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W.P.No.1288 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 26.09.2024

ORDERS PRONOUNCED ON : 28.11.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.1288 of 2018

C.Easwaran

... Petitioner

Vs.

1. The Chief Engineer (General),
Highways Department,
Chepauk, Chennai 5.
2. The Divisional Engineer,
Highways Rural Public Works,
Saithapet Division.
3. Assistant Divisional Engineer,
Highways Department,
Ponneri – 601 204.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the 1st respondent in Memo No.9851/Adl(2).2017 dated 20.11.2017 and quash the same and



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consequently direct the respondents to give suitable employment to the petitioner on compassionate ground.

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For Petitioner : M/s.R.Nirmala Devi

For Respondents : Mr.M.Alagu Gowtham, Government Advocate

ORDER

This Writ Petition is filed seeking Writ of Certiorarified Mandamus to quash the order passed by the 1st respondent in Memo No.9851/Adl(2).2017 dated 20.11.2017 and consequently direct the respondents to give suitable employment to the petitioner on compassionate ground.

2. It is the case of the petitioner that his father Chinnasami worked at the third respondent Office. While he was in service, died on 02.10.1995 leaving behind his wife, 3 daughters and 3 sons including the petitioner as his legal heirs. The petitioner's father was the only breadwinner of his family. Subsequently, the petitioner's mother submitted documents to the concerned authorities seeking for compassionate appointment in the year



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1996 and 1999, but the same were kept pending. The petitioner's mother made another application seeking appointment on compassionate ground for the petitioner on 17.02.2000 to the second respondent and also to the Chief Minister Cell. The respondent vide communication dated 13.02.2003 rejected the claim stating that the application had not been made within the period of 3 years. Thereafter, the petitioner made applications on 12.09.2006, 30.08.2007 and 28.11.2007 and the applications were rejected on the same ground that he had not submitted his application within the 3 years period.

3. Subsequently, the petitioner filed WP.No.21583 of 2014 seeking direction to consider the representation for appointment on compassionate ground. This Court vide order dated, 31.01.2017 directed the petitioner to submit a fresh representation and the first respondent on receipt of the same was directed to consider and pass orders. As per the direction of this Court, the petitioner submitted representation to the respondents on 10.03.2017 and the same was rejected on 20.11.2017 on the ground that he has not submitted his application within the stipulated period of three years.



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4. It is the case of the petitioner that the Supreme Court in its decision reported in *Syed Khadim vs.State of Bihar* reported in 2006 (9) SCC 195, considered the fact that the wife of the deceased having applied for compassionate appointment in time and she was found not eligible and the application submitted by the other heir was directed to be considered even after the lapse of 11 years.

5. It is also contended by the petitioner that in the case of *M.Uma vs. Chief Engineer (Personnel, TNEB, Chennai* (2020) 7 MLJ 644, though the petitioner's application was rejected on the ground that she has not submitted the same within three years, taking into account the indigent circumstances of the family, this Court directed the respondents therein to consider the claim of the petitioner. Similarly, in *Mohanambal vs. the Director, Land and Survey Department* and *R.Prasath vs. The Secretary, Labour and Employment Department and others*, took a similar stand.

6. Aggrieved by the rejection order dated 20.11.2017 and to extend the benefits enshrined in the aforesaid orders, the present writ petition is



filed.



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7. The second respondent/the Divisional Engineer filed a counter affidavit stating that the petitioner's father expired on 20.10.1995, but he did not apply for compassionate appointment immediately and he applied only after completing his +2 course on 21.07.1999. As per G.O.Ms.No.120, dated 26.06.1965, the application submitted by the petitioner after three years is inadmissible. Therefore, the said application and other four applications were rejected on the ground, they were time barred.

8. It is further stated that when the present Writ Petition came up for hearing on 05.09.2024, this Court directed the respondents to produce the original records bearing letter dated 02.12.1999, in which the petitioner's application was returned to rectify the defect. However, it is stated that the said letter could not be traced.

9. The third respondent also filed a counter affidavit stating that the petitioner's mother submitted application only on 24.09.1999 and no application was received in the year 1996. The said application submitted



by the petitioner's mother and other applications of the petitioner were also rejected on the same ground that the applications were not submitted within the time frame as contemplated under the said G.O. The Apex Court and this Court in catena of judgments have clearly pointed out that period is crucial as the employment under compassionate ground is not basic rights but an immediate relief to the deserving family. Hence, he sought to dismiss the Writ Petition.

