

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
CPLA No. 02/2010

Before: **Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.**
 Mr. Justice Syed Jaffar Shah, Judge.

Muhammad Naseem s/o Abdul Sadique r/o Basin Tehsil and District Gilgit

Petitioner.

Versus

1. Zafar Iqbal MD NATCO
2. Controller of Examination University of Peshawar

Respondents.

**PETITIONER FOR LEAVE TO APPEAL UNDER ARTICLE
60 (11)(12) OF GILGIT BALTISTAN (EMPOWERMENT AND
SELF GOVERNANCE) ORDER 2009 AGAINST THE
JUDGMENT DATED 28.09.2009 BY THE CHIEF COURT
GILGIT BALTISTAN.**

Mr. Ehsan Ali Advocate for Petitioner

Mr. Javed Iqbal Advocate for Respondents

Order Dated: 08-06-2010

These connected petitions have been directed against the judgment dated 28-09-2009 passed by the Chief Court in a Civil Revision.

The short facts in the background are that Muhammad Naseem petitioner passed his BA Exam from University of Peshawar in 1973 and he was appointed as Traffic Assistant (TA) in NATCO in 1974. The Managing Director NATCO vide order dated 07-03-2000 terminated his service on the ground that the graduation degree possessed by him was fake. The petitioner filed a suit for declaration that he having passed BA Exam from University of Peshawar was holding a valid degree and his removal from service on such ground was illegal. The suit was decreed and Muhammad Naseem petitioner was directed for reinstatement in service with all back benefits.

In appeal filed on behalf of the Managing Director, NATCO the appellant court reversing the findings on the issue relating to the genuineness of BA degree of the petitioner modified the decree to that extend and maintained the judgment and decree of the trial court in respect of reinstatement of petitioner in service. The parties being not satisfied with the judgment and decree of the 1st appellant court preferred cross Civil Appeals before the Chief Court and learned Judge in Chamber after detail examination of the record dismissed both the appeals.

The precise question for determination in the present petition is whether the judgment of the 1st appellant court maintained by the Chief Court in second appeal on the issue in respect of the genuineness or otherwise of graduation degree of the petitioner was the result of misreading or non reading of evidence and that his initial appointment or further promotion in the service of corporation was not on the basis of his B.A qualification.

The learned counsel for the petitioner has contended that letter dated 29-04-2004 ExP/III by virtue of which the Controller of Examination of Peshawar University verified BA degree of the petitioner has not been read in evidence as a result of which a wrong conclusion has been drawn by the 1st appellant court and also Chief Court in second appeal. The precise argument was that concurrent findings of two courts on the pivotal issue were suffering from inherent defect of non reading of material evidence as a result of which the valid B.A degree of the petitioner has been declared invalid and great miscarriage of justice has been caused.

Learned Counsel for the respondent on the other hand has submitted that in consequence to the inquiry conducted by the Army Monitoring Cell BA degree of the petitioner was found not genuine and Verification Certificate Ex-P/III without formal proof would not be read as admissible evidence, therefore the concurrent finding of two courts on the question of fact cannot be disturbed on the basis of letter ExP/III issued by Controller of Examination University of Peshawar which was not formally proved in evidence.

The careful examination of the record would show that letter dated 29-04-2004 Ex-P/III issued by Controller of Examination University of Peshawar was brought on record and exhibited in evidence without any objection to its genuineness or admissibility and in absence of such an objection, the presumption of correctness would be attached with such an official document and same would be read in evidence.

In view thereof it can safely be held that petitioner was holding a genuine B.A degree and mere fact that he did not produce original degree in evidence would not be a valid reason to declare that he was not graduate or BA degree in his possession was fake. There is no cavil to the proposition that without proof of loss or non-availability of original document the secondary evidence of such document is not permissible but no presumption regarding the non-existence of genuine B.A degree with the petitioner could be raised without examination of original record on the basis of which letter ExP/III was issued. In absence of any evidence in rebuttal to ExP/III the existence of a valid B.A degree in possession of petitioner stood

proved beyond doubt through the Certificate (Ex-P/III) of Controller of Examination of Peshawar University, therefore, the current finding of two courts on the issue being the result of non reading of material evidence would have no significance.

In in light of foregoing discussion we hold that no exception could be taken to the judgment and decree passed by the trial court and the Judgment of the Chief Court is accordingly modified with the result that decree passed by the trial court in the suit shall hold field. This petition is converted into appeal and disposed of with no order as to the cost. Whereas the connected appeal filed by the Managing Director NATCO is dismissed.

Chief Judge

Judge