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**(2003) 04 MAD CK 0050**

**In the Madras High Court**

**Case No :** Writ Petition No's. 7772 to 7782 of 1998

G.S. Krishnan and Others

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

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**Date of Decision :** 10-04-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2003) 2 MLJ 487

**Hon'ble Judges :** P.D. Dinakaran, J

**Bench :** Single Bench

**Advocate :** K.R. Vijayakumar, for the Appellant; K. Veeraraghavan, ACGSC for Respondent Nos. 1 to 4, R.T. Doraisamy in W.P. Nos. 7775 and 7778/98 for Respondent No. 5 and K.R. Ashok, for M. Balachander in WP Nos. 7772, 7774, 7776, 7777, 7779, 7780 to 7782/1998 for Respondent 5, for the Respondent

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## **Judgement**

P.D. Dinakaran, J.—All the writ petitioners are, admittedly, ex-servicemen who after their discharge from defence service joined in the

Central Electro Chemical Research Institute (CECRI), Karaikudi, except in the case of the petitioner in W.P. No. 7772 of 1998, who during his

service in the Central Electro Chemical Research Institute (CECRI), Karaikudi was transferred to Central Leather Research Institute (CLRI),

Chennai. Concededly, both the Central Electro Chemical Research Institute (CECRI) and Central Leather Research Institute (CLRI) are a

constituent unit of the Council of Scientific and Industrial Research (CSIR), New Delhi, and the fact remains that some of the writ petitioners have

retired on superannuation and some of them continue to be in service.

2. Even though the petitioners were paid Dearness Relief on pension, as per their service in the defence, the said Dearness Relief on pension was

subsequently recovered quoting Rule 55A(ii) of the Central Civil Services (Pension) Rules (hereinafter referred to as the ""Rules""), which reads as

follows:

Rule 55A: Dearness Relief on Pension/Family Pension

(i) ...

(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad

including permanent absorption in such Corporation/Company/Body/Bank, he shall not eligible to draw Dearness Relief on pension/family pension

during the period of such re-employment)

3. Alleging that the reliance placed by the respondents on Rule 55A(ii) of the Rules, for recovery of Dearness Relief on Pension paid to the

petitioners for their service in the defence, is illegal, arbitrary and violative of Article 14 of the Constitution of India, as unequals are being treated

as equals, the petitioners seek a writ of Mandamus to pay the Dearness Relief on pension to the petitioner from time to time and also to refund the

amount already recovered from the pension.

4.1. According to the learned counsel for the petitioners, the said Rule 55A(ii) of the Rules is not applicable to the case of the petitioners, as both

the Central Electro Chemical Research Institute (CECRI) and Central Leather Research Institute (CLRI) are a constituent unit of the Council of

Scientific and Industrial Research (CSIR), which is not coming within the definition of ""State"" under Article 12 of the Constitution of India.

4.2. Mr. K.R.Vijay Kumar, learned counsel for the petitioners, contends that the representations made by the petitioners objecting the recovery of

Dearness Relief on pension were also not considered by the respondents.

5.1. During the course of the hearing, Mr. K. Veeraraghavan, learned Additional Central Government Standing Counsel appearing for the

respondents 1 to 4, produced before this Court the proceedings of the Government of India, Ministry of Defence, which reads as follows:

No. 7(1)/95/D(Pens/Sers)

Government of India

Ministry of Defence

New Delhi, dated 30th November 2000

To:

The Controller of Defence Accounts

New Delhi-110066.

Subject:- Recovery of over-payment of Dearness Relief from re-employed ex-servicemen/family pensioners.

Sir,

I am directed to refer to the Office of the CGDA U.O. No. 5137/AT-P, dated 17.4.2000 regarding grant of Dearness Relief to ex-servicemen-

Vacation of Stay Orders. The issue of non-realisation of amount of Dearness Relief already paid to re-employed ex-servicemen has been

examined in consultation with LA (Def) and DP & PW. It has been decided that Dearness Relief already paid in cases where the pensioner or the

family pensioner is no longer alive may be written off but in respect of all others, recovery is inescapable as otherwise it would tantamount to

discrimination amongst pensioners and may not be legally tenable.

