



W.P(MD)No.10311 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Orders reserved on
26.08.2022

Orders pronounced on
02.09.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.10311 of 2012

- 1.S.Ramesh
- 2.R.Sarlet Jegan
- 3.C.Siva Subramonian
- 4.M.Sivakumar
- 5.P.Uchimakali
- 6.S.Kumaravel
- 7.R.Santhoshkumar
- 8.P.Arumuga Nayanar
- 9.A.Selvaganesh
- 10.R.Shankarprakash Raja
- 11.V.Shanmuganadhan
- 12.R.Shaji
- 13.S.Narayanan
- 14.H.Parthiban
- 15.M.Raju
- 16.D.Puvaneksha
- 17.A.Perumal
- 18.S.Kannan
- 19.B.Manthiramoorthy
- 20.R.M.Muthukumar
- 21.A.Bagavathi
- 22.T.Ramachandran
- 23.S.Raja
- 24.V.Vaikundam
- 25.T.Vairamuthu
- 26.R.Vinothkumar
- 27.V.Tony Pradheep
- 28.M.Rengan
- 29.A.Senthilkumar
- 30.V.S.Vasu
- 31.S.Rajalingam
- 32.M.Thirugnanasambantham
- 33.J.Vetrivel



W.P(MD)No.10311 of 2012

- 34.P.Kumar
- 35.G.Mahesh
- 36.P.Udhayakumar
- 37.C.Sivashankarasubbu
- 38.S.Sivasubramanian
- 39.M.Subramanian
- 40.G.Kulasekaran
- 41.S.Sivakumar
- 42.S.Renganathan
- 43.Hamant Suklal More
- 44.R.Karthigaiperumal
- 45.M.Kathirvel Mariappan
- 46.C.Murali
- 47.C.Siva
- 48.N.Muralidharan
- 49.R.Rajagopalan
- 50.D.James Irudhayaraj
- 51.P.Shanmuga Sastha Sivam
- 52.J.Raja
- 53.S.Suresh Babu
- 54.R.Shankar
- 55.J.Ganesan
- 56.U.Kandeeban
- 57.M.Prabhu
- 58.V.S.Iyveen Prasad
- 59.N.Prakash
- 60.S.Nivas Ganesh
- 61.M.R.Selva Subbian
- 62.M.Sundarraaj
- 63.M.Ganesan
- 64.C.Kalidasan
- 65.K.Dhanaraj
- 66.T.Ramesh
- 67.S.Muthiah
- 68.P.Ayyappan
- 69.N.Kumaravelu
- 70.S.Murugan
- 71.P.Paranikannan
- 72.P.Rubachandran
- 73.M.Arun Suresh
- 74.J.Paul Francis Jayaseelan
- 75.R.Ravichandran
- 76.R.Ahilan
- 77.A.Manikandan

... Petitioners



W.P(MD)No.10311 of 2012

Vs.

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- 1.Union of India,
Ministry of Finance,
Department of Expenditure,
Represented by its Secretary,
New Delhi.
- 2.The Department of Atomic Energy,
Represented by its Secretary,
Anushakthi Nagar,
C.S.M. Marg,
Mumbai - 400 001.
- 3.Nuclear Power Corporation of India,
Represented by its Chairman-cum-
Managing Director,
Vikram Sarabhai Bhavan,
Anushakthi Nagar,
Mumbai - 400 094.
- 4.The Director (Human Resource),
Directorate of Human Resource,
Nuclear Power Corporation of India,
Vikram Sarabhai Bhavan,
Anushakthi Nagar,
Mumbai - 400 094.
- 5.The Deputy General Manager (HR-P),
Directorate of Human Resource,
Nuclear Power Corporation of India,
Vikram Sarabhai Bhavan,
Anushakthi Nagar,
Mumbai - 400 094.
- 6.The Site Director,
Kudankulam Nuclear Power Project,
Nuclear Power Corporation of India,
Kudankulam Post,
Radhapuram Taluk,
Tirunelveli - 627 106.



