

By E-mail

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

NO. HC.III-15/2018/ 41 /G

From: Sri S. Dhar,
Registrar (Judicial),
Gauhati High Court, Guwahati.

✓ To,

The District & Sessions Judge,
Bajali / Barpeta / Baksa / Biswanath / Bongaigaon / Cachar /
Charaideo/ Chirang / Darrang / Dhemaji / Dhubri / Dibrugarh / Dima
Hasao / Goalpara / Golaghat / Hailakandi / Hojai / Jorhat / Kamrup (M)
/ Kamrup / Karbi Anglong / Karimganj / Kokrajhar / Lakhimpur/ Majuli
/ Morigaon / Nagaon / Nalbari / Sivasagar / Sonitpur /South Salmara/
Tinsukia / Udalguri / West Karbi Anglong, Assam.

Dated Guwahati 5th January, 2024

Ref: Circulation of order dated 03.01.2024, passed by Hon'ble Supreme
Court in *Civil Appeal Nos. 23-24/2024*

Sir / Madam,

I am directed to forward herewith order dated 03.01.2024, passed by
Hon'ble Supreme Court in *Civil Appeal Nos. 23-24/2024* for information and
circulation amongst all the Judicial Officers in your respective District for compliance.

With warm regards,

Yours faithfully,

Encl: As stated above.


REGISTRAR (JUDICIAL)

5/01/2024



2024 INSC 4

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 23-24 of 2024
Special Leave to Appeal (C) Nos. 8575-8576 of 2023

The State of Uttar Pradesh & Ors.

...Appellants

Versus

Association of Retired Supreme Court and
High Court Judges at Allahabad & Ors.

...Respondents

Validity unknown

Digitally signed by
Sanjay Kumar
Date: 2024.01.20
13:07:45 +05'30'

JUDGMENT

Dr Dhananjaya Y Chandrachud, CJI

Table of Contents

I.	Factual Background	4
II.	The High Court did not have the power to direct the notification of the Rules proposed by the Chief Justice.....	14
III.	Criminal Contempt cannot be initiated against a party for availing legal remedies and raising a legal challenge to an order	18
IV.	Summoning of Government Officials before Courts	21

1. Leave granted.
2. The present appeals arise from two orders of the Division Bench of the High Court of Judicature at Allahabad¹ dated 4 April 2023 and 19 April 2023.² The Impugned Orders have given rise to significant questions about the separation of powers, the exercise of criminal contempt jurisdiction, and the practice of frequently summoning government officials to court.
3. By its order dated 4 April 2023,³ the High Court directed the Government of Uttar Pradesh to *inter alia* notify rules proposed by the Chief Justice of the High Court pertaining to 'Domestic Help to Former Chief Justices and Former Judges of the Allahabad High Court' by the next date of hearing. The High Court further directed certain officials of the Government of Uttar Pradesh to be present before the court on the next date if the order was not complied with.
4. The State of Uttar Pradesh moved an application before the High Court to seek a recall of the Order dated 4 April 2023 highlighting legal obstacles in complying with the directions of the High Court. By its order dated 19 April 2023,⁴ the High Court held that the recall application was 'contemptuous' and initiated criminal contempt proceedings against various officials of the Government of Uttar Pradesh. The officials present in the court, including the Secretary (Finance) and Special Secretary (Finance) were taken into custody and bailable warrants were issued against the Chief Secretary and the Additional Chief Secretary (Finance).

¹ "High Court"

² "Impugned Orders"

³ "First Impugned Order"

⁴ "Second Impugned Order"

I. Factual Background

5. The Impugned Orders arise from a writ petition instituted in 2011 before the High Court by the first respondent, the Association of Retired Supreme Court and High Court Judges at Allahabad. The petition *inter alia* sought an increase in the allowance granted to former judges of the High Court for domestic help and other expenses.

