

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN, GILGIT

BEFORE:

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

CPLA NO. 33/2018

(Against judgment dated 21.04.2018 passed Gilgit-Baltistan Chief Court
in Writ Petition No. 10/2016)

1. Provincial Government through Chief Secretary GB
2. Secretary Food, Gilgit-Baltistan, Gilgit
3. Secretary Services, Gilgit-Baltistan, Gilgit
4. Director Food, Gilgit-Baltistan, Gilgit. **Petitioners**

Versus

Raziq Hussain s/o Aman Ali Shah
r/o Sakwar District Gilgit. **Respondent**

PRESENT:

For the Petitioners : The Advocate General Gilgit-Baltistan
Mr. Ali Nazar, Advocate on Record

For the Respondent: Mr. Johar Ali, Sr. Advocate

Date of Hearing : **02.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose of the above Civil Petition for Leave to Appeal directed against judgment dated 21.04.2018 passed by the learned Gilgit-Baltistan Chief Court, Gilgit, whereby Writ Petition No. 10/2016 filed by the respondent was accepted.

2. Facts in brief, giving rise to institution of this CPLA, are that vide Office Order No. Admin-4(57)/DCS&T/2011 dated 26th September, 2012, the respondent was appointed as Assistant Civil Supply Inspector (ACSI) BPS-05 on contract basis for a period of 1 year. Subsequently, on 7th October, 2013, contract period of the

respondent was extended for another one year. On 20th January, 2016, the respondent approached the petitioner No. 4 (Director Food, GB) with an application for extension of his contract period as well as payment of salary. The Petitioner No. 4, forwarded the application to the Petitioner No. 2 (Secretary Food, GB) with the recommendations that either contract period of Respondent be extended or he be appointed against a clear vacant post of Weigh-man in a Project "Installation of Digital Weigh Bridges and Monitoring System in Food Department". The recommendation letter initiated by the Petitioner No. 4 remained un-responded on the part of the Petitioner No. 2. Thereafter, the vacant posts of ACSIs (BPS-05) were advertised by the Petitioners for direct recruitments. Being aggrieved of and dissatisfied with the attitude of the Petitioners, the Respondent resorted to legal remedy before the Chief Court, GB by way of a Writ Petition No. 10/2016. The learned Chief Court, after hearing the parties, passed its judgment dated 21.04.2018 whereby the Petitioners were directed to appoint/ adjust the Respondent against the post of ACSI (BS-05) in the Food Department GB w.e.f. the date of passing of the impugned judgment and directed for the release of salary to the Respondent for the period he performed duties as contract/ contingent ACSI, hence this CPLA.

3. The above CPLA was heard on 26.06.2018 and notices were issued to the respondents. On the same date, operation of the impugned judgment was also suspended, which still holds the field. The learned counsel for the Respondent, during course of arguments on 09.07.2020, requested for permission to submit a list alongwith Office Orders pertaining to the appointment/ adjustment of other similarly placed persons in the Food Department. Request

was allowed with the direction to submit the same through a separate Misc. Application. In pursuance of the permission/directives, the learned counsel for the Respondent submitted list alongwith relevant documents through Civil Misc. Application No. 57/2020, which was made part of the CPLA in hand.

4. The learned Advocate General, GB argued that the learned Chief Court failed to appreciate the fact that since, the period of contract appointment of the Respondent expired on 25.09.2014 and no further extension was granted to him, hence there does not arise any question of performance of duty by the Respondent till the date of filing of the Writ Petition on 8th February, 2016 before the learned Chief Court. He maintained that the posts of ACIs had already been advertised and the Respondent could have had taken part in the test/interview, but instead in order to get an order in his favour and to avoid test/interview, he filed a Writ Petition before the Chief Court with false contentions as well as pretending him to be a contract employee of the Food Department. The learned Advocate General, GB further argued that instead of appreciating the facts involved in the case, the learned Chief Court resorted to referring to the cases of some illegal appointments made by some dishonest government authorities prior to 2013. He next argued that the learned Chief Court, GB illegally and without lawful authority directed the Petitioners to pay salary of the Respondent for a period during which the Respondent did not serve the Food Department.

5. Conversely, the learned counsel for the Respondent advanced his arguments by submitting that the Respondent performed his duties to the entire satisfaction of his

superiors, which was evident from the recommendation letter of the Petitioner No. 4 addressed to the Petitioner No. 2 for extension of his contract period or to appoint him against the post of Weigh-Man. The learned counsel maintained that the Respondent was appointed against the clear vacant post of ACSI (BPS-05) on contract basis, which period was further extended to another one year keeping in view the satisfactory performance of duty performed by the Respondent. He further argued that it was a case of discrimination and malafide because a number of similarly placed contract/contingent employees working in various offices of the Food Department across GB were appointed/adjusted against the posts already held by them, either under the Contract Employees (Regularization Act), 2014 or otherwise, while the Respondent was singled out. In order to fortify his submissions, the learned counsel presented a list alongwith Office Orders whereby a number of contract/contingent employees in the Food Department, GB were regularized. The learned counsel for the Respondent vehemently defended the impugned judgment passed by the learned Chief Court, GB in the Writ Petition mentioned herein above.

6. We have heard the learned counsel for both the parties. With their able assistance, we have also gone through the relevant record and the impugned judgment passed by the learned Chief Court, GB in Writ Petition No. 10/2016.

