



W.P.No.3028 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 28.02.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.3028 of 2012
and M.P.No.2 of 2012

S.Vinayagam

.. Petitioner

Versus

1. The General Manager,
Tamil Nadu State Transport Corporation,
Villupuram Division,
Villupuram.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division,
Villupuram.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records of the first respondent in his proceedings Ka.No.0023/Va.Tha.P-5/TNGTC, dated 03.11.2011 and quash the same.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mrs.S.Pavithra,
Standing Counsel for TNSTC



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ORDER

This Writ Petition is filed challenging the proceedings of the first respondent, dated 03.11.2011, in and by which, a sum of Rs.30,250/- was ordered to be recovered from the petitioner towards lost items.

2. The case of the petitioner is that the petitioner is a Conductor in the respondent Organisation. While he was on duty on 12.07.2011, during the course of discharge of his duties, when he got down from bus to see the rear side, Electronic Ticketing Machine and Standby ticket book, kept by him in the bus was found missing and therefore, he terminated the service and lodged a Police complaint. Thereafter, the present show-cause notice, dated 29.09.2011 was issued to him proposing to recover a sum of Rs.23,750/- towards the value of the printed tickets and Rs.6,500/- towards the value of the machine. The petitioner submitted his explanation that he was not at all responsible for the loss and that there was no misuse.

3. Further, in view of the settlement under Section 12(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') entered



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into between the workmen and management, in respect of loss due to riots, accidents, theft and robbery, the loss cannot be recovered from the employee. In spite of such an explanation, the impugned order was passed ordering recovery of the amount and hence the Writ Petition.

4. *Mr.S.Senthilnathan*, learned Counsel for the petitioner, reiterating the submissions made in the affidavit filed in support of the Writ Petition, would also rely upon the judgment of this Court in ***M.Kaliappan Vs. Tamil Nadu State Transport Corporation, rep. by its Managing Director and Ors. (W.P.No.24268 of 2017***, dated 12.04.2022), wherein, under identical circumstances, this Court has held that when there is a settlement under Section 12(3) of the *Act*, mandating not to recover the amount, the action of the management is held to be illegal. Not only in the above said judgment, the dictum has been followed in several other judgments and therefore, the impugned order has to be set aside.

5. Per *contra*, *Mrs.S.Pavithra*, learned Standing Counsel for the respondent Corporation, would submit that the respondent Corporation is entitled to recover the value of the Electronic Machine and also the value of



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the tickets as there is a possibility of the same being misused and issued by the petitioner to the passengers and the collection amount being misappropriated.

6. I have considered the rival submissions made on either side and perused the material records of the case.

7. Firstly, in respect of the printed tickets, there is no proof that the employee concerned has actually issued to some other person and is falsely claiming that the tickets are lost. Therefore, in that view of the matter, recovery cannot be ordered on a mere surmise. Secondly, as far as the loss is concerned, if a passenger has travelled and a ticket has been issued to him and the lawful amount due to the Corporation has not come to the coffers of the Corporation, the same would be a loss. Merely because the printed ticket books were lost, the entire amount cannot be calculated and recovered from the employee. It is in this context, the settlement under Section 12(3) of the *Act* was also entered into between the management and the employee. It is on the principle that no loss has been proved or that there is no material for loss, this Court has also, in the earlier judgments, held that the entire



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value of tickets cannot be recovered from the employee. However, negligence is alleged in respect of losing the said printed tickets as well as the Electronic Machine. Therefore, not the value of the tickets, but, the actual cost of printing the tickets and the value of the Electronic Machine can be recovered from the petitioner provided the respondent management come to the conclusion that the petitioner is negligent in the matter.

8. As a matter of fact, it is very intriguing that there are repeated cases of theft of these Electronic Ticket Vending Machines and printed tickets. It does not appeal to the reason as to why would any person steal these things. In spite of repeated orders of this Court, it is seen that the respondent management, if it suspects foul play on employees, instead of taking disciplinary action, is only repeatedly resorting to recovery alone. Be that as it may, the earlier settlement under Section 12(3) of the *Act* as well as the judgment of this Court is that unless there is a corresponding loss, the amount cannot be received from the employee. Therefore, if a book of tickets of value of Rs.10/- each, containing 100 tickets, is lost, it cannot be said that the entire amount, i.e., 100 x Rs.10/- is loss to the Corporation. Actually, the passengers should have been got into the bus, purchased their



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ticket and the money should not have been collected. It is on that principle, the settlement under Section 12(3) of the *Act* was entered into and there were earlier judgments that amount should not be recovered. Therefore, to that extent, the present writ petitioner is entitled to succeed, but, however, towards the value of the machine and the cost of printing the tickets, the management will be entitled to recover, if the loss is caused due to negligence.

9. In that view of the matter, this Writ Petition is disposed of on the following terms :-

(i) The impugned order bearing reference No.Ka.No.0023/Va.Tha.P-5/TNGTC , dated 03.11.2011 is quashed;

(ii) The amount, if any, recovered from the petitioner pursuant to the impugned order shall be refunded to the petitioner;

(iii) However, it is open to the respondent management to issue a show-cause notice for the value of the Electronic Ticketing Machine and the cost of printing of the tickets alone and after hearing the explanation of the petitioner, take a fresh decision in that regard;



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(iv) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28.02.2024

Index : yes
Speaking order
Neutral Citation : yes
grs

To

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D.BHARATHA CHAKRAVARTHY, J.

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