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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

DR. DHANANJAYA Y. CHANDRACHUD: CJI., J.B. PARDIWALA; J., MANOJ MISRA; J.

January 03, 2024

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

The State of Uttar Pradesh & Ors.

versus

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

Constitution of India, 1950; Article 229 (2) - The High Court did not have 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. The Chief Justice did not have the competence to frame the rules under Article 229 of the Constitution. Further, the High Court, acting on the judicial side, does not have the power to direct the Government to frame rules proposed by it on the administrative side. *(Para 24 – 30)*

Constitution of India, 1950; Article 229 - Officers and servants and the expenses of High Courts - 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. *(Para 25)*

Contempt of Courts Act, 1971 - Criminal Contempt cannot be initiated against a party for availing legal remedies and raising a legal challenge to an order. *(Para 31 – 37)*

Contempt of Courts Act, 1971 - The power of the High Courts to initiate contempt proceedings cannot be used to obstruct parties or their counsel from availing legal remedies. *(Para 34)*

Contempt of Courts Act, 1971 - 'Civil Contempt' and 'Criminal Contempt' - The Act makes a clear distinction between two types of contempt. 'Wilful disobedience' of a judgement, decree, direction, order, writ, or process of a court or wilful breach of an undertaking given to a court amounts to 'civil contempt'. On the other hand, the threshold for 'criminal contempt' is higher and more stringent. It involves 'scandalising' or 'lowering' the authority of any court; prejudicing or interfering with judicial proceedings; or interfering with or obstructing the administration of justice. *(Para 32)*

Contempt of Courts Act, 1971; Section 14 - Summoning of Government Officials before Courts - The use of the power to summon the presence of government officials must not be used as a tool to pressurize the government, particularly, under the threat of contempt. *(Para 38)*

Contempt of Courts Act, 1971; Section 14 - Summoning of Government Officials before Courts - Law officers act as the primary point of contact between the courts and the government. Courts must refrain from summoning officials as the first resort. While the actions and decisions of public officials are subject to judicial review, summoning officials frequently without just cause is not permissible.

Exercising restraint, avoiding unwarranted remarks against public officials, and recognizing the functions of law officers contribute to a fair and balanced judicial system. Courts across the country must foster an environment of respect and professionalism, duly considering the constitutional or professional mandate of law officers, who represent the government and its officials before the courts. Constantly summoning officials of the government instead of relying on the law officers representing the government, runs contrary to the scheme envisaged by the Constitution. *(Para 41 & 44)*

Contempt of Courts Act, 1971 – The Standard Operating Procedure (SOP) on personal appearance of government officials in court proceedings framed by this Court in Para 45 of this Judgement must be followed by all courts across the country. All High Courts shall consider framing rules to regulate the appearance of Government officials in court, after taking into account the SOP. *(Para 45)*

(Arising out of impugned final judgment and order dated 04-04-2023 in WC No. 38595/2011 19-04-2023 in WC No. 38595/2011 passed by the High Court Of Judicature At Allahabad)

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For Respondent(s) Mr. Nishit Agrawal, AOR Ms. Kanishka Mittal, Adv. Ms. Vanya Agrawal, Adv. Mr. K M Nataraj, A.S.G. Mr. Vatsal Joshi, Adv. Mr. Shlok Chandra, Adv. Mr. Akshit Pradhan, Adv. Mr. Raghav Sharma, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Raj Bahadur Yadav, AOR Mr. K M Natraj, A.S.G. Mr. Vatsal Joshi, Adv. Mr. Akshit Pradhan, Adv. Mr. Shlok Chandra, Adv. Mr. Raghav Sharma, Adv. Mrs. Sunita Sharma, Adv. Mr. Gaurav Agrawal, AOR Ms. Preetika Dwivedi, AOR Mr. Abhisek Mohanty, Adv.

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

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1. Leave granted.

2. The present appeals arise from two orders of the Division Bench of the High Court of Judicature at Allahabad[1] 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.

[1] "High Court"
[2] "Impugned Orders"
[3] "First Impugned Order"

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).

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 noncompliance 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 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)

[4] "Second Impugned Order"
[5] Writ Petition (Civil) No. 521/2002
[6] Contempt Petition (Civil) Nos. 425-426 of 2015.

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)

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.

…

"**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 ChiefJustice 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)

[7] "Rules"

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—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

32. The Act makes a clear distinction between two types of contempt. 'Wilful disobedience' of a judgement, decree, direction, order, writ, or process of a court or wilful breach of an undertaking given to a court amounts to 'civil contempt'. On the other hand, the threshold for 'criminal contempt' is higher and more stringent. It involves 'scandalising' or 'lowering' the authority of any court; prejudicing or interfering with judicial proceedings; or interfering with or obstructing the administration of justice.

