

Court No. - 42

Case :- WRIT - C No. - 38595 of 2011

Petitioner :- Association Of Retired Supreme Court And H.C.Judges And Another

Respondent :- Union Of India And Others

Counsel for Petitioner :- Alok Kumar Yadav, Shashi Nandan, Vikram D. Chauhan

Counsel for Respondent :- C.S.C., A.S.G.I.(2011/1050), Ashish Mishra, Yashwant Verma

Hon'ble Suneet Kumar, J.

Hon'ble Rajendra Kumar-IV, J.

1. Heard Shri L.P. Mishra, learned Senior Advocate assisted by Shri Praful Tiwari, Shri Vineet Pandey, learned Chief Standing Counsel, Shri M.C. Chaturvedi, Additional Advocate General for the applicants, Shri Alok Kumar Yadav, learned counsel for the petitioners and Shri Ashish Mishra, learned counsel for the High Court.

2. The recall application dated 19 April 2023, and the exemption application has been filed by the officers of the State directly before the Court with a prayer to recall the order dated 4 April 2023, passed by this Court. The order dated 4 April 2023, is extracted:

“1. Pursuant to order dated 23 March 2023, Shri S.M.A. Rizvi, Secretary, Finance, Shri Sarayu Prasad Mishra, Special Secretary, Finance and Principal Secretary Law, Government of Uttar Pradesh, Lucknow, are present along with the record.

2. The Court was constraint to summon the officers as the matter pertaining to providing domestic help and other facilities to the former Chief Justices and former Judges of this Court was kept pending on one pretext or the other. On repeated request made by the learned Additional Advocate General, that the matter is pending consideration at the highest level, as many as, five adjournments over several months was granted. However, the authorities did not take decision.

3. The Principal Secretary Law, at the outset, points out that the matter was placed before the Finance Department for approval on six occasions, but the approval was not accorded.

4. On query, Secretary Finance, submits that the proposed Rules submitted by the High Court is beyond the

‘competence of the Chief Justice’ as the matter pertains to the post retiral benefits of the retired Judges. Further, Special Secretary, Finance stated that the Rules proposed by the High Court in the matter was beyond the scope of Article 229 of the Constitution of India. He further stated that the matter be referred to the Central Government, to draw a Rule that would uniformly be made applicable to the retired Judges across the country.

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.

6. The learned counsel appearing for the High Court, at the outset, submits that the approach and attitude of the Finance Department of late has been that of ‘big brother’, attempting to stall any recommendation/proposal made by the High Court on any matter on one pretext or the other without due deliberation. They do not suggest as to how the matter proposed by the High Court, after due approval of the Hon'ble Chief Justice, could have been carried out, and/or, given effect to. The objections that is being raised do not fall within the ambit of the Finance Department. At the best they should have raised their objection/concerns, if any, with the Law Department. 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. That apart the Finance Department has no other objection. The record merely reflects that the Finance Department does not concur with the proposal. The reason for not agreeing is absent.

7. On query, Principal Secretary Law submits that the objections that is being raised was never conveyed to the Law Department for clarification, neither, it has been brought on record. In any case, he fairly submits that the

objections raised is beyond the scope and ambit of the Finance Department insofar it relates to the legality of the proposal submitted by the High Court. The Department of Finance has a limited role to play and their approval is sought only for the reason that the proposal involves financial implication. He further submits that there is no other objection to the proposal and the same shall be notified by the Law Department in continuation/supersession of the earlier Government Order.

8. *In view of the aforementioned submissions, specific query was made from the Secretary Finance, as to whether the Chief Secretary of the Government of Uttar Pradesh had given an undertaking before the Hon'ble Supreme Court in **P. Ramakrishnam Raju vs. Union of India and others**¹, for providing benefits to the retired Judges. The officer admits that such an undertaking was given and consequently, Government Order dated 3 July 2018, was issued in compliance, but in the same breath states that the Finance Department was not taken into confidence before furnishing the undertaking.*

9. *The matter before the Supreme Court was with regard to the entitlement of benefits to the Judges on retirement. In paragraph 13 of the order, it is recorded that in the conference of the Chief Ministers and the Chief Justices of the High Court, held on 18 September, 2004, the following resolution was passed:*

“ 18. Augmenting of post-retiral benefits of Judges.

