

FORIPSO

Forum of Retired IPS Officers

Regn No. S/RS/SW/1197/2014 dated 7.11.14 under The Societies Registration Act XXI, 1860

Regd. Office: 12, Sultanpur Estate, Mandi Road, Sultanpur, New Delhi-110030

DARPAN Unique ID: DL/2024/0471868 dated 13.12.24

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Dated: 19.4.25

Inputs for the Contempt Case

The Story So Far

1. Delhi High Court passed an Order on 20.3.24. It ordered that "*Arrears in terms of this order will be paid within eight weeks*". The deadline of 8 weeks ended on 17.5.24. On the same date 17.5.24, we filed our contempt case vide CONT.CAS(C) 918/2024. The next date in our case is 16.5.25.
2. In the meanwhile, the lead case petitioner and two others have also filed their contempt cases:-
 - a) CONT.CAS(C) 43/2025-All India S-30 Pensioners Association.
 - b) CONT.CAS(C) 1188/2024.
 - c) CONT.CAS(C) 1202/2024.
3. **Estoppel:-** In the above 3 cases, on 27.2.25, the Govt Counsel pleaded for 3 months' time to make a computation of the entire pensionary benefits payable to the petitioners. The court granted them **4 weeks'** time and clearly warned that no further opportunity shall be given. The Court further warned that "*in case the computation of arrears is not completed within the stipulated time and the amount is not made available for payment to the petitioners, the respondents shall appear in person through video conference at 11:30 AM on the next date (8.4.25) and explain as to why they should not be held guilty of committing contempt of the order of the court and be sentenced in accordance with law*".
4. However, the tables turned on the next date 8th April, 2025. The single Judge bench changed. The ASG appeared and stated that the Finance Act, 2025 has been passed by the Parliament and notified by a Gazette Notification dated 29th March 2025. Part IV of the said Act provides for "*Validation of Central Civil Services (Pension) Rules and Principles for Expenditure on Pension Liabilities from the Consolidated Fund of India*". The Act validated decision of the Central Government stating, *inter alia*, in Section 150

that “*the Central Government has the authority and shall always be deemed to have the authority to classify its pensioners, and may create or maintain distinction amongst pensioners as deemed expedient for implementing the recommendation of the Central Pay Commissions*”. Accordingly, it was contended that by virtue of this validating Act, the Central Government has been empowered (even retrospectively) to recognise the distinction in these categories. It was, therefore, submitted by ASG that, in the light of the extant legislation, the High Court’s order dated 20th March 2024 is no longer applicable and the Government is not obliged to implement it and hence no contempt arises. Considering the submissions, the case was referred to the Division Bench to clarify as to whether the said Finance Act, 2025 shall obliterate and eclipse the orders passed by the Court, thereby giving authority to the Central Government to recognise and endorse the distinction between various categories of the pensioners. The next date in the case is 23rd April, 2025.

Law Points

5. The **mandate** of a contempt case is limited to deciding a single issue: whether the Contemnors have complied with the Court’s order and whether they have wilfully committed contempt of court. On this issue, the case is open and shut: They are guilty.
 - What to talk of complying with the order, the Contemnors have shown gross disrespect to the Court by not even responding to the Contempt petition. Even after a lapse of **13 months and 4 adjournments** (on 30.5.24, 5.9.24, 18.10.24 and 20.12.24), the Contemnors are sitting tight. This shows the Contemnors have least regard for the court’s orders. Hence, they are guilty of contempt.
 - A contempt case stands on an entirely **different footing**. It is not an avenue for appeal which has already been gone into and the last remedy exhausted by the Contemnors when their SLP was dismissed by the Supreme Court on 4.10.24. They have not filed any Review Petition before the Supreme Court. As such, the High Court order has attained **finality**.
6. At this stage, it is **not open to the court to reopen a case** which has already been decided by a Division Bench by a speaking order and upheld by the Apex Court after being dragged on for 12 years since 2012. During this period, **52** of our members have left for their heavenly abode, waiting for justice in vain. Many of our members are super seniors citizens, past the age of **80 years**. Our oldest member is **96 years old**. Apart from deciding the issue of contempt, it is now for the court to get its judgement implemented without any further delay.
7. **Estoppel**:- In view of the firm commitment made by the contemnors before Delhi High Court on 27.2.25 (Para 3 above), the principle of Estoppel kicks in. The Govt Counsel had pleaded for 3 months’ time to make a computation of the entire pensionary benefits

payable to the petitioners. The court granted them **4 weeks'** time and clearly warned that no further opportunity shall be given. Estoppel does not permit the Contemnors to go back on their commitment.

