



WEB COPY



*WP.No.10247/2017*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.10247/2017 & WMP.Nos.11193 to 11195/2017

R.Masilamani

... Petitioner

Versus

1.The Managing Director,  
Tamil Nadu State Transport  
Corporation [Salem] Limited,  
No.12, Ramakrishna Road  
Salem 636 007.

2.The General Manager  
Tamil Nadu State Transport  
Corporation [Salem] Limited  
No.12, Ramakrishna Road  
Salem 636 007.

3.The Branch Manager  
Namakkal Town Branch  
Tamil Nadu State Transport  
Corporation [Salem] Limited, Namakkal.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records from the 2<sup>nd</sup> respondent's Notice No.30-508-d6-tha.a.po.ka.2015



**WP.No.10247/2017**

dated 15.02.2017 as well as the 1<sup>st</sup> respondent's order File No.A30-508-d6-tha.aa.po.ka-2105-17 dated 27.03.2017, relating to recovery of Rs.72,441/- from petitioner's salary, and quash the same and consequently direct the 3<sup>rd</sup> respondent to grant the petitioner's salary without any recovery.

For Petitioner : Mr. P.Saravanan  
For Respondents : Mr. R.Babu, Standing counsel

### ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking the records of a Notice of the 2<sup>nd</sup> respondent, the General Manager, Tamil Nadu State Transport Corporation [Salem] Limited, in Notice No.30-508-d6-tha.a.po.ka.2015 dated 15.02.2017 as well as the order of the 1<sup>st</sup> respondent, the Managing Director, Tamil Nadu State Transport Corporation [Salem] Limited, in File No.A30-508-d6-tha.aa.po.ka.2015-17 dated 27.03.2017, by which, the recovery of a sum of Rs.72,441/- from the salary of the petitioner was directed and to quash both the aforementioned notice and order and to direct the 3<sup>rd</sup> respondent to grant the salary of the petitioner without any recovery.
- (2) The petitioner herein had been working as a Conductor in the



**WP.No.10247/2017**

WEB COPY

respondents, Tamil Nadu State Transport Corporation [Salem] Limited, from 16.02.1985. At the time of filing of the writ petition in the year 2017, he was in service. But, subsequently, he had attained the age of superannuation on 31.05.2017 and had retired from service. On 05.12.2014, when he was the Conductor in a bus bearing Registration No.TN-30-N-1174, plying between Salem and Dindigul route, the bus was parked near the new Bus Stand, Salem. He had kept his handbag with the ticket bundles in the seat and he claimed that he had informed the driver about it. He then came over to Time Keeper's office for signing in the Time Book and returned to the bus. He found that the ticket bag was stolen by unknown persons. He tried to trace the bag. But could not find it. He then lodged a complaint on 08.12.2014 at Pallapatti Police Station. CSR.No.318/2014 was registered and a Non Traceable Certificate was also issued. A show cause notice was issued by the 2<sup>nd</sup> respondent on 12.02.2015 as to why disciplinary action should not be initiated against the petitioner herein. The petitioner had given his explanation on 20.03.2015. He also sought mercy by filing a petition



**WP.No.10247/2017**

on 05.10.2015 seeking dropping of disciplinary proceedings.

However, the 2<sup>nd</sup> respondent had issued final order to recover an amount of Rs.72,441/- from the salary of the petitioner herein. He had then given a further petition seeking mercy to the 1<sup>st</sup> respondent on 22.02.2017. He also filed a writ petition in WP.No.4994/2017. This Court had directed that the petitioner should be afforded an opportunity of personal hearing by considering the appeal. It was stated that all further proceedings should be deferred. The writ petition was disposed of. It is claimed that the petitioner was not called for any personal hearing, but that the impugned order was passed by the 1<sup>st</sup> respondent on 27.03.2017 seeking recovery of a sum of Rs.72,441/- from the salary of the petitioner herein.