Xxx xxxx

[vi] As regards post-retiral benefits to the retired Judges of the High Courts, the scheme sanctioned by the State of Andhra Pradesh be adopted and followed in all the States, except where better benefits are already available.”

10. *In paragraph 33, Supreme Court noted that pursuant to the said resolution, most of the States in the country have extended various post retiral benefits to the retired Judges of the respective High Courts. Reference was made to the Government Order dated 16 March 2012, issued by the Law Department, Government of Andhra Pradesh. It appears that some of the State Governments, including, State of Uttar Pradesh failed to comply with the directions issued in **P. Rama Krishnam Raju** (supra), consequently, contempt petitions came to be filed before the Supreme Court being case of **Justice V.S. Dave President, The Association of***

1. Writ Petition (Civil) No. 521 of 2002, dated 31/03/2014

Retired Judges of Supreme Court and High Courts vs. Kusumjit Sidhu and others².

11. *In the aforementioned proceedings, several States, including, State of Uttar Pradesh, filed affidavits undertaking to frame the scheme. The Government Order issued by the State of Andhra Pradesh was adopted as the yardstick. The Hon'ble Supreme Court directed as follows:*

“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 of Andhra Pradesh (Adpoted 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 petitions insofar as these states are concerned are closed.

We also direct that the effective date of grant of the aforesaid reliefs will be six months from the date of the order of the Court dated 31.03.2014 passed in Writ Petition (C) No. 521 of 2002 [P. Ramakrishnam Raju Vs. Union of India and others.]”

12. *Further, direction was issued that where allowances paid was lesser than the State of Andhra Pradesh, an upward revision of such allowances shall be made at the appropriate stage.*

“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.”

13. *Pursuant to the undertaking, State Government issued Government Order dated 3 July 2018, conferring upon the retired Judges benefits noted therein. The quantum of the benefits were static/fixed, i.e., not subject to change. Thus, exposing the retired Judges to knock the doors of the Court for enhancement to tide over the erosion of the value of the benefits caused due to inflation.*

14. *After a lapse of time, it appears that several State Governments issued orders amending/superceeding the earlier Government Orders conferring benefits upon retired*

2. Contempt Petition (Civil) Nos. 425-426 of 2015 in Writ Petition (Civil) No. 523 & 524 of 2002, decided on 27 October, 2015.

Judges by enhancing the quantum of the benefits and other facilities for several reasons, including, inflation.

15. In this backdrop, an amendment application came to be filed by the petitioners claiming parity with the benefits granted by the Government of Andhra Pradesh to the retired Judges pursuant to Government Order dated 19 January 2022. The Government Order notes that after a careful consideration of the proposal of the Hon'ble Supreme Court, in cessation of the earlier orders, the aforementioned Government Order came to be issued being progressive and plugging the inflationary rise of cost of the benefits provided.

16. The proposal came to be made by the Registrar General, High Court of Andhra Pradesh, referring to resolution of the Chief Justices Conference 2016, held in April 2016, at New Delhi.

17. It is in the aforementioned background that the petitioner-Association of retired Judges sought commensurate benefits at par with that of the State of Andhra Pradesh.

18. Accordingly, Registrar General of the High Court forwarded Rules/Guidelines, duly approved by Hon'ble Chief Justice, for providing benefits to former Chief Justices and former Judges of High Court of Allahabad, which, however, was kept pending and as per the stand of the officers, before the Court, Rules proposed by the High Court was beyond the competence and jurisdiction of the Hon'ble Chief Justice and not falling within the ambit of Article 229 of the Constitution of India.

19. Learned counsel appearing for the petitioner-Association submits that the High Court has been too conservative in according benefits to the retired Judges which is not commensurate to that conferred by other State Governments, including, the State of Andhra Pradesh. It is urged that High Court and the State Government be directed to incorporate enhanced rates of benefits at par with that of the State of Andhra Pradesh.

20. The submission at this stage is premature and is left open to the petitioners to raise the issue after the Government Order/notification is issued as per the proposal of the High Court.

21. In the aforementioned backdrop, specific query was made from the officers of the Finance Department that under which provision, the earlier Government Order was notified in the year 2018 conferring benefits upon retired Judges, and as to whether the proposed Rules/Guidelines proposed

by the High Court can be incorporated by way of amendment/ supercession of the Government Order, i.e., 3 July 2018.