6. While the petition was pending before the High Court, a three-judge bench of this Court in **P Ramakrishnan Raju vs. Union of India**,⁵ decided a batch of cases pertaining *inter alia* to the post-retiral benefits payable to former judges of the High Courts. In its judgement dated 31 March 2014, this Court appreciated the scheme formulated by the State of Andhra Pradesh and recommended that other States also formulate similar schemes for post-retiral benefits to former judges of the High Courts, preferably within six months from the Judgement. The Court held:

“34. While appreciating the steps taken by the Government of Andhra Pradesh and other States who have already formulated such scheme, by this order, we hope and trust that the States who have not so far framed such scheme will formulate the same, depending on the local conditions, for the benefit of the retired Chief Justices and retired Judges of the respective High Courts as early as possible preferably within a period of six months from the date of receipt of copy of this order.”

(emphasis supplied)

7. Subsequently, contempt petitions were instituted before this Court for non-compliance with the Court's decision in **P Ramakrishnan Raju** (supra). This Court directed all states to file affidavits detailing the steps taken to comply with the

⁵ Writ Petition (Civil) No. 521/2002

directions. By an Order dated 27 October 2015, reported as **Justice V.S. Dave, President, the Association of Retired Judges of Supreme Court and High Courts vs. Kusumjit Sidhu and Others**⁶, this Court closed the contempt proceedings against the State of Uttar Pradesh, noting that it had already framed a scheme in accordance with the Court's directions. The Court further held that a slight variation from the yardstick in the Andhra Pradesh scheme is permissible keeping in mind the local conditions and directed that states that are paying less than the yardstick, shall consider upward revision at the 'appropriate stage and time'. The court held:

"State of Meghalaya, Manipur, Maharashtra, Goa, Mizoram, Punjab, Tamil Nadu, Karnataka, Andhra Pradesh, Sikkim, Arunachal Pradesh, Telangana, Uttar Pradesh, Madhya Pradesh, Tripura, Government of NCT of Delhi, Haryana, Uttarakhand, Rajasthan, Chhattisgarh, Kerala, Gujarat and Assam

The counter-affidavits/responses filed on behalf of each of the aforesaid States indicate that a scheme has been framed in accordance with the directions of the Court. While some of the States are paying more than what the State of Andhra Pradesh (Adopted as the yardstick by the Court) is paying by way of post-retirement allowances some others are affording lesser amount(s). A little variation from the yardstick can be understood in terms of the flexibility contemplated in paragraphs 33 and 34 of the judgment which enable the States to frame their respective schemes keeping in mind the local conditions. As all the aforesaid States have framed their schemes, we direct that the contempt proceedings insofar as these states are concerned are closed.

We also direct that such of the states where the allowances paid are lesser than the State of Andhra Pradesh, shall consider the necessity of an upward revision of such allowances at the appropriate stage and time."

(emphasis supplied)

⁶ Contempt Petition (Civil) Nos. 425-426 of 2015.

8. The Government of Uttar Pradesh issued a Government Order dated 3 July 2018 and revised the post-retiral benefits for former judges of the High Court. The domestic help allowance payable to retired Chief Justices and Judges of the High Court was increased to Rs. 20,000/- (per month) for former Chief Justices and Rs.15,000/- (per month) for former judges. Under this revised scheme, after the death of a former Chief Justice or judge, the surviving spouse would be entitled to receive Rs. 10,000/- and Rs 7,500/- per month, respectively for life. In 2022, the Government of Andhra Pradesh increased the allowance to Rs. 50,000 for former Chief Justices and Rs. 45,000 for former judges of the High Court. The first respondent preferred an application to amend the prayers in the writ petition and sought parity with the new scheme framed by the Andhra Pradesh government.

9. From the submissions of the parties and documents on the record, it appears that sometime between 2019 and 2023, the Chief Justice of the High Court proposed certain '*Rules for providing Domestic Help to Former Chief Justices and Former Judges of Allahabad High Court*'.⁷ The preamble to the Rules indicates that they were framed by the Chief Justice in the exercise of his purported powers under Article 229 of the Constitution. The operative portion of the Rules, which lie at the heart of the present case, follows:

"In exercise of the powers conferred by Article 229 of the Constitution of India, the Chief Justice of the High Court of Judicature at Allahabad is pleased to frame the following rules for providing the domestic help to former Chief Justices and former Judges of the High Court.

