

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

BEFORE:

***Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge***

CPLA Under Objection No. 248/2018

(Against the Judgment dated 02.07.2018, passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 272/2017)

1. Provincial Govt. through Chief Secretary Gilgit-Baltistan
2. Secretary Education Gilgit-Baltistan, Gilgit
3. Secretary Services Gilgit-Baltistan
4. Secretary Finance Gilgit-Baltistan, Gilgit
5. Accountant General Gilgit-Baltistan, Gilgit...**Petitioner(s)**

Versus

Zawara Baig Director Physical Education (DPE) FG Inter College Harespo Nagar**Respondent (s)**

PRESENT:

For the Petitioner (s) : The Advocate General, GB

For the Respondent(s): Mr. Aman Ali Shah, Advocate

Date of Hearing : **21.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge: Through the instant civil petition for leave to appeal, the petitioners have called in question judgment dated 02.07.2018 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 272/2017, whereby the Writ Petition filed by the Respondent was partially allowed and the petitioners were directed to reflect the upgraded posts of Director Physical Education (hereinafter referred to as DPE) in New Item Statement (NIS)

and thereafter, the respondent alongwith two other DPEs were ordered to be promoted against the upgraded posts of DPEs in accordance with their seniority.

2. Brief facts of the case are that vide Office Order No. DE 54(4)/13101-72 dated 29th November, 1977, respondent was initially appointed as Teacher and subsequently in the year 2000, he was appointed as DPE (BPS-16) through Federal Public Service Commission Islamabad and since then, he was performing his duties as such. The Federal Minister/the then Chief Executive Northern Areas vide Office Order No. Admn-IV-2(5)/2006 dated 20.02.2006 was pleased to accord upgradation to three posts of DPE from BPS-16 to BPS-17 in Education Department Gilgit-Baltistan. In pursuance of the said directives, the respondent approached petitioner No. 1 to 3 with numerous applications for giving effect to the directives of the then Chief Executive NAs (now GB) for up-grading the said posts, but he could not get any positive response from them and decided to avail legal remedy before the Courts of law. As such, the respondent invoked writ jurisdiction of the learned GB Chief Court by means of Writ Petition No. 272/2017 and sought a writ against the petitioners for giving effect to above-mentioned notification which was partially accepted. The petitioners being aggrieved and dissatisfied have assailed the impugned judgment passed by the learned GB Chief Court by way of the instant CPLA before this Court.

3. The learned Advocate General Gilgit-Baltistan argued that the learned GB Chief Court fell in error to exercise a jurisdiction not so vested in it because the matter being of terms and conditions of service fell squarely within jurisdiction of the learned Gilgit-Baltistan Service Tribunal. It

was next argued by the learned Advocate General that the respondent could not claim up-gradation of his post in terms of Office Order No. Admn-IV-2(5)/2006 dated 20.02.2006 as the said order was issued by an authority, who was not empowered to do so under any law/Rule. It is next contended by the learned Advocate General that posts of Director Physical Education (DPE) up-graded under the above notification were not reflected in NIS, hence the notification could not be acted upon. It was next argued by the learned Advocate General that the impugned judgment was passed without taking into consideration the material facts and relevant law therefore, the judgment passed is liable to be set aside.

4. Conversely, learned counsel for the respondent supported the impugned judgment and contended that the respondent was appointed against the post of DPE on the recommendations of the Federal Public Service Commission (FPSC) on 7th November, 2000 and is rendering his services as such in various colleges in Gilgit. The Learned counsel next argued that through Office Order No. Admn-IV-2(5)/2006 dated 20.02.2006, the then Chief Executive was pleased to upgrade 03 posts of DPE from BPS-16 to BPS-17, therefore, post of DPE held by the respondent was required to be up-graded by the petitioners, but they failed to do so and tended to deprive the respondent from the lawful right of upgradation and also caused financial loss to the respondent.

5. Arguments advanced by the learned counsel for both the parties have been heard. We have also gone through the available record as well as the impugned judgment.

6. It is noted that the then Federal Minister/ Chief Executive Northern Areas vide Office Order No. Admn-IV-2(5)/2006 dated 20.02.2006 accorded up-gradation to three posts of Director Physical Education (DPE) from BPS-16 to BPS-17 in Education Department GB which was not implemented by the petitioners on the pretext of non-reflection of the posts in the NIS. We are cognizant of the fact that executive authority of region has been issuing directives for upgrading various posts from time to time and the directives so passed are being implemented by concerned implementing authorities. Such upgradation of posts once sanctioned by executive authorities of the region/province cannot be called in question by the public functionaries, save in accordance with the law. The contentions of the learned Advocate General Gilgit-Baltistan that the directives of upgradation of posts could not be acted upon for the said posts were not reflected in NIS are neither logical nor tenable. It would be just and proper to make it clear to the public functionaries that responsibility of getting the new/ upgraded posts in NIS rests on the shoulders of the public functionaries and not on the shoulders of incumbents of the posts. Refusal to act upon the orders of the Chief Executive regarding upgradation of the posts in question merely on the basis of inexcusable pretext of non-reflection thereof in the NIS is just an attempt on the part of concerned authorities to be absolved from legal duty and nothing more. Under the garb of such inexcusable tactics on the part of authorities, the respondent could not be deprived of a benefit already extended by the then Chief Executive. Benefits granted by the Executive authorities of the country in favour of government employees are not meant for withholding by public

authorities to see whether such orders be implemented or not. In order to strengthen our view, we would like to lend some support from a judgment of the Hon'ble Supreme Court of Pakistan in a case reported as Imdad Magsi Vs. Karachi Water & Sewerage Board 2002 PLC (C.S.) 1361 wherein it has been held as under:

"The approach of the learned Judges of the High Court that in such a case, no direction could be issued for implementation of the orders of the Chief Minister/ Provincial Government by way of direction in the nature of mandamus is not tenable. It was not the Chief Minister who had approached the High Court complaining that his orders were not being implemented in which case, the High Court might have justification to decline interference.....The Constitutional Petitions were filed by the appellants employees who were the beneficiaries of the orders by the Provincial Government/Chief Minister in their appeals which were not allowed to be implemented by the Vice Chairman, which was absolutely without lawful authority, therefore, the High Court was under the law obliged to declare the act of the Vice Chairman without lawful authority and direct the Board to give effect to the orders of the Chief Minister".

7. The contention of the learned Advocate General, Gilgit-Baltistan that since the matter in hand was of terms and conditions of service, therefore, the learned Gilgit-Baltistan Chief Court had no jurisdiction to entertain the writ petition and pass the impugned judgment are not tangible. It is observed that the issue before the learned Chief Court was not of terms and conditions of service, rather was enforcement of legal right accrued to the respondent after upgradation of his post. Therefore, the respondent rightly approached the learned Gilgit-Baltistan Chief Court for

enforcement of his legal right which was withheld by the public functionaries just on the basis of inexcusable grounds.

8. The upshot of the above observations is that we did not find any illegality, irregularity or infirmity in the judgment passed by the learned GB Chief Court which could call for interference of this court. Consequently, leave in the above CPLA Under Objection No. 248/2018 is refused. The impugned judgment dated 02.07.2018 in Writ Petition No. 272/2017 is maintained. The petitioners are directed to comply with the judgment in the terms decided by the learned Chief Court. These were the reasons for our short order dated 21.09.2020, which is reproduced below:

“The learned Advocate General, Gilgit-Baltistan has been heard. For the reasons to be recorded later, the above CPLA (Under Objection No.248/2018) is dismissed”

Chief Judge

Judge

Whether fit for reporting (**Yes / No**)