- (3) The respondents have entered appearance. But have not filed a counter affidavit.
- (4) The records speak for themselves. The petitioner was the Conductor in Bus No.TN-30-N-1174, plying between Salem and Dindigul. The bus was parked at Salem New Bus Stand. The petitioner had left his bag in the bus and had gone over to the Time Keeper's office. When



**WP.No.10247/2017**

WEB COPY

he came back, he found that the bag was stolen. This was on 05.12.2014. He tried in vain to search for the bag, but could not find it. He then lodged a complaint on 08.12.2014 before the Pallapatti Police Station and a CSR in CSR.No.318/2014 was registered and subsequently, a Non Traceable Certificate was also issued.

- (5) A show cause notice was issued to the petitioner on 12.02.2015. The petitioner had given an explanation. However, the 2<sup>nd</sup> respondent, the General Manager, Tamil Nadu State Transport Corporation [Salem] Limited, had passed orders directing recovery of a sum of Rs.72,441/- from the salary of the petitioner herein. There is an appeal provision which is provided before the 1<sup>st</sup> respondent/Managing Director, Tamil Nadu State Transport Corporation [Salem] Limited. At that juncture, after filing an appeal, the petitioner had also simultaneously filed WP.No.4994/2017 seeking interference with the order of the 2<sup>nd</sup> respondent. A learned Single Judge of this Court, by an order dated 28.02.2017, directed that the petitioner should be afforded with personal hearing and thereafter, the 1<sup>st</sup> respondent can pass necessary orders. The order of the 1<sup>st</sup> respondent, dated 27.03.2017 is also



**WP.No.10247/2017**

impugned in the present writ petition.

WEB COPY

(6) A reading of the same shows that there cannot be any inference drawn that the petitioner was given an opportunity of personal hearing as directed by this Court in the earlier writ petition in WP.No.4994/2017. A grant of opportunity to explain the circumstances under which the bag went missing is sacrosanct and is inbuilt in the principles of natural justice around which every disciplinary proceedings should be conducted. There cannot be an order passed without there being an opportunity being granted to the delinquent to explain the circumstances. Such opportunity, should not only be an opportunity for the sake of it, but should be an effective opportunity. There was a direction in WP.No.4994/2017, wherein, specifically all further proceedings of the 1<sup>st</sup> respondent were directed to be deferred and then, orders to be passed only after giving an opportunity of personal hearing to the petitioner. However, the 1<sup>st</sup> respondent in the impugned order, had stated that he had perused the records and had found that the order of the 2<sup>nd</sup> respondent was perfectly in order and therefore, had proceeded to confirm the



**WP.No.10247/2017**

WEB COPY

same. The 1<sup>st</sup> respondent, before taking such a view while looking into the records, should also have kept in mind the petitioner herein and should have sought information from the petitioner about the circumstances under which the bag was lost or stolen. In view of that particular non-adherence to the direction of this Court and more particularly, non-adherence to the fundamental principles of natural justice, the order impugned naturally has to be interfered with by this Court.

- (7) Quite apart from that particular aspect, the learned counsel for the petitioner placed reliance on three further aspects.
- (8) The first is the Wage Settlement reached under Section 12[3] of the Industrial Disputes Act, between the Union and the Management with respect to the recovery of the value of the ticket and the circumstances under which such recovery should not be initiated by the Management. The circumstances under which such recovery should not be initiated are rioting, accident, theft and dacoity. In the instant case, the bag was lost also because of negligence, but primarily because somebody had stolen the bag. The contribution is



**WP.No.10247/2017**

WEB COPY

not only on the petitioner, but also because there was corresponding theft of the bag.

