

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,  
REGISTRY BRANCH SKARDU.**

**BEFORE:-**

1. Mr. Justice Raja Jalal-ud-Din, Acting Chief Judge.
2. Mr. Justice Muzaffar Ali, Judge.

**CPLA NO.85/2014.**

Iftikhar Ali S/o Shah Khan Resident of Khomer Gilgit.

**(PETITIONER)**

**VERSUS**

Karakoram International University- KIU Road Konodas Gilgit, through.

1. Vice Chancellor KIU.
2. Registrar KIU.
3. HR Manager KIU.
4. Ms. Sadia Baig, Assistant Professor Department of IR-KIU.

**(RESPONDENTS)**

**PETITION FOR LEAVE TO APPEAL AGAINST IMPUGNED JUDGEMENT ORDER DATED AUGUST 05, 2014 PASSED BY DIVISIONAL BENCH CHIEF COURT IN W.P NO. 31/2012 WHEREBY LEARNED CHIEF COURT PARTIALLY ACCEPTED W.P WHILE REFUSING REMEDIES FOR PERMANENT APPOINTMENT AND SETTING ASIDE THE IMPUGNED TERMINATION ORDER PASSED BY RESPONDENTS DATED MAY 06, 2011.**

**PETITION FOT THE GRANT OF LEAVE TO APPEAL TO APPEAL AGAINST IMPUGNED JUDGMENT ORDER DATED AUGUST 05, 2014 PASSED BY DIVISION BENCH CHIEF COURT IN W.P NO. 21/2012 WHEREBY LEARNED CHIEF COURT PARTIALLY ACCEPTED W.P WHILE REFUSING REMEDIES FOR PERMANENT APPOINTMENT AND BY THE RESPONDENTS DATED MAY 06, 2011.**

**FOR PARTIALLY SETTING ASIDE VERDICT OF CHIEF COURT INCORPORATED IN PARA NO.6 OF IMPUGNED JUDGMENT AND FOR SETTING ASIDE IMPUGNED ORDER DATED 06-05-211 PASSED BY RESPONDENTS, FURTHER MORE APPOINTMENT OF PETITIONER MAY BE DECLARED PERMANENT AGAINST BPS-19 AS ASSISTANT PROFESSOR AT IR DEPARTMAENT KIU TO MEET THE ENDS OF JUSTICE.**

**PRESENT:-**

1. Mr. Amjad Hussain Advocate for the petitioner.
2. Mir Ikhlaq Hussain Advocate on behalf of the respondents.

**DATE OF HEARING: - 21-08-2015.****JUDGMENT.**

**Muzaffar Ali, J.....**We converted C.P.L.A No.22/2013, into an appeal vide order dated 05-03-2015, after hearing the counsel for the petitioner. Through this appeal, the appellant impugned the judgment dated 05.08.2014 passed by the learned Division Bench of Chief Court Gilgit-Baltistan in Writ Petition No.31/2012 filed by the present appellant/petitioner against the present respondents.

The brief facts wrapped with this appeal can be summarized as that, the respondents No.1 to 3 advertised two posts i.e. one position of Assistant Professor (BPS-19) on regular basis and one post on contract basis. The appellant and the respondent No.04 (struck off) short-listed and called for presentation before the Selection Board. Thereafter, the appellant was appointed against the contract post and Mst. Sadia Baig against the regular post (BPS-19). The contract services of the appellant were extended from time to time.

The appellant submitted a departmental appeal before respondent No.01 against the decision of the Selection Board but instead of deciding his appeal on its merits, the respondent No.02 issued termination of contract service of the appellant/petitioner before expiry of the last extended contractual period alongwith a permanent restriction, the same is reproduced as under:-

**"Mr. Iftikhar Ali is debarred for all kinds of employment arising from time to time at KIU for conduct and behavior of unbecoming of an officer of the Government and University."**

The facts narrated above paddled up the appellant to fight legal battle against the respondents before the Courts of law, resultantly, he filed the Writ Petition No. 31/2012 before the learned Chief Court, Gilgit-Baltistan. The learned Chief Court Gilgit-Baltistan passed the impugned judgment with operative part therein as below:-

**"Result is that the remedies sought through this petition in reliefs No.1 and 2 cannot be allowed and to that extent we dismiss this petition. Anyhow, we grant the following relief:-**

**a). Respondents are bound to pay salary of the petitioner for the complete period of his contract appointment. From perusal of file, it is evident that petitioner was appointed for two years from 12-06-2010 to 12.06.2012 and petitioner was terminated through order dated 06-05-2011. So, respondents are to pay the arrears of salary of petitioner from 06-05-2011 to 12-06-2012.**

**b). Petitioner is entitled to appear in any competition for any post in KIU, but that also if he fulfills the qualification required for any such test or interview."**

Hence this appeal before this court against the impugned judgment dated 05.08.2014 passed by the learned Chief Court Gilgit-Baltistan.

