

**GOVERNMENT OF RAJASTHAN
FINANCE DEPARTMENT
(RULES DIVISION)**

No. F.9(14)FD/Rules/2005/Pt.

Jaipur, dated : **17 AUG 2016**

All Addl. Chief Secretaries/
Principal Secretaries/
Secretaries to Government,
All Heads of Departments.

CIRCULAR

**Sub: Recovery of wrongful / excess payments made to
Government Servants / Pensioners.**

Kind attention is invited to para 3(iii) of FD Circular of even number dated 22.07.2014 in which it has been mentioned that recovery must be made in all cases of over-payment barring few cases of extreme hardships. Whenever, there is a justifiable case of extreme hardship prior approval of the Finance Department must be obtained. This Circular was issued in compliance of the law declared by Courts and reiterated by the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal and Ors vs State of Uttarakhand and Ors., 2012 AIR SCW 4742, (2012) 8 SCC417.

2. The issue has subsequently come up for consideration before the Hon'ble Supreme Court in the case of State of Punjab & Ors vs Rafiq Masih (White Washer) etc. in CA No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012) wherein Hon'ble Court on 18-12-2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information / misrepresentation/fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments.

3. The issue that was required to be adjudicated by the Hon'ble Supreme Court was whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employees would be impermissible in law :

- (i) Recovery from employees belonging to Grade Pay upto Rs 2800/-.
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

4. As mentioned in para 3(iii) of FD Circular dated 22.07.2014 the cases of extreme hardships as summarised in para 3 for waiving of recovery of wrongful/excess payments made to Government Servants/Pensioners may be examined by Administrative Department. Thereafter, concurrence of FD (G&T) be taken.


(Naveen Mahajan)
Secretary, Finance (Budget)


Copy forwarded to the following for information and necessary action :

1. Principal Secretary to Hon'ble Governor, Rajasthan
2. Secretary to Hon'ble Chief Minister, Rajasthan
3. All Special Assistants / Private Secretaries to Hon'ble Ministers / State Ministers / Sansadiya Sachiv, Rajasthan

4. Sr. Dy. Secretary to Chief Secretary
5. Principal Accountant General, Rajasthan, Jaipur
6. Director, Pension and Pensioners' Welfare Department, Rajasthan, Jaipur
7. Director, Treasury and Accounts, Rajasthan, Jaipur
8. Director, Information and Public Relations, Rajasthan, Jaipur
9. Dy. Director (Statistics), Chief Minister's Office
10. All Treasury Officers
11. Administrative Reforms (Codification) Department, Rajasthan, Jaipur
12. Additional Director (Computer Cell), Finance Department
13. All Sections, Secretariat

Copy also forwarded to :

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2. Registrar General, Rajasthan High Court, Jodhpur / Jaipur
3. Secretary, Rajasthan Public Service Commission, Ajmer
4. Secretary, Lokayukt Sachivalaya, Jaipur


21/8/16
(S.Z. Shahid)
Dy. Secretary to Govt.

(RSR-20/2016)