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W.A.(MD) No.1559 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.(MD) No.1559 of 2023
and
C.M.P.(MD) No.12092 of 2023**

The Management of
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region
rep.by its General Manager
Madurai

... Appellant

-vs-

M.Sherfudeen

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 11.01.2022, passed in W.P.(MD) No.2661 of 2015, on the file of this Court.

For Appellant : Mr.S.C.Herold Singh

For Respondent : Mr.S.Arunachalam

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J U D G M E N T

[Judgment of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This writ appeal is directed against the order of the learned Single Judge, dated 11.01.2022, passed in W.P.(MD) No.2661 of 2015 filed by the respondent herein for issuance of a writ of certiorarified mandamus to call for the records relating to the order dated 12.01.2015, passed by the appellant, quash the same and to direct the appellant to refund the amount already recovered from his monthly wages and to treat the period from 22.09.2012 to 12.10.2012 as duty period with pay.

2. As a matter of fact, the learned Single Judge allowed the writ petition, while upholding the order of punishment imposed on the respondent being the punishment of stoppage of increment for three months without cumulative effect.

3. The case of the respondent / writ petitioner is that he was working as a Special Grade Conductor in the appellant – Transport Corporation. While the respondent was in duty on 08.09.2012 in the bus bearing registration No.TN58 N1913, plying between Madurai and Tuticorin,



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he was given an Electronic Ticket Machine (ETM) for issue of tickets. On completion of trip at Madurai Mattuthavani Bus Stand at 01.30 a.m. on 09.09.2012, the respondent found that the printed ticket books, which were kept in his bag, was stolen. Therefore, a complaint was lodged with the concerned Police on 09.09.2012. As a matter of fact, after enquiry and finding negligence on the part of the respondent, a punishment of stoppage of increment for three months without cumulative effect was imposed on him. At the same time, by order dated 12.01.2015, the entire face value of the ticket book i.e. Rs.37,256/- was ordered to be recovered from the salary of the respondent in twenty monthly installments. Aggrieved by the same, the respondent filed the above writ petition.

4. The learned Single Judge, by order dated 11.01.2022, upon considering the case of the parties and considering the fact that there is a 12(3) settlement, in which the Management and the employees have agreed that face value of the ticket books cannot be recovered and the earlier Judgment of this Court in ***Rani Mangammal Transport Corporation Limited vs. M.Palanisamy***, reported in ***(2008) 1 MLJ 224***, which held that such a recovery cannot be made, allowed the writ petition as stated above.



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Challenging the same, the Management of the Transport Corporation has preferred the present writ appeal.

5. Mr.S.C.Herold Singh, learned counsel appearing for the appellant would submit that in this case, when the respondent has been given an ETM machine, there is every possibility of misusing the ticket books and therefore, the amount is sought to be recovered from the salary of the respondent. It is his further contention that when the respondent has negligently misplaced the unused tickets, the same would not amount to theft and therefore, it will not be covered by 12(3) settlement entered into between the Management and the employees.

6. We have considered the submissions made by the learned counsel for the appellant and perused the materials placed on record.

7. We are unable to accept the contentions of the learned counsel for the appellant. As a matter of fact, a perusal of the complaint clearly shows that when the respondent looked in his bag, he found that the ticket books were missing. Therefore, the same is a clear case of theft falling within the



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12(3) settlement between the parties. As far as the possibility of misuse of ticket book is concerned, by way of presumption or mere suspicion, the amount cannot be recovered. If only the appellant – Corporation comes with a definite stand that it suffered a loss, then the question of recovery of loss arises. The sum cannot be deducted from the wages of the respondent only on the mere suspicion, without fixing the responsibility. As a matter of fact, the appellant has conducted an enquiry and finding only negligence and not any misuse or actual loss, had imposed only stoppage of increment for three months without cumulative effect. In that view of the matter, we are unable to countenance the arguments of the learned counsel appearing for the appellant.

8. In the result, finding no merits, this writ appeal is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.]

[D.B.C., J.]

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