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WP(MD).15038 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.02.2025

PRONOUNCED ON : 14.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

WP(MD)No.15038 of 2021

M.Rathinam

Petitioner(s)

Vs

1. The Managing Director, Tamil Nadu State Transport Corporation (KMBU) Limited, Kumbakonam 612001, Thanjavur
2. The Financial Advisor Cum CAO, Tamil Nadu State Transport Corporation (KMBU) Limited, Kumbakonam 612001, Thanjavur
3. The General Manager, Tamil Nadu State Transport Corporation (KMBU) Limited, Nagapattinam
4. The Branch Manager, Tamil Nadu State Transport Corporation (KMBU) Limited, Nagapattinam

Respondent(s)

Prayer:- This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the action of the Respondents in imposing "ticket book recovery of Rs.73,341/- on the Petitioner towards the face value of unused/unsold missing ticket books, as illegal and arbitrary and further directing the Respondents to refund the recovery amount of Rs.73,341/- with interest at 6% p.a. to the Petitioner.

For Petitioner(s) : Mr.K.Gokul

For Respondent(s) : Mr.P.Balasubramanian

ORDER

1. This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the action of the



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Respondents in imposing “ticket book recovery of Rs.73,341/-” on the Petitioner towards the face value of unused/unsold missing ticket books, as illegal and arbitrary and further, directing the Respondents to refund the recovery amount of Rs.73,341/- with interest at 6% p.a. to the Petitioner.

2. The facts of case, in a nutshell, led to filing of this Writ Petition and necessary for disposal of same, are as follows:-

(a) The Petitioner was appointed in the 1st Respondent Corporation, as a daily wage Conductor on 22.01.1988 and he retired from the service as a Selection Grade Driver on 31.03.2020 on attaining superannuation.

(b) The Petitioner was performing duty on 12.10.2019 in Route No.39C, in the Vehicle No. TN-68-N-0963 in its 08.30 p.m. Trip at Nagapattinam from Nagapattinam to Erode and its trip completed and halted at Erode Bus Stand at 05.45 a.m on 13.10.2019. Thereafter, he went to the Common Toilet from the Erode Bus Stand and when again returned back to the halted bus in the early morning on the same day, he found that the bag, consisting of unsold/unused ticket books, which was kept inside the bus, was missing. Immediately, he gave a complaint, dated 13.10.2019 to the Erode Town Police Station, which was received at 10.00 hours and he was issued with a receipt in CSR.No. 216 of 2019 by the concerned Police. Thereafter, the Petitioner also immediately informed the 4th Respondent, Branch Manager, about the incident through the cell phone and also by a letter dated, 18.10.2019. The



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Police is investigating the missing of bag, containing unsold/unused ticket books and till date, it has not been recovered.

(c) While so, the Petitioner was issued with a charge Memo in TNSTC/D14/509/19, dated 09.12.2019 by the 4th Respondent, stating as to why disciplinary action should not be taken against him for the missing unsold/unused ticket books to the tune Rs.73,341/-. In the mean time, without passing any written order, the 5th Respondent orally insisted the Petitioner to pay the face value of the missing unsold/unused ticket books to the tune of Rs.73,341/-, failing which he will not be allowed to retire. Since the Petitioner was due to retire on 31.03.2020 and hence, the Petitioner was constrained to remit the said amount, vide receipt No.FQ-0037798, dated 19.10.2019. Thereafter, the Petitioner made a representation dated 30.07.2021, requesting the respondents not to recover the said amount and to refund the recovery amount of the missing unsold/unused ticket books. However, the said sum was recovered from the Petitioner. In such circumstances, this Writ Petition has been, seeking the relief, as stated above.

3. This Court heard Mr.K.Gokul, the learned counsel for the Petitioner and Mr.P.Balasubramanian, the learned counsel for the Respondents.
4. The learned counsel for the Petitioner has assailed the action of the Respondents, in recovering a sum of Rs.73,341/- being the face value of the missing unsold/unused ticket books, which were lost due to theft, on the ground that for the missing unsold/unused ticket books due to theft,



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when he made a complaint immediately to the Police at the instance of the 4th Respondent, no recovery can be made, as per Clause 29 of the Settlement, dated 28.09.1995, entered into between the Trade Unions and the Respondent Corporation under Section 12(3) of the Industrial Disputes Act. Hence, such action of the Respondents is in total violation of the above said settlement and the recovery by way of an oral order is illegal and hence, he prays for refund of the said amount with interest.

5. In support of his contention that when the missing unsold/unused ticket books was not due to any negligence on the part of a bus conductor, no amount can be recovered from him, the learned counsel for the Petitioner has relied on the following decisions:-

- i. 2003 ILLJ 1021 Mad (Palanisamy Vs. Management of Rani Mangammal Transport Corporation Limited)*
- ii. 2008 (1) MLJ 224 (Management of Rani Mangammal Transport Corporation Limited Vs. M.Palanisamy)*

6. Per contra, the learned counsel for the Respondents has submitted that the ticket books are issued to the Conductors with the cash value of such ticket books and that since there would be every scope for abusing those missing unsold/unused ticket books for persons to undertake travel, without paying the necessary value of the tickets, the Corporation would be put serious prejudice and monetary loss and hence, the impugned action of the Respondents in recovering the face value of those tickets is in order.