We heard the learned counsel for the parties on 21-08-2015 and the case was fixed for consideration and final decision. Hence this judgment is announced today on 19.10.2015. The considerable points raised by the learned counsel for the appellant/petitioner are as such,

**(a)** That the Chairman, Department of International Relation (IR) sent requisition of two (2) budgeted positions of Assistant Professors (BPS-19) and one leave vacancy to be adjusted by respondent No.3. The respondent No.2 and 3 malafidely ignored the requisition made by the Chairman International Relation and in utter violation of the requisition, advertised one (01) regular post and one (01) post of Assistant professor on contract basis, keeping one budgeted post vacant without any plausible reason. This malafide omission by the respondent No.02 & 03 adversely effected the appellant's career.

**(b)** that Mst. Saadia Baig was not eligible to be short listed as she was not qualifying the terms and condition of the advertisement till the final date of submission of the application coupled with the required credentials, but the respondent No.03 accepted her application with a sentence "To whom it may concern" and despite her disqualification, she was selected against the regular post while the appellant/petitioner was offered the contract post.

**(c)** That facing the discriminatory situation the appellant/petitioner requested to unveil the minutes and result of the selection Board but the same was refused.

**(d)** That after joining the post the appellant/petitioner made protest through Departmental appeal to the respondent No.01 but instead of conducting any inquiry, the respondent No. 02,

in avenge, issued the impugned termination order with a dictatorial restriction without issuing any show cause notice.

(e) The impugned termination order and the restriction therein show the malafide of the respondents and the same is worst example of the unheard action taken against the appellant/petitioner.

The learned Division Bench of the Chief Court, Gilgit-Baltistan reached to the conclusion that, the termination order and the restriction imposed therein is not tenable in the eyes of law, but at the same time it erred in law by holding dismissal of the Writ Petition and by refusing the legal remedies 01, 02 sought, ignoring the binding force of judgments delivered by this court and persuasive sanction of the judgments delivered by the Honorable Supreme Court of Pakistan and Islamabad High Court, referred as Civil Review Petition No. 02/2008, Syed Mazhar Ali Shah and 08 others Versus VC KIU and 14 Others and CPLA No. 24/2012 VC KIU and another Versus Mst. Kaneez Fatima, Civil Petition 1409 of 2012, Quaid-e-Azam University Islamabad Versus Muhammad Sadiq and two others, Writ Petition NO. 2225/2009, Muhammad Sadiq and another versus Quaid-e-Azam University etc.

The learned counsel for the respondent responded the above points as under:-

(a) That, it was in discretion of the respondents to either advertise one regular post/vacant or both. The appellant has no vested right to compel respondents to advertise any vacant post at any particular time.

(b) That the respondents were not bound to show the result of the Selection Board to the appellant/petitioner. The appellant accepted the offer of the respondent with his free will and joined the post on contract basis as such, he is stopped by his conduct to claim regular appointment.

(c) That the respondent had qualified against a leave vacancy post, as such his claim was meaningless and without lawful sanction behind, hence the learned Division Bench of the Chief Court dismissed the Writ Petition.

(d) The conduct of the appellant was unbecoming as his appeal to the respondent No.01 could not be acceded to and he was not only terminated from his contractual services but also he was liable to be debarred for all kind of employment at KIU.

(e) That the judgments of this Court and August Supreme Court of Pakistan referred by the appellant/petitioner are not identical with the instant case.

We with the able assistance of the learned counsel for the parties, have gone through the record of the case and visited through the points raised by both the learned counsel, perusal of the record reveals that the 1<sup>st</sup> point raised by the

learned counsel for the appellant/petitioner is correct that, two budgeted regular posts were vacant in the International Relation Department and the Chairman of the department had sent requisition of two budgeted posts in addition of a leave vacancy to be advertised by respondent No 03. The respondent No 03 & 04 kept one regular post pending and advertised only one regular post alongwith one contract post despite the requisition made by the department as per needs. The learned counsel tried to meet this point with the plea that, it was within the discretion of the respondent either to advertise one or two regular posts and the appellant having no right to compel them to advertise or not to advertise.

We are not agreed with the plea taken by the learned counsel for the respondents to say that the discretionary powers vested with an authority could not be called in question. The legal discretion is not a sweet will, it must be exercised with reasons and keeping in view the logic of the rules and law which vested the authority with the discretion. In the case in hand the respondents No 02 & 03 might have discretion but they had to look into academic needs of the department. The respondents No 02 & 03 are having administrative responsibilities over an educational institution and future of the nation is attached with. The respondents are supposed to fulfill the requirements of the institution and they are not there to withhold even budgeted

posts despite the requisition made by the department keeping in view the academic needs. The appellant/petitioner directly could not compel the respondents for advertisement of any vacant post but an adverse inference can be drawn from the conduct of the respondent 01 & 02, that either they kept the budgeted vacancy in waiting for a blue eyed candidate or they wanted to deprive the short listed candidate to take benefit to be regularly appointed against the said post.