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.

23. It is informed that the Chief Secretary has convened the meeting of the officers with regard to the matter after personal appearance of the officers.

24. In view thereof, it is relevant to take note that the Finance Department was unnecessarily objecting to the proposal without suggesting that the proposed Rules/Guidelines forwarded by the High Court could be given effect to by issuing a fresh/amended Government Order in purported exercise of powers under Article 162 of the Constitution of India as was done by the Government earlier.

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.

26. List this case on 19 April 2023.”

3. The affidavit has been sworn by Shri Shahid Manzar Abbas Rizvi, Secretary (Finance) U.P.

4. Pursuant to the aforementioned order, Additional Chief Secretary (Finance) is not present, the officers present on the said date, i.e., Secretary (Finance) and the Special Secretary (Finance) are present.

5. An exemption application has been filed on behalf of the Additional Chief Secretary (Finance), seeking exemption due to post-Covid complications.
6. On 4 April 2023, a similar prayer was made by the officer seeking exemption on the ground of ailment.
7. We have carefully perused the affidavit in support of the application with the assistance of the learned counsel for the parties.
8. In paragraph 5, it has been stated that the issue *“involved in the writ petition as also raised through the present affidavit, is to be taken as a counter affidavit to the writ petition, are only legal in nature and do not involve any disputed or disputable questions of fact are to be gone into. It is expedient in the ends of justice that writ petition which is pending since the year 2021 be heard and decided finally.”*
9. In short, officer of the State has taken a stand that the matter be adjudicated upon on merit as they have reservations in complying the order that is being sought to be recalled.
10. In the second paragraph of the affidavit, it is stated that the *‘State of U.P. has always been keen to act in the best interest of Hon’ble the retired Chief Justices/Hon’ble Retired Judges and their spouses so far as providing of post-retiral benefits within the constitutional frame is concerned and the State Government treats the Hon’ble Retired Chief Justices and Retired Judges of the Hon’ble Allahabad High Court, as its golden past.’*
11. Thereafter, it is stated that *‘in the matter of fiscal policy and the involvement of expenditure from the public Ex-chequer, the State Government is constitutionally obligated also to act in the best interest of millions of its populations living in extremely socially, educationally and economically backward conditions as also in extreme penury.’*
12. It is further stated that the State Government is also under a legal obligation to act within the frame of law and Constitution of India.
13. In paragraph 3.A(i), the issue of Article 229 of the Constitution of India has been raised stating therein that the power conferred thereunder pertains to the service conditions of the officers and servants of the High

Court in making Rules in that regard and not with regard to Judges, sitting or retired of the High Court.

14. In paragraph 3.A.(ii), referring to the proposal made by the High Court in the form of Rules for providing domestic help to former Chief Justices and former Judges of Allahabad High Court, it is stated that the proposed Rule does not fall within the scope and ambit of Article 229 of the Constitution.

15. Accordingly, it is stated that the observation made in the order dated 4 April 2023, observing that the conduct of the officer is “unbecoming of a government servant” and “audacious” is uncalled for and the same may be recalled.

16. Thereafter, the averment made in the affidavit is to justify the stand taken by the Finance Department way back in the year 2016, wherein, it was opined that the State Government lacks competence to legislate in regard to the Judges of the High Court. The document has been placed on record. The averment is irrelevant and misleading as the Government Order came to be issued subsequently in the year 2018, conferring benefits to the retired Judges of this Court despite the objection of Article 229 of the Constitution of India.

17. In paragraph B.(ii) it has been categorically stated that the directions of the order dated 4 April 2023, is not capable of compliance. The relevant paragraph is extracted:

*“(ii) The directions, as quoted above, **are capable of not being complied with at all for the following reasons:-***

*(a) Before finalization of any rules/guidelines including the rules/guidelines having financial implications or for the purpose of superseding any existing Government Order containing financial implications to be replaced by any new Government Order, the matter be referred to the Finance Department for the purpose of placing the subject matter before the Hon’ble Cabinet for necessary deliberations and considerations are undertaken. **Thus, no rules can be notified before ultimate consideration of the advice expressed by the Finance Department, Law Department or any***

other concerned department and before any proposal in that regard having been approved by the Hon'ble Cabinet. In this view of the matter, there could not be any such situation of notifying the rules/guidelines as proposed by the Hon'ble High Court by amending/incorporating/superseding the Government Order dated 03.07.2018 forthwith and thereafter to get approval from the Finance Department.