...

⁷ "Rules"

“6. Selection of Domestic Help: The former Chief Justice or former Judge may at her, or his discretion select a person to be engaged as a Domestic Help.

7. Contractual appointment: The engagement of a Domestic Help under Rule 6 shall be on a contractual basis and will be available until the former Chief Justice or former Judge is entitled to the benefit of the facility under Rule 5 and until the Domestic Help performs duties satisfactorily subject to the certification of the former Chief Justice or former Judge.

8. Reimbursement: Upon engagement, the monthly remuneration payable to the Domestic Help shall be reimbursed by the High Court to the former Chief Justice or former Judge after completion of the month in each month.

9. Wages: The wages to be reimbursed by the High Court to the former Chief Justice or former Judge for the engagement of the Domestic Help shall be equivalent to the salary payable to a Class-IV employee of the High Court in the grade of a peon or equivalent at the minimum of the scale of pay inclusive of dearness allowance.

...”

(emphasis supplied)

10. In the above factual background, the High Court heard the writ petition, summoned officials of the Government of Uttar Pradesh and passed various orders, including the two Impugned Orders. The orders of the High Court passed before the Impugned Orders are pertinent to understand the course of events before the High Court while adjudicating the subject writ petition.

11. On 5 January 2023, the High Court allowed the first respondent's amendment application. The High Court directed the Principal Secretary, Law and Justice, Government of Uttar Pradesh to appear in-person along with the records to “expedite the matter”. The High Court held:

“On specific query, the learned Standing Counsel submits that the scheme pursuant to the direction of the Supreme Court is already there and the amount is being duly paid by the State Government. However, the quantum of amount towards the benefits being granted to the retired Judges has not been revised since then. It is submitted that the matter for revision, if any, is to be considered at the highest level.

Be that as it may, in order to expedite the matter, before any further order is passed, it would be appropriate that the Principal Secretary, Law and Justice, Government of Uttar Pradesh, shall appear along with the records and apprise the Court of the stand of the State Government in the matter.

Amendment application is allowed. Learned counsel for the petitioner to file an amended copy of the writ petition.”

(emphasis supplied)

12. When the writ petition was heard on 12 January 2023, the Principal Secretary, Law and Justice, Government of Uttar Pradesh was present before the High Court. Further, it was submitted before the High Court that the Rules proposed by the Chief Justice were pending consideration, certain queries were made to the High Court and the matter would be placed before the Cabinet for approval. The High Court listed the case for 19 January 2023 and noted that *“on the said date, it is expected that the queries/clarification would be addressed by the concerned committee.”* (of the High Court).

13. On 19 January 2023, the counsel on behalf of the High Court submitted that while the queries about the Rules were resolved by the High Court, the State Government was raising queries in a piecemeal manner to keep the matter pending for a long period. The Additional Advocate General submitted that the Rules involve

an amendment to the existing scheme and would be examined by the State Government expeditiously.

14. On the next date, 23 March 2023, the High Court expressed its displeasure about the delay by the State Government in notifying the Rules and revising the post-retiral benefits granted to former judges of the High Court. The High Court stated that it is *“constrained to summon the Finance Secretary, Government of UP and all the associated Officers dealing with the file along with the Principal Secretary (Law), Government of UP to appear along with the records on the next date fixed.”*

15. On 4 April 2023, the High Court passed the First Impugned Order. As directed, the Special Secretary, Finance and Principal Secretary, Law, Government of Uttar Pradesh were present. The High Court noted the submission by the Principal Secretary, Law that the matter was placed before the Finance Department on six occasions, but approval was not accorded. On the other hand, the Secretary, Finance submitted that the Rules are beyond the competence of the Chief Justice and do not fall within the ambit of Article 229 of the Constitution. The High Court observed that the objection with regard to the competence of the Chief Justice was being raised for the first time before the High Court. The High Court observed that:

