



W.P.No.26582 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

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CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.26582 of 2012

- 1.M.Ethiraj
- 2.K.Thulukanam
- 3.P.Ramalilngam
- 4.G.Rajan
- 5.R.Devanathan
- 6.K.Narayanan
- 7.R.Prabakaran
- 8.C.Elumalai
- 9.G.Munusamy
- 10.G.M.Danabal
- 11.G.Murugesan
- 12.S.Nagarajan
- 13.S.Radhankrishnan
- 14.S.Jayavelu
- 15.K.Ramamoorthy
- 16.K.Nandagopal
- 17.G.Ganesan
- 18.R.Mohan



W.P.No.26582 of 2012

19.E.D.Sekar

20.Thangadurai.P

21.G.Chokkalingam

22.K.Munusamy

23.V.Damodaran

24.V.Karunakaran

... Petitioners

Vs.

1.The Government of Tamil Nadu,
Rep. by Secretary to Government,
Highways and Minor Ports Department (H.M.2)
Fort St.George,
Chennai – 600 009.

2.The Director General,
Highways Department,
Chepauk, Chennai – 600 005.

... Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling upon the production of the records relating to the proceedings dated 15.06.2012 made in letter No.16142/H.M.2/2011-5 passed by the first respondent herein, quash the same and direct the first respondent to step up the pay of the petitioners on par with the juniors and disburse difference in the pay to the petitioners.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.M.Rajendiran,
Additional Government Pleader



ORDER

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The relief sought by the petitioner in this writ petition is to call upon the production of the records relating to the proceedings dated 15.06.2012 made in letter No.16142/H.M.2/2011-5 passed by the first respondent herein, quash the same and direct the first respondent to step up the pay of the petitioners on par with the juniors and disburse difference in the pay to the petitioners.

2. The case of the petitioners are that they are originally appointed in the Nominal Muster Role in the office of the Divisional Engineer, Highways, Workshop division, Guindy during the period 1966 and 1971. After completion of a few years of service in the N.M.R category, all of them were appointed as cleaners during the period from 1971 to 1976. Their services were regularised with effect from 01.01.1977 to 01.01.1982. The petitioners have filed O.A.No.37 of 1996 before the Tamil Nadu Administrative Tribunal for promotions from the category of cleaner to higher categories and the Tribunal by order dated 06.10.1998 directed the respondents to consider their plea of promotion.



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3. As per the directions of the Tribunal, the first respondent issued G.O.Ms.No.60, dated 16.02.1999 for promotion of petitioners and the case of P.S.Kumar and 14 others will be considered as per adhoc Rules. Accordingly by proceedings dated 12.03.1999, the petitioners were regularized in the technical side. Meanwhile, 15 N.M.Rs' namely P.S.Kumar and others approached the Deputy Chief Inspector of Factories to declare that they are entitled to be declared as permanent workers and accordingly orders were passed that they were made permanent. Challenging the said order, the department has filed a Civil Revision Petition in C.R.P.Nos.1327 to 1339 and 2524 of 1991 and 1254 of 1992 before this Court and the same was dismissed on 22.03.1997. Subsequently, the said dismissal order dated 22.03.1997 has been challenged by way of filing Special Leave Petition before the Hon'ble Supreme Court of India and the same was also dismissed.

4. The petitioners found that consequent to the grant of permanent status to the said 15 persons, they were placed in higher scale of pay than the petitioners. Even though the fact is that they are juniors to the petitioners.



Hence, the petitioners have filed O.A.No.37 of 1996 before the Tamil Nadu Administrative Tribunal, seeking direction to the respondents 1 and 2 to consider them for promotion to higher grade in accordance with the Adhoc Rules, without considering the claims of juniors and the same was disposed of on 06.10.1998 with a direction to the respondents to consider the claims of the petitioners. Subsequently the Government has passed G.O.Ms.No.60, Highways Department dated 16.02.1999. restoring the original seniority with all attendant benefits including promotion in their turn. In accordance with those orders, the petitioners herein were promoted on 23.03.1999.

