

**IN THE SUPREME APPELLATE COURT, GILGIT-BALTISTAN  
(Appellate Jurisdiction)**

**CPLA No. 24/2013**

**Before: -**

**Mr. Justice Rana Muhammad Arshad Khan, Chief Judge.**

**Mr. Justice Raja Jalal Uddin, Judge.**

**Mr. Justice Muzaffar Ali, Judge.**

1. Provincial Government through Chief Secretary Gilgit-Baltistan.
2. Secretary Education Gilgit-Baltistan.
3. Deputy Secretary Education Gilgit-Baltistan.
4. Director Education Gilgit.
5. Deputy Director Education Gilgit.
6. Deputy Director Education Astore.

..... **Petitioners**

**VERSUS**

1. Mrs. Shabana Shafa EST (BS-14) d/o Muhammad Shafa, Girls High School No. 1, Gilgit.
2. Mrs. Andaleeb Sardar EST (BS-14) d/o Sardar, Girls High School No. 1, Gilgit.
3. Mrs. Rahat Begum EST (BS-14) d/o Ali Mardan, Girls High School Naikoi, Gilgit.
4. Mrs. Zakia Khatoon TGT (BS-16) d/o Syed Shamshad Hussain, Girls Middle School, Nagaral, Gilgit.
5. Mrs. Munira Begum L. Teacher (BS-09) d/o Delawar Khan, Girls Middle School, Jutial, Gilgit.
6. Mrs. Shenaz Akhtar L. Teacher (BS-09) d/o Muhammad Sher, Girls Middle School, Khommer, Gilgit.
7. Mst. Nighat Parveen EST (BS-14) d/o Mustafa, Girls Primary School, Noor Colony, Jutial, Gilgit.
8. Mst. Tanveer Begum TGT (BS-14) d/o Abdul Munaf, Girls Middle School, Konodas, Gilgit.
9. Mst. Chashman Pari TGT (BS-16) d/o Muhammad Hussain, Girls Middle School, Mayoon, Hunza.
10. Mst. Farida Begum MT (BS-09) d/o Fida Ali, Girls High School, Skardu.
11. Mst. Imrana EST (BS-14) d/o Muhammad Muslim, Girls Middle School, Sonikote, Gilgit.
12. Mst. Rukhsana Ghafoor EST (BS-14) d/o Abdul Ghafor, Girls Middle School, Jutial, Gilgit.

..... **Respondents**

**PETITION FOR LEAVE TO APPEAL UNDER  
ARTICLE 60 OF GILGIT-BALTISTAN  
(EMPOWERMENT AND SELF GOVERNANCE)  
ORDER, 2009 READ WITH PROVISIONS OF  
SUPREME APPELLATE COURT RULES 2008  
AGAINST THE EX-PARTE IMPUGNED ORDER  
PASSED IN LIMINI BY THE CHIEF COURT**

**GILGIT-BALTISTAN IN WRIT PETITION NO.  
63/2013 ETC.**

**Present:** -

1. Mr. Asad Ullah Khan, Advocate General Gilgit-Baltistan for the Petitioners.
2. Mr. Muneer Ahmed Advocate for respondents.

**Date of hearing: 09.10.2013**

**JUDGMENT**

**Rana Muhammad Arshad Khan, CJ:** The petition in hand has been preferred against the Order dated 03.09.2013, passed by the learned Division Bench of the Hon'ble Chief Court Gilgit-Baltistan, whereby, the Writ Petition No. 63/2013 filed under Article 71 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 was admitted for regular hearing and by way of interim relief, suspended the operation of repatriation order dated 06.5.2013.

3. Shorn of unnecessary fact, it is stated that the writ petitioners were transferred in sheer violation of the transfer policy which in terms provides that under the wedlock policy, the husband and wife shall be posted at one place in order to render their services comfortably and to the utter satisfaction of their superiors with peace of mind and in violation whereof, the executive order passed by the competent authority can be subjected to the scrutiny through judicial review. In this view of the matter the learned division Bench of the Hon'ble Chief Court Gilgit-Baltistan admitted the petition to regular hearing and by suspending the operation of order dated 06.05.2013, passed by competent authority restored the previous position of the writ petitioner. This has necessarily the effect of Status Quo Anti.

4. The learned Advocate General appearing for the petitioners states that the transfer Order/repatriation Order in question cannot be

said to be a punishment, particularly when the impugned transfer orders have been passed in exigencies of service by officers empowered under the law, competent to do the same and the Writ Petition is absolutely not competent. He submits further that posting and transfer relate with the terms and conditions of service of the petitioner. The transfer Order can, in no manner whatsoever, be taken as punishment.