“5. On perusal of the record with the assistance of the learned Additional Advocate General, we do not find any such objection which is being pressed before this Court. In other words, the attitude of the officers of the Finance Department is not only contemptuous, but at the same time their stand/submission with regard to the competence of the Hon'ble Chief Justice/ Article 229 is not reflected from the record”

16. The High Court further recorded the submissions of the counsel for the High Court that the Finance Department was attempting to stall all the recommendations of the High Court in the recent past and that the objections being raised by the Finance Department should have been raised with the Law Department. The High Court observed:

"6. [...] The audacity of the officers to raise the issue of competence of the Hon'ble Chief Justice, is not only unbecoming of a civil servant, but at the same time contemptuous. These objections are not available on record, nor have it been brought to the notice of the Law Department for legal advice. The Government Order granting benefits to the retired Judges is already in place, the proposal of the High Court merely seeks to incorporate the same by amending, and/or, in supercession of the earlier Government Order. Article 229 is unnecessarily being pressed with the sole purpose of creating hindrance when there is none.

17. The High Court observed that the Rules were pursuant to the assurances given by the State of Uttar Pradesh in **P Ramakrishnan Raju** (supra) and **Justice V.S. Dave** (supra). Further, the High Court recorded that the Secretary, Finance conceded that the Rules could be notified by way of a Government Order amending or superseding the Government Order dated 3 July 2018. The High Court relied on this purported 'no objection' and directed as follows:

"22. Secretary, Finance, fairly states that the Finance Department would have no objection in the event the Government Order to that effect is issued incorporating the proposals submitted by the High Court in the form of Rules. He further submits that the Finance Department does not have objections with regard to the financial implications in according approval to the proposed Rules/Guidelines.

...

25. Having regard to the categorical stand of the Principal Secretary Law and Secretary Finance Department, the following directions are issued:

1. The Rules/Guidelines as proposed by the High Court shall be notified by amending/incorporating/superceeding the Government Order dated 3 July 2018, forthwith;

2. The Finance Department would accord approval within a week thereafter;

3. The notification of the Government Order and the approval, thereof, shall be placed on record on the date fixed;

4. In the event the order is not complied, Additional Chief Secretary, Finance and the officers present today shall appear on the date fixed."

(emphasis supplied)

18. The State of Uttar Pradesh filed a recall application before the High Court on 19 April 2023 seeking a recall of the First Impugned Order on the grounds that:

- a. The High Court did not have the power to pass the above directions;
- b. The rules do not fall within the ambit of Article 229 of the Constitution;
- c. The direction for the Rules to be notified and the Finance Department to accord approval thereafter cannot be complied with as the concurrence/advice of the Finance Department must be taken **before** notifying the rules; and
- d. Only the Parliament and the Union government are competent to frame legislation/rules pertaining to post-retiral benefits for former judges of the High Courts.

19. On 19 April 2023, the High Court passed the Second Impugned Order. The High Court noted that the Additional Chief Secretary (Finance) was not present, while the Secretary (Finance) and the Special Secretary (Finance), who also appeared on the previous date, were present. The High Court noted that on the

date of the First Impugned Order, the officials of the Finance Department categorically stated that they have “no objection” if the Government Order issued in 2018 is modified or amended. The recall application, according to the High Court, constituted “ex-facie criminal contempt”, as it did not indicate any valid reasons for non-compliance with the First Impugned Order. The High Court held:

'30. [..] From perusal of the entire affidavit, it is not clear as to which part of the order the officers intend to recall, rather, the prayer made therein is to recall the entire order, but no reason has been assigned as to how the order is obnoxious on the whole. In other words, the affidavit that has been filed today is false, misleading and averments, therein, constitute ex-facie criminal contempt.