5. Further, the petitioners have filed another application in O.A.No.4932 of 2001 seeking a direction to the respondents 1 and 2 to step up the pay of the petitioners on par with the said P.S.Kumar and 14 others, who were juniors to the petitioners. After the abolition of the Tribunal, the said O.A.No.4932 of 2001 was transferred to this Court and numbered as W.P.No.232 of 2007 and subsequently, order was passed on 28.10.2011, directing the petitioners to make fresh representation to the first respondent to step up their pay on par with juniors based on the order made in



C.R.P.Nos.1327 to 1339, 1527 of 1991 and 1254 of 1992, within a stipulated period. Accordingly, the petitioners made representation on 12.12.2011.

However, the first respondent passed the order dated 15.06.2012 in letter No.16142/H.M.2/2011-05 holding the order in C.R.P. is not applicable to the petitioners and the persons referred as juniors were appointed by creating 15 supernumerary post as per G.O.No.44, dated 02.03.2001 and those persons' services were regularized with effect from 01.01.1982. Hence they cannot be cited as Juniors. The impugned order concluded that the request to step up their pay on par with them is no feasible for compliance. Challenging the said order dated 15.06.2012 passed by the first respondent, the petitioners have come forward with the present writ petition. Further, the petitioners are now retired from service as on date of filing this writ petition.

6. Learned counsel for the petitioner submitted that the impugned order has missed the crucial point. The creation of supernumerary post for P.S.Kumar and 14 others and their permanent status under the Tamil Nadu Industrial Establishment (Conferment of Permanent status to worker) Act 1981 is not a material issue to be considered. On the other hand what is to be



decided is whether the said P.S.Kumar and 14 others were Juniors to the petitioners and if they are juniors in service and if they got more pay than the petitioners, then the relief sought for by the petitioner to step up their pay on par with them is correct and sustainable. That aspect was not considered in the impugned order.

7. Learned counsel for the petitioner further submit that the petitioners have given their service particulars in para 3 of the affidavit filed in writ petition. The petitioners originally appointed as NMRs' during the period from 1966 to 1971. Whereas, as per para 5 of the counter of the respondents the said P.S.Kumar and 14 others were appointed during the period from 1972-1982. Thus they are Juniors to the petitioners. The petitioners were appointed as cleaners during the period from 1971 to 1976. Their services were regularized from 1977 to 1982. Whereas in para 9 of the counter filed by the respondents, it is admitted that P.S.Kumar and 14 others entered into service between 1972 to 1982. Admittedly those persons are Juniors. The services were regularized with effect from 01.01.1982. The details are given in page 82 and 84 of the typed set. The respondents have misconstrued the



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W.P.No.26582 of 2012

your case since you have been absorbed in regular posts brought into regular post during the period from 1971 to 1976, subsequently brought into regular establishment during the period from 1977 to 1983 on completion of 5 years of service and subsequently even promoted to next higher posts during 1999. Moreover, in respect of Thiru P.S.Kumar and 14 others, whom you are citing as your juniors were appointed by creating 15 supernumerary posts as per G.O.Ms.No.44, Highways (HM2) Department, dated 02.03.2001 and in that G.O., it has been ordered that their services be regularized with effect from 01.01.1982. Thus they were appointed to the Grade II posts of the respective trades with effect from 01.01.1982 itself. Further, it has been reiterated in the above Government Order that this should not be taken as a precedent for future cases. These posts are only supernumerary in nature and as such will cease to be in existence once the occupants of these posts are retired from service. Further, they have been appointed directed to the Grade II posts of the respective trades and their services have been regularized with effect from 01.01.1982 itself in the Grade II posts of the respective trades and as such they cannot be cited as juniors to you, since you have been appointed to the Grade II posts only during 1999.”