10. The learned counsel for the petitioner would submit that the father of the petitioner died on 02.10.1995 in harness. The petitioner's mother made representations in 1996 and 1999 requesting to provide compassionate appointment. The said representation was made within one year from the death of her husband. The petitioner made applications on 12.09.2006, 30.08.2007 and 28.11.2007 and the same were rejected on the ground that the applications were not submitted within the 3 year period. Subsequently, the petitioner filed WP.No.21583 of 2014, to consider his representation for appointment on compassionate ground. As per the order of this Court, the petitioner submitted representation on 10.03.2017, which was rejected through the impugned order on the ground that he has not



submitted his application within the limitation period of three years.

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11. The learned counsel further contends that while rejecting the claim of the petitioner for compassionate appointment the first respondent failed to consider the aim and object of the compassionate appointment scheme and it was rejected on the ground of technicalities without considering the actual sufferings of the petitioner after the death of his father.

12. On the other hand, the learned Government Advocate appearing for the respondents would submit that the application claiming compassionate appointment has to be submitted within 3 years from the date of death of the deceased employee. In the present case, the application was submitted by the petitioner belatedly and as such, the claim is rejected as per the procedure.

13. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and carefully perused the materials available on record.



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14. It is an admitted fact that the father of the petitioner died on 02.10.1995 in harness. It is the case of the petitioner that his mother made a representation for compassionate appointment in 1996. As per order dated 31.01.2017 of this Court, the petitioner made a representation dated 10.03.2017 for compassionate appointment. The first respondent rejected the same vide letter dated 20.11.2017 on the ground that he had not made his application within 3 years from the death of his father.

15. The issue involved in the present writ petition was already dealt by this Court and the Court of Andhra Pradesh and Apex Court in the following judgments:

i) A Division Bench of Madurai Bench of Madras High Court while dealing with a case in similar circumstances in ***P.Kasthuri vs. The Chief Engineer (Personnel) and another*** in W.A.(MD).No.792 of 2011 vide its judgment dated 03.12.2015 directed the respondents therein to make compassionate appointment to the appellant therein considering the application submitted within the stipulated time by the mother of the



appellant. The relevant paragraphs of the said judgment are extracted hereunder:

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“7. One more aspect which has to be considered de hors of the Rules is the pathetic condition of the appellant and other children of late Palanivel. After the death of the said Palanivel in 1994, his wife also passed away on 04.08.1996 after applying for compassionate appointment. In fact, the appellant and others have become orphans and they are looked after by their maternal uncle. When such is the pitiable condition, the respondents should have considered the appellant's application for compassionate appointment with compassion.

8. The learned Single Judge should also have taken into consideration the said aspect. The learned Single Judge, in fact, did not take into consideration the application made by the appellant's mother on 11.01.1996 for compassionate appointment which was in time. Therefore, the impugned order passed by the second respondent as well as the order of the learned Single Judge are set aside. The respondents are directed to make the compassionate appointment of the appellant on or before 01.04.2016, failing which the respondents shall appear before this Court on 02.04.2016.”

ii) In ***S.Velraj vs. The Superintendent Engineer and another*** in W.A.(MD).No.1400 of 2011, a Division Bench of this Court vide its



judgment dated 16.12.2015 held that three years limitation cannot be applied in strait-jacket formula and each and every case has to be approached differently, based on the facts. The relevant paragraph is extracted hereunder:

“3. It is admitted fact that the employee died on 19.03.1992, leaving behind four children and at that time, the appellant is the eldest son, aged about 12 years. If he applied for appointment on compassionate ground at that time, when he was 12 years, his application would have been rejected on the ground that he was a minor and, therefore, on attaining majority, the appellant rightly applied for appointment on compassionate ground. However, taking into consideration the plight of the family and also the young age of the mother and other children, it is a case where appointment on compassionate ground has to be given. Three years limitation cannot be applied in strait-jacket formula and each and every case has to be approached differently, based on the facts. Since the eldest son of the family has rightly applied for appointment on compassionate ground, on attaining majority, the respondents have to consider the appellant's application for appointment on compassionate ground. ”

iii) In ***Priyadharshini vs. The Registrar General, High Court,***



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Madras in WP.No.28945 of 2019, a Division Bench of this Court vide its judgment dated 25.11.2019 held that the respondents therein failed to consider the indigent circumstances of the petitioner therein and held that 3 years limitation period cannot be cited as a straight-jacket formula for rejecting the claim of the petitioner. The relevant paragraphs of the said order are extracted hereunder:

“8. We find from a perusal of the impugned order that the respondent has failed to consider the indigent circumstances of the petitioner. The application of the petitioner seeking appointment on compassionate grounds, was rejected mainly on the ground that she was minor and the application was not submitted within three years from the date of the death of her father. We find that she has submitted the application six months prior to her attaining majority. Therefore, within a reasonable time, she has submitted the application and after attaining majority, she has also made a representation, dated 06.03.2019.