W.P(MD)No.10311 of 2012

7.The Deputy General Manager (HR),
Kudankulam Nuclear Power Project,
Nuclear Power Corporation of India,
Kudankulam Post,
Radhapuram Taluk,
Tirunelveli - 627 106.

8.The Manager (HR),
Kudankulam Nuclear Power Project,
Nuclear Power Corporation of India,
Kudankulam Post,
Radhapuram Taluk,
Tirunelveli - 627 106.

9.The Deputy Manager (HR-ER),
Kudankulam Nuclear Power Project,
Nuclear Power Corporation of India,
Kudankulam Post,
Radhapuram Taluk,
Tirunelveli - 627 106.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 27.11.2010 passed by the eighth respondent in KKNPP/HR/Estt.2010/S/3548, the order dated 10.05.2011 passed by the fifth respondent in NPCIL/HRP/1/8/2/2011/347, the order dated 30.05.2011 passed by the seventh respondent in KKNPP/HR/Estt.2011/5/3698 and the order dated 20.08.2011 passed by the ninth respondent in KKNPP/HR-ER/2011/S/300, quash the same and consequently direct the respondents to pay the petitioners the band pay of Rs.10,920 from the date of the petitioners appointment as Scientific Assistant - B and the band pay of Rs.12,540 from the date of the petitioners promotion to the post of Scientific Assistant - C in the pay band of Rs.9,300-34,800 with arrears and all other consequential benefits together with interest at the rate of 12% per annum and also to pay



W.P(MD)No.10311 of 2012

the band pay of Rs.12,540/- to the petitioners who are yet to get promotion to the post of Scientific Assistant - C from the date of the petitioners promotion to the said post, award costs.

For Petitioner : Mr.V.Ajay Khose
For RR 1 & 2 : Mr.Arjunarajan
Senior Panel Counsel
for Government of India
For RR 3 to 9 : Mr.Krishna Srinivasan
for M/s.S.Ramasubramaniam Associates

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order dated 27.11.2010 passed by the eighth respondent in KKNPP/HR/Estt.2010/S/3548, the order dated 10.05.2011 passed by the fifth respondent in NPCIL/HRP/1/8/2/2011/347, the order dated 30.05.2011 passed by the seventh respondent in KKNPP/HR/Estt.2011/5/3698 and the order dated 20.08.2011 passed by the ninth respondent in KKNPP/HR-ER/2011/S/300 and consequently directing the respondents to pay the petitioners the band pay of Rs.10,920/- from the date of the petitioners appointment as Scientific Assistant - B and the band pay of Rs.12,540/- from the date of the petitioners promotion to the post of Scientific Assistant - C in the pay band of



W.P(MD)No.10311 of 2012

Rs.9,300-34,800/- with arrears and all other consequential benefits together with interest at the rate of 12% per annum and also to pay the band pay of Rs.12,540/- to the petitioners who are yet to get promotion to the post of Scientific Assistant - C from the date of the petitioners promotion to the said post.

2. The petitioners case, in brief, is that the petitioners were appointed as Scientific Assistant B and Scientific Assistant B trainee. The pre-revised scale of pay for Scientific Assistant B is Rs. 5,500-175-9000. The revised pay as per VI CPC was notified on 29.08.2008, but given effect from 01.01.2006. The Government of India issued office Memorandum, dated 30.08.2008 regarding the implementation of VI CPC and fixation of pay and payment of arrears. The third respondent issued proceedings dated 18.09.2008 notifying the revised pay structures for the posts operated in NPCIL. All the pre-revised scales of pay from S-9 to S-15 posts/grades were brought under the new, but single pay band/scale. S-9 to S-15 posts/grades were brought under new pay band No.2 (PB-2) of Rs. 9300-34800, but different Grade Pay for each grade. The Grade Pay in PB-2 for the pre-revised scale for the grades S-9 to S-12 is Rs. 4200, the Grade Pay for S-13 is Rs.4600, the Grade Pay for S-14 is Rs.4800 and the Grade Pay for S-15 is Rs.5400. The entry pay in



