

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT**

BEFORE:

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

CPLA No.97/2018

(Against the judgment dated 23.05.2018 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 477/2014)

1. Govt. of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan
2. Secretary Health Gilgit-Baltistan
3. Secretary Services Gilgit-Baltistan
4. Secretary Home Gilgit-Baltistan **Petitioners**

Versus

Dr. Qazi Muhammad Saleem,
Principal, HRD, Health Department Skardu. **Respondent**

1. Dr. Muhammad Afzal, Principal Medical Officer Gilgit
2. Dr. Muhammad Irshad Hussain,
Retired Medical Officer BPS-20
DHQ Hospital, Gilgit.... **Proforma Respondents**

PRESENT:

For the Petitioners : The Advocate General GB

For the respondents: Malik Shafqat Wali Sr. Advocate

Date of Hearing: **22.10.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- Through this judgment, we intend to dispose of the above Civil Petition for Leave to Appeal directed against the judgment dated 23.05.2018 passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit whereby, Service Appeal No. 477/2014 filed by the respondent was accepted and the petitioners were

directed to extend retirement benefits to the respondent by promoting him to BS-20.

2. Succinctly, the facts gathered from the record of file are that the respondent felt aggrieved when two doctors namely Dr. Muhammad Afzal Khan and Dr. Irshad Hussain, were provisionally promoted to the post of Principal Medical Officers BS-20. The respondent claimed that as per prevalent recruitment rules of 2009, those doctors were not eligible for promotion to the said posts as at the relevant time they did not possess the requisite qualification i.e., Postgraduate higher/ Lower Diploma in Public Health/ Heath Services/ Hospital Administration or equivalent. He claimed that this qualification was an essential prerequisite for promotion to the post of Principal Medical Officer BS-20, thus grant of promotion to those doctors was illegal and against the settled rules of the department. He further claimed that having possessed this qualification, he was entitled to be promoted to the said post while the health department with malafide intentions extended undue advantage to the proforma respondents which on one hand violated the rules of the department and on the other hand deprived him from the right of promotion. To this end, the respondent claimed to have submitted a departmental appeal to the competent authority, which remained unsuccessful. After failure to get the remedy of grievance from the departmental authorities, the respondent filed a service appeal before the learned Gilgit-Baltistan Service Tribunal which was accepted to the extent of extending retirement benefits in terms of either granting him promotion against any vacant post of grade 20 or upgrading his post to BS-20 in terms of person specific,

which has now been impugned by the petitioners before this Court through the above CPLA.

3. The learned Advocate General, Gilgit-Baltistan contended that three different cadres existed in the health department, GB and the cadre to which the two doctors (proforma respondents) were promoted did not relate to the cadre of the respondent and in this view of the matter, the respondent could not claim promotion. The learned Advocate General, GB next argued that in view of seniority too, the respondent could not claim promotion to the post of Principal Medical Officer BS-20 as at the relevant time, he was junior to the proforma respondents. He next submitted that the learned Service Tribunal did not take into consideration the legal position as the service appeal before it was time barred and without discussing this legal point went on to pass the impugned judgment in total departure from relevant facts and laws/ rules, hence the judgment so passed was liable to be set aside.

4. On the other hand, the learned counsel for the respondent argued that this is a case of discrimination because two similarly placed doctors, who even did not possess the requisite qualification, were promoted to the post of Principal Medical Officer BS-20 on provisional basis, while he maintained that there is no provision in the rules for grant of provisional promotion either in the SRO 2009 or 2011. He next argued that having attained the requisite qualification, the respondent deserved to be promoted in the year 2009, but with malafide intentions, the authorities of health department, GB granted provisional promotions to the proforma respondents that too on the basis of draft

recruitment rules and without adhering to the requisite qualifications. He next argued that no promotion could be made on the basis of draft recruitment rules as such the act of petitioners to promote the proforma respondents was totally against the approved recruitment rules of the health department Gilgit-Baltistan which could be declared *void ab initio*. He further argued that seniority alone could not be considered for promotion in the field of doctors while the other prerequisite of qualification etc. were equally required to be considered in promotion cases.