9. In similar circumstances, this Court (Madurai Bench) in W.A.(MD).No.1400 of 2011 (S.Velraj Vs. The Superintendent Engineer, Tamil Nadu Electricity Board, Tirunelveli Electricity Distribution Circle, Tirunelveli), by order dated 16.12.2015 and in another judgment of this Court (Madurai Bench) reported in 2016 (5) CTC 125 (The Inspector



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General of Prisons Vs. P.Marimuthu), observed that the appointment on compassionate grounds had to be given considering the facts and circumstances of each case and therefore, the three-year limitation period cannot be applied as a straight-jacket formula and each and every case has to be approached differently based on the facts.

10. In the instant case, the factual aspects of the matter show that the petitioner has become orphan and her grandfather, under whom she is in the custody, is an age-old person and that the petitioner has also produced necessary documents to show that she has no sufficient funds to sustain herself.

11. Considering all the above aspects, we are of the opinion that this is a fit case to quash the impugned order. Accordingly, the impugned order is quashed. The Writ Petition is allowed as prayed for. The respondent is directed to give suitable employment to the petitioner commensurate with her educational qualification on compassionate grounds. No costs.”

iv) In ***The District Collector and 2 others vs. S.Santhi*** in W.A.No.2640 of 2018, a Division Bench of this Court vide its judgment dated 30.01.2023 held as follows:



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“5. We are alive to the fact that application for compassionate appointment should be made within a reasonable time, in the case on hand the application was made within a year, but due to certain circumstances the nominee was changed. Therefore, the petitioner cannot be blamed for the delay. In similar circumstances, where the elder son of the Government servant died and an application was made after six years nominating the younger son, a Division Bench of this Court in M.Namadeva v. The Director of School Education, made in WA No.4062 of 2019 dated 26.11.2019, had held that in such cases delay cannot be a ground to refuse compassionate appointment.”

v) In ***A.Chindamani vs. The General Manager and another*** in W.P.No.31311 of 2017, a learned Single Judge of this Court vide order dated 25.08.2021 held as follows:

“8. This is a case where the petitioner herself appears to be an uneducated and a semi-literate person. It is not expected for an uneducated homemaker to be aware of the Government orders, which are released from time to time, by the Government. Considering the fact that the petitioner's son was a minor at the time of the death of his father and also the fact that there was no other guideline which was uniformly being



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applied at the time of the death of the petitioner's husband, this Court is inclined to direct the respondent/Board to consider the petitioner's application for appointment on compassionate ground of her son, favourably by overlooking the three year limitation prescribed in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995. The respondent/Board may also consider the fact that several other persons who had applied after the petitioner's application were appointed after the limitation period of three years prescribed in G.O.Ms.No.120, Labour and Employment Department dated 26.06.1995 had expired and by relaxing the same by applying G.O.Ms.No.18, Labour and Employment (Q1) Department dated 23.01.2020 which is currently prevailing for employment on compassionate grounds. The respondent/Board shall dispose of the application of the petitioner favourably, within a period of six weeks from the date of receipt of a copy of this order provided the petitioner satisfies the other criteria for appointment on compassionate ground."

vi) While considering the identical facts in a case in ***K.Michael Johnson vs. A.P.Southern Power Distribution Company Limited*** reported in (2021) 2 ALD 43, the High Court of Andhra Pradesh directed the



respondents therein to consider the claim of the petitioner to appoint him in a suitable post within a period of six months. The relevant paragraphs of the said order is extracted hereunder:

“20. Thus, such cases in which unfledged children lose their parents in harness have to be considered as “hard cases” and should be dealt with a humane outlook and thoughtfulness .

.....

....

23. In identical matters, the Hon’ble High Court of Madras following the decisions of the Hon’ble Apex Court in (1) T. Meer 5 (2007) 6 MLJ 1011 2021:APHC:1202 12 Ismail Ali Vs. The Tamil Nadu Electricity Board and others, (2) Selvi R. Anbarasi Vs. The Chief Engineer (Personnel), Tamil Nadu Electricity Board and others (3) The Superintending Engineer vs. V. Jaya and (4) M. Uma Vs. The Chief Engineer (Personnel), Tamil Nadu Electricity Board and others and (5) J. Jeba Mary’s case wherein directed the respondent authority therein i.e., Tamil Nadu Electricity Board to issue an order of appointment on compassionate grounds to the petitioners therein as per their qualifications.