W.P(MD)No.10311 of 2012

the revised pay structure for direct recruits appointed after 01.01.2006 is given in tabular column under Section 2, Part-A of the first schedule to the notification, dated 29.08.2008. The Grade Pay of Rs.4200 has been fixed for the pre-revised scales applicable to S-9 to S-12 grades/posts. In a decision taken by the pay anomaly committee, directions were issued to enhance the grade pay for Scientific Assistant - C, who were in S-12 grade from Rs.4200 to Rs. 4600. Scientific Assistant - A is a promotional post for Technicians. Scientific Assistant - B is the entry level post for direct recruitment and also it is a promotional post for Scientific Assistant - A. The Scientific Assistant - A were getting the pay scale of Rs. 5000-100-8000 under V CPC and it comes under S-9 grade. The Scientific Assistant - B were getting the scale of pay of Rs.5500-175-9000 and it comes under S-10 grade. The revised pay structures as per VI CPC, both the Scientific Assistant - A and Scientific Assistant - B have been given the same pay band of (PB-2) of Rs.9300-34800 with a same Grade Pay of Rs.4,200/-. While fixing the pay for Scientific Assistant - B, instead of fixing the basic pay as per the fitment table for S-10 grade, the respondents followed the fitment applicable to S-9 grade. Correct basic pay in the pre-revised pay was not taken for fixing the basic pay for Scientific Assistant B. Though in CCS (RP) Rules, 2008, the pre-



W.P(MD)No.10311 of 2012

revised scale for all the grades from S-9 to S-15 were merged and brought into one single scale/pay band, namely, PB-2 of Rs. 9300-34800, in many departments including NPCIL, even after 01.01.2006, the posts coming under Grades S-9 to S-15 were not merged for various reasons and had continued to remain. One grade is the feeder category for the next higher grade. The respondents ought to have merged the posts carrying the scales of pay of Rs. 5000-8000, Rs.5500-9000 with the posts scale in the pre-revised scale of pay of Rs.6500-10500 and they should have been upgraded employees to those scales and revised to the scale of pay of Rs.6,500-10500. There is also disparity in the pay fixation for Scientific Assistant - C, who were recruited directly and who were promoted from the post of Scientific Assistant - B. In this regard, representations were submitted and that was rejected, leading to the filing of this Writ Petition.

3. Learned counsel appearing for the petitioners submitted that as per office memorandum, dated 25.05.1998 issued by the Ministry of Personnel Public Grievances and Pension, for movement from the basic pay of Rs.5000-8000 to Rs.5500-9000 it takes three years. Thus for the Scientific Assistant - A to move from his pay scale of Rs.5000-8000 to the pay scale of Rs.5500-9000 which



W.P(MD)No.10311 of 2012

belong to Scientific Assistant B, it requires three years. The Government of India issued Sixth Pay commission report in March, 2008 with general recommendations on pay structure and fixation. The Ministry of Finance (Department of Expenditure) issued notification, dated 29.08.2008, relating to Central Civil Services (Revised Pay) Rules, 2008. Rule 8 of the Central Civil Services (Revised Pay) Rules, 2008 deals with fixation pay in the revised pay structure of employees appointed as fresh recruits on or after 01.01.2006. The combined reading of the recommendations made in the pay commission report and Central Civil Services (Revised Pay) Rules, 2008 with regard to fixation of pay structure, certain protection was given for employers who are already in service and who are recruited after 01.01.2006. Though the petitioners were recruited after 01.01.2006, they were directly recruited as Scientific Assistant - B in the pay scale of Rs.5500-9000. The feeder category for promotion to the post of Scientific Assistant - B is Scientific Assistant A. The pay structure for Scientific Assistant - A is Rs. 5000-8000. However, both the previous scales of pay were merged as Rs.9300-34800. When dealing with such a scenario, the pay commission recommendation reads as follows:-



