

No. 4/118/09-1FPPC/ 1146

Government of Punjab
Department of Finance
(Finance Pension Policy & Coordination Branch)

Dated, Chandigarh, the 5th October, 2012

To

All Heads of Departments,
Commissioners of Divisions,
Registrar High Court of Punjab and Haryana,
District and Sessions Judges and
Deputy Commissioners in the State.

Subject: - Regarding excess payment due to wrong fixation of pay.

Sir,

I am directed to invite a reference to Government letter No.4/118/09-1FPPC/624 dated 25.5.2011 on the subject cited above vide which guidelines were issued on the basis of the decision of the Hon'ble Punjab & Haryana High Court in Civil Writ Petition No. 2799 of 2008 titled, "**Budh Ram Vs. State of Haryana**" regarding recovery of wrongly paid benefits to an employee of the State or its instrumentalities. On the basis of the aforesaid decision of the Hon'ble High Court, the cases regarding recovery of wrongly paid benefits were divided into the following three categories:-

- (i) Cases in which the benefits sought to be recovered from the employees were granted to them on the basis of any fraud, misrepresentation or any other act of deception.
- (ii) Cases in which the benefits sought to be recovered were granted on the basis of bonafide mistake committed by the authority granting the same while applying or interpreting a provision contained in the service rule, regulation or any other memo or circular authorizing such grant regardless whether or not grant of benefits involved the performance of higher or more onerous duties by the employee concerned;
- (iii) Cases that do not fall in either one of the above two categories but where the nature of the benefit and extent is so unconnected with his service conditions that the employee must be presumed to have known that the benefit was flowing to him undeservedly because of a mistake buy the authority granting the same.

The guidelines referred to above *interalia* provide that in the cases falling in the categories (i) and (iii) mentioned above, the recovery of wrongly paid benefit shall always be made but no recovery shall be made from the recipients of wrongly paid benefits in cases falling in category (ii) mentioned above.

2. Now, the matter regarding recovery of wrongly paid benefits to an employee has been considered by the Hon'ble Supreme Court of India in Civil Appeal No. 5899 of 2012 @ Special Leave Petition (C) No. 30858/ 2011 titled as "**Chandi Prasad Uniyal & Others Vs. State of Uttarakhand & Others**" and the Hon'ble Supreme Court, in its judgment

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dated 17-08-2012, has held as under:-

"We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right. In such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara (ret'd.) case, the excess payment made due to wrong/irregular pay fixation can always be recovered."

3. In **Syed Abdul Qadir and Ors. Vs. State of Bihar and Ors. [(2009) 3 SCC 475]**, the Hon'ble Supreme Court has held as under:-

" Undoubtedly, the excess amount that has been paid to the appellant- teachers was not because of any misrepresentation or fraud on their part and the appellant also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rules that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant-teachers should be made."

4. In **Col. B.J. Akkara (ret'd.) Vs. Government of India and Ors. [(2006) 11 SCC 709]**, the Hon'ble Supreme Court has held as under:-


" Such relief, restraining recovery that of excess payment, is granted by court not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if the recovery is implemented. A Government servant, particularly, one in the lower rungs of service would spend whatever emoluments he received for the upkeep of his family. If he received an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee has knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, court may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

5. In view of the aforesaid judgement dated 17.08.2012 of the Hon'ble Supreme Court of India, it has been decided that the recovery of wrongly paid benefits in various types of

cases shall be regulated as under:-

- (a) Cases in which wrongly paid benefit was noticed and recovery thereof was ordered or made but the concerned employee approached the Hon'ble High Court and the recovery was either stopped or refunded in compliance with the orders of Hon'ble High Court. If such cases have already attained finality, these may not be reopened.
 - (b) Cases in which wrongly paid benefit was noticed and recovery thereof was started but the concerned employee approached the Hon'ble High Court and has obtained a judicial verdict in his favour which is yet to be implemented. In such cases suitable judicial proceedings, such as appeal or review, will be instituted in a court of competent jurisdiction, in accordance with the law laid down in the above noted judgment dated 17.08.2012 of the Hon'ble Supreme Court.
 - (c) Cases in which wrongly paid benefit came into notice but recovery thereof was not made in view of the guidelines issued vide Government letter No.4/118/09-1FPPC/624, dated 25/5/2011. Since these instructions were not the subject matter of judicial scrutiny before the Hon'ble High Court, such cases will be re-opened and necessary recovery shall be effected unless such cases are covered in the exceptions provided in sub-para (e) below.
 - (d) Cases in which the wrongly paid benefit has either already come into notice or will come into notice after the date of issue of the guidelines contained in this letter. Needless to say that in such cases, the recovery shall be made.
 - (e) Cases of extreme hardship in which an exception is provided as per above noted judgment dated 17/08/2012 of the Hon'ble Supreme Court. These cases relate to those recipients of wrongly paid benefits who have either retired or are on the verge of retirement or who are employed in the lower rung services i.e. in "Group D" services. Recovery in such case will be waived with the specific approval of the Department of Finance (in the relevant Expenditure Branch).
 - (f) Cases of wrongly paid benefit which are still pending in the Courts. Such cases will be defended in the light of the aforesaid judgment dated 17.08.2012 of the Hon'ble Supreme Court.
6. All recoveries required to be made under these orders shall be effected after following the proper procedure.
 7. The existing instructions on the subject shall be deemed to have been superseded to the extent of decisions contained in this letter.
 8. Receipt of this communication may please be acknowledged.

Yours faithfully,


(Usha Sehgal)
Joint Secretary Finance

No. 4/118/09-1FPPC/ 1147 Dated Chandigarh, the 5 October, 2012

A copy is forwarded for information to the:-

1. The Principal Account General (A & E), Punjab, Chandigarh
2. The Principal Accountant General (Audit), Punjab, Chandigarh.

Gulab Kaur
Superintendent

No. 4/118/09-1FPPC/ 1148 Dated Chandigarh, the 5 October, 2012

A copy is forwarded to the:

1. The Chief Secretary to the Government, Punjab;
2. All the Financial Commissioners and Principal Secretaries and Administrative Secretaries to the Government of Punjab;
3. Resident Financial Commissioner, Punjab, Punjab Bhawan Copernicus Marg, New Delhi.

for information and necessary action.

Gulab Kaur
Superintendent

No. 4/118/09-1FPPC/ 1149 Dated Chandigarh, the 1 October, 2012

A copy is forwarded to all the District Treasury Officers/Treasury Officers in the State for information and necessary action.

Gulab Kaur
Superintendent

No. 4/118/09-1FPPC/ 1150 Dated Chandigarh, the 5 October, 2012

A copy is forwarded to the:-

1. Secretary to the Government of Haryana, Department of Finance, Chandigarh.
 2. Secretary to the Government of Himachal Pradesh, Department of Finance, Shimla, and
 3. Finance Secretary, Chandigarh Administration (U.T.) Chandigarh.
- for information and necessary action.

Gulab Kaur
Superintendent
