



W.A.(MD)No.1501 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.01.2025

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD)No.1501 of 2021
and
C.M.P.(MD)No.6157 of 2021**

1.Government of Tamil Nadu,,
Rep by the Principal Secretary,
Department of Public Works Department,
Fort St.George, Chennai-9.

2.The Engineer in Chief (General),
Water Resource Organization,
Public Works Department,
Chepauk, Chennai - 6.

3.The Superintending Engineer,
Vaipparu Basin Circle,
Water Resource Organization,
Public Works Department,
Virudhunagar.

... Appellants / Respondents

Vs.

R.Stalin

... Respondent / Writ Petitioner



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Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set the order dated 22-12-2020 passed in W.P(MD).No.23014 of 2019 on the file of this Court.

For Appellants : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.K.S.Selvaganesan,
Addl. Government Pleader.

For Respondents : Mr.V.Rajiv Rufus

JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

The respondent / Stalin joined Public Works Department as NMR (Driver) on 01.10.1999. He was terminated on 01.03.2009. Questioning the same, Stalin raised industrial labour dispute in I.D.No.28 of 2013 before the Labour Court, Madurai. The Labour Court passed award on 29.09.2015 holding that termination of his service was illegal and directed his reinstatement with continuity of service. The said award was challenged by the department in W.P.(MD)No.3644 of 2016 before this Court. But it was dismissed. Pursuant to the interim order granted by



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this Court, Stalin was reinstated in service on 16.03.2017 and on as date, he is working.

2. Thereafter, Stalin submitted representation to regularise his service. His request was rejected on the strength of G.O.(Ms)No.202 dated 01.08.2012 by the third appellant vide order dated 08.07.2019. Challenging the same, Stalin filed W.P.(MD)No.23014 of 2019. The writ petition was allowed by the learned Single Judge in the following terms:-

“5. On perusal of G.O.Ms.No.202, Public Works (C2) Department, dated 01.08.2012, it appears that the petitioner supposed to have completed 10 years of service. Obviously, the petitioner has completed 9 years and 5 months of service before retrenchment. Against the retrenchment order passed by the third respondent, the petitioner herein has preferred an appeal before the Labour Court, Madurai vide I.D.No.28 of 2013 and the Labour Court, Madurai, passed an order dated 29.09.2015 and the relevant portion of the said order reads as follows:

“31. In the result, award is passed directing the respondent to reinstate the petitioner as temporary worker on daily wage basis with continuity of service on the same conditions existed before within three months from the date of receipt of this order but without backwages and other benefits. It is clarified that continuity of service would mean the maintenance of seniority of the petitioner amongst other daily wage workers. Parties are directed to bear their own costs.”



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6.The order passed by the Labour Court, Madurai, was under challenge before this Court in W.P(MD)No.3644 of 2016 and this Court also confirmed the order of the Labour Court, Madurai, on 12.12.2018. The relevant portion of the said order is extracted hereunder:

“2.I am of the view that the order passed by the Labour Court does not warrant any interference. The Writ Petitioner would claim that the second respondent herein did not work for 240 days per year. But then, this is a finding of fact. When the Labour Court on consideration of the materials available before it, rendered a finding of fact in favour of the second respondent, I do not propose to interfere with the same. This is all the more so because, this Court directed is that the workman should be taken back on daily wages basis. Of course the second respondent cannot dictate to the superior officers with regard to the nature of work to be allocated. The status of the second respondent as a daily wages worker alone is projected and declared. Continuity of service has also been given. Therefore, with this clarification, the award passed by the Labour Court, Madurai, in I.D.No.28 of 2013, dated 29.09.2015, is sustained.”

7.On perusal of the award passed by the Labour Court, Madurai as well as the order of this Court, it appears that continuity of service has been provided to the petitioner by the Labour Court and the same was upheld by this Court and no further appeal has been filed. When such being the case, as on the date of passing the impugned order, the petitioner has completed 19 years of service. Taking into consideration of all these aspects, the impugned order has been passed by the third



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respondent without application of mind. In such of the view, the third respondent supposed to have considered the petitioner's request for regularization along with benefits entitled for him.

8.At this juncture, the learned counsel for the petitioner has also brought to the knowledge of this Court, the proceedings of the second respondent, dated 16.09.2019, wherein the second respondent identified 2406 candidates for the purpose of regularization and the petitioner's name can be included in the same. In the present case, the petitioner has completed more than 19 years of service as on date. However, these facts have not been considered by the third respondent, while passing the impugned order and completely ignored the order of the Labour Court as well as this Court.

9.Hence, this Court is of the opinion that the impugned order is liable to be set aside and while setting aside the impugned order, the matter is remanded back for reconsideration on the basis of the fact that the petitioner has already completed 10 years of service consequent to the order passed by the Labour Court as well as this Court. The Labour Court has categorically stated that for the purpose of continuity of service, the period of non employment should be considered for the purpose of seniority. In such case, the third respondent should consider the period of non employment of the petitioner's service for the purpose of regularization. Therefore, this Court does not find any impediment for the respondents to regularize



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the petitioner's service as per G.O.Ms.No.202, dated 01.08.2012.

10.In the result, this Writ Petition is allowed and the impugned order passed by the third respondent, dated 16.09.2020 is set aside and this Court remand this matter for reconsideration and directs the third respondent to take into consideration all the above aspects observed by this Court while passing order for regularisation of the petitioner's service. No costs. Consequently, connected miscellaneous petition is closed.”

Questioning the same, this writ appeal has been filed.

3.The learned Additional Advocate General submitted that the impugned order has not taken note of certain material aspects and that therefore, it should be set aside. He reiterated all the contentions set out in the memorandum of grounds of appeal.

4.We are not swayed by the said submissions. We are more than satisfied that as on the date of passing G.O.(Ms)No.202 Public Works Department dated 01.08.2012, Stalin by virtue of the Labour Court's award is deemed to have completed ten years of service. Since the



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Labour Court award had become final, we are of the view that the learned Single Judge rightly considered the issue. The order impugned in this writ appeal does not warrant interference.

5.The learned Additional Advocate General submitted that when regularisation orders are passed, Stalin should be given notional benefits with effect from the date when he completed ten years of service but the actual monetary benefits will be given only from the date of passing the regularisation order. We leave open this issue.

6.This writ appeal is dismissed with the aforesaid observation. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (R.P. J.)
30.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-
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- 1.The Principal Secretary,
Department of Public Works Department,
Fort St.George, Chennai-9.
- 2.The Engineer in Chief (General),
Water Resource Organization,
Public Works Department,
Chepauk, Chennai - 6.
- 3.The Superintending Engineer,
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