

IN THE HIGH COURT OF JUDICATURE AT MADRAS

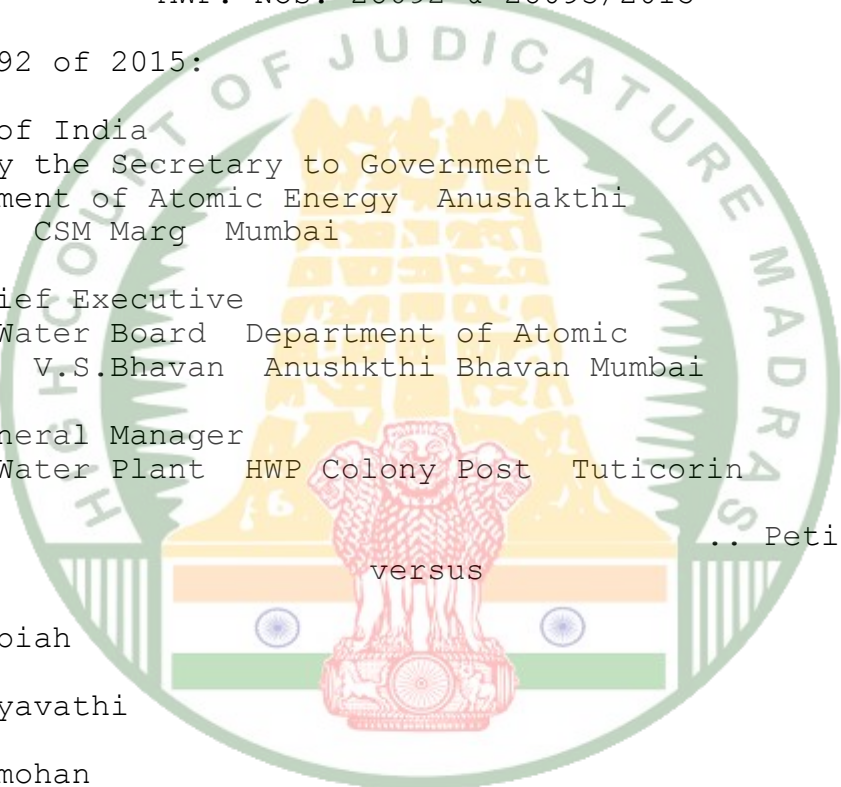
Date: 05.01.2017

Coram

The Honourable Mr. Justice K.K. SASIDHARAN
and
The Honourable Mr. Justice V. PARTHIBAN

W.P.Nos.28092 to 28094 of 2015 &
W.M.P.Nos. 1 to 1 of 2015
MWP. NOS. 28092 & 28093/2015

W.P.No.28092 of 2015:

- 
- 1 Union of India
rep. by the Secretary to Government
Department of Atomic Energy Anushakthi
Bhavan CSM Marg Mumbai
- 2 The Chief Executive
Heavy Water Board Department of Atomic
Energy V.S.Bhavan Anushkthi Bhavan Mumbai
- 3 The General Manager
Heavy Water Plant HWP Colony Post Tuticorin
... Petitioners
- versus
- 1 S.Subbiah
- 2 G.Bagyavathi
- 3 S.Rajmohan
- 4 The Central Administrative
Tribunal rep. by its Registrar Madras
Bench Chennai-104
.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, call the entire records of the 4th respondent in its common order dated 31.3.2015 made in OA No.1766/2013 and to quash the same.

W.P.No.28093 of 2015:

- 1 Union of India
rep. by the Secretary to Government
Department of Atomic Energy Anushakthi
Bhavan CSM Marg Mumbai

2 The Chief Executive
Heavy Water Board Department of Atomic
Energy V.S.Bhavan Anushkthi Bhavan Mumbai

3 The General Manager
Heavy Water Plant HWP Colony Post Tuticorin

.. Petitioners

Versus

1 S.Balasubramaniam

2 The Central Administrative
Tribunal rep. by its Registrar Madras
Bench Chennai-104

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, call the entire records of the 2nd respondent in its common order dated 31.3.2015 made in OA No.1769/2013 and to quash the same.

W.P.No.28094 of 2015:

1 Union of India
rep. by the Secretary to Government
Department of Atomic Energy Anushakthi
Bhavan CSM Marg Mumbai

2 The Chief Executive
Nuclear Fuel Complex Department of Atomic
Energy ECH PO Hyderabad 500 062

3 The Project Director
Zirconium complex Department of Atomic
Energy Pazhayakal Tuticorin

सत्यमेव जयते ..