(b) There is no prevalent system under the rules of business laying down the guidelines for administration/legislative functions of the State Government stipulating any such situation that first the rules/guidelines shall be notified and thereafter approval/concurrence of the Finance Department was to be taken. On the other hand its converse is true in as much as that the concerned department including Finance Department, as and when required, deal with the matter and thereafter only the matter is placed before the Hon'ble Cabinet and it is only after the approval of the Hon'ble Cabinet such notifications are made.

(c) In the event of the direction Nos. 1 and 2 as contained in Para 25 of the order not at all capable of being complied with, as aforesaid, there is no question for placing such notification of the Government Order before this Hon'ble Court on the date fixed, i.e., today."

18. It has been further stated in the affidavit that the '*notifications issued by the other State Governments conferring post-retiral benefits to their retired Judges and their spouses, cannot legally create a situation for the State of U.P. to follow the same in line of such exercise is beyond the legislative competence of the State Government.*' In other words, the State Government is not competent to consider the proposal.

19. The reasons stated for non-compliance is that before finalizing any Rules/Guidelines having financial implications, the matter is referred to the Finance Department for the purpose of placing the subject matter before the Hon'ble Cabinet for necessary deliberations and considerations. It is further stated that no Rule can be notified before consideration of the advice expressed by the Finance Department, Law Department or any other concerned department before the proposal in that regard having been approved by the Hon'ble Cabinet. It is further stated that in this view of the matter, there could not be any such situation notifying the Rules/Guidelines as proposed by the Hon'ble High Court by

amending/incorporating or superseding the Government Order dated 3 July 2018, forthwith and thereafter to get approval from the Finance Department.

20. In paragraph 3.B.(ii)(c), it has been stated that ***'in the event, the direction Nos. 1 and 2 as contained in paragraph 25 of the order not at all capable of being complied with, as aforesaid, there is no question for placing such notification of the Government Order before the Hon'ble Court on the date fixed, i.e., today.'*** In other words, a categorical stand has been taken that despite the consent of the officers of the Finance Department before this Court, the order sought to be recalled cannot be complied at all.

21. Paragraph 4(a) refers to the decisions of the Hon'ble Supreme Court as passed in contempt jurisdiction, wherein, it *'has been stated that the Hon'ble Supreme Court of India has not at all delved into the question of Legislative competence of a State Government, including, that of State of U.P. in regard to framing of rules governing the post-retiral benefits of the Hon'ble retired Chief Justices/Hon'ble retired Judges and their spouses.'*

22. In paragraph 3.B.(ii)(c), it has been stated that the upward revision as mentioned in the order of the Hon'ble Supreme Court dated 27 October 2015, ***'relates to upward revision made by the State of Andhra Pradesh by that point of time and the said observation is not in perpetuity. Otherwise, an anomalous situation of vesting of legislative competence in the State Government or in the Hon'ble Chief Justice of a High Court which does not stand so vested under the Constitutional Scheme would arise. The Central Government in exercise of power under Section 24 of 1958 Act has framed rules known as "High Court Judges (Salary and Conditions of Service) Act 1954," and has also been making amendment in the said rules from time to time.'***

23. It is further stated in the same paragraph that again, *‘an anomalous situation would arise that the State Legislature would be competent to legislate in regard to the service conditions of Hon’ble Judges of High Court though the said field stand exclusively occupied by Article 221 of the Constitution of India, read with Entry 78 of List-1 of VIIth Schedule.’*

24. It is further stated that *‘once the State of U.P. issued Government Order dated 3 July 2018, in adherence and compliance of the order dated 27 October 2015, passed by the Hon’ble Supreme Court in contempt proceedings, the ‘upward revision’ so mentioned in the order dated 27 October 2015, stands exhausted.’*

25. In the same breath, in paragraph 4(d), it is stated that the State Government wrote a letter dated 10 April 2023, to the Government of India clearly stating that the terms and conditions of the Hon’ble Chief Justices and the Hon’ble Judges, both in harness and retired, are to be prescribed by the Indian Parliament/Central Government or the President of India and the State Government may be apprised as to whether the Central Government has framed any rules prescribing the rates admissible as Domestic Help Allowances and any other facilities for the retired Hon’ble Chief Justices and Hon’ble Judges of High Courts.