10. A counter affidavit was filed on behalf of the respondents on 17.01.2013. For better appreciation, the relevant paragraphs are extracted hereunder:



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W.P.No.26582 of 2012

“5. one, P.S. Kumar & 14 others, who had been appointed as NMRs during 1972 1982, had individually approached the Deputy Chief Inspector of Factories seeking conferment of permanent status to them under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act. 1981. The Deputy Chief Inspector of Factories vide Common order dated 10.08.1990 had allowed all the 15 applications in favour of the said Applicants. Aggrieved by the same, the Department had preferred C.R.P.Nos.1327 to 1339: 2524/1991 & 1254/1992 and this Hon'ble Court vide order dated 22.03.1995 was pleased to dismiss the CRPs. Aggrieved by the same, the Department had preferred S.L.P.Nos.5522 to 5836/1996 and the Hon'ble Supreme Court of India vide order dated 28.10.1996 was pleased to dismiss the SLPs.

6. the said P.S. Kumar & 14 others had filed Claim Petitions before the Hon'ble Additional Labour Court at Chennai, seeking payment of wages from the date of their conferment of permanency. The Hon'ble Labour Court had allowed the said Claim Petitions. Aggrieved by the same the Department had preferred W.P.No.2589/1997 and W.A.No.812/1997 and this Hon'ble Court was pleased to grant interim order on condition to deposit the amounts awarded by the Labour Court. Aggrieved by the same, the Department had preferred Appeal in C.C.No.2949/1998 and the Hon'ble Supreme Court of India vide order dated 30.03.1998 was pleased to dismiss the same with the observation that the relief granted to the said P.S.Kumar & 14 others will be confined to



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W.P.No.26582 of 2012

the facts of that case and will not be treated as a precedent.

7. In compliance of the above said orders, the Government had issued G.O.Ms.No.44, Highways (HM 2) Department, dated 02.03.2001 appointing the said P.S.Kumar & 14 others with effect from 01.01.1982 by creating 15 Supernumerary Posts and by relaxing the Adhoc Rules and Tamil Nadu State & Subordinate Services Rules. Challenging the said GO, the Petitioners herein along with 19 others had filed O.A.No.4932/2001 before the Hon'ble Tamil Nadu Administrative Tribunal, by impleading the said P.S.Kumar & 14 others and sought the same relief as sought in this Writ Petition. After the abolition of the Tribunal. the said Original Application was transferred to this Hon'ble Court and was renumbered as W.P.No.232/2007. During the course of hearing of the said Writ Petition, the Petitioners had given up their claim against the said P.S.Kumar & 14 others. This Hon'ble Court vide order dated 28.10.2011 was pleased dispose of the said Writ Petition by directing the Petitioners herein to make representation to the first Respondent within 2 weeks seeking stepping up of their pay on par with the said P.S.Kumar & 14 others based on the order passed in the CRPs. This Hon'ble Court further directed the 1st Respondent to pass appropriate orders on merits and in accordance with law. In compliance of the said order, the 1st Respondent had passed orders in Letter No.16142/HM 2/2011-5, dated 15.06.2012, rejecting the claim of the Petitioners. The Petitioners have challenged the said order of the 1st Respondent in this Writ Petition and have sought the same relief that was sought in W.P.No.232/2007 (O.A.No.4922/2001)."



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11. Learned Additional Government Pleader appearing for the respondents submitted that the said P.S. Kumar and 14 others were granted regularization and benefits with effect from 01.01.1982 in view of the orders of this Hon'ble Court and that of the Hon'ble Supreme Court of India. The said P.S. Kumar and 14 others were not made seniors to the Petitioners herein as assumed and portrayed by the Petitioners. The said P.S. Kumar and 14 others were kept aloof, in view of their supernumerary posts and were not included in any seniority list or promotions with others, including the Petitioners. Also, the Petitioners herein cannot seek parity with the said P.S. Kumar and 14 others in view of the categorical order of the Hon'ble Supreme Court of India that the benefits granted to the said P.S. Kumar & 14 others will be confined to the facts of that case and will not be treated as a precedent. Thus, the Petitioners cannot claim any benefits, including stepping up of pay on par with the said P.S. Kumar and 14 others with effect from 01.01.1982, in view of the order of the Hon'ble Supreme Court.