- (9) The 2<sup>nd</sup> aspect which the learned counsel for the petitioner pressed is the judgment of a learned Single Judge of this Court, namely, the Hon'ble Mr. Justice *P.SATHASIVAM* [as His Lordship then was] reported in *2003 [1] LLJ 1021 [Palanisamy Vs. Management of Rani Mangammal Transport Corporation, Dindigul]*. The learned Judge examined an issue when a conductor had lost the ticket bags which were unused and also lost his personal belongings. In that case also, he had given a complaint and subsequently, the respondents therein had issued a notice charging him with negligence and directing recovery of the amount of the value of the tickets therein. The learned Judge had also examined the Wage Settlement which was also relied on by the learned counsel in the instant case and thought it fit that since it had been agreed in the Settlement in the year 1995 that no recovery proceedings to be initiated for the loss of ticket books, the impugned order therein was set aside. The relevant portion is as follows:-



WP.No.10247/2017

*"9.It is also brought to my notice that it was agreed in the Wage Settlement in 1995 that no recovery proceeding shall be initiated against conductors for loss of ticket books due to riot, accident, theft etc. Clause 29 of the 1995 Wage Settlement is extracted hereunder:-.....*

*No doubt, this Settlement is with effect from 1995 and in our case, the petitioner conductor, had lost the ticket books in 1992. In the light of the above discussion and also considering the difficulties in carrying the ticket books by the conductors coupled with the decision arrived at in the 1995 Settlement that no action would be taken against the conductors for loss of tickets due to riot, accident, theft etc., I am of the view that the same can be applied to the case of the petitioner. On this ground, the impugned order of the respondent is liable to be set aside."*

- (10) The third aspect on which the learned counsel for the petitioner pressed is the judgment of another learned Single Judge of this Court dated 04.01.2010 in WP.No.8295/2003 ***[N.Palanisamy Vs. The General Manager, Tamil Nadu State Transport Corporation [Coimbatore Div-II] Limited]***. In that case also , the conductor had



**WP.No.10247/2017**

WEB COPY

been assisting the driver to take the bus in reverse and thereafter, went to take the bag which he had kept on the left side of the driver dashboard. When he went to get the bag, he found it was missing. Once again, it was an issue of theft of the bag. The learned Single Judge placed reliance on the judgment reported in **2003 [1] LLJ 1021 [referred to supra]** and also observed that consequent to the Wage Settlement reached with the Management, there cannot be any recovery of the value of the tickets. It was also directed that the entire amount recovered should be refunded without interest to the petitioner therein.

- (11) I have carefully considered all these aspects.
- (12) In the instant case, the learned counsel for the petitioner had produced a copy of the Settlement reached under Section 12[3] of the Industrial Disputes Act in the year 2007. It had been very specifically stated that theft is one of the grounds in which there cannot be any recovery of the value of the ticket books.
- (13) In view of that particular Agreement that had been reached with the



**WP.No.10247/2017**

WEB COPY

Union and also because of the fact that the Settlement has been upheld by two earlier precedents of this Court and maintaining consistency, I hold that the impugned order has to be necessarily interfered and has to be set aside.

- (14) Learned counsel for the petitioner stated that the petitioner having retired on attaining the age of superannuation, had not been paid with his retirement benefits. A direction is given to the respondents herein to proceed further to determine the retirement benefits payable to the petitioner and pass necessary proceedings within a period of sixteen weeks from the date of receipt of a copy of this order.
- (15) The writ petition stands **allowed** and the impugned orders of the 2<sup>nd</sup> and 1<sup>st</sup> respondents dated 15.02.2017 and 27.03.2017 respectively stand quashed. No costs. Consequently, connected miscellaneous petitions are closed.

08.08.2023

AP  
Internet : Yes



**WP.No.10247/2017**

WEB COPY To

- 1.The Managing Director,  
Tamil Nadu State Transport  
Corporation [Salem] Limited,  
No.12, Ramakrishna Road  
Salem 636 007.
- 2.The General Manager  
Tamil Nadu State Transport  
Corporation [Salem] Limited  
No.12, Ramakrishna Road  
Salem 636 007.
- 3.The Branch Manager  
Namakkal Town Branch  
Tamil Nadu State Transport  
Corporation [Salem] Limited, Namakkal.



WEB COPY



*WP.No.10247/2017*

C.V.KARTHIKEYAN, J.,

AP

WP.No.10247/2017

08.08.2023