Petitioners

versus

1 M.Manohar

2 The Central Administrative
Tribunal rep. by its Registrar Madras
Bench Chennai-104

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, call the entire records of the 2nd respondent in its common order dated 31.3.2015 made in OA No.244/2014 and to quash the same.

For Petitioners : Mr. V.P.Sengottuvel
For Respondents : Mr.Balan Haridass
MWP 28092/15
For R1 in Wp 28093/15 : -do-
For R1 in Wp 28094/15 : -do-
For R4, R2, R2 in
Wp NOs. 28092 to 28094/15 Respectively - Tribunal

COMMON ORDER

(Order of the Court was delivered by V.PARTHIBAN, J.)

The present Writ Petitions arose out of the common order passed by the Central Administrative Tribunal, Madras Bench passed in O.A.Nos.1766, 1769 of 2013 and 244 of 2014, dated 31.3.2015 allowing the applications filed by the employees of the petitioner herein, seeking declaration that they are deemed pensioners and to bring them under the Pension Scheme.

2. The employees of the petitioner were originally members of the Contributed Provident Fund Scheme (in short, CPF Scheme). The Department of Personnel and Training issued Official Memorandum dated 1.5.1987 directing all the employees who are in service as on 1.1.1986 and those who were still in service as on the date of the Official Memorandum, would be deemed to have come over to the Pension Scheme, on introduction of the Pension Scheme.

3. According to the Official Memorandum, the employee was given option to continue in the CPF Scheme if he so desires, but he should exercise his option on or before 30.9.1987 and if no option is received by the said date, the employee deemed to have come under the Pension Scheme. Admittedly, in the present case, the respondent employees did not exercise their option before the cut of date, i.e. 30.9.1987. Further, the cut of date was extended till 30.12.1987 by a Circular, dated 18.09.1987 and during the extended time, the respondent employees had exercised their option to remain with CPF Scheme. After exercising their option to remain with CPF Scheme, subsequently it appears that the employees had submitted the representations that they should be brought under the pension scheme, as they did not originally exercise their option before the original cut of date on 30.9.1987, which representations came to be rejected. On their claims being rejected, the respondent employees approached the learned Tribunal, seeking declaration that by deeming provision, they had become members of the Pension Scheme as per the original Office Memorandum dated 1.5.1987.

4. In response to the Original Applications filed by the respondent employees, the petitioner herein resisted the claim by contending that the original cut of date being extended till 30.12.1987, the employees having exercised their option during

extended time, cannot turn around and claim that they had come under the Pension Scheme and hence, entitled to pension.

5. The case of the petitioners before the Tribunal was that once the employees have chosen their exercise consciously, they cannot re-assail their position subsequently and claim pension under the Pension Scheme. The learned Tribunal after taking note of the submissions of rival parties, had framed the following issue, viz.,

"Whether the employees who have not opted to remain in the CPF scheme by the cut-off date, i.e. 30.09.1987 fixed by the DOPT in O.M.dt.01.05.1987, has to be treated as deemed to have opted for the Pension Scheme or by exercising such option to CPF scheme at a later date, within the extended date, they continue to remain in the CPF Scheme?"

6. Dealing with the above issue, the learned Tribunal placed reliance on the decision of the Hon'ble Supreme Court in UOI & another versus S.L.Verma & others" as extracted in para 9 of its order as well as the decision of the High Court of Delhi in W.P.No.(C) No.1490/2006-1507/2006 etc. (Dr.R.N.Virman & others versus University of Delhi and another) as extracted in para 10, has held that an employee who had not opted to continue with CPF Scheme within the original cut-off date, would automatically become member of the Pension scheme by virtue of legal fiction created. The conclusion of the learned Tribunal was on the basis of the ratio laid down by the Hon'ble Supreme Court and the High Court of Delhi, of which, the relevant portion of the Judgment was extensively extracted in para 9 and 10 of the impugned order which read as under:

"9. A similar issue was dealt with by the Apex Court in its decision rendered in UOI & Anr. vs. S.L.Verma & Ors dt.28.11.2006. The Supreme Court held therein that inasmuch as the employees have not chosen to give their option before the cut-off date, a legal fiction is created whereby they have become the members of the Pension Scheme. The operative portion of the judgment is extracted as hereunder:

"7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1.5.1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension

Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No.1 to 13 was illegal when a request was made by respondent No.14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos.1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme."

The above decision squarely applies to the case on hand.