33. In the second Impugned Order, the High Court held that the actions of the officials of the Government of Uttar Pradesh constituted criminal contempt as there was no "valid reason" to not comply with the earlier Order. Even if the High Court's assessment is assumed to be correct, non-compliance with the First Impugned Order could at most, constitute civil contempt. The High Court failed to give any reasoning for how the purported non-compliance with the First Impugned Order was of the nature to meet the standard of criminal contempt. The High Court acted in haste by invoking criminal contempt against the officials of the Government of Uttar Pradesh and directing for them to be taken into custody.

34. In our considered opinion, however, even the standard for civil contempt was not met in the facts of the present case. In a consistent line of precedent, this Court has held that while initiating proceedings of contempt of court, the court must act with great circumspection. It is only when there is a clear case of contemptuous conduct that the alleged contemnor must be punished. The power of the High Courts to initiate contempt

proceedings cannot be used to obstruct parties or their counsel from availing legal remedies.

35. In the present case, the State of Uttar Pradesh was availing its legitimate remedy of filing a recall application. From a perusal of the record, it appears that the application was filed in a *bona fide* manner. Not only had the Finance Department raised its concerns regarding the competence of the Chief Justice before the High Court but its previous conduct, including file notings of the department and letters to the Central Government, indicate that this objection had been raised by them in the past. The legal position taken by the Government in the recall application was evidently based on their desire to avail their legal remedy and not to willfully disobey the First Impugned Order.

36. The objections raised by the Government of Uttar Pradesh with regard to legal obstacles in complying with the First Impugned Order were never adjudicated by the High Court. Instead, the High Court regarded the objection as an attempt to obstruct justice, without even a cursory attempt to provide reasons. Applying the standards delineated above, it is clear that the actions of the government of Uttar Pradesh did not constitute even 'civil contempt' let alone 'criminal contempt'. The circumstances most definitely did not warrant the High Court acting in haste, by directing that the officials present before the court be taken into custody. This summary procedure, although, permitted under Section 14 of the Contempt of Courts Act cannot be invoked as a matter of routine and is reserved for only extraordinary circumstances.

37. Such summary procedure, as has been held by this Court, in **Leila David v. State of Maharashtra,**[8] can only be invoked in exceptional cases, such as instances where:

"36. ….after being given an opportunity to explain their conduct, not only have the contemnors shown no remorse for their unseemly behavior, but they have gone even further by filing a fresh writ petition in which apart from repeating the scandalous remarks made earlier, certain new dimensions in the use of unseemly and intemperate language have been resorted to further denigrate and scandalize and overawe the Court. This is one of such cases where no leniency can be shown as the contemnors have taken the liberal attitude shown to them by the Court as license for indulging in indecorous behavior and making scandalous allegations not only against the judiciary but those holding the highest positions in the country."

No such situation prevailed in the present case. Therefore, the invocation of criminal contempt and taking the government officials into custody was not warranted.

IV. Summoning of Government Officials before Courts

38. Before concluding, we must note the conduct of the High Court in frequently summoning officials of the Government of Uttar Pradesh. The appearance of government officials before courts must not be reduced to a routine measure in cases where the government is a party and can only be resorted to in limited circumstances. The use of the power to summon the presence of government officials must not be used as a tool to pressurize the government, particularly, under the threat of contempt.

39. The Court must also refrain from relying on mere undertakings by government officials in court, without consent on affidavit or instructions to law officers such as the Attorney General, Solicitor General, or the Advocate Generals of the states. Courts must be cognizant of the role of law officers before summoning the physical presence of government officials.

[8] (2009) 10 SCC 337

40. Under Article 76 of the Constitution, the Attorney General is appointed by the President and serves in an advisory capacity, providing legal counsel to the Union Government. The responsibilities of the Attorney General include advising on legal matters, performing assigned legal duties, and representing the government in various courts. Similarly, under Article 165 of the Constitution, the Advocate General is appointed by the Governor of each state. The Advocate General provides legal advice to the state government, performs legal duties as assigned, and discharges functions conferred by the Constitution. Several other law officers also represent the Union and the states including the Solicitor General, Additional Solicitor General, and Additional Advocates General for the states. They *inter alia* obtain instructions from the various departments of the government and represent the government before the courts.

41. Law officers act as the primary point of contact between the courts and the government. They not only represent the government as an institution but also represent the various departments and officials that comprise the government. This Court in **Mohd. Iqbal Khandaly v. Abdul Majid Rather**,[9] had occasion to observe that there was no justification to direct the Additional Advocate General, not to appear for the appellant in a contempt petition and to direct that he should merely assist the court.

