

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

**Before:- Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**C. Appeal No. 83/2016
In
CPLA. No. 115/2016**

Nadir Ali s/o Sartaj Khan r/o Chillas District Diamer presently working as Acting District Support Manager at District Astore.

APPELLANT

VERSUS

1. Inam-ur-Rehman s/o Inayat Khan r/o Harchu District Astore, presently working as Senior Executive Admin and Finance People's Primary Healthcare Initiative (PPHI) District Support Unit Gilgit.

RESPONDENT

2. Provincial Government through Chief Secretary Gilgit-Baltistan.
3. Secretary Health/Program Director PPHI Gilgit-Baltistan.

PROFORMA RESPONDENTS

**CIVIL APPEAL UNDER ARTICLE 60 SUB ARTICLE 13 OF
GILGIT-BALTISTAN (EMPOWERMENT & SELF
GOVERNANCE) ORDER 2009 AGAINST THE IMPUGNED
JUDGMENT DATED 16/08/2016 PASSED IN WRIT
PETITION NO. 98 OF 2015 OF THE GILGIT-BALTISTAN
CHIEF COURT, GILGIT.**

Present:-

1. Mr. Rai Muhammad Nawaz Kharal, Advocate alongwith Mr. Rehmat Ali, Advocate-on-Record for the petitioner.
2. Mr. Manzoor Ahmed, Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the respondents.

Date of Hearing:- 13-04-2017.

JUDGMENT

Javed Iqbal, J..... Through this petition for leave to appeal the petitioner/Appellant named above has sought that People's Primary Healthcare initiative (PPHI) is a project which is being executed under an agreement with the Gilgit-Baltistan

Government, by the Gilgit-Baltistan Rural Support Program of Gilgit-Baltistan is an NGO i.e. Gilgit-Baltistan Rural Support Program (GB. RSP) which is limited company by guarantee and not having a share capital and is registered as Social Welfare under Article 42 Companies Ordinance 1984, on the basis of no loss no profit by virtue of its registration is not sovereign nor controlled by the Government, thus no such any writ-petition under Article 71(2) (a) (ii) of Gilgit-Baltistan (Empowerment & Self Governance) Order 2009 is maintainable, thus passing impugned judgment is not warranted. That, passing the impugned judgment a great miscarriage of justice has been occurred which is against the law.

2. The facts gathered from the record of the case, as well as learned counsel for the parties.

Petitioner/appellant and respondent No.1 applied for the post of Executive Admin and Finance and appeared in the interview before respondent No.3 (Secretary Health/Program Director PPHI), and in result the respondent No. 1 was offered contract appointment vide office order dated 1st June, 2010, while the name of petitioner/appellant was kept in waiting list.

On 1st March, 2010, when petitioner/appellant was appointed as contract employee against above named post of Executive Admin & Finance DSU Ghizer. It is also admitted the answering petitioner/appellant was appointed on the above post after registration of one Aliyar Khan another appointed person as Executive Admin & Finance who was appointed initially with the present respondent.

Present controversy was arose when the post of District Support Manager Astore was held vacant due to promotion of an incumbent who was admittedly next senior to the respondent, that is why the respondent has preferred an application to respondent No. 1 for his promotion against the vacant post of District Support manager (DSM) Astore. His above application was directed to be put up before the promotion committee by the office of respondent No.3 vide letter dated 09-3-2015, but to his utmost disappointment,

respondent No.3 was given the acting charge vide impugned order dated 24-8-2015.

It is also admitted fact, that, petitioner/appellant had joined the Department of respondent No.3 People's Primary Healthcare Initiative (PPHI) on 28-9-2007, as Admin Officer District Support Unit (DSU) Diamer and on basis of his earlier joining of Department, and requested for his promotion being alleging senior from respondent No.1 as claimed in his parawise comments.

3. From perusal of facts it transpires that impugned office order has been procured by office of respondent No.3 with the recommendation that answering the petitioner/appellant was most senior individual in office of People's Primary Healthcare Initiative (PPHI) as Admin Officer against the record and facts of present case where both the respondent No.1 and petitioner/appellant among others applied for the post of Executive Admin & Finance but petitioner/appellant could not be appointed having less merit than the already appointed incumbents as mentioned above his name was kept in waiting list till 1st March, 2010, when he was appointed Executive Admin & Finance when the said post was afterwards fell vacant due to registration of an earlier appointed incumbent given facts the appellant/petitioner by stretch of no imagination be held senior to respondent No.1, after three months of appointment of present petitioner as Executive Admin & Finance.