10. Similar order was passed by the Delhi High Court in W.P.(C) No.1490/2006-1507/2006, etc., Dr.R.N.Virman and Ors. vs. University of Delhi and Anr., etc. cases, in order dt.30.04.2014. While passing the order the Delhi High Court has observed as follows:

"14.2. A perusal of the aforesaid form would show that the only option which had to be exercised was with regard to continuation by an employee under the CPF Scheme. The employee was not required to submit any form if, he or she wanted to be covered under the Pension Scheme, as that was automatic, in view of the deeming provision incorporated in clause 3.1 and 3.2 of O.M. dated 01.05.1987. This is precisely the reasoning given by the Supreme Court in no uncertain terms in S.L. Verma's case. The relevant observations of

the Supreme Court are contained in paragraphs 4 and 7, which for the sake of convenience, are extracted hereinbelow.

"4. The Central Government as also the respondent No.14-Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose. For the first time on 2.2.1999, the respondent No.14 requested the Union of India for grant of another chance to the respondents to switch over to pension scheme stating that they purported to have exercised their option for CPF Scheme on the cut-off date.

"7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1.5.1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No.1 to 13 was illegal when a request was made by respondent No.14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed

hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos.1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme..."

"14.5 Clearly, the Pension Scheme as reflected in O.M. dated 01.05.1987 and the facts under consideration, in the present case, are different. There is no requirement for a positive option being exercised for conversion to Pension Scheme. On the cut-off date i.e., 30.09.1987, employees by a deeming legal fiction got covered under the Pension Scheme, unless they chose to exercise a positive option to continue with the CPF Scheme by 30.09.1987.

"16. The argument raised before me by the respondents, which veered towards approbation, was based on the fact that petitioners had continued to contribute under the CPF Scheme. This submission would not cut much ice with me, having regard to the plain terms of O.M. dated 01.05.1987. If, the cover under the Pension Scheme, gets triggered with effect from 30.09.1987, the contribution by an employee and its receipt by the employer clearly proceeds on a misconception of the provisions of O.M. dated 01.05.1987. As a matter of fact, this very argument was repelled by the Supreme Court, in S.L. Verma's case, and I think, for good reason. Consequently, there is no room for entertaining such an argument. The relevant observations made in paragraph 7, specific to this aspect, are, once again, extracted hereinafter.

"...It may be right they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise.."

"18. Having regard to the dicta of the Supreme Court in D.S. Nakara's case that grant of pension is a measure of socio-economic justice which, provides economic security in the evening of one's life, and that, this discernible purpose

should inform the interpretive process involved in any such scheme, and therefore, should receive liberal construction, I am inclined to hold that the petitioners would stand covered under the Pension Scheme. In my view, this conclusion accords with the decision of the Supreme Court in S.L. Verma's case and the stand taken by the UGC with regard to the interpretation placed on clause 3.2 of O.M. dated 01.05.1987."

7. As against the above decision of the learned Tribunal, granting the relief, the petitioners are before this Court.

8. The petitioners assailed the order passed by the Tribunal on the ground that once an option had been exercised by the employees concerned albeit during the extended period of time granted for exercising option, the employees cannot go back on their option and that too after several years and claim for pension under the Pension Scheme.

9. Mr.V.P.Sengottuvel learned counsel appearing for the petitioners strenuously contended that vide communications dated 1.5.1987 and 18.9.1987, the employees were given option to remain in CPF Scheme till 30.12.1987, it was followed by another Official Memorandum dated 7.7.2009 stating that such exercise option up till 30.12.1987, cannot be held to be invalid and the employees of the Department Atomic Energy are to be treated separately and cannot be treated as that of the Central Government employees in view of the fact that the original Office Memorandum providing option, had been belatedly circulated to the said Department. By this submission, Mr.Sengottuvel attempted to draw a distinction between the employees of Department of Autonomic Energy and other counterparts of the Central Government. According to him, the learned Tribunal overlooked these crucial aspects and followed the decision of the Hon'ble Supreme Court and the Delhi High Court cited supra. In any event, according to the learned counsel, once admittedly the employees having exercised option to remain in CPF Scheme, no relief could be granted to them towards pension as that would defeat the very purpose of the original Official Memorandum issued providing for option.

10. Refuting the contentions of the learned counsel appearing for the petitioners, Shri Balan Haridass learned counsel appearing for the respondents would contend that the extension of the cut of date from 30.9.1987 to 30.12.1987 had no sanctity in law since the same was not authorized. In support of his contention, Shri Balan Haridass had drawn our attention to the communication dated 24.10.2007 issued by the Ministry of Personnel, P.G., and Pensions, Department of Pension and Pensioners' Welfare, in which, it is mentioned that the power to extend the date has not been delegated by the Department to any other authority. Therefore, according to him, the exercise

of option by his clients, namely, the respondent employees cannot be held against them since such exercise is not a valid exercise in the eye of law.