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W.P(MD)No.10311 of 2012

2.2.21 (v) *On account of the proposed merger of pre-revised pay scales of Rs.5000-8000, Rs. 5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades shall come to lie in an identical grade. The Commission has given specific recommendations about some categories of these posts in the Report. As regards other posts, it should first be seen if the posts in these three scales can be merged without any functional disturbance. If possible, this should be done. In case it is not feasible to merge the posts in these pay scales on functional considerations, the posts in the scale of Rs.5000-8000 and Rs.5500-9000 should be merged with the post in the scale of Rs.6500-10500 being upgraded to the next higher grade in pay band PB-2 with grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs. 6500-10500 should be merged with the post in the scale of Rs.7450- 11500. Besides, posts in the scale of Rs.6500-10500 carrying minimum qualification of either Degree in Engineering or a Degree in Law should also be upgraded and placed in the scale of Rs.7450-11500 corresponding to the revised pay band PB-2 of Rs.8700-34800 along with grade pay of Rs.4600.*



W.P(MD)No.10311 of 2012

2.2.22 Fixation of pay in the revised pay bands of existing employees as well as future recruits shall be done in the following manner:-

.....

(iv) In case of new recruits, fixation in the running pay band of the group (viz. 'A', 'B', 'C') to which the post belongs will be done in the following manner:-

a. Initially the fixed qualifying service prescribed in DOPT's OM dated 25/5/1998 (as may be amended by the Government in future) for movement from the first grade in the running band to the grade in which recruitment is being made will be computed.

b. Thereafter, one increment for every year of fixed qualifying service prescribed in the aforesaid OM of DOPT shall be provided on the sum total of the minimum of the running pay band and the lowest grade pay in that pay band.

c. The pay band on joining shall be the stage so computed in the corresponding running pay band. Additionally, grade pay corresponding to the grade in that running pay band shall be payable.

d. To exemplify the fitment of new recruits in any grade in the revised pay bands, a case of direct recruitment in the revised pay band PB-1 of Rs. 4860-20200 along with grade pay of Rs.2000 that corresponds to the pre-revised pay scale of Rs. 3200-4900 has been taken up.



W.P(MD)No.10311 of 2012

DOPT's OM dated 25/5/1998 prescribes minimum six years of service for promotion from the prerevised scale of Rs.2750-4400 (being the first grade in the running pay band) to the scale of Rs.3200-4900 (3 years from scale of Rs.2750-4400 to Rs.3050-4590 and thereafter 3 years from the scale of Rs.3050-4590 to Rs.3200-4900).

Hence, 6 increments at the rate of 2.5% for each increment – adding upto 15% - will need to be given. The minimum pay in the revised pay band for a person recruited to a post carrying grade pay of Rs.2000 will therefore be Rs.5859 i.e. the minimum of the pay (Rs.4860) attached to pay band PB-1 and 15% (being six increments at the rate of 2.5% each) of sum total of the minimum of the running pay band and the lowest grade pay in that pay band.

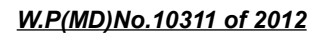
Grade pay of Rs.2000 will additionally be payable. Consequently, the consolidated pay in the pay band and grade pay, at the time of recruitment of an employee directly recruited in the pay band PB-1 with grade pay of Rs.2000, will be Rs.7859."

If the pay of the petitioners is fixed on the basis of these recommendations, the pay for pre-revised pay scale Rs.5500-175-9000, shall have to be fixed at basic pay of Rs. 10,520/-. The pay of the petitioners were not fixed as per these guidelines.



W.P(MD)No.10311 of 2012

4. In reply, learned counsel appearing for the respondents 3 to 9 submitted that the petitioners have joined the service from the year 2000 to 2009. Sixth pay commission recommendations were given effect from 01.01.2006. Therefore, the petitioners pay have to be fixed in the minimum revised pay scale as per the revised pay scale. The post of Scientific Assistant - A was not operated when the petitioners were recruited and therefore, they cannot claim to have their pay revised as claimed by them. The petitioners 1 to 16 and 66 to 77 were joined as Scientific Assistant - B and the petitioners 17 to 65 were joined as trainee Scientific Assistant - B. The trainee Scientific Assistant B cannot claim pay revision on par with Scientific Assistant B. The pay of direct recruits was fixed as per Rule 8 of the Central Civil Services (Revised Pay) Rules, 2008. Pre-revised pay scale of Rs.5000-8000, 5500-9000 and Rs.6500-10500 were merged in a single pay band of Rs. 9300-34800 with Grade Pay of Rs.4200. Then the Grade Pay of Rs. 4600 was granted to the pre-revised scale of pay of Rs.6500-10500. The pay was revised in line with Government Orders and the provision of the Central Civil Services (Revised Pay) Rules, 2008, for those who joined on or after 01.01.2006. At the time of the petitioners joining in NPCIL, no Scientific Assistant - A post was in existence. When that be the case, comparison of the post not in