12. Since the petitioners have themselves admitted that they are seniors and the said P.S.Kumar and 14 others are juniors to them. Hence, the first respondent had rejected the claim of the petitioners. In view of the



2524 of 1991 and 1254 of 1992 before this Court and the same was dismissed on 22.03.1997.

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15. Thereafter, the petitioners have claimed promotion from the category of cleaner to higher category and also filed an application in O.A.No.37 of 1996 before the Tamil Nadu Administrative Tribunal seeking direction to the respondents to consider them for promotion in accordance with the Adhoc Rules and the same was disposed by order dated 06.10.1998, directing the respondents to consider their plea of promotion. Pursuant to the order of the Tribunal, the first respondent has issued a G.O.Ms.No.60, Highways Department, dated 16.02.1999 for the promotion of the petitioners.

16. This being so, the first respondent created a supernumerary post with effect from 01.01.1982 and granted permanent status in higher posts by issued G.O.Ms.No.44, dated 02.03.2001. Even though the G.O. was issued on 02.03.2001, those persons i.e., P.S.Kumar and 14 others were granted permanency from 01.01.1982 and they were made seniors to the petitioners. Thereafter, the petitioners have filed O.A.No.4932 of 2001 before the Tamil



Nadu Administrative Tribunal, seeking a direction to the respondents 1 and 2 to step up the pay of the petitioners on par with the said P.S.Kumar and 14 others, who were juniors to the petitioners. Subsequently, the Tribunal was abolished and the said O.A.No.4932 of 2001 was transferred to this Court and numbered as W.P.No.232 of 2007 and the same was ordered on 26.10.2011, directing the petitioners to make fresh representation to the first respondent to step up their pay on par with juniors based on the order made in C.R.P.No.1327 to 1329, 1527 of 1991 and 1254 of 1992, within a stipulated period. Accordingly, the petitioners made representation on 12.12.2011. However, the first respondent passed the order in letter No.16142/H.M.2/2011-05, dated 15.06.2012 holding that the order in C.R.P. is not applicable to the petitioners and the persons referred as juniors were appointed by creating 15 supernumerary post as per G.O.No.44, dated 02.03.2001 and those persons' services were regularized with effect from 01.01.1982. Hence they cannot be cited as juniors.

17. The respondents themselves in the counter affidavit have categorically admitted that the said P.S.Kumar and 14 others were



appointed as N.M.Rs' during 1972-1982, whereas the petitioners were appointed during the period from 1966 to 1971. Hence, it is clear and evident that the petitioners are seniors in appointment as N.M.Rs' than the aforesaid P.S.Kumar and 14 others.

18. The said P.S.Kumar and 14 others approached the Deputy Chief Inspector of Factories seeking conferment of permanent status and by order dated 10.08.1990, the Deputy Chief Inspector of Factories allowed all the 15 applications conferring permanent status to them. Challenging the order of conferment dated 10.08.1990, the department has preferred Civil Revision Petitions and the same was dismissed by this Court on 22.03.1997 and aggrieved by this, the respondents have also preferred Special Leave Petition in S.L.P.Nos.5522 to 5836 of 1996 and the same was also dismissed on 28.10.1996.

19. When the matter was taken up for final hearing, this Court by order dated 02.02.2024 has raised the following queries to be answered by the respondents for which, the respondents have replied by way of filing



Additional Typed Set of Papers dated 15.02.2024. The queries raised by this Court and the reply given by the respondents are reads as follows:

(i) When the petitioners were absorbed and regularized and the date of the same. For which, the respondents have replied that the petitioners were absorbed in regular posts during **the period from 1971 to 1976**, subsequently brought into regular establishment during the period from 1977 to 1983 on completion of 5 years and even promoted to next higher posts during the year 1999 in accordance with the Adhoc Rules issued in G.O.Ms.No.169, Transport Department, dated 16.02.1983.

(ii) When P.S.Kumar and 14 others were appointed and their date of absorption and regularization. For this query, the respondents have replied that Mr.P.S.Kumar and 14 others were appointed by creating 15 supernumerary posts as per G.O.(Ms).No.44, Highways and Minor Ports (HM2) Department, dated 02.03.2001 and their services were regularized with effect from 01.01.1982.