31. On specific query, it is informed by the officers present in the Court, on perusal of the record, that pursuant to the order dated 4 April 2023, the Chief Secretary had convened a meeting of the officers on 13 April 2023. The Advocate General had opined to comply the order. Further, the office of the Law Department on 6 April 2023, had forwarded the proposed Government Order/amendment to confer benefits upon the retired Judges for approval of the Finance Department. The proposal is not to frame Rules under Article 229 of the Constitution. These facts have been suppressed. As per the stand of the officers, it is only after approval by the Finance Department, submitted by the Law Department, the matter would be placed before the Cabinet. In this backdrop, affidavit is not only false but also misleading as the affidavit does not disclose as to why the proposal submitted by the Law Department was not approved or the reason for not approving it, rather, frivolous issues have been raised with regard to the procedure to be adopted while notifying the Government Order or the issue of Article 229 of the Constitution. Affidavit does not clarify as to why the Government Order as proposed by the Law Department was not approved by the Finance Department till date. The approach of the officers of the Finance Department is writ large, that the proposal submitted by the High Court, would not be complied and in their overzealous approach and adamant attitude are opposing compliance of the writ court order without any valid basis.

32. In the circumstances, having regard to the averments made in the affidavit and the conduct of the officers suppressing material facts and misleading the Court, prima facie, have committed criminal contempt of the Court.”

(emphasis supplied)

20. The High Court directed that the officials present in the court, the Secretary (Finance) and the Special Secretary (Finance) be taken into custody and produced before the Court on the next day for framing of charges. Further, the Court issued bailable warrants against the Chief Secretary and the Additional Chief Secretary (Finance) to ensure their presence before the Court on the next day.

21. The above Orders dated 4 April 2023 and 19 April 2023 have been challenged by the State of Uttar Pradesh by the present appeal. By an interim order dated 20 April 2023, this Court stayed the operation of the Impugned Orders and the officials of the Government of Uttar Pradesh, who were taken into custody were directed to be released. This Court directed:

“4 Till the next date of listing, there shall be a stay” of the operation of the orders of the Division Bench of the High Court of Judicature at Allahabad dated 4 April 2023 and 19 April 2023.

5 The officers of the Government of Uttar Pradesh, who have been taken into custody, shall be released forthwith

6 The Registrar (Judicial) of this Court shall communicate the order of this Court both telephonically and on the email to the Registrar General of the High Court of Judicature at Allahabad for immediate compliance.”

22. We have heard Mr Tushar Mehta, Solicitor General with Mr K.M. Natraj, Additional Solicitor General appearing on behalf of the Union of India, Mr Nishit

Agrawal, counsel appearing on behalf of the Association of Retired Supreme Court and High Court Judges at Allahabad and Ms Preetika Dwivedi, counsel appearing on behalf of the High Court of Judicature at Allahabad on the administrative side.

23. Having heard the rival submissions advanced by the parties and examined the record, the following broad points of law arise for our consideration:

- (i) Whether the High Court had the power to direct the State Government to notify Rules proposed by the Chief Justice pertaining to post-retiral benefits for former Judges of the High Court;
- (ii) Whether the power of criminal contempt could be invoked by the High Court against officials of the Government of Uttar Pradesh on the ground that the application for recall was 'contemptuous'; and
- (iii) The broad guidelines that must guide courts when they direct the presence of government officials before the court.

II. The High Court did not have the power to direct the notification of the Rules proposed by the Chief Justice

24. The preamble to the Rules proposed by the Chief Justice expressly states that the Rules have been made pursuant to Article 229 of the Constitution. Article 229 pertains to 'officers and servants' of the High Courts. Article 229(2) provides that the conditions of service of officers and servants of the High Court shall be as may be prescribed by rules made by the Chief Justice of the High Court or any

other Judge or officer authorized by the Chief Justice for the purpose. The proviso to the Article mandates that the rules made under Article 229(2) require the approval of the Governor of the State, in so far as they relate to salaries, allowances, leave or pensions. The provision reads as follows:

229. Officers and servants and the expenses of High Courts. — (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund

(Emphasis Supplied)

25. Article 229(2) pertains only to the service conditions of 'officers and servants' of the High Courts and does not include Judges of the High Court (both sitting and retired judges). The Chief Justice does not have the power, under Article 229, to make rules pertaining to the post-retiral benefits payable to former Chief Justices and judges of the High Court. Therefore, the Rules proposed by the Chief

Justice, in the present case, do not fall within the competence of the Chief Justice under Article 229. The reliance placed on the provision in the preamble to the Rules is misplaced.