42. In the present case, instead of adjudicating on the legal position taken by the Government of Uttar Pradesh on affidavit or hearing the Additional Advocate General present in the court, the High Court repeatedly summoned government officials. The government was also directed to notify the Rules based on a "no objection" from the officials of the Finance Department purportedly made before the High Court, which is now contested by the state. Such situations can be avoided in cases where submissions on affidavit can be sought and the law officers of the Government are present in court, with instructions. The issuance of bailable warrants by the High Court against officials, including the Chief Secretary, who was not even summoned in the first place, further indicates the attempt by the High Court to unduly pressurise the government.

43. This Court in **State of Uttar Pradesh v. Manoj Kumar Sharma,**[10] frowned upon the frequent summoning of government officials "at the drop of a hat". This Court held:

*"***17.** A practice has developed in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. The line of separation of powers between Judiciary and Executive is sought to be crossed by summoning the officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.

18. The public officers of the Executive are also performing their duties as the third limbs of the governance. The actions or decisions by the officers are not to benefit them, but as a custodian of public funds and in the interest of administration, some decisions are bound to be taken. It is always open to the High Court to set aside the decision which does not meet the test of judicial review, but summoning officers frequently is not appreciable at all. The same is liable to be condemned in the strongest words.

…

21. Thus, we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the court is not enhanced when an officer is called to court. Respect to the court has to be commanded and not demanded and the same is not enhanced by calling the public officers. The presence of public officer comes at the cost of other official engagement demanding their attention. Sometimes, the officers even have to travel long distance. Therefore, summoning of the officer is against the public interest as many important

[9] (1994) 4 SCC 34.
[10] (2021) 7 SCC 806.

tasks entrusted to him get delayed, creating extra burden on the officer or delaying the decisions awaiting his opinion. The court proceedings also take time, as there is no mechanism of fixed time hearing in courts as of now. The courts have the power of pen which is more effective than the presence of an officer in court. If any particular issue arises for consideration before the court and the advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond."

(emphasis supplied)

44. Courts must refrain from summoning officials as the first resort. While the actions and decisions of public officials are subject to judicial review, summoning officials frequently without just cause is not permissible. Exercising restraint, avoiding unwarranted remarks against public officials, and recognizing the functions of law officers contribute to a fair and balanced judicial system. Courts across the country must foster an environment of respect and professionalism, duly considering the constitutional or professional mandate of law officers, who represent the government and its officials before the courts. Constantly summoning officials of the government instead of relying on the law officers representing the government, runs contrary to the scheme envisaged by the Constitution.

45. Enriched by the valuable insights shared in discussions with my esteemed colleagues Justice J.B. Pardiwala and Justice Manoj Misra, we have framed a Standard Operating Procedure (SOP) specifically addressing the appearance of Government Officials before the courts. At its core, this SOP emphasizes the critical need for courts to exercise consistency and restraint. It aims to serve as a guiding framework, steering courts away from the arbitrary and frequent summoning of government officials and promoting maturity in their functioning. The SOP is set out below:

Standard Operating Procedure (SOP) on Personal Appearance of Government Officials in Court Proceedings

This Standard Operating Procedure is applicable to all court proceedings involving the government in cases before the Supreme Court, High Courts and all other courts acting under their respective appellate and/or original jurisdiction or proceedings related to contempt of court.

1. Personal presence pending adjudication of a dispute

1.1 Based on the nature of the evidence taken on record, proceedings may broadly be classified into three categories:

a. **Evidence-based Adjudication:** These proceedings involve evidence such as documents or oral statements. In these proceedings, a government official may be required to be physically present for testimony or to present relevant documents. Rules of procedure, such as the Code of Civil Procedure, 1908, or Criminal Procedure Code 1973, govern these proceedings.

b. **Summary Proceedings:** These proceedings, often called summary proceedings, rely on affidavits, documents, or reports. They are typically governed by the Rules of the Court set by the High Court and principles of Natural Justice.

c. **Non-adversarial Proceedings:** While hearing non-adversarial proceedings, the court may require the presence of government officials to understand a complex policy or technical matter that the law officers of the government may not be able to address.

1.2 Other than in cases falling under para 1.1(a) above, if the issues can be addressed through affidavits and other documents, physical presence may not be necessary and should not be directed as a routine measure.

1.3 The presence of a government official may be directed, inter alia, in cases where the court is *prima facie* satisfied that specific information is not being provided or is intentionally withheld, or if the correct position is being suppressed or misrepresented.

1.4 The court should not direct the presence of an official solely because the official's stance in the affidavit differs from the court's view. In such cases, if the matter can be resolved based on existing records, it should be decided on merits accordingly.

