

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN

GILGIT.

C. Appeal No. 09/2014

In

C.P.L.A. No. 78/2014

Before :- Mr. Justice Raja Jalal-Ud-Din, Acting Chief Judge.

Mr. Justice Muzaffar Ali Judge.

Muhammad Ismail s/o Khushmir Ex.Lecturer Computer Science KIU r/o village Jalalabad Tehsil and District Gilgit.

Petitioner.

Versus

1. Vice Chancellor Karakoram International University Gilgit.

2. Registrar Karakoram International University Gilgit.

Respondents.

PETITION FOR LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT/ORDER DATED 16-06-2014, PASSED BY CHIEF COURT GILGIT-BALTISTAN.

Present :- Mr. Muhammad Issa, Sr. Advocate alongwith Mr. Munir

Ahmed Advocate for the petitioner.

Mir Akhlaq Hussain Advocate for the respondents.

Date of Hearing :- 06-05-2015

JUDGMENT:

Mr.Justice Muzaffar Ali, J..... The present appellant filed Writ Petition No.73/2010, before the learned Chief Court Gilgit-Baltistan, folding with the facts that, the appellant served the respondent's Institution as contract Lecturer (BPS-17) in Computer Sciences Department since 2006 till 2009. The appellant was granted leave without pay to get Higher Education abroad and accordingly, he got admission in LimKoping city Sweden, University, succeeded to get degree of Technology Master Examination (M.Phil) in Computer Science, after completing two years study in the said University. The appellant was party to the C.P.L.A No. 7/2008 and in Review Petition No.6/2008 as petitioner among others before this Court.

The supra cited petitions were finally disposed of on merits and directives issued to the present respondents to regularize the contractual service of Lecturers as a matter of right on the basis of their contractual appointments made by the respondents under the "prescribed manners." The respondents regularized 11 petitioners in

compliance of the orders/directives of this Court without further interview/test but on the basis of their contractual employment made under the "**prescribed manners.**"

The respondents showed discriminatory attitude in case of the present appellant and intentionally delayed to put up the appellant's case before the Selection Board. Finally, his case was referred to the Selection Board but refused the right of appellant accrued to him at par to other petitioners under the judgment dated 20-9-2008 and 29-4-2010 respectively by this Court. The present respondents regretted regular appointment of the present respondent through the letter dated May 15, 2013 on the pretext of his failure in the fresh interview conducted by the Selection Board. Hence the present appellant filed the supra Writ Petition before the learned Chief Court. The Writ Petition was heard by a Division Bench of the Chief Court and finally the Writ was dismissed through the impugned judgment dated 16-6-2104.

The appellant being dissatisfied and feeling aggrieved with the impugned judgment, submitted the petition for leave to appeal No. C. Appeal 09/2014 in C.P.L.A No.78/2014 before this Court. We heard the learned Counsel for the appellant, the learned counsel for appellant raised some legal points. We felt the points require thorough consideration and appreciation, hence we granted the petition for leave to appeal and converted the petition into appeal vide order sheet dated 17-9-2014. On 06-05-2015. We, thereafter, heard the learned counsel for the parties and reserved the judgment to announce. Today we announced the judgment after writing the same.

We, after, hearing the counsel for the parties have reached to realize that, the issue between the parties pertains to the "**ratio decidendi**" of the judgments of this Court. The counsel for appellant urges that, the judgments cited of this Court have confirmed a right to the contract Lecturers to be adjusted against regular posts without any fresh test/interview on the basis of their contract services and no discretion vests with the Selection Board of the respondents to negate the right of regular appointment of the contract Lecturers. Contrary to the learned counsel for the respondent is of the opinion that, the cited judgment, on the bases of which, the appellant claims his right, if its para 2<sup>nd</sup> last is read with the operative part, then it becomes clear that, the

judgment has vested the Selection Board with the discretion either to refuse or to select contract Lecturers for regular post and the judgment has not given any vested right to them, to be adjusted without going through the prescribed manners afresh.

The learned Division Bench of the Chief Court has acceded the understanding of the respondents in this regard, through the impugned judgment and the appellant has come to this Court, feeling aggrieved with. We, therefore, have gone through the judgments of this Court cited and feel it proper to reproduce the relevant paras of the cited judgment in Review petition No.06/2008 hereunder:-

**2<sup>nd</sup> last para:-**

**“The rule of fair treatment and natural justice would demand that candidates who have qualified the test and interview on the basis of 40% aggregate Marks have acquired a legitimate right of selection on their own merits and should have been dealt with accordingly. Similarly the candidates who were appointed on contract basis in the (prescribed manner) would be entitled to be considered for regular appointment in their own right on the basis of their contract service.**

**Last para:-**

**In the light of the above discussion to ensure the fair treatment and transparent selection we direct that the Registrar of the University will place the case of petitioners in Review petitions No.02/2008 and 06/2008 falling within the purview of para (b) and (c) of the judgment referred above before the Selection Board for final selection on merits on a date to be fixed by the Vice Chancellor of the University and in the light of the recommendations of Selection Board the competent authority will make appointment accordingly. With the above modification in the judgment under review these review petitions are disposed of.”**

