

Order of recovery of excessive payment made to employees would be impermissible in law if the mistake is detected after 5 years or if it is from Group C or D employees or from retired employees: SC [Read the Judgment]

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Quashing an order of recovery of excessive payments made to employees, a Supreme Court bench comprising of Justice J.S. Khehar and Justice Arun Kumar Mishra has held that, if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same, but if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the

mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

The Bench held that such recovery would be impermissible in law, if 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.

The Court also concluded that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV – sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them as such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

Recovery of excess payments, made from employees who have retired from service, or are close to their retirement, according to the Court, would entail extremely harsh consequences outweighing the monetary gains by the employer. In its view, a period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous.

Additionally, it held that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

"The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses."

The Court further justified its stand saying, "The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover."

The respondents were given monetary benefits where were in excess of what they were entitled to, because of the authority's mistake in determining the payments. Hence, all of them were beneficiaries of an unintentional mistake committed by the employer.

The employees were not guilty of furnishing any incorrect information and therefore, the excessive payments were neither due to any misrepresentation made by them, nor was it on account of any fraud committed by them.

The question to be answered by the Court was that whether these employees should be exempted in law, from the reimbursement of the same to the employer.

The Court also took note of observations made by the Division Bench of three-judges of the apex Court, wherein the Court had observed, "In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra-ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice."

The Court observed that the employee cannot enjoy the benefit of excessive payments, merely on the ground that "he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee."

The order for recovery by the employer, according to the Bench, 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.

Consequently, the Bench observed, "As between two parties, if a determination is rendered in favor of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India."