



FINANCE [Pension] DEPARTMENT

G.O.Ms.No.286, Dated 28th August 2018.

(Vilambi, Aavani-11, Thiruvalluvar Aandu 2049)

ABSTRACT

Recovery of wrongful / excess payments made to Employees / Pensioners / Family Pensioners – Responsibility and Recovery of Over Payments consequently upon recent changes in the process - Orders Issued.

ORDER:

The Hon'ble Supreme Court in the case of **State of Punjab & Others etc 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. The Hon'ble Supreme Court in its judgment dated 18th December, 2014 ibid has, inter-alia, observed as under:

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

"10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery

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would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."

2. 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. For the applicability of the instant order, and the conclusions recorded by them thereafter, the ingredients depicted in paras 2 and 3 of the judgment are essentially indispensable.

3. 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 employers would be impermissible in law:-

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (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. In view of the law declared by the Courts, the Government directs that the Administrative Departments of Secretariat, Heads of Department and Head of Offices are advised to deal with the issue of wrongful / excess payments made to Government servants / Pensioners / Family Pensioners in accordance with the decision of the Hon'ble Supreme Court in **Civil Appeal No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc** as detailed below.

- (i). In all cases where the excess payments on account of wrong pay / pension / family pension 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.

- (ii). In a case like this where the authorities decide to rectify an incorrect order, a **show-cause notice** may be issued to the concerned employee / pensioner / family pensioner informing him/her of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee / pensioner / family pensioner to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee / pensioner / family pensioner.
- (iii). Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favouritism, negligence or, carelessness, etc., roles of those responsible for overpayments in such cases, and the employees / pensioners / family pensioners who benefitted from such actions should be identified, and departmental/criminal action should be considered in appropriate cases.
- (iv). Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships as detailed in para-3 above. No waiver of recovery may be allowed without the approval of Finance Department.
- (v). While ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employee may be allowed to refund the money in suitable installments with the approval of Secretary to Government in the Administrative Department of Secretariat, in consultation with the Finance Department.
- (vi). Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc, interest would continue to be recovered from the employee as done hitherto.

5. The Government further directs that wherever the waiver of recovery in the above-mentioned situations is considered, the waiver of recovery will be allowed by the Administrative Department in Secretariat with the express approval of Finance Department.

6. The Government also directs that wherever overpayments occur due to wrong attestation of claims/wrong submission of returns by establishment, the irregular payments will be recovered from such establishments. In cases of excess debits by banks/overpayments compared to cheque amounts/payments authorized by Disbursing Officers due to reasons not attributable to staff and officers, the irregular amount will be recovered from bank.

7. The Government also directs that the procedure on recovery of overpaid amounts shall be as follows.-

- (1) Wherever any overpayments are noticed, the action for fixing the responsibility on erring officials be initiated by the Secretary to Government, Administrative Department in Secretariat / Head of Departments / Heads of Offices concerned immediately.
- (2) Endeavour should be made to recover the overpaid amount from the recipient of the said amount.

- (3) In case the reasons of overpayment are attributable to the employee / pensioner / family pensioner or the establishment concerned, legal action/other follow up actions be initiated against such member or establishment for recovery of the overpaid amount.
- (4) The recovery of overpayments from the officials will be made only when responsibility of such overpayments are fixed by the Secretary to Government, Administrative Department in Secretariat / Head of Departments / Heads of Offices on the concerned officials. In these cases also, efforts should be made to recover the amounts from the recipients to the extent possible and permissible under law.
8. The Government also directs that the ratio of responsibility in case of overpayments/irregular payments shall be as under:-

(1) When Over Payment occurs in such cases where the excess payments on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure. The ratio of responsibility will be as under:-

- (a) If the overpayment occurs due to reasons solely attributable to Pay Fixation Authority, the ratio of responsibility will be as under:-

(i) Administrative Departments in Secretariat:

| | | |
|-----|--------------------------------------|-----------------------------|
| (a) | Dealing Assistant Section Officer | 65% of the overpaid amount. |
| (b) | Section Officer concerned | 35% of the overpaid amount. |

(ii) Head of Departments / Head of Office:

| | | |
|-----|---------------------------|-----------------------------|
| (a) | Dealing Assistant | 65% of the overpaid amount. |
| (b) | Section Superintendent | 35% of the overpaid amount. |

- (b) If the overpayment occurs due to reasons solely attributable to Bill Passing Authority i.e. Pay and Accounts Office / District Treasury Office / Sub-Treasury Office, the ratio of responsibility will be as under:-

(i) Pay and Accounts Office:

| | | |
|-----|--|-----------------------------|
| (a) | Dealing Accountant | 50% of the overpaid amount. |
| (b) | Superintendent concerned | 25% of the overpaid amount. |
| (c) | Assistant Pay and Accounts Officer concerned | 25% of the overpaid amount. |

(ii) District Treasury Office:

| | | |
|-----|---------------------------------------|-----------------------------|
| (a) | Dealing Accountant | 50% of the overpaid amount. |
| (b) | Superintendent concerned | 25% of the overpaid amount. |
| (c) | Additional Treasury Officer concerned | 25% of the overpaid amount. |

(iii) Sub-Treasury Office:

| | | |
|-----|--|-----------------------------|
| (a) | Dealing Accountant: | 50% of the overpaid amount. |
| (b) | Additional Sub-Treasury Officer / Sub-Treasury Officer concerned | 25% of the overpaid amount. |
| (c) | Assistant Treasury Officer concerned | 25% of the overpaid amount. |

(2) Over Payment occurred in Pension / Family Pension cases.