26. In response to the clarification, the Ministry of Law and Justice, Department of Justice, Government of India vide communication dated 13 April 2023, addressed to the Additional Chief Secretary, Finance and Finance Commissioner, Government of Uttar Pradesh, Lucknow, was of the view that the Department of Justice has no comments to offer on the said proposal. It is, therefore, advised that an appropriate decision may be taken by the State Government based on local conditions and after considering the proposal on merits. The Government of India further categorically stated that as regards Article 229 of the Constitution that covers the field in making rules with regard to the conditions of service of Officers and servants of High Court.

27. Paragraph 2 and 3 of the communication dated 13 April 2023, is extracted:

*“2. However, the Hon’ble Supreme Court in its judgment dated 31.03.2014 in W.P. (C) No. 521 of 2002 – Justice (Retd). P. Ramakrishnam Raju vs UOI and Ors has allowed payment of a consolidated amount to retired Chief Justices and retired Judges towards meeting the expenses on orderly, driver, security guard, secretarial assistance, residential telephone etc. and directed the State Governments to formulate a scheme depending on the local conditions, for the benefits of the retired Chief Justices and retired Judges of the respective High Courts. Since the directions of the Hon’ble Supreme Court were addressed to the State Governments for implementation, the **Department of Justice has no comments to offer on the said proposal. It is, therefore, advised that an appropriate decision may be taken by the State Government based on local conditions and after considering the proposal on merits.***

3. As regards your query with regard to the second proposal, it is stated that the Chief Justice of a High Court under Article 229 of the Constitution has power to make rules with regard to appointment and conditions of service of Officers and servants of High Court. The Salary, Allowance, Pension and other Conditions of Service of High Court Judges are governed by the High Court Judges (Salaries and Conditions of Service) Act 1954, and under Section 24 of the Act, it empowers the Central Government to frame rules under the Act and not the High Court of the States.”

28. In this backdrop, the present application has been filed to recall the order dated 4 April 2023, in totality.

29. On bare perusal of the affidavit and the averments made therein, it is abundantly clear that the stand of the State Government has reduced the writ petition, to an adversarial litigation. A categorical stand has been taken that the recall application be taken as a counter affidavit to the writ petition raising objections, in particular, that the Rules/Guidelines forwarded by the High Court cannot be notified under Article 229 of the Constitution of India. The same stand was taken earlier as noted in the order to be recalled, but, on specific query, officers of the Finance Department categorically stated that they have no objection in the event Government Order already issued in 2018, is either modified or amended. Accordingly, the order came to be passed.

30. In the recall application, officers have not disputed that such a course is not available, but, have raised the issue of Article 229 of the Constitution unnecessarily questioning the competence of Hon'ble Chief Justice. The issue of conferring benefits to the retired Judges of this Court does not fall within the ambit of Article 229 of the Constitution, nor, is it being argued or pressed by the petitioners-Association. 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, 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

over zealous 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.

33. Accordingly, officers present in the Court, namely, Shri Shahid Manzar Abbas Rizvi, Secretary (Finance) U.P. Lucknow and Shri Sarayu Prasad Mishra, Special Secretary (Finance) are taken into custody. They shall be produced before the Court tomorrow, i.e., 20 April 2023, at 11:00 am for framing of charge.

34. Issue bailable warrants to Chief Secretary, Uttar Pradesh, Lucknow, and Dr. Prashant Trivedi, Additional Chief Secretary (Finance) U.P. Lucknow, through the concerned Chief Judicial Magistrate, to ensure their presence before this Court on 20 April 2023.

35. The officers shall show cause as to why charge may not be framed against them.

36. The order shall be communicated by the office of the Advocate General for compliance. Registrar General to comply the order of this Court and duly communicate to the concerned Chief Judicial Magistrate for compliance.

37. After passing of the order, learned Senior Counsel requested that the officers taken into custody be enlarged on bail. The request shall be considered on the date fixed.

38. The certified copy of this order shall be made available by the Registry today.

Order Date :- 19.4.2023

Mukesh Pal

(Rajendra Kumar-IV)

(Suneet Kumar)