(iii) How G.O.Ms.No.44 of 2001 has given effect of absorption to



Kumar and 14 others with effect from 01.01.1982. In this regard, the respondents have replied that Thiru.P.S.Kumar and 14 others who had been appointed as NMRs during the period from 1972 to 1982, had individually approached the deputy Chief Inspector of Factories seeking conferment of permanent status to them under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and the Deputy Chief Inspector of Factories had issued orders favouring the applicants. Subsequently, Thiru. P.S.Kumar and 14 others had filed Claim Petitions before the Hon'ble Additional Labour Court at Chennai seeking payment of wages, from the date of their conferment of permanency. The Hon'ble Labour Court had allowed the said Claim Petitions. The Writ Appeal and Special Leave Petitions filed by the Department were dismissed. The Hon'ble Supreme Court was pleased to dismiss the SLP CC No.2949/1998 and orders passed on 30.03.1998 as follows:-

In view of the peculiar facts of this case, as the earlier S.L.P. was dismissed on 29th October, 1996 the consequential order passed in the present proceedings regarding back wages cannot be found fault with. Consequently, the S.L.P. is dismissed keeping the question of law open. It



is made clear that the relief granted to the respondent in the present case will be confined to the facts of this case and will not be treated as a precedent.

Based on the Court direction the relief granted to the said Thiru.P.S.Kumar and 14 others will be confined to the facts of the case and will not be treated as a precedent.

Therefore to comply the orders of the Hon'ble Courts, 15 supernumerary posts were created and Thiru. P.S.Kumar and 14 others were appointed to the said trade posts with effect from 01.01.1982 vide G.O.(Ms.)No.44, Highways and Minor Ports (HM2) Department, dated:02.03.2001 by relaxing the existing rules in respect of these trade posts in G.O.(Ms.) No.169, Transport Department, dated: 16.02.1983 and G.O(Ms.) No. 171, Transport Department, dated: 16.02.1983.

(iv) As per the impugned order, the petitioners were regularized during the period from 1971-1976. In the case, the petitioners were senior to Kumar and 14 others. If so,. In this regard, the respondents have replied that the petitioners cannot be considered as seniors to Thiru. P.S.Kumar and 14



others, just because their services were regularized during the period from 1971 1976. Since they were appointed in accordance with the Adhoc Rules, they were appointed to the trade posts as and when vacancy arose i.e., during the year 1999. On the other hand, Thiru. P.S.Kumar and 14 others were appointed directly to the trade posts with effect from 01.01.1982, relaxing the Adhoc Rules, to comply the orders of the Hon'ble Courts.

(v) Then, why the benefits are denied to the petitioners. For this, the respondents have replied that Thiru.P.S.Kumar and 14 others were given the benefit as directed by the Hon'ble Courts. The Hon'ble Court had issued direction to this effect with the observation, that the relief granted to the said Thiru. P.S.Kumar and 14 others will be confined to the facts of the case and will not be treated as a precedent. Accordingly the benefit was not extended to the petitioners and if the benefit is extended to the petitioners, it will open floodgates of litigations of this sort and will bring much hardship to the respondents and huge financial burden to the state exchequer.

20. In the above reply given by the respondents to the queries raised by



this Court, it is clear and evident that the petitioners were absorbed in the legal post during the period from 1971 to 1976 whereas the said P.S.Kumar and 14 others have been appointed as N.M.Rs' only during the period 1972 to 1982. Hence, the petitioners in this writ petition are seniors to P.S.Kumar and 14 others.