2. Procedure prior to directing personal presence

2.1 In exceptional cases wherein the in-person appearance of a government official is called for by the court, the **court should allow as a first option, the officer to appear before it through video conferencing**.

2.2 The Invitation Link for VC appearance and viewing, as the case may be, must be sent by the Registry of the court to the given mobile no(s)/e-mail id(s) by SMS/email/WhatsApp of the concerned official at least one day before the scheduled hearing

2.3 When the personal presence of an official is directed, reasons should be recorded as to why such presence is required.

2.4 Due notice for in-person appearance, giving sufficient time for such appearance, must be served in advance to the official. This would enable the official to come prepared and render due assistance to the court for proper adjudication of the matter for which they have been summoned.

3. Procedure during the personal presence of government officials: In instances where the court directs the personal presence of an official or a party, the following procedures are recommended:

3.1 **Scheduled Time Slot:** The court should, to the extent possible, designate a specific time slot for addressing matters where the personal presence of an official or a party is mandated.

3.2 **The conduct of officials:** Government officials participating in the proceedings need not stand throughout the hearing. Standing should be required only when the official is responding to or making statements in court.

3.3 During the course of proceedings, oral remarks with the potential to humiliate the official should be avoided.

3.4 The court must refrain from making comments on the physical appearance, educational background, or social standing of the official appearing before it.

3.5 Courts must cultivate an environment of respect and professionalism. Comments on the dress of the official appearing before the court should be avoided unless there is a violation of the specified dress code applicable to their office.

4. Time Period for compliance with judicial orders by the Government

4.1 Ensuring compliance with judicial orders involving intricate policy matters necessitates navigating various levels of decisionmaking by the Government. The court must consider these complexities before establishing specific timelines for compliance with its orders. The court should acknowledge and accommodate a reasonable timeframe, as per the specifics of the case.

4.2 If an order has already been passed, and the government seeks a revision of the specified timeframe, the court may entertain such requests and permit a revised, reasonable timeframe for the compliance of judicial orders, allowing for a hearing to consider modifications.

5. Personal presence for enforcement/contempt of court proceedings

5.1 The court should exercise caution and restraint when initiating contempt proceedings, ensuring a judicious and fair process.

5.2 **Preliminary Determination of Contempt:** In a proceeding instituted for contempt by wilful disobedience of its order, the court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.

5.3 **Notice and Subsequent Actions:** Following the issuance of the notice, the court should carefully consider the response from the alleged contemnor. Based on their response or absence

thereof, it should decide on the appropriate course of action. Depending on the severity of the allegation, the court may direct the personal presence of the contemnor.

5.4 **Procedure when personal presence is directed:** In cases requiring the physical presence of a government official, it should provide advance notice for an in-person appearance, allowing ample time for preparation. However, the court should allow the officer as a first option, to appear before it through video conferencing.

5.5 **Addressing Non-Compliance:** The court should evaluate instances of non-compliance, taking into account procedural delays or technical reasons. If the original order lacks a specified compliance timeframe, it should consider granting an appropriate extension to facilitate compliance.

5.6 When the order specifies a compliance deadline and difficulties arise, the court should permit the contemnor to submit an application for an extension or stay before the issuing court or the relevant appellate/higher court.

46. In a nutshell, the conclusions reached in this Judgement are as follows:

a. The High Court did not have 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. The Chief Justice did not have the competence to frame the rules under Article 229 of the Constitution. Further, the High Court, acting on the judicial side, does not have the power to direct the Government to frame rules proposed by it on the administrative side.

b. The power of criminal contempt could not be invoked by the High Court against officials of the Government of Uttar Pradesh on the ground that the application for recall of the First Impugned Order was 'contemptuous'. The actions of the officials do not meet the standard of both 'criminal contempt' and 'civil contempt'.

c. The conduct of the High Court in frequently summoning government officials to exert pressure on the government, under the threat of contempt, is impermissible. Summoning officials repeatedly, instead of relying on the law officers representing the government or the submissions of the government on affidavit, runs contrary to the scheme envisaged by the Constitution.

d. The SOP on Personal Appearance of Government Officials in Court Proceedings framed by this Court in Para 45 of this Judgement must be followed by all courts across the country. All High Courts shall consider framing rules to regulate the appearance of Government officials in court, after taking into account the SOP which has been formulated above.

47. Both the Impugned Orders dated 4 April 2023 and 19 April 2023 are set aside and the appeals are disposed of. The High Court is at liberty to hear the writ petition, in view of the observations made in this judgement.

48. The Registry is directed to communicate the judgment to the Registrar General of every High Court.

49. Pending applications, if any, stand disposed of.