IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3038 OF 2016

The Union of India …. Petitioners
through the Secretary & Ors.

Versus

Smt. Saramma John Mathai …. Respondent

Mrs. Neeta V. Masurkar for Petitioners.
Mr. Anilkumar R. Joshi for Respondent.

CORAM : R. M. BORDE AND
A. S. GADKARI, JJ.
DATE : FEBRUARY 14, 2017.

P.C.

. We have come across a number of matters presented on behalf of the Central Government, wherein challenge has been raised in respect of trifal matters involving a paltry sum awarded to the central services employees. We have come across matters wherein negligible benefit granted in favour of Group 'C' and 'D' employees by the Tribunal are subjected to challenge in writ petition. It is also noticed that there is absolutely no policy for rendering finality to the orders passed by the Tribunal.

2. Instant is a case wherein the Central Government has raised the challenge in respect of quashment of the order passed by the Central Government relating to the recovery of the amount already paid to the Respondent-employee towards gratuity of an amount of Rs. 47,770/-. It is not a matter of dispute that the Respondent-employee had already retired long back on attaining age of superannuation. She objected to the order passed by the Central Government in contemplation of her retirement i.e. three days prior to her retirement. The challenge raised by the Respondent-employee has been upheld by the Tribunal while dealing with Original Application No. 147 of 2013 and relying on the judgment delivered by the Supreme Court in the case of ***State of Punjab and others etc. V/s Rafiq Masih (White Washer) etc., AIR 2015 Supreme Court 696***, wherein adverse orders have been quashed. The Supreme Court has observed in para no. 7 of the judgment as under :

> "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."

The Tribunal found that since the order in respect of recovery of arrears was passed three days prior to the retirement of the Group 'C' employee, it is iniquitous and it postulates all situations of hardship.

3. In paragraph 12 of the judgment, the Supreme Court had laid down the parameters and and instructed not to effect recoveries from employees in the circumstances serialized in paragraph 12 of the Judgment. Apex Court has observed as under :

> “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. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :
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> (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. So far as the instant case is concerned, the same falls within clauses (ii) and (v) of the paragraph 12 of the judgment referred to above. An adverse order passed by the Tribunal in favour of the retired Respondent-employee, who was due for retirement within three days prior to the order of recovery, ought not to have been objected. The Tribunal found that the order passed by the Central Government directing recovery of an amount of Rs. 47,770/-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.

5. As has been stated in the first paragraph, it would be appropriate for the Central Government to adopt a policy for providing finality to certain categories of orders passed by the Tribunal and to refrain from bringing unnecessary litigation to the High Court raising challenge to the insignificant orders or wherein paltry claim of an employee, and more specifically of retired employee, has been awarded by the Tribunal or wherein some just relief is granted in favour of Group 'C' and 'D' employees. Unless it is noticed that such an order is palpably illegal or, in any case, needs interference by the High Court in such matters it would be

appropriate to avail of extraordinary remedy. In the instant matter, probably the cost of litigation is far more than the monetary claim granted by Tribunal to the retired employee. In view of above, the writ petition does not deserve for consideration.

6. Writ Petition is accordingly dismissed.

[A. S. GADKARI, J.] **[R. M. BORDE, J.]**