8. The Amendment Act passed by the parliament is a colourable exercise to circumvent the High Court judgement duly upheld by the Supreme Court. It is clear from the following paragraph in the Act:-

*“AND WHEREAS the judgment of the Supreme Court in SLP (Civil) No. 29124 of 2024 in the case of the Union of India and Ors. Vs All India **S-30 Pensioners Association** and Ors. has obliterated such distinction and proceeded on the premise that the Government lacks authority for providing for such distinction of the Central Government pensioners based on their date of retirement;”*

9. Part IV of the Finance Act, 2025 (notified by a Gazette Notification dated 29th March 2025) has amended the Central Civil Services (Pension) Rules, 1972 which was subsequently replaced by the Central Civil Services (Pension) Rules, 2021 and the Central Civil Services (Extraordinary Pension) Rules, 2023. This amendment has been made effective from the 1st day of June, 1972.

- It is worth noting that these Pension Rules were enacted as a **subordinate legislation to the All India Services Act, 1951**. It is a settled law that a subordinate legislation cannot override the provisions of the parent Act/ enabling Act, i.e. the All India Services Act, 1951.
- Subordinate legislation derives its power and validity from the main Act. The parent Act delegates the authority to create these rules, regulations, or bye-laws to a specific body (e.g., a government department). The power delegated to create subordinate legislation is always limited by the scope and provisions of the main Act.
- The subordinate legislation must be within the boundaries set by the parent Act and cannot go beyond what the Act permits. The main Act, having been directly enacted by the legislature (which holds primary law-making power), holds a superior position in the legal hierarchy compared to subordinate legislation.
- If a piece of subordinate legislation contradicts, goes beyond the scope of, or is inconsistent with the main Act, it can be declared *ultra vires* and therefore invalid.
- The primary purpose of subordinate legislation is usually to provide the detailed rules and procedures necessary to implement and administer the broader principles and framework laid down in the main Act. It is meant to supplement and facilitate the execution of the Act, not to alter its fundamental provisions.

10. Part IV of the Finance Act, 2025 **violates Section 3(1A) of the All India Services Act, 1951** which is a crucial safeguard that no rule can be made retrospectively if it negatively impacts the interests of anyone it applies to. It is worth noting that Section 3(1A) of the All India Services Act, 1951 has not been amended by the Parliament till date and stands as it is. Clearly, the Amendment Act is ultravires to that extent. This Section is extracted below:-

“3. Regulation of recruitment and conditions of service.—(1) The Central Government may, after consultation with the Governments of the States concerned [including the State of Jammu and Kashmir], (and by notification in the Official Gazette) make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All India Service.

(1A) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.”

11. Alabhya has prepared a tentative list of cases where the legislation has in effect changed the judgments and court has made remarks on the govt / legislature. Here are some observations of the Supreme Court in the past cases:-

- ✓ A writ of mandamus cannot be nullified by a subsequent legislation made by the legislature. A binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance simply overrules a judgment unless the foundation of the judgment is removed. A mandamus against the respondent-State giving financial benefits to the petitioners cannot be nullified by a legislation.
- ✓ It may be open to the legislature to alter the law retrospectively, so as to remove the basis of a judgment declaring such law to be invalid, it is essential that the alteration is made only to bring the law in line with the decision of the Court. The rule of law would cease to have any meaning if the legislature is at liberty to defy a judgment by simply passing a validating legislation. Abrogation is not a device to circumvent any and all unfavourable judicial decisions. If enacted solely with the intention to defy judicial pronouncement, such an amendment Act may be declared to be ultravires and as a piece of ‘colourable legislation.’ An act of abrogation is permissible only in the interests of justice, effectiveness and good governance, and not to serve the oblique agenda of defying a court’s order, or stripping it of its binding nature.

- ✓ Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. Nullification of mandamus by an enactment would be impermissible legislative exercise. Even interim directions cannot be reversed by a legislative veto. Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of **Article 14** of the Constitution of India.
- ✓ The court's orders derive their force from **Article 226** of the Constitution. These cannot be touched by an ordinary Act of Parliament.

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