

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

Before: - Mr. Muhammad Nawaz Abbasi Chief Judge
Mr. Muhammad Yaqoob Judge.

CPLA.No 19/2009

Provincial Government through Chief Secretary Gilgit-Baltistan and 3 others
Petitioners.

Versus

Sadar Azam s/o Muhammad Akbar r/o Phuguch, Darel, District Diamer and 8 others

Respondents.

CPLA. No. 20/2009

Zia-ur-Rehman s/o Haji Gahrib Khan r/o Phuguch Darel District Diamer and 4 others

Petitioners

Versus

Sadar Azam s/o Muhammad Akbar r/o Phuguch Darel District Diamer and 12 others

Respondents.

**PETITION FOR GRANT OF LEAVE TO APPEAL
AGAINST THE IMPUGNED JUDGMENT DATED 19-05-
2009 PASSED BY THE DIVISION BENCH OF THE
HON'BLE CHIEF COURT, NORTHERN AREAS
GILGIT, WHEREBY THE DIVISION BENCH HAS
ACCEPTED THE REVIEW PETITION NO. C.MISC. NO.
04/2009.**

Advocate General Gilgit-Baltistan for Provincial Government

Haji Mirza Ali Advocate for Respondents

Muhammad Issa Sr. Advocate assisted by Malik Shafqat Wali Advocate for Petitioners in CPLA. No. 20/2009.

Date of hearing: 05-05-2010

Judgment

Justice Muhammad Nawaz Abbasi, CJ: These two connected petitions have been directed against the judgment dated 19-05-2009 passed by the Chief Court in a Review Petition which arised out of the judgment dated 16-12-2008 in a writ petition No. 41/2008 whereby the Petitioners therein sought direction to the Provincial Government of Gilgit Baltistan for their appointment in PBS-14 from the date of their induction in service.

The short facts leading to this petition in the background are that the petitioners in Writ Petition No. 41/2008 in pursuance of the advertisement made by the Director Education to fill the vacant posts of Teachers in different districts

of Gilgit Baltistan applied for the posts. The petitioners on qualifying the test and interview and on the basis of educational qualification possessed by them were appointed as Teacher in BPS-07 and after serving the department for a considerable period, they filed a representation before the competent authority for their appointment in grade 14 on the ground that subsequent to the joining of service they have improved their professional qualification and being graduate with CT may be adjusted in BPS-14 against the posts which were lying vacant since the time of their appointment. The department appointed a committee to look into the matter and the committee after a detail probe submitted its report wherein it was pointed out that few posts of BPS-09 and BPS-14 teachers were vacant at the time when the petitioners were appointed but they being not qualified for appointment as BPS-14 Teachers could not be appointed against the vacant posts. However this committee recommended that Teachers appointed in BPS-07 may be given BPS-09 from the date of their initial appointment and on their failure before the departmental authorities they filed separate writ petition in the Chief Court. The petitioner in connected petition with identical grievance filed Writ Petition No. 26/2006 and Chief Court disposed of both the Writ Petitions on the same day by separate Orders.

The writ Petition No. 26/2006 titled Zia Ur Rehman etc v/s Provincial Government etc was disposed of with observation that petitioners due to lack of qualification of CT and B.Ed initially were not appointed in BPS-14 but they having improved their qualification during the service would be entitled to be adjusted in BPS-14 against the five vacant posts in sub division Darel and directed the Education Directorate to consider their case accordingly on verification of their educational qualification etc for the post.

The Writ Petition No. 41/2008 filed by Sardar Azam and Others was dismissed vide judgment dated 16-12-2008 without grant of relief prayed therein

therefore the petitioners in this petition filed a review petition with assertion that they would stand at par to the petitioners in Writ Petition No. 26/2007, and were entitled to be treated accordingly. The precise case of the petitioners in Writ Petition 41/2008 was that they have been discriminated.

The Chief Court having considered the matter on the basis of additional documents brought on record in review petition observed that the petitioners were also entitled to be considered for adjustment in BPS-14 alongwith the petitioners in Writ Petition No. 26/2006 and allowed the review petition. The judgment dated 16-12-2008 passed in writ Petition No. 41/2007 was accordingly modified with direction to the Education Department for verification of the educational qualification of petitioners for their consideration for appointment against the vacant posts of Teachers BPS-14. The Department has filed the present Petition No. CPLA 19/2009 against the order of the Chief Court passed in Review Jurisdiction without challenging the Order passed in Writ Petition bearing No. 26/2007 filed by Zia Ur Rehman etc and petitioners in the connected petition CPLA No. 20/2009 are also aggrieved of the judgment under challenge.

The learned Advocate General has submitted that both sets of Teachers on the basis of improved professional qualification during service would have no right to claim initial appointment in BPS-14 against the vacant posts and that the private respondents having accepted appointment in BPS-07 would be estopped to claim right of appointment in BPS-14. The Learned Advocate General argued that the petitioners in Writ Petition 26/2008 also had no right to claim initial appointment in BPS-14 on the basis of their B.A degree without the qualification of CT or B.ed. The learned Advocate General forcefully argued that the Order passed by the Chief Court on the basis of additional documents brought on record for the first time by the private respondents in review petition was not proper and legal and the court in Review Jurisdiction could hardly rectify the substantial error

in the Judgment effecting the rights of parties and was not supposed to fill the lacuna of the case of either party. The learned counsel for the private respondents in this petition and petitioners in the connected petition contended that the department having not challenged the judgment rendered by the Chief Court in the writ petition No. 26/2008 would not be able to question the illegality of judgment in that petition in the collateral proceedings in the present petition.

The examination of the record with assistance of Learned Counsel for the parties would unambiguously suggest that none of the teachers in these two petitions had the qualification for initial appointment in BPS-14 and they willingly accepted the appointment in the grade for which they qualified therefore their representation before the competent authority could not succeed and further the committee constituted to examine their case having not found them entitled for appointment in BPS-14 recommended their adjustment in BPS-09. We noticed that these teachers after lapse of considerable period filed representation before the competent authority and on failure to get desired result filed separate Writ Petitions in the Chief Court with the defect of laches but the Chief Court deemed it proper to decide the same on merits. The learned counsel for the private respondents in CPLA No. 19/2009 and petitioners in CPLA No. 20/2009 have not been able to satisfy us with reference to the rules on the subject that the teachers in these two petitions had any right to claim initial appointment in BPS-14 on the basis of graduation degree without possessing the required professional qualification of CT and B.ed instead learned counsel have frankly conceded that they were not holding professional qualification of CT and B.Ed at the time of initial appointment.

There is no cavil to the proposition that a person placed in same position in alike circumstances is entitled to the same treatment but there is no rule to claim a right to which a person was not otherwise entitled.

Be that as it may the private respondents and also the petitioners in these connected petitions could not claim initial appointment in BPS-14 merely on the basis of qualification of graduation and we are of the considered view that no legitimate right accrued to them for invoking the writ jurisdiction of the Chief court. However we may observe that the Department without prejudice to the right of any other Teacher senior to them in BPS-07 and PBS-09 or disturbing the right of any other person may consider the respondents and the petitioners in connected petitions in their own right for adjustment in BPS-14 subject to their qualification and availability of vacancies.

The Secretary Education will constitute a committee for the scrutiny of the qualification and merits of each Teacher and in exercise of his power as competent authority may consider them for appointment in BPS-14 against the vacant posts. This petition is converted into an appeal and disposed of in the above terms. The connected Petition No. 20/2009 is also disposed of.

Chief Judge

Judge