The paras, reproduced supra are very clear in their wording if read together that, this court has recognized right of the contract Lecturers of their regular selection through Selection Board in the respondent Institution on the basis of their contract

Service alone, provided that. the appointment against the post was made after going through the “**prescribed manners.**”

The record of the case transpires that, the respondents also acted upon the directions of this court in the referred cases in the manners, as we have interpreted above and 11 contract Lecturers were regularized without any test/interview in the basis of their contract service with the satisfaction of the Selection Board about their contract service in the “**prescribed manners.**” Diversity was seen in the attitude of the respondents, when they refused to adjust some contract Lecturers against the regular posts without assigning any reason. The affected contract Lecturers approached to the Chief Court for redressal against the discriminatory attitude of the respondents and thereafter, the issue came to this Court in appeal, the learned Chief Court and this Court passed the following judgments and restrained the respondents from discriminatory interpretation of the directives in the “**cited judgments**” of this court on the basis of liking and disliking and directed the respondents to adjust the petitioners as per directives of this Court without any discrimination. The cases are referred as under :-

- (a) Implementation petition No.C.Misc.33/2011, judgment dated 14-05-2012 passed by me and my learned brother judge, Raja Jalal-Ud-Din, when we were the judges in the learned Chief Court and my learned brother was author of the cited judgment. The relevant para of the same is reproduced here under :-

**“The petitioners and others in Review petition No.06/2008 have been appointed on contract basis in the prescribed manners through the process of test and interview would not be required to undergo the same process of test and interview again for the purpose of regular appointment against the same posts, therefore, in all fairness they should have been considered for regular appointment on the basis of their contract appointment which were made in accordance with the prescribed method of appointment under the rules and view thereof we find nothing wrong with the direction contained in para© above.”**

- (b) W.P.No.43/2011 of the learned Chief Court judgment dated 12-06-2012 passed by the learned Chief Court, the author in this judgment was learned Chief Judge Justice Sahib Khan. The judgment was acceded by this court vide judgment dated 20-03-2014 of this Court in appeal.**

**(c) This court has held likewise view in the case titled Iftikhar Ali V/S KIU etc. judgment dated 19-10-2015.**

In all the above cases this court and the learned Chief Court are in consonance that, the judgment dated 26-06-2008 in appeal No.07/2008 and in Review petitions No.02/2008 have recognized and conferred a right to the contract Lecturers, to be adjusted against the regular posts on the basis of their contract Service, provided that, their appointment in the contract basis was made, duly adopting the “**prescribed manners**” and no discretion has been left with the selection board or the respondents to negate the regular appointment of the contract Lecturers on the basis of any new interview or test with the exception that, the selection board or the respondents are having discretion to regret a regular appointment of a candidate, if it is found that, the candidate was appointed against the contractual post disregarding the “**prescribed manners**.”

In the case in hand, it is admitted fact that, the appellant has not been regretted to adjust him against a regular post in context of his contract appointment, found to be in violation of the “**prescribed manners**” test/interview but, he was refused to regularize his contract service in the light of fresh interview made by the selection board when the appellant appeared before the board for its recommendation against regular post on the basis of his contract service as per directives of this Court in the cited judgments.

The selection board has derogated and has traversed from the “**ratio decidendi**” laid down in all the above judgments referred in preceding paras of this Judgment, notwithstanding the fact that, the board had no discretion to make the appellant undergo through fresh interview but otherwise too, the decision of the selection board against the appellant seems to be malafidey for the reasons that, the appellant was selected for the contract post by the respondents when he was not foreign qualified and he served as contract Lecturer for more than 2 years without any adverse remarks by the board after going through due process in “**prescribed manners**” but he was

regretted the regular appointment on the pretext of fresh interview, when he was armed with a foreign higher degree.

We, have gone through the impugned judgment. In the same, the learned Division Bench of the Chief Court has held that, “**Since the appellant has failed to convince the selection Board for recommendation of him for regular appointment**” and on this score, the writ petition was dismissed but the learned Judges of the Chief court have forgotten, the previous legal view taken by the Chief Court in two identical cases (a) **Muhammad Shahid Malik etc. V/S Vice Chancellor KIU etc** and (b) **Mst. Kaneez Fatima V/S Vice Chancellor etc**, (referred in preceding paras of this judgment) in the later case the learned Judge Sahib Khan, the Senior Member of the Division Bench in this case, himself was author. In the impugned judgment, the learned Division Bench has not only have taken altogether a new view then that of the previous view held by the learned Court itself but also have held divergence with the view taken by this court, disregarding the binding force of the judgments, passed by this court to follow by the courts below in the Gilgit-Baltistan and also have misconceived the dictum laid down in the cases cited in this judgment and have kept a door open to the respondents to deviate from the dictum laid down by the Superior Judiciary holding interview afresh and regretting regular appointment of the contract Lecturers on the simple pretext, getting a liecence there from, a blow hot and cold.

Consequent upon the above discussion, the impugned judgment dated 16-06-2014 is set aside and the respondents are directed to adjust the appellant on the basis of his contractual service.

**Announced:-**

30-11-2015.

Acting Chief Judge

Judge

Whether the case is fit to be reported or not?