5. On the other hand the learned counsel has appeared on behalf of the respondents in pursuance of the order dated 23.09.2013 passed by this Court and has submitted that the order called in question being the ad-interim order, the petition before this court is not competent. He submits further that the wedlock policy was promulgated in order to accommodate the government servants keeping in view their hardships, particularly, when the female government servant is posted at a place much away from place of posting of her husband or father as the case may be, but the authorities have caused inconvenience to the petitioners while passing the order impugned in Writ Petition.

6. We have given our conscious thought to the arguments of the learned Advocate General as well as the learned counsel for the respondents herein addressed at the bar.

7. The plain reading of Article 78 of the Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009, which in terms provides the ouster of jurisdiction of all courts including the Chief Court. In case of Tribunal once established, no other court can have the jurisdiction to grant any injunction or make any order or entertain any proceedings in respect of any matter falling within the jurisdiction of tribunal as the legislature in its wisdom introduced non obstante clause contained in Article 212-A of the Constitution of Islamic Republic of

Pakistan, 1973, which in terms provides the ouster of jurisdiction of all courts including the High Court. In case of Tribunal once established, the said Article ousts jurisdiction of other courts and the orders passed by the departmental authorities without jurisdiction or on the basis of mala fide intent can only and solely be challenged before the tribunal. Thus, in respect of matters which fall within the administrative Court or Tribunal set up under explicity of Article 78 of the said order of 2009, the exclusive jurisdiction remains with the tribunal. But unfortunately, in this part of the area, no tribunal has so far been established, therefore, when one is left with no remedy, the jurisdiction of the Chief Court can be invoked for the entertainment of disputes even though are related with the terms and conditions of service in appropriate cases.

8. Much emphasis has been laid that this Court will not entertain disputes at ad-interim stage. The superior courts of the country in more than one cases observed that fragmentary decisions should not be challenged as the same are not final decisions and final decision cannot be pre-empted. We are in agreement of question raised but the rule would not operate as barrier in every case, exceptions are always available. The interference can be made at the ad-interim stage where, the order so passed involves the public interest. In most of the cases, it has been noticed that the Chief Court granted injunction and adjourned the cases sine die without fixation of dates which may take years together in making final disposal. In such situations we are inclined to entertain the petition and decide the same on merit.

9. The core issue involved in these cases is that the competent authority at the apex, in passing orders, violated the Wedlock Policy drawn by the administrative department and directed the female

teachers or their husbands to march to far flung areas which definitely resulted in inconvenience and thus the purpose of policy was drawn by administrative department to provide guidelines to run the business. It is very essential to be seen that the said policy would qualify as statutory rules, capable of creating rights and obligations, enforceable at law and for this purpose, departmental instructions must have been issued by the same authority who, in law has the jurisdiction to issue the policy in exercise of powers under the relevant provisions of law. For instance each department has its own Minister to sit as a supervisory head over the department but at the same time he does not have the jurisdiction either to frame rules or the policy, capable of creating any right or jurisdiction.

10. No doubt weight may be given to the Wedlock Policy in public interest but only where posts are available for adjustment of Civil Servants. In case of non-availability, Civil Servants have no conceivable right to invoke the jurisdiction of Chief Court and to get administrative orders corrected on the anvil of jurisdiction of judicial review. The discretionary power of the superior courts is fundamentally designed to correct errors but in case of some practical difficulty, relief being discretionary, the court would refuse to intervene where grant of interim relief would result injustice. The superior courts while exercising discretionary powers is under obligation to foster justice, preserve rights and to make a correction of a wrong thing and keeping this object in view, may be in equity, set aside the judgment of subordinate courts in order to do complete justice between the parties.

11. The net shell of what has been discussed in the preceding paragraphs is that the Civil Servant is bound to serve anywhere in

compliance with the orders of departmental authority. Even the remedy by way of filing a reference in the next higher authority is available to the aggrieved Civil Servant and by refusing discretionary relief, no injustice is likely to be caused to such aggrieved Civil Servant.

12. In view of what has been discussed in the preceding paragraphs, the petition in hand is accepted by converting the same into an appeal and after setting aside impugned order, this case is remitted to the Hon'ble Chief Court for decision afresh, alongwith other similar cases, after hearing the respective parties preferably within two months. No order as to cost.

**Chief Judge**

**Judge**

**Judge**