26. It is a settled principle of law that merely because reference is made to a wrong provision of law while exercising power, that by itself does not vitiate the exercise of power so long as the power of the authority can be traced to another source of law. However, in the Rules, the Impugned Orders or in its submissions before this Court, the High Court has not brought to the fore any other source of law which empowers the Chief Justice to frame binding rules for post-retiral benefits of former judges of the High Court. In the Impugned Orders, the High Court merely adverts to the judgements of this Court in **P Ramakrishnan Raju** (supra) and **Justice V.S. Dave** (supra) to justify the imposition of the Rules on the state government.

27. In our considered opinion, the reliance on the judgements of this Court to justify the promulgation of Rules by the Chief Justice is based on an erroneous and over-expansive interpretation of the directions of this Court. As stated above, this Court in **P Ramakrishnan Raju** (supra) appreciated the scheme in Andhra Pradesh and observed that the Court "*hopes and trusts that the States who have not so far framed such scheme will formulate the same, depending on the local conditions". Further, in **Justice V.S. Dave** (supra), the Court closed the contempt proceedings against the State of Uttar Pradesh noting that the state had already framed a scheme for post-retiral benefits. The Court held that slight variations from the scheme adopted in Andhra Pradesh were permissible and flexibility was*

contemplated in **P Ramakrishnan Raju** (supra) for states to frame their respective schemes. Further, the court directed that “states where the allowances paid are lesser than the State of Andhra Pradesh, shall consider the necessity of an upward revision of such allowances at the appropriate stage and time.”

28. There is no iota of doubt that in the above judgements, this Court directed the state governments to frame schemes for post-retiral benefits. The above judgements of this Court did not grant the Chief Justices of High Courts, acting on the administrative side, the power to frame rules about post-retiral benefits for former judges that must mandatorily be notified by the State Governments. Further, the Court recognized the need for flexibility and granted state governments the leeway to duly account for local conditions.

29. Further, the High Court's conduct on the judicial side in the Impugned Orders was also erroneous. The High Court, acting under Article 226 of the Constitution, cannot usurp the functions of the executive and compel the executive to exercise its rule-making power in the manner directed by it. Compelling the State Government to mandatorily notify the Rules by the next date of hearing, in the First Impugned Order, virtually amounted to the High Court issuing a writ of mandamus to notify the Rules proposed by the Chief Justice. Such directions by the High Court are impermissible and contrary to the separation of powers envisaged by the Constitution. The High Court cannot direct the State Government to enact rules on a particular subject, by a writ of mandamus or otherwise.

30. The High Court, acting on the judicial side, could not compel the State Government to notify Rules proposed by the Chief Justice in the purported exercise of his administrative powers. Policymaking by the government envisages various steps and the consideration of various factors, including local conditions, financial considerations, and approval from various departments. The High Court cannot use its judicial powers to browbeat the State Government to notify the Rules proposed by the Chief Justice. As the Rules were promulgated by the Chief Justice without competence, at best, they amounted to inputs to the State Government. The State Government was free to constructively consider the desirability of the Rules within its own decision-making apparatus. Therefore, the High Court acted beyond its jurisdiction under Article 226 by frequently summoning officers to expedite the consideration of the Rules and issuing directions to notify the Rules by a fixed date, under the threat of criminal contempt.

III. Criminal Contempt cannot be initiated against a party for availing legal remedies and raising a legal challenge to an order

31. The Contempt of Courts Act, 1971 defines 'civil contempt' and 'criminal contempt' in the following terms:

2. Definitions. — In this Act, unless the context otherwise requires, —

[...]

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—