7. I have given my careful and anxious consideration to the contentions put



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forward by the learned counsel on either side and also perused the entire materials available on record.

8. The Petitioner was working as a Conductor in the 1st Respondent Corporation and he was due to retire on 31.03.2020.
9. While the Petitioner was performing his duty on 12.10.2019 in Route No. 39C, in the Vehicle No. TN-68-N-0963 in its 08.30 PM Trip at Nagapattinam from Nagapattinam to Erode and its Trip completed and halted at Erode at 05.45 a.m. on 13.10.2019. At that time, he went to toilet and when he came back to the halted bus after some time, the Petitioner found the bag, containing unsold/unused ticket books, to be missing in the halted bus on 13.10.2019 at 5.45 a.m.
10. Admittedly, the Petitioner had lost the bag containing unsold ticket books to the face value of Rs.73,341/- due to theft, as is evident from CSR.No. 216 of 2019 and after theft of the bag, the Petitioner also immediately informed about the incident to the 4th Respondent, Branch Manager of the Transport Corporation, by his letter dated 18.10.2019. Since he was due to retire on 31.03.2020, at the oral instructions of the Respondents, the Petitioner was constrained to remit the said amount, vide receipt No.FQ-0037798, dated 19.10.2019. On a perusal of the records, it is seen that there is no order by the Respondents to recover the said amount. Thereafter, the Petitioner was allowed to retired on his due date.
11. As per Clause 29 of the Settlement, dated 28.09.1995, entered into between the Trade Unions and the Respondent Corporation under Section



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- 12(3) of the Industrial Disputes Act, while on duty, if the ticket books are lost due to riot, accident, theft and robbery and when there is a complaint made regarding such incident, then there would be no recovery of the face value of the lost ticket books from the concerned Conductor for such loss of lost ticket books.
12. It is clear from that above said Clause 29 that the action of the Respondents in recovering the face of the unsold ticket books, which were lost due to theft, from the Petitioner is illegal and arbitrary and hence, it cannot be sustained, as it is in violation of the Clause 29 of the above said Settlement, dated 28.09.1995.
13. The issue involved in this Writ Petition has come up before the Division Bench of the Principal Bench of this Court, on an earlier occasion, in the case of **Palanisamy Vs. Management of Rani Mangammal Transport Corporation Limited reported in 22008 (1) MLJ 224**, wherein, in similar circumstances, the Division Bench of the Principal Bench of this Court was pleased to observe in paragraph 4, 5 and 6 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



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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 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.

5. Viewing in that respect, we are in full agreement with the conclusion of the learned Single Judge as has been set out in paragraphs 8 and 9 of the order impugned in this appeal for all the above stated reasons, we are convinced that the order impugned in this appeal does not call for interference. We therefore do not find any merit in this appeal.

6. The appeal fails and the same is dismissed. No costs."

14. Admittedly, in this case also, as stated above, the Petitioner had given a complaint immediately after missing of the unsold/unused ticket books from the halted bus and diligently informed the 4th Respondent, Branch Manager, in writing about the missing of unsold/unused ticket books, by a



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letter dated, 18.10.2019. A copy of the CSR.No. 216 of 2019, dated 13.10.2019, establishes the said factum of missing of unsold/unused ticket books on that date. Till date, it is not known as to whether the lost ticket books due to theft are recovered or not. Further, it is clear that the Petitioner had taken diligent steps to duly inform the Respondent Corporation about the missing of unsold/unused ticket books and thus, there was no negligence on the part of the Petitioner in respect of the missing of unsold/unused ticket books. Hence, the above judgment is squarely applicable to the facts of the present case.

15. Thus, the action of Respondent, in imposing "Ticket Book Recovery" of Rs.73,341/- on the Petitioner towards the face value of unused/unsold missing ticket books, appears to be unjustified and illegal, in view of the Clause 29 of the Settlement, dated 28.09.1995, entered into between the Trade Unions and the Respondent Corporation under Section 12(3) of the Industrial Disputes Act. Hence, such action of the Respondents is in total violation of the above settlement and the recovery made against the Petitioner by way of an oral order is illegal and against the provisions of law. Thus, the Petitioner is entitled to get the recovered amount of Rs.73,341/- with interest from the Respondent Corporation.
16. In the result, in the light of the above said observations and discussions made above and in the light of the referred decisions, this Writ Petition is **allowed**, as prayed for. The Respondents are directed to refund the recovered amount of Rs.73,341/- with simple interest at the rate of 6%



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p.a. from the date of recovery of the said amount till date. The payment shall be made to the Petitioner within a period of six weeks from the date of receipt of a certified copy of this order. There is no order as to costs.

14.02.2025

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
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To

1. The Managing Director, Tamil Nadu State Transport Corporation (KMBU) Limited, Kumbakonam 612001, Thanjavur
2. The Financial Advisor Cum CAO, Tamil Nadu State Transport Corporation (KMBU) Limited, Kumbakonam 612001, Thanjavur
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SHAMIM AHMED, J.

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Pre-Delivery Order in
WP(MD)No.15038 of 2021

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