

No. 1/23/2010-2PR(FD)

From

The Financial Commissioner & Principal Secretary to Government, Haryana, Finance Department

To

- 1 All Heads of the Departments in Haryana
- 2 The Commissioners, Ambala, Hisar, Rohtak and Gurgaon Divisions
- 3 All Deputy Commissioners in Haryana
- 4 All Sub Divisional Officers (Civil) in Haryana.
- 5 The Registrar, Punjab & Haryana High Court, Chandigarh.

Dated Chandigarh the 25th May, 2010

Subject: - Regarding recovery of excess payment/amount made to Government employee.

Sir,

I am directed to invite your attention to the subject citation noted above and to say that the issue of recovery of excess amount/payment from government employees have already been considered by the Full Bench of the Hon'ble Punjab & Haryana High Court in CWP No. 2799 of 2008. While disposing of a bunch of cases, it was observed by the Hon'ble Court that such cases can be seen in three distinct dimensions :-

- 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 a 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 by the authority granting the same.*

2. With regard to third category of cases further clarification has been given by the Hon'ble Court in a judgment which is reproduced as under:-

Apart from cases that fall in categories (i) and (ii) above, there is one conceivable situation in which an employee may even when he is not guilty of mis-representation, fraud, deception or the like receive, under a mistake of any functionary of the State, an amount which he has no reason to either receive or appropriate. For instance and purely on a hypothetical plane, there may be a case where an employee of the State Government or the instrumentality of the State receives an amount with his salary that is wholly disproportionate, unexpected or inexplicable. An employee whose monthly emoluments are, for instance Rs. 20000/- receives in a given month, a sum of Rs. 30000/- instead of Rs. 20000/-. Such a payment may be purely accidental and erroneous arising out of an un-intended mistake. The question is whether the employee has any obligation to verify the reason or the genesis of the windfall that he has received and to refund the same, if he is not lawfully entitled to the same. Our



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answer to this is in the affirmative. Such a case may not fall in category (i) as the employee has not committed any mistake but it is not a case that would fall in category (ii) either as the benefit is unrelated to any erroneous interpretation or application of rule. It is a case where by reason of sheer neglect of a functionary of the State Government, a payment that is undeserved and wholly uncalled for is made to the employee. Such a case cannot be equated with those falling in category (ii). Such a case may be dealt with independently and the employee concerned called upon to refund to the Government the undeserved payment that he has received. We say so because in our opinion, once the undeserved payment came to his notice, every employee is under an obligation to verify the reason for the same and act in a manner that is fair and equitable. Appropriation of a payment which the employee had no reason to expect or accept would in such a case be dishonest. And one who is dishonest cannot take shelter behind equity."

3. Hon'ble Supreme Court of India while disposing of case of similar nature titled as Registrar, Cooperative Societies Haryana and Others Vs/ Israil Khan and Others in Civil Appeals No. 3668 of 2007 with Nos. 3669-71 and 3675-77 of 2007 decided on October 8, 2009 observed that —

"7. There is no "principle" that any excess payment to employees should not be recovered back by the employer. This Court, in certain cases has merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/allowances from employees on the ground of hardship, where the following conditions were fulfilled :-

- (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.*
- (b) Such excess payment was not made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*

8. *In Col. B.J. Akkara (Retd.) V. Govt. of India this Court explained the reason for extending such concession thus: (SCC pp. 728-29, para 28)*

"28. Such relief, restraining back recovery of excess payment, is granted by courts 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 recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives 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 had 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, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

9. *What is important is, recovery of excess payments from employees is refused only where the excess payment is made by the employer by applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, courts will not use their discretion to deny the right to recover the excess payment."*