24. In the present case, this Court already noted that the guardian of the petitioner made an application, dated 05.06.2003 within the stipulated period in favour of the



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petitioner, being a minor at that time and after attaining the age of 18 years she made another application on 14.11.2013 seeking appointment on compassionate grounds to the petitioner. Though this Court is having conscious of the directions of the Hon'ble Supreme Court on which the respondents relied in their counter, in view of the provision provided in the Board proceedings delegating the powers to relax the conditions to the Member Secretary of the APSEB and 6 2004 (3) CTC 120 7 (2006) 2 MLJ 200 8 (2007) 6 MLJ 1011 9 (2010) 7 MLJ 644 2021:APHC:1202 13 of the fact that the guardian of the petitioner has made an application within the stipulated time and also made subsequent application after attaining the age of majority by the petitioner and also taking note of the fact that the petitioner, who turned an orphan due to his father's death in harness, the claim of the petitioner has to be considered."

vii) In similar circumstances, a Division Bench of this Court in ***The State of Tamil Nadu, Rep. by its Secretary vs. C.Arnold,*** in WA(MD).No.479 of 2024, dated 01.04.2024, directed the appellants therein to provide compassionate appointment to the respondent therein within a period of 2 months. The relevant paragraphs are extracted hereunder:

"13.Therefore, it is not mandatory that at the time of



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making the application seeking compassionate appointment, the applicant or for whom such an application has been made seeking compassionate appointment to have a minimum years of age, that means on behalf of a minor also the application can be made, however, such application even if it is considered, the appointment can be given to the dependant or legal heir only after he or she attains majority.

14. Therefore, the intention of the Rule making authority is clear, unambiguous and explicit to state that under no circumstances compassionate appointment should be denied to a family which is in penurious circumstances where for want of attaining the majority of the legal heir or dependant of the deceased employees family, if compassionate appointment could not be given immediately, the employer can consider such application and grant the same or extend the benefit of compassionate appointment to such a dependant or legal heir of the deceased employee of the family on his attaining the majority.

15. When this intention of the Government has been made very clear under the Rule and the Rule has also been given to force with effect from 08.03.2023, thereafter, if the consideration is made in May 2023, in the case in hand, the Rule should have been applied and had it been applied, the



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application filed on behalf of the respondent/writ petitioner ought not to have been rejected by the employer. Therefore, the learned Judge since has interfered with the said order and given direction in the order impugned to consider the application for extending the benefit of compassionate appointment to the respondent/writ petitioner, in our considered view it is flawless and hence, the same is to be sustained. Accordingly, the impugned order is sustained. Hence, the Writ Appeal fails.”

viii) While dealing with a writ petition in WP.No.30954 of 2018 (***M.Swetha vs. The District Collector and 3 others***), filed in similar circumstances, this Court by its order dated 06.11.2024 observed as hereunder:

“7.The aim and object of providing compassionate appointment is to give immediate support to the family who lost their breadwinner who died over the sudden crises. For effective implementation of the compassionate appointment scheme, the State Government issued several instructions and order time to time. In several cases, it came to the notice of the Court that the respondents are maintaining the seniority list, district wise to provide compassionate appointment to the



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eligible legal heirs of the deceased employees who died in harness. In most of the cases, the State Government is taking more than 10 to 15 years to provide compassionate appointment by following the seniority list maintained by them.

8. Under these factual position, the ground raised by the respondents in the impugned order that the petitioner submitted her application for compassionate appointment after three years of the death of the petitioner's father is, untenable and unsustainable. As and when the State Government is not in a position to provide compassionate appointment immediately after demise of the breadwinner of the family or at a reasonable time, they are not suppose to contend that the petition submitted after three years by the petitioner and as such, she is not entitled for consideration. ”

16. The learned Government Advocate for the respondents in support of his contention has placed a reliance on the order dated 12.06.2024 in WP.No.23314 of 2023 of a learned Single Judge of this Court. On going through the said order, this Court is of the opinion that the said order is not applicable to the facts of the present case.

17. The principle behind the compassionate appointment is to provide



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a buffer, a cushion to the direct dependants of the deceased employee to cope with the loss. The purpose of providing compassionate appointment to the members of the deceased government servant is to render assistance to the family, which is found in indigent circumstances. The respondents are not supposed to defeat the claim of the dependants of the deceased family on technicalities or on the ground that the application was made beyond the stipulated time of 3 years. The respondents ought to have adopted a humane touch while considering the claim of the dependants of the deceased family for compassionate appointment.

