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W.P.(MD)No.14274 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.14274 of 2016

and

W.M.P.(MD)Nos.10599 and 10600 of 2016

V.Pandiarajan

... Petitioner

vs.

1.The General Manager,
Department of Disciplinary Proceedings,
Tamilnadu State Transport Corporation
(Madurai) Limited,
Madurai Division, Madurai.

2.The Branch Manager,
Tamilnadu State Transport Corporation,
Thirumangalam Depot,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the



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records pertaining to the impugned proceedings of 1st respondent in Parvai/O.Na.Thu/D7/Thi.Ma/CR/3254, dated 29.02.2016, which served on 15.04.2016 and to quash the same as illegal and un-constitutional, consequently, to direct the 2nd respondent to return back the money of Rs.13,234/- (Rupees Thirteen Thousand Two Hundred and Thirty Four only) which was recovered from the petitioner and acknowledged by the 2nd respondent in receipt No.106575, dated 07.12.2015, for missing of ticket-books in question.

For Petitioner : Mr.S.Balamurugan

For Respondents : Mr.S.C.Herold Singh

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned proceedings dated 29.02.2016 of 1st respondent and consequently to direct the 2nd respondent to return back the money of Rs.13,234/- (Rupees Thirteen Thousand Two Hundred and Thirty Four



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3. The 1st respondent issued charge memo, dated 31.12.2015, for missing ticket books. The petitioner submitted explanations but the explanations were not satisfactory to the 1st respondent. Hence, a show cause notice was issued. The respondents proposed a punishment of stoppage of increment for six months without cumulative effect and passed the impugned order, dated 15.04.2016.

4. The petitioner relied on the 12(3) settlement between the Trade Unions and the Management of all State Transport Corporations, wherein it is stated that whenever the ticket books are lost in robbery, theft, riot and accident and an FIR has been registered for the loss of ticket books, no recovery should be effect. However, the respondents have recovered money from the petitioner and also imposed a punishment for the missing of ticket books. Hence, the petitioner prayed to return back the



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recovered amount and set aside the punishment.

5.The respondents have not filed any counter affidavit, but relied on the impugned order and submitted that due to the petitioner's carelessness the tickets were lost. Infact some tickets were recovered but some tickets could not be recovered, which would indicate the petitioner's carelessness and prayed to dismiss the petition.

6.Heard S.Balamurugan, learned Counsel appearing for the petitioner and Mr.S.C.Herold Singh, learned Counsel appearing for the respondents.

7.The relevant portion of the Clause 29 of 12(3) Settlement is culled out hereunder:



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“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.”

8.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



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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.”

9.In this present case, the petitioner preferred FIR immediately for the loss of the tickets and had intimated the loss of tickets to the higher officials as well. 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 towards missing of ticket books.



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10. Accordingly, the Writ Petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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S.SRIMATHY, J

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