<https://www.mhc.tn.gov.in/judis>
14/22



W.P(MD)No.10311 of 2012

as fresh recruits on or after 01.01.2006. Section II of Part A of first schedule has details about the entry pay in the revised pay structure appointed on or after 01.01.2006. We are concerned in this case with the Pay Band 2 of Rs.9300-34800. Part A of Section shows S-9 and S-10 grade of pre-revised pay scale of Rs.5000-8000 and Rs.5500-9000 respectively were merged into a single revised pay band of Rs.9300-34800 with Grade Pay of Rs.4200/-.

7. As already stated, the specific claim of the petitioners is that it takes three years for Scientific Assistant - A to reach the Scientific Assistant - B, with the pay scale of Rs.5500-9000. Though the pay commission report 2006 merges these two pay scales, till 2009 the post of Scientific Assistant - A and Scientific Assistant B were functional in the third respondent Corporation. However, this fact is disputed by the respondents 3 to 9 and submitted that at the time when the petitioners were appointed, there was no Scientific Assistant - Grade A posts available and therefore, it is pointless to compare the pay scale of Scientific Assistant - A with the pay scale of Scientific Assistant - B. This is a disputed fact and there is no conclusive evidence available to find out as to whether Scientific Assistant - A was available, functional when the petitioners were appointed as Scientific Assistant - B directly.



W.P(MD)No.10311 of 2012

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8. If really, Scientific Assistant - A posts were available when the petitioners were appointed as Scientific Assistant - B, this Court is of the considered view that there is some genuineness in the grievance expressed by the petitioners in the matter of fixation of their pay in the revised pay scale.

9. The reason is that general recommendations on pay structure and fixation of pay scale in case of Chapter 2.2.22(iv) deals with fixation of pay in case of new recruits. As per 2.2.22 (a), fixed qualifying service prescribed in DOPT's OM dated 25.05.1998 for movement from the first grade in the running band to the grade in which recruitment is being made, will be computed for pay fixation. Already we have seen that as per this DOPT's OM, dated 25.05.1998, it takes three years to reach the pay of Rs.5500-9000 from the pay of Rs.5000-8000.

10. Thereafter, one increment for every year fixed qualifying service shall be provided on the sum total of the minimum of the running pay band and the lowest Grade Pay in the pay band as per 2.2.22 (b). If we applied this formula, 3% increment as per Rule 9 of the Central Civil Services (Revised Pay) Rules, 2008 for each year



W.P(MD)No.10311 of 2012

and for the period of three years comes to 9%. The minimum running pay band on the lower Grade Pay for the pre-revised pay scale of Rs.5500-9000 is Rs.9300-34800 and the Grade Pay is Rs. 4200. The minimum of the running pay band and the lowest Grade Pay as per 2.2.22 (b) is $\text{Rs.9300} + \text{Rs.4200} = \text{Rs.13,500/-}$. 9% of Rs.13500 is Rs.1215.

11. Thus the basic pay on joining as Scientific Assistant - B has to be computed as $\text{Rs.9300} + \text{Rs.1215} = \text{Rs.10,515/-}$ and rounded off to Rs.10,520/-. If this formula is applied, the claim of the petitioners that the revised pay scale for pre-revised pay scale of Rs.5500-9000 shall be fixed at Rs.10520/- seems correct and genuine claim. However, this Court is not an expert in undertaking this exercise of fixing/revising pay scale of an employee. It requires a great amount of expertise and this job is better left to the domain of experts in the field.