4. Being aggrieved, the above facts, respondent No.1 filed constitutional petition in shape of writ before the Chief Court Gilgit-Baltistan and get a decision in his favour.

5. We minutely perused the record of the case with the help of counsel of both the parties as well as impugned judgment passed by learned Chief Court Gilgit-Baltistan. The learned counsel for the petitioner/appellant has forcefully argued, that the People's Primary Healthcare Initiative (PPHI) is NGO and their employees are contract employees the project renewable every year, and governed by the

terms and conditions of service agreement/contract as executed between the management of company, and its employees have a right to agitate their grievances before authorities of companies, no such any petition under Article 71(2) (a) (ii) of Gilgit-Baltistan (Empowerment & self Governance) Order 2009, is maintainable. The learned counsel of petitioner/appellant referred following cases,

1. 2000 SCMR 928 (Maqsood Ahmad Toor etc Versus Federation of Pakistan).

2. PLD 1975 SC 244 (Salahuddin etc Versus Frontier Sugar Mills etc).

6. The learned counsel for the respondent on the basis of judgment of learned Chief Court has forcefully argued that the respondent had no adequate remedy except to invoke the writ-petition of Chief Court, and People's Primary Healthcare Initiative (PPHI) is not entirely private company as the board of directors or management consists of the officials of the Government.

7. It is not disputed the board of directors of People's Primary Healthcare Initiative (PPHI) is controlling authority of company and under Article of Association of company the board is empowered to see the service matters of the company. This being so the essential requiring determination to resolve the controversy would be firstly whether service rules of the employees of company framed by its directors of the company registered under Companies Ordinance 1984 have the status of statutory rules and secondly whether private limited organization in Gilgit-Baltistan in respect of its affairs is amenable to the writ jurisdiction of Chief Court Gilgit-Baltistan.

8. There are public and private limited companies. The public limited companies established under a statute are subject to the control of respective Government, where affairs of private limited companies ordinance 1984 are controlled by the board of Directors. The above characteristics of the public and private limited company registered under Companies Ordinance 1984 would distinguish the

rules of public company established under a statute from the rules of private company framed by the board of directors of company. The rules of a public limited company established under a statute are statutory rules, whereas the rules of private limited company are non-statutory rules.

9. The service rules of company cannot governed by the rules of statutory law. The service rule of private limited company registered under Companies Ordinance 1984 certainly regulate the terms & conditions of service of employees of company and may have the force of law to determine the right of employees relating to his service under such rules but there can be no departure to the rule that the validity of non-statutory rules cannot be questioned in writ-jurisdiction of Chief Court Gilgit-Baltistan as the employees of non-statutory bodies are governed by the principle of master and servant and service rules of such bodies subject to any exception or relationship inter-se employer and employees accordingly. There is settled law that the vires of non-statutory rules cannot be questioned in writ-jurisdiction. The reference may be made to **Government of Gilgit-Baltistan versus Saeed Faqeer (GBLR 2011)**.

10. The employees of People's Primary Healthcare Initiative (PPHI) are neither civil servants nor their service is governed by statutory rules and in that, the issue relating to the service of company may not be adjudicate able by the Chief Court in writ-jurisdiction despite the fact that a registered company under the law carries the status of a legal person with a right to sue and liability to be sued through its Chief Executive but the mere fact that a company is a legal person may not be necessarily subject to the jurisdiction of writ-petition of Chief Court in respect of its internal affairs, rather an aggrieved person may avail the appropriate remedy before a court of a general jurisdiction in respect of his grievance against the company.

11. Having considered the contention of learned counsel for the parties in the light of the provision of law on the subject and Companies Ordinance 1984. We proceeded to convert this petition into an appeal and allowed the same vide order dated 13-4-2017,

“for the reasons to be recorded later on, this appeal is allowed, consequently, the impugned judgment dated 16-8-2016 passed in Writ-petition No. 98/2015 by the learned Chief Court is set aside”.

12. The above are detail reasons for the short order and this appeal accordingly succeeds with no order as to costs.

Appeal Allowed.

Announced:- 13-4-2017.

JUDGE

CHIEF JUDGE