11. Shri Balan Haridass also contended that the learned Tribunal after considering the facts and circumstances, had rightly concluded in favour of the respondent employees and therefore, the impugned order of the Tribunal does not warrant any interference from this Court.

12. In addition to the factual submission, the learned counsel has taken us through the decision of the Delhi High Court in the matter of "Smt. Shashi Kiran and others versus Union of India and others" etc., reported in 2016 SCC OnLine Del4819" wherein, the Delhi High Court has dealt with the issue in extenso and finally held that even if an option exercised by the employees, they would still be entitled to request for change of option to pension scheme in view of subsequent developments and change in socio and economic scenario. In order to appreciate the arguments of Shri Balan Haridass, relevant paragraphs of the decision which would be helpful in deciding the issue involved in the writ petitions, are extracted hereunder:

"22. This court is of the opinion that no infirmity can be found with the approach or reasoning of the learned Single Judge, in allowing the respondents' petitions. The learned Single Judge made a factual analysis, in this category of teaching staff. The chart, prepared for the purpose, and extracted at Para 3.1 of the judgment in this batch (N.C. Bakshi v Union of India WP 5310/2010) shows that all the employees opted for the CPF benefits, after the cut-off date. It was because of this and the expressed stand of the UGC- and the University that the learned Single Judge concluded that notwithstanding the so called option, exercised in terms of the extensions given, the writ petitioners could not be denied the benefit of the Pension Scheme because they were deemed, by the OM of 01.05.1987 to have opted for it, by default. Having regard to these facts, the appellants could not have urged that the benefit of the Pension Scheme should have been denied to these class of petitioners/teaching staff. Therefore, we are of opinion that there is no infirmity with the impugned judgment of the learned Single Judge. The University's appeals, therefore, deserve to fail.

"23. The last category is the Shashi Kiran batch. Here, the University staff, who constituted the writ petitioners, had consciously opted for the CPF benefits. Their grievance was that of discriminatory exclusion. They had approached the court, contending that when they sought for options,

the respondents refused to extend it, saying that the previous extensions had ended and later, that the UGC and the Central Government had refused to grant approval.

"24. This court noticed earlier that relief was granted in the Virmani batch of petitions, by a separate judgment though delivered on the same day. In that judgment, the sequence of events which led to the extensions and how the respondents (i.e UGC and Union of India) were aware of it, was noticed. The said portion of the judgment is relevant and is extracted below:

"(i). that the option for employees for change over from CPF to Pension Scheme was available only upto 30.09.1987;

(ii). the revised options given to employees to return to Pension Scheme were "absolutely incorrect and against the Rules";

(iii). the fact that 30.09.1987 was the cut-off date was conveyed by the UGC to the University of Delhi vide its letter dated 25.05.1999;

(iv). the UGC vide its communication dated 08.08.2001 had requested the GOI through Ministry of Human Resources Development (in short MHRD) to consider extension of the scheme of conversion, which was, however, not agreed to as reflected in GOI's letter dated 27.09.2001. The stand of the GOI as reflected in the said communication was based on its earlier communication dated 19.06.2000 which, adverted to the fact that the matter had been examined by the Ministry of Finance, GOI which had, in turn, advised against grant of another option for change over from CPF to Pension Scheme;

(v) In September 2002, letters were exchanged between the UGC and MHRD, GOI as also between University of Delhi and UGC.

(v)(a) To be noted, letters exchanged amongst the entities referred to above have been appended with the counter affidavit of UGC.

(v)(a)(i) The letters exchanged between the UGC and MHRD, GOI are dated: 03.09.2002, 24.10.2002, 26.03.2007, 28.03.2007, 11.05.2007, 26.09.2008, 10.09.2008;

(v)(a)(ii). In so far as correspondences exchanged between University of Delhi and UGC are concerned, these are dated: 28.02.2003, 23.09.2003, 21.12.2006.

(v)(a)(iii). Apart from the above, there is a reference to representations by teachers, who were employed with University of Delhi and colleges affiliated to it, prior to 01.01.1986.

(v)(b). The sum and substance of the correspondences referred to above is, that while UGC was sympathetic

to extension of the date of conversion till at least 31.03.1998, it did not want to take the burden of pension liability of the employees if, GOI was not agreeable to the extension of date beyond 30.09.1987. (see letter dated 03.09.2002). As a matter of fact, UGC sought instructions in the matter from the GOI, which vide its letter dated 24.10.2002, advised UGC, being the funding agency for Central Universities and deemed Universities, to take a decision at its end without referring the matter to MHRD.