5. After careful consideration by Government in view of the above said judgements of Hon'ble Courts, it has been decided that Administrative Department must take requisite action

promptly in these cases in the following manner :-

<p>1 <i>Recovery from Government employee(s) in cases where benefit is/has been granted to them on the basis of any fraud, misrepresentation or any other act of deception.</i></p>	<p><i>In such cases every endeavour should be made to recover the whole amount lost from the State Exchequer from the guilty person(s), as per provision already existing in Appendix 2 of PFR Volume-II.</i></p> <p><i>The fact that Government employee(s) who were guilty of frauds or irregularities have been demobilized or have retired and have thus escaped punishment, should not be made a justification for absolving those who are also guilty but who still remain in service. The amount may also be recovered from pensioner as per provision in Rule 2.2(b) of Pb. CSR Vol. II.</i></p> <p><i>Simultaneously, disciplinary action should also be taken against the officer/official, if any, indirectly involved in the case.</i></p>
<p>2 <i>Recovery in cases where excess payment or the benefit is/has been 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 or instructions etc. which is subsequently found to be erroneous</i></p>	<p><i>The recovery of benefits erroneously extended to the employees without the employee being, in any way, guilty of any fraud, misrepresentation or deception would be unfair inequitable and against justice and good conscience. Even the employee does not possess the requisite qualification for the benefit granted to him and is not, therefore, entitled to any relaxation of the Rules, it would be against the concept of fairness, equity, justice and good conscience to recover the amount received by him in consequence of the benefit granted to him.</i></p> <p><i>In cases where loss to Government is due to delinquencies of subordinate officials and where it appears that this has been facilitated by laxity of supervision on the part of a superior officer, the latter shall also be called strictly to account and his personal liability in the matter carefully assessed. The competent authority may, in special cases, condone an officer's honest errors of judgement involving financial loss if the officer can show that he has acted in good faith and done his best up to the limits of his ability and experience.</i></p>
<p>3 <i>Recovery in cases where a Government employee receives any undeserved and wholly uncalled payment/benefit by reason of sheer neglect or under a mistake of any functionary of the State.</i></p>	<p><i>Each and every Government employee has obligation to verify the reason if he receives any extra amount with his salary or otherwise to which he is not entitled under the rules. Whenever the undeserved payment came to his notice, he should verify the reason for the same and refund the same acting in a manner that is fair and equitable. However to relieve the employees from the hardship that will be caused if recovery is implemented in all cases following view is taken:-</i></p> <p><i>a). where the error is detected or corrected within a short time say within six months of wrong payment, there will be no relief against recovery. The employee concerned may be called upon to refund the undeserved payment that he has received. If in any case he is not ready to refund, the same may be recovered from his salary adopting due procedure</i></p> <p><i>b). If employee receives an excess payment for a long period say more than 6 months,, he/she would have spent 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 may be granted in these types of cases.</i></p>

	<i>On the other hand disciplinary action should also be taken against the guilty officer/official. Personal liability shall be strictly enforced against all officers/officials who are careless or negligent in the duties entrusted to them.</i>
Note	Provision regarding procedure for recovery of loss sustained by Government through fraud, negligence, carelessness etc. exists in Appendix 2 of PFR Vol. II the same should also be followed.

These instructions may please be brought to the notice of all concerned for strict compliance.

Yours faithfully,


Superintendent (PR)

for Financial Commissioner & Principal Secretary to
Government, Haryana, Finance Department

Endst. No. 1/23/2010-2PR(FD)

Dated, Chandigarh the 25.05.2010

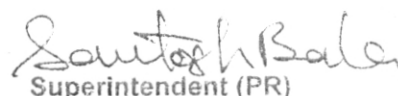
A copy is forwarded to the Accountant General, Haryana (i) (A&E), (ii) (Audit) Chandigarh for information.


Superintendent (PR)

for Financial Commissioner & Principal Secretary to
Government, Haryana, Finance Department

A copy is forwarded to:-

- (i) All the Financial Commissioner's in Haryana and
- (ii) All the Commissioners & Administrative Secretaries to Government Haryana for information and necessary action.


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