

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

No. F9(14)FD/Rules/2005/Pt

Jaipur, dated 22 JUL 2014

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

Circular

Subject: Recovery of wrongful/excess payments made to Government servants.

The issue of recovery of wrongful/excess payments made to Government servants has been examined in the light of the judgement of the Hon'ble Supreme Court in *Chandi Prasad Uniyal And Ors vs State Of Uttarakhand And Ors*, 2012 AIR SCW 4742, (2012) 8 SCC 417, decided on 17th August, 2012. The Hon'ble Court has observed as under:

- “15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.
16. 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.”

2. Hon'ble Supreme Court also distinguished the cases like *Shyam Babu Verma v UOI*, 1994 SCR (1) 700, 1994 SCC (2) 52, *Syed Abdul Qadir and Ors. v. State of Bihar and Ors.*, (2009) 3 SCC 475, *Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18 etc., where it had not allowed recovery of excess payment in view of the peculiar facts and circumstances of those cases so as to avoid extreme hardship to the concerned employees, for example, where the employees concerned were mostly junior employees, or they had retired or were on verge of retirement, the employees were not at fault, and recovery which was ordered after a gap of many years would have caused extreme hardship.
3. In view of the law declared by Courts and recently reiterated by the Hon'ble Supreme Court in the above cited case, *Chandi Prasad Uniyal And Ors vs State Of Uttarakhand And Ors*, 2012 AIR SCW 4742, (2012) 8 SCC 417, the Departments are advised to deal with the issue of wrongful/excess payments as follows:
 - i. In all cases where the excess payments on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc. come to notice, immediate corrective action must be taken. For rectifying such an incorrect order, a show-cause notice may be issued to the concerned employee informing him of the decision to rectify the order which had resulted in the overpayment, stating the intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee to represent against the same. Speaking orders, may, thereafter be passed after consideration of the representations, if any, made by the employee.
 - ii. Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favouritism, negligence or, carelessness, etc., the employees who are responsible for overpayments in such cases, and the employees who benefitted from such actions should be identified, and departmental/criminal action should be considered in appropriate cases.
 - iii. Recovery must be made in all cases of overpayment barring few cases of extreme hardships. Whenever, there is a justifiable case of extreme hardship prior approval of the Finance Department must be obtained.
 - iv. In appropriate cases, the concerned employee may be allowed to refund the recoverable money in suitable installments with the approval of ACS/Principal Secretary/Secretary of the Administrative Department, in consultation with the Finance Advisor of the department.
 - v. Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc. as in the case of TA, interest would continue to be recovered from the employee as heretofore.

34
171
(Subhash Chandra Garg)
Principal Secretary, Finance