(v)(b)(i). The UGC, therefore, on its part vide its communication dated 23.09.2003, informed University of Delhi that it could not grant, a retrospective, one time change over from CPF Scheme to Pension Scheme.

(v)(b)(ii). What interestingly, though, emerges from the correspondence, is that, since several institutions, such as, IIT Kanpur and other autonomous institutions such as, the Department of Atomic Energy and CSIR had extended the date of switch over qua its employees - UGC's request that the conversion date be extended till 31.12.2003, as a new Pension Scheme had kicked-in vis-à-vis persons joining the University on or after 01.01.2004, was declined by MHRD. (see letter dated 26.03.2007)."

"23. The discrimination complained of by the appellants in Shashi Kiran's batch of cases is that even though the deadline of 30.09.1987 was not deemed sacrosanct by the University (and through omission and, therefore, tacit approval, by UGC and the Central Government) a large number of employees who had not opted either way were allowed to switch-over to the Pension Scheme through options given over 14 years, by 12 different extensions. Given that the ground realities had undergone a sea change, the CPF scheme was unfeasible and had lost viability; on the other hand, the Pension Scheme was more beneficial. These appellants argue that in such a situation, when 2469 staff members opted for pension on various dates during these extensions, when they wished to do so, the respondents unfairly refused the benefit.

"26. The learned Single Judge's view has some logic in it because the University refused the Pension Scheme benefits in case of those who had chosen it: in Virmani's case, by default (i.e. no option, which meant deemed option) and in the other cases, because of the option for CPF, given after the date prescribed. While the logic for directing relief in the first category (Virmani) is sound, the second category was given relief by ignoring that they consciously wished to switch-over to the CPF scheme,

but after the cut- off date. Thus, the learned Single Judge ignored the conscious choice made only on the ground that the choice or option for CPF was after the cut-off date. Now, this has led to a peculiar situation where those who opted for CPF benefits have been divided into two categories: one, who opted before the cut-off date and two, those who opted after the cut-off date. The latter have been given relief. That is also the basis for refusing relief to the former, who are appellants in this batch."

13. From the above, it could be seen that even the employees who have originally opted to remain in CPF Scheme and switched over to Pension Scheme because the same was being more beneficial to them, the Court has held that non-grant of better benefits by way of pension and denying the same to one set of employees per se discriminatory notwithstanding the option exercised by the employees to remain in CPF scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. The Delhi High Court has adverted to several decisions of the Hon'ble Supreme Court and other High Courts and passed a detailed judgment in a batch of appeals. The issues raised before the Delhi High Court were identical and the Court has answered the issues in favour of the employees.

14. This Court, after hearing the arguments on either side, gave its anxious consideration with reference to the pleadings and the decisions of the Hon'ble Supreme Court and the decision of the Delhi High Court. The natural conclusion emanated from our anxious consideration will only lead to hold that the respondent employees despite their option to remain in CPF Scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. Firstly, the said option given during the time of extended period has no sanctity in law. Secondly, such option given by the employees cannot be held against them in view of the fact that several similarly placed employees of the Central Government were allowed to switch over to the GPF Scheme, meaning that no seriousness attached to the cut of date prescribed originally by the Official Memorandum dated 1.5.1987. If these employees were denied pension in the facts and circumstances, it would certainly amount to discrimination, which per se constitutionally impermissible. Moreover, the decision of the Delhi High Court cited supra and the contentions which were extracted above, would unequivocally supported the claim of the respondent employees notwithstanding the fact that whether they exercised their option or not.

15. In the above circumstances, the order passed by the Tribunal allowing the claim of the respondent employees cannot be faulted with, although the learned Tribunal did not elaborate reasons in support of its conclusion. The conclusion reached by

the Tribunal, in our opinion, would not suffer from any infirmity or irregularity warranting interference of this Court.

For the foregoing reasons, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected MPs are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

1. Union of India
rep. by the Secretary to Government
Department of Atomic Energy Anushakthi
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5. The Regiistrar,
Central Administrative Tribunal.
Madras Bench,
Chennai -104.
6. The Chief Executive,
Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad.

+1cc to M/S. Balan Haridas, Advocate SR. 958

+1cc to M/S.V.P. Sengottuvel, Advocate SR. 1034

W.P.Nos.28092 to 28094 of 2015

NRI (CO)
VR(06/02/2017)