



WEB COPY



W.P.No.18465 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.18465 of 2020

G.Dhayalan

...Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore – 641 002.

2. The General Manager,
Tamil Nadu State Transport Corporation,
Erode Region (Head Office),
Chennimalai Road,
Erode - 638 001.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the order passed on appeal by the 1st respondent in his proceedings No.Pa.No.1 / D3/356 / Law / ER / 2017 dated 26.10.2019 confirming the order of recovery passed by the 2nd respondent in his Proc. Pa.No. 1 / D3 / 356 / Law / TNSTC /ER / 2017 dated 9.1.2019, quash the same and consequently direct the respondents to repay the entire recovered amount of Rs.80 560/- after duly deducting the printing charges for the loss of ticket books as prayed by the petitioner.



W.P.No.18465 of 2020

For Petitioner : Ms.S.Girija

For Respondents : Mr.M.Murali Vinodh
for R1 and R2

ORDER

The instant Writ Petition has been filed challenging the order of recovery dated 26.10.2019.

2.The learned counsel for the petitioner would vehemently submit that the petitioner was as a Conductor in the 1st respondent/Corporation. Whereas whileso, when he was in duty, on 11.04.2017, at Erode Bus Stand in a Bus bearing No.TN39 N 0074, a ticket book kept safely near the driver's cabin, was missing and that, in pursuance thereof, a police complaint was given on 12.04.2017. The learned counsel would further contend that subsequent to the police complaint, the police has given a Non-traceable Certificate on 19.04.2017. However, in contravention to the Bipartite Settlement, the respondents have passed recovery order dated 23.02.2019, and they erroneously confirmed the same vide order dated 26.10.2019 and that these orders are in contravention to the above referred Settlement and against the various precedents of this Court. Hence, he prayed to interfere with the same.



3.The learned counsel for the respondents would contend that those loss has occurred only due to the negligence of the petitioner. Therefore, the order passed by the Authority concerned, is in order and does not require any interference.

4.I have given my anxious consideration to either side submissions.

5.The learned counsel for the petitioner invited the attention of this Court in respect of the Bipartite Settlement, wherein Clause 9 stipulates that, if there is any theft or any loss of ticket books then the Corporation should not claim the value of the tickets. But in contrast, such recovery order passed, inspite of the police complaint, that too ignoring the Non-traceable Certificate issued by them.

6.In this regard, the learned counsel for the petitioner has relied upon the Judgment of this Court in W.P.No.30955 of 2012 dated 22.03.2018 in the case of S.Chinnasamy v. The Managing Director, Tamil Nadu State Transport Corporation 9Coimbatore) Limited, 27, Mettupalayam Road, Coimbatore 641 002, wherein the learned Single Judge has relied upon various Division Bench Judgment, more specifically in W.A.No.1122 of 2012 dated 18.07.2012 and the Management of Rani Mangammal Transport Corporation Limited, v.



M.Palanisamy reported in (2008) 1 MLJ 2024. The relevant paragraph is paragraph 9, which reads as follows:

“9.Moreover, the learned counsel for the petitioner would also submit that the recovery order has been imposed by the Management is also contrary to the settled legal principle enunciated by this Court on the same subject matter and also the same is contrary to the 12(3) Settlement entered into between the workman and the Management. The learned counsel would draw the attention of this Court to an order passed by the learned Single Judge in W.P.No.647 of 2013, dated 22.09.2017, wherein, in identical circumstances, this Court has intervened and allowed the writ petition. The order passed by the learned Single Judge of this Court was on the basis of the order passed by the Hon'ble Division Bench of this Court. The submissions of the learned counsel therein and the findings of the learned Single Judge as found in paragraph Nos.5 to 10, are reproduced below:-

“5.Mr.V.Ajoy Khose, learned counsel appearing for the petitioner would submit that the issue is directly covered by Clause 17 of 12(3) settlement dated 29.08.2005 in and by which the Corporation had accepted and agreed that no recovery will be made from the conductors towards the value of those ticket books which were lost. According to the learned counsel for the petitioner, the agreement is still in force and the same was applied wherever there is a loss of ticket bundles, for which no recovery action was initiated. 12(3) settlement between the workers and the Corporation in respect of the said issue has not been disputed by the learned counsel for the Corporation.

6.Learned counsel appearing for the petitioner would further draw the attention of this Court that in similar circumstances, this Court has time and again held that no recovery could be made



WEB COPY



W.P.No.18465 of 2020

from the conductors, if ticket bundles were lost. He would draw the attention of this Court to the order passed by the learned single Judge dated 23.06.2011 in W.P.No.9686 of 2011. The learned Judge of this Court, after following the Division Bench decision, directed the return of the recovery amount from the conductor concerned. The operative portion of the order is extracted below:

“4.In the light of the said categorical pronouncement made by the Division Bench particularly in paragraphs 4 and 5 holding that the said demand is contrary to Clause 29 of the Settlement and the fact that the similar settlement is now in force, the impugned order is set aside and the writ petition is allowed. The amount already recovered to the tune of Rs.5,693/- is directed to be returned to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.”

7.The said decision of the learned single Judge has been confirmed in W.A.No.1122 of 2012 dated 18.07.2012. Learned counsel would also draw the attention of this Court to yet another decision of this Court in Management of Rani Mangammal Transport Corporation Ltd., Vs. M.Palanisamy ((2008) 1 MLJ 224), wherein a Division Bench of this Court has clearly held that no amount can be recovered from the bus conductor when there was loss of bus ticket books not due to any negligence on the part of the conductor. These decisions squarely cover the case in favour of the petitioner.

8.Mr.P.Paramasivadosh, learned counsel appearing for the respondents would vehemently oppose the grant of any relief to the petitioner on the ground that unless the loss is compensated by the conductor



WEB COPY

concerned, there would not be any responsibility on the part of any conductor for keeping ticket book in safe custody. However, he would not dispute the settlement arrived at between the workers and the management in this regard. He would also have no quarrel with the legal proposition laid down by this Court both by the learned single Judge and by the Division Benches as relied on by the learned counsel for the petitioner.

9. In view of the admitted position that the issue is directly covered by the aforesaid decisions and also in view of the binding agreement between the workmen and the management, this Court has no hesitation in allowing the writ petition. The impugned order dated 06.12.2012 is therefore set aside. The respondents are also directed to treat the period of the petitioner's non-employment as duty for the aforesaid reasons and pay the admissible wages for the said period. The respondents are directed to pass orders in compliance with these directions within a period of four weeks from the date of receipt of a copy of this order."

According to the above Judgment, if there is a missing of ticket books, and such missing is without the negligence of the workman, then the recovery of total value of ticket cannot be effected against the workman, as the same contravenes the Bipartite Agreement. As such, the issue involved in this case, is no longer *res integra*. In view of the same, the instant recovery proceedings is illegal and liable to be quashed.

7. Accordingly, this Writ Petition is allowed. At this juncture, the learned counsel for the petitioner would submit that the respondents have already recovered the total value of the ticket from the petitioner. If that being the case,



W.P.No.18465 of 2020

the respondents are directed to refund the said amount to the petitioner after deducting the printing charge, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

21.10.2024

Index :Yes/No
Speaking order :Yes/No
Neutral citation :Yes/No
mps

To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore – 641 002.
2. The General Manager,
Tamil Nadu State Transport Corporation,
Erode Region (Head Office),
Chennimalai Road,
Erode - 638 001.



WEB COPY



W.P.No.18465 of 2020

C. KUMARAPPAN, J.

mps

W.P.No.18465 of 2020

21.10.2024