

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT.

Civil Appeal No.05/2014 in
C.P.L.A NO.46/2014

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

1. Provincial Government through Chief Secretary Gilgit-Baltistan.
2. Home Secretary /Secretary Services Gilgit-Baltistan.
3. Deputy Secretary Services Gilgit-Baltistan.

Petitioners/Appellants

Versus

Malik Mushtaq Ahmed Khan s/o Malik Muhammad Issa Khan R/o Malik House Zulfiqarabad Tehsil &District Gilgit.

Respondent.

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOVERMENT &SELF GOVERNANCE) ORDER 2009, AGAINST THE JUDGMENT DATED 29-10-2013 PASSED BY CHIEF COURT GILGIT-BALTISTAN IN WRIT PETITION NO.68/2011 WHEREBY THE LEARNED CHIEF COURT HAS ACCEPTED THE WRIT PETITION OF RESPONDENT AND BY SETTING ASIDE THE CORRIGENDUM NO.SO(S)-1-1(28)/2009 DATED 18-10-2010 HAS MAINTAINED THE IMPUGNED NOTIFICATION NO.SO(S)-1-1(28)/2010 DATED 02-09-2010.

Present :- 1. Advocate General Gilgit-Baltistan for petitioners.
2. Malik Shafqat Wali Sr.Advocate alongwith
Mr.Latif Shah Advocate for the respondent.

Date of Hearing :- 19-08-2015

JUDGMENT:

Mr.Justice Muzaffar Ali, J.....The learned Advocate General for appellants argued the petition for grant of leave to appeal on 09-06-2014. The legal points put before us by the learned Advocate

General convinced us tentatively that the points raised require deep consideration. Hence we converted the petition into appeal and issued notice to the respondent to attend the court to defend himself.

To day, we heard the learned Advocate General and the learned counsel for the respondent also at a length. The facts gave rise to the appeal are as such that, initially, the respondent was appointed Administrative Officer in a project, running under the supervision of appellants. This project came to an end in the year 2009 and 52 employees, including the respondents were held surplus .The Review board headed by the appellant No.1 decided to adjust the surplus employees of the project in other relevant departments and accordingly the surplus staff of the project were adjusted in various departments. The respondent was also adjusted against the existing post of Development Officer (BPS-16) in the Directorate of LG & RD Gilgit-Baltistan with immediate effect.

The appellants, thereafter issued corrigendum/modification order No. SO(S)-1-1(28) 2009 and converted regular appointment of the respondent into contractual Service. Hence the respondent filed a writ petition before the learned Chief court Gilgit-Baltistan. The writ was heard by a learned Division Bench of the Chief court and was acceded. Hence this appeal against the impugned judgment dated 29-10-2013 passed by the learned Chief Court.

We, with the able assistance of the learned Advocate General and learned counsel for the respondent, visited through the record of the case to reach into a legal conclusion on the points raised by the learned Advocate General to defend the corrigendum order dated 02-09-2010 made by the appellants. The learned Advocate General endeavored to fortify the corrigendum order with three points as under:-

(a) Mistake committed in the adjustment order dated 02-09-2010. (b) The adjustment order was the result of collusion with some official (c) the regular appointment against a post in grade-16 only could be made after recommendations of the Public Service Commission. As such, the order was without lawful authority. Let us discuss the each point separately to understand the legal sanction of the points.

(a) Mistake :- Law recognizes a clerical mistake or accidental slip of pen by author of a document, humanly possible and allows correction of such mistake. The mistake must not be deliberate and contentious in nature. The mistake should be apparent from the record to be a slip of pen.

In the case in hand, from the perusal of the record, it transpires that, the “adjustment order” is not a result of an accidental error but the same is deliberative and contentious in nature.

The adjustment order refers the Service of the respondent, to be governed under (Government Servants appointment, Promotion and transfer) Rules, 1973. The order states probation period in it. The respondent submitted his joining report as regular Servant. The respondent was transferred from one place of service to another. He has been paid salary without any objection even by the AGPR office. Hence no accidental mistake is apparent on the face of the order or record and the same is with intention and contentious.

The corrigendum order speaks not a single word in it, to hold the “adjustment order” to be result of any mistake or error. It just converts the regular appointment of the respondent into contract service.

- (b) Collision: – The point of collision has been raised by the learned Advocate General during course of the arguments before us for the first time. Plea of collision neither has been taken in the written comments submitted by the appellants before the learned Chief Court nor has been established therein. The plea has not been established even before us through submitting any record to substantiate the plea.

This court and the courts below have observed the irresponsible attitude of the appellants usually in every case of service affairs to allege that, “the appointing authority or the officials of the relevant office have made appointments in collision with the person or the persons appointed” but not in a single case, the appellants bothered to couple the plea with the proof or have taken the plea with the force of any inquiry made against the authority or the officials, despite this court asked this question from, in many cases but the appellants always remained mum.

Judicial Note:- “We at this juncture, strictly direct the appellants to take plea of collision with sufficient force of proof on record and after conducting an enquiry against the responsible authority or concern officials and after taking the responsible personals into account for collision, otherwise the court would refer such cases to the NAB to investigate and punish the responsibles. The courts below in Gilgit-Baltistan are also directed to refer such like cases to NAB ist and than adjudicate the cases on merits.”

- (c) Recommendations of FPSC:- The learned Advocate General has raised the point that, the vacant posts in grade-16 and above are not within ambit of the Service department to appoint against, directly but the posts vacant

are referred to the FPSC and after receiving recommendations from, the incumbents are appointed.

The ESTACODE provides three kinds of appointments (a) initial appointment (b) appointment by promotion (c) appointment by transfer .Initial appointment against certain grades is made on the recommendation of Public Service Commission. Appointment against certain posts is made either by promotion or by transfer on the recommendations of departmental committee or selection Board. The respondent and other were appointed in their respective posts, initially against a project and after closing of the said project, the incumbents were adjusted in line departments as per recommendations of the Review Board headed by the Chief Secretary Gilgit-Baltistan. Hence the appointment of the respondent does not come within the definition of the initial appointment but it at most could come under the head of “appointment by transfer.”

The corrigendum order dated 02-09-2010 lacks reasons about conversion of the regular service of the respondent into contract as such, the same has been passed in violation of the legal dictum laid down in section 24-A of the General Clauses Act 1897. The section demands reasons from the authority issues the order, either the authority exercises quasi or administrative powers. When due

reasons are missing in the order, then it creates a right in favour of the party effected by. The appellants have passed the “corrigendum order” against the respondent without issuance of show cause notice to the respondent to explain his position and the order is unheard. Hence the corrigendum order is in violation of universal legal principle of “**Audi alterum partem**”

Last but not the least, the corrigendum order dated defeats the legal philosophy behind the section 21 of the General Clauses Act 1897 and does not fall within the four corners of the Principle of “**Locus poenitentiae**” which has been interpreted by the courts that, the authority having power to make an order also holds power to rescind, modify or withdraw such orders before same have been acted upon. In this interpretation, the word “**before acted upon**” signifies that, the authority ceases its power to modify, rescind the order, when the order has been acted upon. In the case in hand the adjustment order dated 02-09-2010 has been acted upon as the respondent has joined the service, has received salary. He has been included in the seniority list approved. Since the adjustment order dated 02-09-2010 was acted upon in the legal language a right has accrued to the respondent. Hence the appellants had become functus officio to make the corrigendum order against.

The upshot of the above discussion is that, the appeal is meritless and liable to be dismissed and the same is dismissed accordingly. Parties to bear their own costs.

Announced.

19-08-2015

Acting Chief Judge

Judge

Whether the case is fit to be reported or not?