21. The main contention of the respondents is that the said P.S.Kumar and 14 others were appointed only by creating 15 supernumerary post and their services were regularized with effect from 01.01.1982. As per the direction of the Hon'ble Supreme Court of India, the said 15 persons initially approached the Deputy Chief Inspector of Factories seeking permanent status and it was conferred on 10.08.1990 against which, the respondents have preferred Civil Revision Petition, which was dismissed by this Court and therefore, Special Leave Petition was filed before the Hon'ble Supreme Court of India and the same was also dismissed. **By this, the respondents are indirectly stating that since the petitioners have not got any orders from this Court as in the case of P.S.Kumar and 14 others, they are not entitled to step up from pay on par with P.S.Kumar and 14 others.**



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22. The said P.S.Kumar and 14 others were regularized with effect from 01.01.1982, whereas the petitioners were regularized only between 01.01.1972 to 01.01.1982. Even according to this, the petitioners are seniors to these 15 persons. Hence, appointing the 15 persons in the year 2001 and giving effect of regularization from 01.01.1982 is unsustainable for the simple reason that the petitioners were regularized much earlier i.e., for the period from 1977-1983.

23. As far as the conferment of permanent status of P.S.Kumar and 14 others are concerned, the respondents filed Special Leave Petition in S.L.P.Nos.5522 to 5236 of 1996, before the Hon'ble Supreme Court of India and the same was dismissed on 28.10.1996 and nowhere it is mentioned that the relief granted to the respondents i.e., P.S.Kumar and 14 others will be confined to the facts of this case and will not be treated as precedent and the same is not applicable to the case of the petitioners for the reason that it is only in the S.L.P. which was filed challenging the grant of backwages by the Labour Court at Chennai to the said



P.S.Kumar and 14 others, the Hon'ble Supreme Court of India by its order dated 30.03.1998 have stated that the relief granted to the respondents in the present case will be confined to the facts of the case and it will not be treated as precedent.

24. Hence, the petitioners are entitled for the relief sought for in the writ petition for the following reasons:

(i) The petitioners were appointed during the period as N.M.Rs' between 1966 and 1971 and the P.S.Kumar and 14 others were appointed as N.M.Rs' during the period from 1972 to 1982. Hence, the petitioners are seniors to them.

(ii) The services of the petitioners were regularized during the period from 1977 to 1983 whereas, the P.S.Kumar and 14 others were regularized with effect from 01.01.1982 only that too pursuant to the G.O. passed in the year 2001.

(iii) In the order passed by the Hon'ble Supreme Court of India in S.L.P.Nos.5522 to 5836 of 1996, challenging the conferment of permanent status to P.S.Kumar and 14 others by order dated 28.05.1996 no where it



is stated that this order is confined only to the respondents and it will not be treated as precedent.

(iv) It is only in the S.L.P. which was filed challenging the grant of backwages by the Labour Court at Chennai to the said P.S.Kumar and 14 others, the Hon'ble Supreme Court of India by its order dated 30.03.1998 have stated it is main application that the relief granted to the respondents in the present case will be confined to the facts of the case and it will not be treated as precedent.

(v) Even in the impugned order it is clearly stated that the petitioners have been absorbed in regular post during the period from 1971 to 1976 and subsequently brought into regular establishment during the period from 1977 to 1983.

25. The appointment of P.S.Kumar and 14 others in supernumerary posts and directly to grade II posts with effect from 01.01.1982 and the petitioners are seniors as they were initially appointed as N.M.Rs' between the period from 1966 to 1971 and subsequently regularized between the period 1972 to 1976. **Hence, it is clear and evident that the petitioners are**



W.P.No.26582 of 2012

undoubtedly seniors to the P.S.Kumar and 14 others. Hence, they are entitled to pay on par with them.

26. In view of the above facts and circumstances of the case, the order passed by the first respondent in letter No.16142/HM 2/2011-5 dated 15.06.2012 is liable to be quashed and the same is hereby quashed.

27. In the result, this writ petition is allowed and the first respondent is directed to step up the pay of the petitioners on par with the juniors and disburse difference in the pay to the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

27.03.2024

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No



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W.P.No.26582 of 2012

J.SATHYA NARAYANA PRASAD,J.

vm

To:

- 1.The Secretary to Government,
Highways and Minor Ports Department (H.M.2)
Fort St.George,
Chennai – 600 009.
- 2.The Director General,
Highways Department,
Chepauk,
Chennai – 600 005.

W.P.No.26582 of 2012