

**R.Stalln Vs. the Chief Engineer**

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**Court :** Chennai

**Decided On :** Oct-11-2011

**Judge :** K.Chandru, J.

**Appeal No. :** Writ Petition (MD)No.11609 of 2009

**Appellant :** R.Stalin

**Respondent :** The Chief Engineer

**Judgement :**

1. The petitioner was an NMR employee as Jeep driver attached to the office of the Assistant Executive Engineer, Water Resources Division, Vaipparu Basin Circle, Virudhunagar District. The total period of employment put in by the petitioner between October 2000 to August 2002 is for only 201 days and the petitioner subsequently moved the Labour Court at Madurai that C.P.No.76 of 2004 claiming salary for 51 days for the period for which he was not paid and the entire salary claim was Rs.4080/- for the period of 51 days. At any point of time, the petitioner had any continuous service nor his service was terminated by the respondent. But long after the petitioner non employment of three years, the Labour Court ordering payment of 51 days wages. The petitioner sent a representation, dated 25.06.2009 seeking for regularisation of employment in the post of Jeep driver. When the petitioner's representation was not considered, he filed a writ petition before this Court being W.P.(MD)No.8210 of 2009 seeking for a

direction to dispose of his representation, dated 25.06.2009. This Court without going into the merits of the case, directed the second respondent therein to dispose of his representation by order dated 20.08.2009. It is pursuant to the said direction, the impugned order came to be passed. In the impugned order, the petitioner was informed that the question of regularisation of the petitioner cannot be considered. The Government has issued G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 enabling the subordinate officers to send proposals in the case of employees who had completed 10 years of service and necessary proposals to be forwarded to the State Government. On getting their proposals, appropriate orders will be passed. But in the case of the petitioner and even such proposals can be sent only after it is shown to the employee has completed 90 days of service in each year of the entire 10 years. Even as per the admission of the petitioner, he had only worked on daily wages in the said Division on the said years and therefore, the petitioner do not come within the enabling provision of the Government Order under which the proposals can be sent. Aggrieved by the said communication, the writ petition came to be filed as noted above.

2. Notice of motion was ordered on 12.11.2009. On notice from this Court, the third respondent has filed counter affidavit, dated 09.12.2009. In the counter affidavit, at paragraph 2, the list of dates worked by the petitioner has also given.

3. However, the petitioner placed reliance upon the communication sent on 06.10.2006 a copy of which is found enclosed wherein the Principal Chief Engineer and Chief Engineer, Water Resources Division had asked for details of names of persons who have been working on daily wage basis for minimum period of five years and therefore, pursuant to the same, the petitioner's name has also been sent. Such an argument is not open to the petitioner since the proposals to send for regularisation is only based upon the G.O.Ms.No.22, Personnel and Administrative Reforms (F) Department, dated 28.02.2006 which clearly stipulates the minimum employment of 10 years and preceding the date indicated in the said Government order. On the date of issuance of the said Government order, the petitioner was not even in the service. Therefore, the question of regularisation of

the petitioner will not arise and the writ petition is clearly misconceived.

4.The Hon'ble Supreme Court vide its judgment reported in (2007) 1 SCC 408 (Indian Drugs and Pharmaceuticals Limited Vs.Workmen, Indian Drugs and Pharmaceuticals Limited) has held that the regularisation cannot be a mode of appointment and the Court cannot direct such regularisation. The similar view was expressed by the Hon'ble Supreme Court in the judgment reported in (2009) 3 SCC 35 (Council of Scientific and Industrial Research and others Vs.Ramesh Chandra Agrawal and another).

5.In the abovesaid circumstances, the writ petition is misconceived. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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