The minutes of the meeting and result prepared by the Selection Board was not Secret and Confidential but comes within the definition of "**Public Documents**" as such refusal to show the result or the minutes of the meeting to the appellant/petitioner amounts to violation of law of the land and the conduct transpires malafide of respondent No 01 and 02.

We are taken aback after going through the termination order against the appellant/petitioner. The respondents instead of going into merits of the matter in appeal, deprived the appellant from his fundamental right to apply against any post to which he otherwise qualified without bringing any cogent reason on the record. We are really shocked whether the respondent No. 01 (Vice Chancellor) and his Registrar were ignorant of the relevant provisions of the Constitution about the basic rights of a citizen of Pakistan and the fundamental rights of the citizens of Gilgit-Baltistan

enshrined in Article 17 and 19 of the “**Gilgit-BALTISTAN, (EMPOWERMENT AND SELF-GOVERNANCE) ORDER, 2009.**

The State even cannot deny this protection and the safeguard against discrimination enjoyed by citizens unless ample proof is on record that, the citizen is involved in enemy like activities against the State or he is found guilty of violating law of the land and his conduct is injurious to the State.

The respondents imposed perpetual restriction against the appellant/petitioner but without any proof only because the appellant/petitioner protested discrimination against him through an appeal. We found no iota of evidence on the record of the case and even such record was attached then too the respondents are not empowered to impose such a perpetual restriction but they could simply terminate his service under rules after he was heard.

On the other hand the appellant/petitioner has attached appreciation letter issued by Dean of faculty of Sciences wherein, the Dean has awarded him with high words of appreciation for his performance. The respondents have also extended his contractual service from time to time, which transpires that the services of the petitioner were satisfactory and up to the mark. The Department has taken such serious actions and even he has been debarred for applying services in the institution in future. In derogation of the provisions of the

**“GILGIT-BALTISTAN (EMPOWERMENT AND SELF-**

**GOVERNANCE) ORDER, 2009”** but without giving any chance to the appellant/petitioner to defend him and all the Supra discussion of the facts are sufficient to show malafidies of the administrative authorities (Respondent 01 and 02) against the appellant and their malafidies provoked them even to violate principle of natural Justice “**Audi altrum partum**”. The principle is recognized by the Superior Courts as it has been embodied in law and rules even it has not been embodied in any statute or law.

The last point, raised by the counsel for the petitioner as to the application of principle of estoppel against the respondent, having no substance to attract us to hold it against the respondent for the reasons that Principle of estoppel is a rule of evidence and not a cause of action or a source of title. It debars a party from aprobatting and reprobating a statement given by, in respect of a specific fact. Principle of estoppel cannot be extended to prevent an action of law even if a party has allowed or consented by conduct any authority to pass an order or to take an action, if the same order or action taken by the authority is against law and without lawful authority. **(The supra view has been taken by this Court on the point of estopple in the case titled “Vice Chancellor KIU etc versus Mst. Kaneez Fatima).**

Last but not the least, this Court has settled a principle in favor of the candidates in contract in the cited

cases (01) Civil Review Petition No. 02/2008, Syed Mazhar Ali Shah and 08 others Versus VC KIU and 14 Others, and (02) VC KIU and another Versus Mst. Kaneez Fatima, 2. In both cases the finding is clear with the directions, the same are reproduced as under:-

**"The rule of fair treatment and natural justice would demand that candidates who have qualified the test and interview on the basis of 40% aggregate marks have acquired a legitimate right of selection on their own merits and should have been dealt with accordingly. Similarly the candidates who were appointed on contract basis in the prescribed manner would be entitled to be considered for regular appointment in their own right on the basis of their contract service".**

In the case in hand the appellant/petitioner had been appointed on contract basis, though against a leave vacant post but in prescribed manners. The appellant/petitioner was short listed and he qualified the test/interview. His contract services were extended from time to time. He was not terminated from with the reason that the incumbent against the leave vacancy had rejoin her/his post but he was terminated without inserting any reason in the termination order. One regular post was vacant at that time when the appellant had qualified after going through the prescribed manners. The regular post remained vacant without advertising the same till the appellant filed the writ petition and during pendency of the writ petition, it was advertised but stayed. Secondly, it was advertised when this

appeal is subjudice but the same is still vacant. The remedy in REM granted by this Court as reproduced supra fully attracts the case in the hand.

In nutshell, this appeal is accepted, the termination order is declared null and void and the restriction imposed in the termination order dated 6<sup>th</sup> May, 2011 passed by respondent No. 02 has already been set aside by the learned Chief Court, Gilgit-Baltistan and the respondent have not challenged the findings of the learned Chief Court in this regard through any appeal or through any cross objection before this Court. Hence, the respondents are directed to appoint the appellant/petitioner against the vacant & regular post giving him benefits of the principle laid down by this Court in the above cited cases. Cost to follow the event. File be consigned to record.

The appeal is allowed.

Date of Delivery of Judgment: - **19.10.2015.**

**Acting Chief Judge.**

**Judge.**

Whether the case is fit to be reported or not?