

**IN THE SUPREME APPELLATE COURT GILGIT-BLATISTAN
GILGIT**

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge

CPLA No. 98/2020

(Against the Judgment dated 24.08.2020, passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 32/2019)

1. Provincial Govt. through Chief Secretary Gilgit-Baltistan, Gilgit
2. Secretary Water & Power Gilgit-Baltistan, Gilgit
3. Executive Engineer, Water & Power, District Nagar
4. Assistant Executive Engineer, Water & Power, District Nagar

.....**Petitioners**

Versus

Akhtar Hussain S/o Ghulam Nabi
r/o Village Budalas, Tehsil Chalt, District Nagar . **Respondent**

PRESENT:

For the Petitioner (s) : The Advocate General, GB

Date of Hearing : **28.10.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- Through the instant petition, the petitioners have challenged the judgment dated 24.08.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 32/2019, whereby the Writ Petition filed by the Respondent was allowed and the petitioners were directed to accept joining report of the respondent from the date of his appointment i.e 08.11.2013.

2. Brief facts leading to institution of the *lis* in hand are that initially the respondent was appointed as work charge

Helper BS-02 in Water & Power Division Hunza/ Nagar at a fixed pay of Rs. 4000/- per month in the year 2009. Thereafter on 08.11.2013 services of the respondent as Helper BS-02 were brought on regular footings against 2% disabled quota through an Office Order issued by the Secretary, Water & Power Department, Gilgit-Baltistan in Water & Power Division, Hunza/Nagar with immediate effect. When the respondent approached the concerned authorities of Water & Power Division, Hunza/ Nagar with joining report, they refused to accept joining report of the respondent purportedly on the pretext of having no post of Helper BS-02 in the department. Against refusal to accept the joining report by the W&P authorities Hunza/ Nagar, the respondent approached the Superintending Engineer, W&P Gilgit upon which S.E. W&P Division Gilgit vide Office Order dated 13.09.2018 constituted a board, comprising the following officers/ officials, to look into the application of the respondent:

- i. Engr. Zahid Hussain (XEN Nagar) President
- ii. Mr. Nadeem Ahmed (AO) Circle Office Member
- iii. Mr. Imtiaz Ali (AEE Nagar) Member
- iv. Mr. Abbas Ali (Head Clerk) Member

The Board after meeting and due deliberation on the issue, submitted its report whereby it recommended that either the respondent be considered against the 02 % disabled quota or be considered for appointment against the already vacant 04 posts of Helper BS-02 lying vacant with the office of Water & Power Division Nagar. Despite the clear recommendations of the Board, petitioners did not accept joining report of the respondent. Having been disappointed with the attitude of the petitioners, the respondent resorted to avail legal remedy from the Courts of law, thus, moved a writ petition before the learned Gilgit-Baltistan Chief Court. The learned Gilgit-Baltistan Chief Court accepted his writ petition which has now been impugned

before this Court by way of the above Civil Petition for Leave to Appeal.

3. The learned Advocate General Gilgit-Baltistan contended that at the time when appointment of respondent was made as Helper BS-02, no such post(s) against 02 % disabled quota was/were lying vacant in Water & Power Department Gilgit-Baltistan which led to non-acceptance of the joining report. He next argued that all the work charge employees of Water & Power Division (about 5000) were regularized in the year 2012 and further work charge appointments were ordered to be stopped, thus his appointment was not justifiable and was against the instructions of the government. He next argued that the impugned judgment so passed was based on surmises and conjectures, against the facts and law and was liable to be set aside.

4. Arguments advanced by the learned Advocate General have been heard. We have also gone through the available record as well as the impugned judgment minutely.