18. It is appropriate to extract the observation of the High Court of **Andhra Pradesh in K.Udaykiran vs. State of Andhra Pradesh** reported in 2021 SCC OnLine AP 2009 at Paragraph Nos.15 and 20 as hereunder:

“15. The respondents have to understand the very purpose of providing compassionate appointment, which is meant for providing employment assistance to the dependants of the deceased employee, who died in harness and thereby to provide some relief to the family from undergoing financial sufferings. When the family of the deceased employee consisting of illiterate wife and minor child, since, they have no other source of livelihood after the untimely death of the



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bread winner of the family, the respondents should have been much more sympathetic and practical in considering the claim of the dependants of the deceased employee for compassionate appointment.

20. This Court expects from the respondents also such type of liberal approach in considering the claims of the dependants of the deceased employees for compassionate appointments. This court holds that the respondents shall consider the cases of the dependants of the employees died in harness with human touch without considering only technicalities.”

19. In this regard, it is worthwhile to refer the case in ***Balbir Kaur v. Steel Authority of India Limited*** reported in (2000) 6 SCC 493 wherein their Lordships (U.C. Benarjee, J speaking for the Bench) of the Hon'ble Supreme Court have held as under:

“In the case of appointment considering the social and economic justice as enshrined in the constitution, denials of deserving cases are liable to be set aside. Further, the purpose of providing compassionate ground to a son or daughter or a near relative of the deceased government servant is to render assistance to the family, which is found in indigenous



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circumstances. Hence, in considering the case for compassionate appointment, the authorities are supposed to adopt a human outlook.”

20. The Hon-ble Apex Court further held at Para No. 19 as extracted hereunder:

“The concept of social justice is the yardstick to the justice administration system or the legal justice and as Respondent pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.”

21. In this regard, it is worthwhile to refer the case in ***Superintending Engineer v. V. Jaya*** reported in (2007) 6 Mad LJ 1011, wherein their Lordships comprising a Division Bench of this Court have held at Para No. 7 as extracted hereunder:

“7. However, in a case of request for appointment on compassionate ground, however, the Court, while exercising



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its jurisdiction under Article 226 of the Constitution of India, cannot ignore the very purpose of providing employment on compassionate ground to the dependant of an employee/government servant dying in harness in preference to anybody else as it is done so in order to mitigate the hardship to the family of the employee on account of his unexpected death while still in service. The concept of compassionate employment is intended to alleviate the distress of the family and it is for such purpose appointments are permissible and provided even in the rules and regulations and any rigid approach or too technical objections may defeat the very object of the scheme. It is for that purpose while considering the request for compassionate appointment; the authorities are expected to act as a Good Samaritan overlooking the cobwebs of technicalities.”

22. In the present case, the specific stand of the petitioner is that the petitioner's mother submitted a representation seeking compassionate appointment in the year 1996, but it is the specific contention of the respondents that they did not receive any representation from the mother of the petitioner in the year 1996 and she gave representation only on 24.09.1999. However, such contention of the respondent appears to be not



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correct since on perusal of the letter No.627/B1/99, dated 02.12.1999 of the Assistant Divisional Engineer (H&RW), Ponneri, addressed to the Divisional Engineer (H&RW), Saidai Division, Chennai, which was filed as additional document at page 38, it is stated that “the service register of Shri.N.Chinnasamy, deceased Gang was already submitted vide office letter No.317/95/ dated 21.03.1996 along with proposal for seeking posting under compassionate ground and the same is not received by their office”.

23. On careful examination of the said averments, this Court has no hesitation to come to the opinion that the stand of the petitioner that her mother had submitted representation for compassionate appointment in the year 1996 and subsequent to that, a proposal was also sent by the Assistant Divisional Engineer, vide his letter dated 21.03.1996 to process the said representation, is true.

24. In view of the same, it came to understand that the petitioner's mother made representation in 1996. As such, the representation submitted by the mother of the petitioner is within time and remaining representations are consequential representations submitted by the petitioner. Thus, there is



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no substance in the contention of the respondents for rejecting the claim of the petitioner on the ground of delay in making representation.

25. For the aforesaid reasons and in the light of the settled position of law stated supra, the present Writ Petition is allowed and the Memo No.9851/Adl(2).2017, dated 20.11.2017 issued by the first respondent is hereby set aside with a consequential direction to the respondents to appoint the petitioner in any suitable post within a period of six weeks from the date of receipt of a copy of this order.

No costs.

28.11.2024

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
pvs



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To

1. The Chief Engineer (General),
Highways Department,
Chepauk, Chennai 5.

2. The Divisional Engineer,
Highways Rural Public Works,
Saithapet Division.

3. Assistant Divisional Engineer,
Highways Department,
Ponneri – 601 204.



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pvs

Pre-delivery order in

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