2. It is requested that necessary instruction may be issued for initiating the recovery of over-payment of Dearness Relief from re-employed defence

pensioners expeditiously. Wherever Court/CAT Stay exists against the recovery of over-payment of Dearness Relief, Govt. Counsel and other

concerned authorities may be advised to take necessary action to get the stay vacated before resorting to recovery.

Sd/-

(I.K.Haldar)

Under Secretary to the Govt. of India

In the said decision, the Government of India, Ministry of Defence, has decided that Dearness Relief already paid in the cases where the pensioner

or the family pensioner is no longer alive may be written off, but in respect of all others recovery is inescapable as otherwise it would tantamount to

discrimination amongst pensioners and may not be legally tenable.

5.2. The learned Additional Central Government Standing Counsel appearing for the respondents 1 to 4, also contends that the Central Electro

Chemical Research Institute (CECRI) of Central Leather Research Institute (CLRI) is a constituent unit of the Council of Scientific and Industrial

Research (CSIR), which is a Central Autonomous Body, under the Government of

India, and therefore, the provisions contained vide Rule 55A(ii)

of the Rules is applicable to the petitioners.

6. The learned counsel for the fifth respondents contend that they are only disbursing agencies who are obliged to follow the directions of

respondents 1 to 4.

7. I have given careful consideration to the propelling and repelling contentions of the parties.

8. The fact that Dearness Relief on pension paid to the petitioners, for their service in the defence, was recovered by the respondents placing

reliance on Rule 55A(ii) of the Rules, is not disputed.

9. Rule 55A(ii) of the Rules is applicable only in the case of ex-servicemen who are re-employed under the Central or State Government. It is a

settled law that Central Electro Chemical Research Institute (CECRI) and Central Leather Research Institute (CLRI) which are a constituent unit

of the Council of Scientific and Industrial Research (CSIR) is not coming within the definition of "State" under Article 12 of the Constitution of

India, vide *Sabhajit Tewary Vs. Union of India (UOI) and Others*, which was also subsequently confirmed by the Seven Judges Bench of the

Apex Court in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, I am, therefore, of the considered opinion

that Rule 55A(ii) of the Rules is not applicable to the petitioners.

10. That apart, while considering the claim of similarly placed ex-servicemen with respect to the Dearness Relief on the pension for their service in

the Defence, the Apex Court by order dated 9.9.1996 in Review Petition No. 1002 of 1995 in Civil Appeal No. 1809 of 1998, observed that the

Union of India should apply its mind to the question whether ex-servicemen could be treated differently from others, in so far as the service

conditions of the ex-servicemen are said to be not attractive, and also desired that Central Government should sympathetically consider the

question of non-realisation of amount already disbursed to the re-employed ex-servicemen.

11. In spite of the clear indication of the Apex Court in their order dated 9.9.1996 in Review Petition No. 1002 of 1995 in Civil Appeal No. 1809

of 1998, I am unable to understand how the respondents have taken a decision on 30.11.2000 to the effect that Dearness Relief on pension

already paid in cases where pensioner or the family pensioner is no longer alive may be written off, but in respect of all others, recovery is

inescapable. As the decision dated 30.11.2000 appears to have been taken without reference to the order of the Apex Court dated 9.9.1996 in

Review Petition No. 1002 of 1995 in Civil Appeal No. 1809 of 1998, suffice it to permit the petitioners to make further representations bringing

the observation of the Apex Court dated 9.9.1996 in Review Petition No. 1002 of 1995 in Civil Appeal No. 1809 of 1998 to the notice of the

respondents within thirty days from the date of receipt of copy of this order, and to direct the respondents to pass appropriate orders in the light of

the said order of the Apex Court within sixty days from the date of receipt of the representations of the petitioners.

These writ petitions are ordered accordingly. No costs. Consequently, W.M.P. Nos. 11825 to 11835 of 1998 and W.P.M.P. Nos. 24315 to

24324 of 2001 are closed.