7. We observed that the appointment of the respondent as ACSI BS-5 was disputed neither before the learned Chief Court nor before this Court. It is presumed without any shadow of doubt that performance of the respondent remained satisfactory during the contract period and it was on the basis of his performance that the petitioner

No. 4 recommended his case to the petitioner No. 2 for extension of contract period or adjustment of the respondent against the vacant post of Weigh-man in the project mentioned in the said recommendation letter. From perusal of Office Orders provided by the learned counsel for the respondent, surprisingly noticed that a huge number of contract/contingent employees of different cadres working on contract/contingent basis in various Offices of Food Department, Gilgit-Baltistan were regularized. The total number of ACSIs appointed out of the total strength of contingent staff came to a figure of about 60-70 employees. These office orders were not disputed/denied by the learned Advocate General, Gilgit-Baltistan. It is noted that the respondent was also a contract ACSI at par with the other regularized ACSIs, then what could be the reasons justifying the authorities of Food Department to single out the respondent from the process of regularization. Be that as it may, after judgment in favour of the respondent from the learned Chief Court, in line with regularization of the ACSIs, the judgment should have been implemented by the authorities of Food Department. In the peculiar circumstances of the case emerging after regularization of hundreds of contingent/contract staff, the Food Department should have regularized the respondent at par with others regularized staff. In view of the circumstances, it would not be exaggeration in any sense of the word if the case in hand is termed as a flagrant example of disparity and discrimination. We are unable to understand that despite clear directives of this court as well as superior Courts of Pakistan directing the public functionaries to avoid treatment of discrimination while dealing with the cases of employees of a department. It is noted with pain that at times the

concerned government authorities in total disregard to law/rules as well as judgments of superior courts, tend to violate the same and cause serious violation of the settled principles of natural justice. In each and every case involving the question with regard to the services of government employees, this Court has been issuing directives to the government authorities to ensure equal treatment amongst equals as mandated by law and while using their authority must refrain from discrimination in any manner whatsoever. but it appeared that the government authorities do not bother to go through the same directives. The Hon'ble Supreme Court of Pakistan has also been issuing such directions in various cases. The observations of the Hon'ble Supreme Court of Pakistan from some of such cases are reproduced below:

"Messrs Arshad & Company Vs. Capital Development Authority Islamabad through Chairman 2000 SCMR 1557. Relevant part is reproduced below:

"Every exercise of discretion is not an act of discrimination as discretion becomes an act of discrimination only when it is improbable or capricious exercise or abuse of discretionary powers"

While dealing with the issue of equality amongst equals, the Hon'ble Supreme Court of Pakistan in a case reported as I.A Sharwani & others Vs. Govt. of Pakistan through Secretary Finance Division Islamabad & others 1991 SCMR 1041 has held as under:

"1. That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike"

Under the law, the government authorities cannot be left at liberty to make unreasonable classification of similarly placed persons and resort to an action which would benefit one set of persons and the same action would prove to be detrimental to other set of similarly placed persons. In order to strengthen this observation, we lend support from a judgment of the Hon'ble Supreme Court of Pakistan reported as Federation of Pakistan Vs. Ghulam Mustafa 2012 SCMR 1914, wherein it has been held as under:

“3. After hearing the learned counsel and having gone through the operative paras of the impugned judgment, we are of the opinion that as far as the respondents are concerned, they have to be treated at par with the employees in whose favour decision has been taken by the High Court as well as by this Court. Therefore, in absence of any reasonable classification, no exception can be taken to the impugned judgment”

8. In addition to above, the legislatures have also issued certain instructions to the public functionaries in the form of General Clauses Act. Relevant section of the said Act which lays down the legal obligations/ responsibilities on the public functionaries is Section 24A, which is reproduced below:

24A. Exercise of power under enactments.-

(1). Where by or under any enactment, a power to make any order to give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment”.

While discussing the responsibilities of the public functionaries under 24A of the General Clauses Act, this Court in a case titled Provincial Government GB through

Chief Secretary & others Vs. Niaz Ali & others (CPLA No. 43/2019) has held as under:

“4. Under the law, it is obligatory upon the public functionaries to redress grievances of general public including their subordinate employees in accordance with the law. In this regard, it is pertinent to mention here that in order to make the public functionaries realize their responsibilities, the legislature has felt it imperative to insert Section 24A in the General Clauses Acts laying down responsibilities of the public functionaries”.

9. The outcome of the above discussion/ observations is that the Provincial Government of Gilgit-Baltistan has badly failed to make out a case for inference with the impugned judgment. We did not find any illegality, irregularity or infirmity in the impugned judgment. As a result, leave in the above CPLA No. 33/2018 is refused and impugned judgment dated 21.04.2018 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 10/2016 is maintained. The petitioners are directed to comply with the impugned judgment and submit compliance report to the Registrar of this Court. The above were the reasons for our short order dated 02.09.2020 which is produced below:

“Learned Advocate General, Gilgit-Baltistan has been heard. For the reasons to be recorded later, the leave in CPLA No. 33/2018 is refused and Civil Misc. No. 57/2020 is dismissed. The judgment dated 21.04.2018 passed by the learned Chief Court, Gilgit-Baltistan in Writ Petition No. 10/2016 is maintained”

Chief Judge

Judge

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