taken further treatment from 14.10.2014 to 05.11.2014. Immediately after the accident, the petitioner had reported to the Branch Manager of Madurai Branch about the loss of tickets to the tune of Rs.38,500/- (Rupees Thirty Eight Thousand and Five Hundred only). The petitioner had preferred a complaint in Crime No.276 of 2014, on the file of Olakkur Police Station, Vilupuram District against the Driver for the offence under Section 279 and 339 of IPC. The petitioner had also paid Rs.2,000/- (Rupees Two Thousand only) for the expenses incurred for engaging the Crane to recover the bus. Aggrieved over the same, the petitioner had filed this Writ Petition.

4.The respondents have not filed any counter affidavit.

5.Heard Mr.A.Rahul, learned Counsel appearing for the petitioner and Mr.K.Sathiya Singh, learned Standing Counsel appearing for the first and second respondents.

6.The contention of the petitioner is that the recovery of loss of tickets and the expenses for using Crane cannot be fasten on the petitioner and the petitioner relied on Clause 29 of 12(3) Settlement of the year 1995. It has been specifically stated that when the tickets are lost due to road accident, theft or robbery, the same shall not be collected from the petitioner. The relevant portion of the Clause 29 of 12(3) Settlement is culled out hereunder:

"Clause 29. 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 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."



7. 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 Ottanchatram 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."

WEB COPY

8.The respondents contended that the petitioner had not substantiated the loss is due to the accident because the petitioner being conductor would be seated in the back side of the bus. Since in the accident, the front portion was damaged, it is unbelievable that the tickets were lost due to accident.

9.In this present case, the petitioner had preferred police complaint immediately about the loss of tickets due to accident. Therefore, this Court is convinced that the petitioner preferred an FIR immediately after the accident 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 recovered from his salary towards loss of unused ticket books and also refund the amount which was used for the expenses of crane to recover the bus.

10.The Writ Petition in W.P.(MD)No.12115 of 2015 is filed by Mr. S. Maruthupandian and the contention of the petitioner is that he was having the tickets in the bag along with his personal belongings. A person who was sitting next to the Conductor's seat and had taken the conductor's bag deliberately and the bag was lost due to theft. The petitioner's contention is that the petitioner is protected under Clause 29 of the 12(3) settlement. In the instant case the petitioner preferred a complaint to police, but the Police refused to register the same. Thereafter the petitioner approached this Court for registering the complaint and this Court on 18.02.2014, directed the concerned police officer to register the complaint and thereafter, the complaint was registered. Therefore, this Court is convinced that the petitioner is protected under the clause 29 of the 12(3) settlement for loss of bag due to theft. The petitioner submitted that the respondents have already deducted Rs.2,500/- (Rupees Two Thousand and Five Hundred only) and due to interim order the balance amount was not deducted from his salary.

11.Therefore, this Court is setting aside the impugned order and 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.



12. Accordingly, the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (WRITS)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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.

To

1. The Managing Director,
State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai, Chennai - 02.
2. The General Manager,
State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai, Chennai - 02.
3. The Assistant Manager,
Invoice Audit Section,
State Express Transport Corporation
(Tamil Nadu) Limited,
Central Workshop,
Tiruchirapalli - 23.
4. The Managing Director
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Bye-pass Road, Madurai.
5. The General Manager,
Tamil Nadu Transport Corporation (Madurai)
Limited,
Bye-pass Road, Madurai..

+1 CC to M/s.K.SATHIYA SINGH, Advocate
(SR-1626[F] dated 12/01/2022)

+2 CC to M/s.A.RAHUL, Advocate (SR-1629,1630[F] dated 19/01/2022)
W.P. (MD)Nos.5068 and 12115 of 2015

12.01.2022

SS/04.04.2022 : 6P/9C