- (a) If the overpayment occurs due to reasons solely attributable to Pension Sanctioning Authority, the ratio of responsibility will be as under:-

(i) Administrative Departments in Secretariat:

| | | |
|-----|-----------------------------------|-----------------------------|
| (a) | Dealing Assistant Section Officer | 65% of the overpaid amount. |
| (b) | Section Officer concerned | 35% of the overpaid amount. |

(ii) Head of Departments / Head of Office:

| | | |
|-----|------------------------|-----------------------------|
| (a) | Dealing Assistant | 65% of the overpaid amount. |
| (b) | Section Superintendent | 35% of the overpaid amount. |

- (b) If the overpayment occurs due to reasons solely attributable to Pension Disbursing Authority i.e. Pension Pay Office, Chennai / District Treasury Office / Sub-Treasury Office, the ratio of responsibility will be as under:-

(i) Pension Pay Office, Chennai:

| | | |
|-----|--------------------------------------|-----------------------------|
| (a) | Dealing Accountant: | 50% of the overpaid amount. |
| (b) | Superintendent concerned | 25% of the overpaid amount. |
| (c) | Assistant Accounts Officer concerned | 25% of the overpaid amount. |

(ii) District Treasury Office:

| | | |
|-----|---------------------------------------|-----------------------------|
| (a) | Dealing Accountant: | 50% of the overpaid amount. |
| (b) | Superintendent concerned | 25% of the overpaid amount. |
| (c) | Additional Treasury Officer concerned | 25% of the overpaid amount. |

(iii) Sub-Treasury Office:

| | | |
|-----|--|-----------------------------|
| (a) | Dealing Accountant: | 50% of the overpaid amount. |
| (b) | Additional Sub-Treasury Officer / Sub-Treasury Officer concerned | 25% of the overpaid amount. |
| (c) | Assistant Treasury Officer concerned | 25% of the overpaid amount. |

(In the foregoing, overpaid amount shall mean the amount that has been overpaid and is not recoverable from the employee / pensioner / family pensioner concerned in accordance with the Hon'ble Supreme Court order indicated in para-3 above).

9. The Government also directs that the Secretary to Government, Administrative Department of Secretariat, Heads of Department and Heads of Offices concerned shall circulate this order among the staff and officers concerned under their control for strict compliance so that eventual loss to the Government is protected. The staff handling these cases such as dealing Assistants / Accountants / Superintendents etc. may be advised to be cautious while processing cases authorizing payments, particularly those that cannot be recovered under the Hon'ble Supreme Court guidelines. Every care must be taken to avoid any excess payment by making staff / officers accountable for such payment.

10. The Government also directs that the delay in processing of fixation of pay / pension / family pension fixation with due approvals shall be avoided so as to avoid hardship to the employees / pensioners / family pensioners concerned and also to avoid payment of interest on delayed payment of the entitlements.

(BY ORDER OF THE GOVERNOR)

K. SHANMUGAM
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

To

All Secretaries to Government.
The Secretary, Legislative Assembly Secretariat, Chennai-9.
The Additional Chief Secretary to Governor, Chennai-22.
The Comptroller, Governor's Household, Raj Bhavan, Chennai-22.
The Governor's Secretariat, Raj Bhavan, Guindy, Chennai-22.
All Heads of Departments.
The Tamil Nadu Information Commission, Chennai-18.
All Departments of Secretariat (OP/Bills)
All Sections in Finance Department.
All Collectors / All District Judges / All Chief Judicial Magistrates.
The Accountant General (Accounts and Entitlements), Chennai-18.
The Principal Accountant General (Audit-I), Chennai-18.
The Accountant General (Audit II), Chennai-18.

The Accountant General (CAB), Chennai -9 / Madurai.
 The Principal Secretary / Commissioner of Treasuries and Accounts, Chennai-35.
 All Pay and Accounts Officers / All Treasury Officers / All Sub-Treasury Officers.
 The Chairman, Tamil Nadu Public Service Commission, Chennai-3.
 The Commissioner of Tribunal for Disciplinary Proceedings, Chennai-108.
 The Registrar General, High Court, Chennai-104.
 The Registrars of all Universities .
 All State owned Corporations and Statutory Boards.
 The Commissioner, Greater Chennai Corporation, Chennai-2.
 The Commissioner, Corporation of Madurai / Coimbatore / Tiruchirappalli / Salem /
 Tirunelveli / Erode / Tirupur / Thoothukudi / Vellore / Thanjavur / Dindigul.
 All Divisional Development Officers / All Tahsildars / All Block Development Officers.
 All Municipal Commissioners.
 All Revenue Divisional Officers / All Chief Educational Officers.
 All Recognised Service Associations.
 All Pensioners Associations.

Copy to:

The Secretary to Hon'ble Chief Minister, Chennai-9.
 The Deputy Secretary to Hon'ble Deputy Chief Minister, Chennai-9.
 The Senior Personal Assistant to Hon'ble Chief Minister, Chennai-9.
 The Private Secretary to Chief Secretary to Government, Chennai-9.
 The Senior-Private Secretary to the Additional Chief Secretary to Government,
 Finance Department, Chennai-9.
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ot. Vantani
SECTION OFFICER.