5. The record clearly revealed that respondent was already performing his duties with the Water & Power Division, Hunza/Nagar on work charge basis before his adjustment as Helper BS-02 against 02 % disabled quota. Pursuant to the adjustment order against 2% disabled quota, the respondent approached the authorities of W&P Division Hunza/ Nagar with joining report which was refused. The ground for refusal of joining was non-availability of post with the department. This reason for refusal to accept the joining report is not tenable because when we took in our hands the report of the Board constituted for resolving the issue of the respondent, we found that the Board had clearly unearthed the availability of the post

of Helpers in Nagar Division. Besides this, the authorities (Superintending Engineer Gilgit) who issued the appointment order might be well aware of the fact of availability of posts otherwise how he could issue an appointment order against a non-existent post. The concluding para of the report is reproduced below which will clarify the factum of availability of posts:

“Recommendation finding

In the light of above the board members are of the opinion that his case may be considered against 2% disable quota Or

His case may be considered against vacant 04 posts of Helpers lying vacant in Nagar division”

The statements of the concerned departments of the government of Gilgit-Baltistan dealing with the matter in hand are contradictory. On one hand, the learned Advocate General argued that there were no posts of Helper BS-02 available with the department for adjustment of the respondent while on the other hand the committee whose President was none-other than the concerned Executive Engineer of Nagar clarified availability of 04 posts of Helper. Being the immediate concerned authority, the report of the concerned XEN should be given weightage. Having availability of the required posts, non-acceptance of joining report is not understandable. It is observed that after submission of the report showing clear vacant posts of Helper BS-02, there appeared no excuse for the Water & Power authorities of Hunza/ Nagar to decline the joining report. Regarding the contention of the learned Advocate General that no work charge/ regular appointments were required to be made after the year 2012, it is worthwhile to be noted that it was not the fault on the part of the respondent rather it was the concerned department who made work charge appointment of the respondent, obtained duty from the

respondent and then brought his work-charge services on permanent footings. If work charge appointments were stopped after the year 2012, then who made his appointment and why the concerned district authorities of W&P obtained duty from the respondent as a work charge helper. As such, it would not be just and appropriate to hold the respondent responsible for appointment as Helper during the period when allegedly work-charge appointments were stopped in Water & Power Department, Gilgit-Baltistan. We observe that the superior Courts of Pakistan are also of the consistent opinion that in the matter of appointments, particularly to low profile posts and removing them after a considerable period of service on the ground of being the appointments made in departure of rules, the appointing authority has been held responsible for the action of appointments. Reliance in this regard can be placed on a judgment reported as "*Muhammad Akhtar Shirani & Others versus Punjab Text Book Board and others*" reported as 2004 SCMR 1077 wherein it has been held as under:

"8. It may be observed that for such reason beneficiary cannot be blamed alone because primarily the authority who had actually mis-exercised his powers, for the reasons known to it, is bound to be held responsible for the same, instead of penalizing the petty employees like Chowkidar, Naib-Qasid, junior clerks etc. who have to earn livelihood to support their families and if after having served for a long period they are removed from service discriminately, such action would not promote the cause of action and it would give rise to a number of problems to them. In this regard at a number of occasions, it has been held by this Court that instead of removing the employees from service, action should have been taken against the authority who had mis-exercised its powers"

In the above scenario, we are constrained not to accept the submissions of the learned Advocate General, Gilgit-Baltistan.

6. The crux of the above discussion is that we are unable to find any illegality, irregularity or infirmity in the judgment passed by the learned GB Chief Court. The facts and grounds as discussed do not warrant for inference with the impugned judgment, hence leave is refused. The impugned judgment dated 24.08.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 32/2019 is maintained. The petitioners are directed to comply with the impugned judgment. These were the reasons for our short order dated 21.09.2020, which is reproduced below:

“Case heard and record perused. The learned Advocate General, Gilgit-Baltistan argued that the impugned judgment is not in accordance with the law. However, after perusal of the impugned judgment, we have not been able to find any illegality or irregularity in the impugned judgment. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 98/2020 is refused. The Civil Misc. Application No. 107/2020 is dismissed. The impugned judgment dated 24.08.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 32/2019 is maintained/upheld.”

Chief Judge

Judged

Whether fit for reporting (**YES** / **NO**)