12. Another contention made by the learned counsel appearing for the petitioners is that there is a disparity between Scientific Assistant - B, promoted as Scientific Assistant - C and Scientific Assistant - C recruited directly. Sometimes, the promoted Scientific Assistants - C were paid less than the minimum scale of



W.P(MD)No.10311 of 2012

pay fixed for directly recruited Scientific Assistant C. Now that the issue is addressed and Scientific Assistant C had been paid with the basic pay on par with the directly recruited Scientific Assistant C. Even if there is any issue in this regard, this Court is not an expert to take a decision on this issue. It is stated in the counter-affidavit of the respondents 3 to 9 that there there is a platform, namely, Joint Consultative Machinery for addressing the petitioners grievances.

13. May be that the petitioners' earlier representations had been rejected, however, in view of the reasons stated above that there is some merit in the claim of the Scientific Assistant - B that their pay is not fixed as per the recommendations of 6th pay commission report and notification issued, this Court directs the petitioners to raise their grievance by way of petitions to the Joint Consultative Machinery or any other appropriate authority within a period of three months from the date of receipt of a copy of this order. On such filing the petitions, the Joint Consultative Machinery or any other authority shall dispose the petitions in the light of the observations made and in the manner known to law within a period of three months from the date of receipt of the petitions or the petitioners may submit a fresh representations to the respondents



W.P(MD)No.10311 of 2012

concerned within a period of three months from the date of receipt of a copy of this order. On such submission of the fresh representations, the respondents concerned are/is directed to consider the representations of the petitioners in the light of the observations made in this order and pass orders in accordance with law.

14. In the result,

"This Writ Petition is disposed of with a direction to the petitioners to raise their grievance by way of petitions to the Joint Consultative Machinery or any other appropriate authority within a period of three months from the date of receipt of a copy of this order. On such filing the petitions, the Joint Consultative Machinery or any other authority shall dispose the petitions in the light of the observations made and in the manner known to law within a period of three months from the date of receipt of the petitions.

or

The petitioners may submit a fresh representations to the respondents concerned within a period of three



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W.P(MD)No.10311 of 2012

months from the date of receipt of a copy of this order. On such submission of the fresh representations, the respondents concerned are/is directed to consider the representations of the petitioners in the light of the observations made in this order and pass orders in accordance with law."

There shall be no order as to costs.

02.09.2022

Internet :Yes
Index :Yes / No
ps

Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.Union of India,
Ministry of Finance,
Department of Expenditure,
Represented by its Secretary,
New Delhi.



W.P(MD)No.10311 of 2012

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- 2.The Department of Atomic Energy,
Represented by its Secretary,
Anushakthi Nagar,
C.S.M. Marg,
Mumbai - 400 001.
- 3.Nuclear Power Corporation of India,
Represented by its Chairman-cum-
Managing Director,
Vikram Sarabhai Bhavan,
Anushakthi Nagar,
Mumbai - 400 094.
- 4.The Director (Human Resource),
Directorate of Human Resource,
Nuclear Power Corporation of India,
Vikram Sarabhai Bhavan,
Anushakthi Nagar,
Mumbai - 400 094.
- 5.The Deputy General Manager (HR-P),
Directorate of Human Resource,
Nuclear Power Corporation of India,
Vikram Sarabhai Bhavan,
Anushakthi Nagar,
Mumbai - 400 094.
- 6.The Site Director,
Kudankulam Nuclear Power Project,
Nuclear Power Corporation of India,
Kudankulam Post,
Radhapuram Taluk,
Tirunelveli - 627 106.
- 7.The Deputy General Manager (HR),
Kudankulam Nuclear Power Project,
Nuclear Power Corporation of India,
Kudankulam Post,
Radhapuram Taluk,
Tirunelveli - 627 106.



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W.P(MD)No.10311 of 2012

G.CHANDRASEKHARAN, J.

ps

8.The Manager (HR),
Kudankulam Nuclear Power Project,
Nuclear Power Corporation of India,
Kudankulam Post,
Radhapuram Taluk,
Tirunelveli - 627 106.

9.The Deputy Manager (HR-ER),
Kudankulam Nuclear Power Project,
Nuclear Power Corporation of India,
Kudankulam Post,
Radhapuram Taluk,
Tirunelveli - 627 106.

Order made in
W.P(MD)No.10311 of 2012

02.09.2022