5. We have considered the arguments advanced from the both the sides. We have also gone through the record as well as the impugned judgment passed by the learned Gilgit-Baltistan Service Tribunal. The pivotal issue which requires to be thrashed out is that as to whether the proforma respondents possessed the requisite qualification at the time of their promotion i.e., in the year 2010 in accordance with the SRO 2009? The question would be answered in negative. At the time of their promotions in the years 2010, the proforma respondents did not possess the requisite qualification of Postgraduate higher/ Lower Diploma in Public Health/ Heath Services/ Hospital Administration or equivalent, which co-existed with the conditions for promotions as per the approved recruitment rules 2009. These two pre-requisites are of equal importance. Fitness may connote qualification/ trainings etc. which cannot be ignored altogether to bless someone in a department like the health SA. As far as the issue regarding provisional promotion is concerned, we have not been able to come across any provision in service rules which would allow provisional promotions. We have noticed that at the relevant

time, the only approved recruitment rules governing promotions etc. were the Rules of 2009. It would be appropriate to mention here that since the draft recruitment, which later culminated in the Recruitment Rules 2011, did not exist in the health department at the time of issuance of impugned promotion notice i.e., 2010, then how the authorities of health department promoted the two doctors on the basis of a non-existent rules. No justifiable reasons were assigned in the impugned promotion notification and the only reason given in the promotion orders are "*The officers at S. No. 5 & 6 are provisionally promoted till approval of amendment in the Recruitment Rules by the competent forum*". We understand that probably, the amendments proposed in the draft recruitment rules might be omission of the condition of qualification of Postgraduate higher/ Lower Diploma in Public Health/ Heath Services/ Hospital Administration or equivalent, whereas the same appears to have been approved in the year 2011 in the form of Recruitment Rules 2011, as such the proposed amendments did not exist in the year 2010 in the form of approved rules.

6. In view of the judgment of the Hon'ble Supreme Court of Pakistan, the government authorities are directed to avoid exercising their discretionary powers in discriminatory manner to bless someone by bulldozing the set and approved law/ rules. The observations of the Hon'ble Supreme Court of Pakistan reduced to writing in a judgment are reproduced below:

2000 SCMR 1557

Messrs Arshad & Company Vs. Capital Development Authority Islamabad through Chairman

"Every exercise of discretion is not an act of discrimination as discretion becomes an act of

discrimination only when it is improbable or capricious exercise or abuse of discretionary powers”

7. In view of the above position, we have come to the conclusion that keeping in view of the peculiar circumstance of the case, the learned Gilgit-Baltistan Service Tribunal has assigned reasonable grounds in the judgment of not reversing the provisional promotion of proforma respondents who had already retired. We consider that the mistake of department should not result in injury to retired senior doctors who had already retired. In the peculiar circumstances of the case in hand, the judgment of the learned Gilgit-Baltistan Service Tribunal does not warrant for interference by this Court, hence be complied with by the concerned authorities in the terms as decided by the learned GB Service Tribunal. In the above terms, leave in the above CPLA No. 97/2018 is refused.

8. The above were reasons for our short order dated 22.10.2020 which is reproduced below:

“The learned Advocate General, Gilgit-Baltistan vehemently opposed the contentions raised by the learned counsel for the respondents by arguing that the impugned judgment passed by the learned Gilgit-Baltistan Service Tribunal is against facts and the law, hence prays for setting aside the same. On the other hand, learned counsel for the respondent rebutted the arguments of the learned Advocate General, GB on the basis that two similarly placed doctors were extended the benefits of the same specialization, while the respondent was treated differently which, on the face of it, is a discriminatory treatment meted out to the respondent. On the basis of his arguments, the learned counsel for the respondent prays for maintaining the impugned judgment of the learned Gilgit-Baltistan Service Tribunal.

2. *Case heard and record perused. We have also gone through the impugned judgment of the learned Gilgit-Baltistan Service Tribunal minutely. We have not been able to find any illegality or infirmity in the*

impugned judgment; therefore, for the reasons to be record later, leave in the above CPLA No. 97/2018 is refused. As a result whereof, impugned judgment dated 23.05.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 477/2014 stands maintained”.

Chief Judge

Judge

Whether fit for reporting (**Yes / No**)