

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.36/2018

(against judgment dated 08.12.2017 passed by the GB Service Tribunal in Service Appeal No. 669/2016)

1. Govt. of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan
2. Secretary Finance Gilgit-Baltistan
3. Secretary Education Gilgit-Baltistan
4. Accountant General (AGPR), Gilgit-Baltistan

Petitioners

Versus

1. Akhtar Ali Khan s/o Muzaffar Ali Khan TGT BPS-16 r/o District Gilgit
2. Latif Ahmed s/o Ibrahim Khan TGT BPS-16 r/o District Gilgit
3. Naeem Ud Din Saqib s/o Naib Shah Oriental Teacher (OT) BS-16 Resident of Gilgit

Respondents

PRESENT:

For the Petitioners: The Advocate General Gilgit-Baltistan

Date of Hearing: **23.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose of the above Civil Petition for Leave to Appeal directed against judgment dated 08.12.2017 passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit whereby Service Appeal No. 669/2016 filed by the respondents was accepted.

2. The respondents in the present petition called in question the acts of the petitioners in respect of deduction of conveyance allowances from their salaries for the winter and summer vacations. The conveyance allowance was deducted

on the pretext that the teachers across Gilgit-Baltistan were not required to perform duties and were not required to undertake journey from home to school and back to home during winter and summer vacations as such they were not entitled to avail the facility of conveyance allowance. The said allowance, at par with other provinces of Pakistan, was granted to the govt. employees of Gilgit-Baltistan through a Notification No. Fin-A-3(14)/2010 dated 18.10.2011. This allowance, after some time, was discontinued by the office of Accountant General, Gilgit-Baltistan to the teachers during winter and summer vacations, allegedly on the advice of Finance Department, Gilgit-Baltistan. The respondents, who are teachers of Gilgit-Baltistan, approached the learned Service Tribunal with prayers to declare them entitled to the said allowance for whole year at par with other government employees of Gilgit-Baltistan. The learned Gilgit-Baltistan service Tribunal, as an interim relief, refrained the petitioners from deducting the conveyance allowances from the salaries of the teachers for winter and summer vacations and finally through the impugned judgment held the teachers entitled to the said allowance for the whole year, which has been impugned by way of the above Civil Petition for Leave to Appeal.

3. The learned Advocate General, Gilgit-Baltistan contended that the learned Service Tribunal erred to interpret the notification whereby only working employees were held entitled for conveyance allowance, who either worked within the municipal area or used to undertake journey/ travel from home to office and back to home. He next argued that the learned Service Tribunal failed to advert to the position that as per spirit of the said notification the teachers did not go to

school for teaching purpose during the winter and summer vacations, they were not entitled to the conveyance allowance. He next argued that conveyance itself connotes to undertake travel and in absence of undertaking travel by an employee during off days owing to closure of schools it did not apply to the respondents. He next argued that similar situation prevailed in Sindh Province where the said allowance was not made applicable to teachers for they did not undertake travel to office during these vacations. The learned Advocate General, Gilgit-Baltistan contended that the judgment of the learned Gilgit-Baltistan Service Tribunal is based on surmises and conjectures and is passed while departing from the facts of the case and law on the subject, therefore is liable to be set aside.

4. Arguments advanced by the learned Advocate General, Gilgit-Baltistan heard. The record as well as the impugned judgment is also perused. We have also gone through the notification which led to discontinuation of conveyance allowance to the respondents.

5. Before going into details of the case, we consider it apt to discuss the notification dated 18.10.2011 under which conveyance allowance was granted to respondents. Pursuance to declaration of Gilgit City as “Big City” by the Prime Minister of Pakistan, Notification No. Fin.A-3(14)2010 dated 18.10.2011 was issued by the government of Gilgit-Baltistan. The same is reproduced hereunder for better understanding:

*“No. Fin-A(14)/2012
Government of Gilgit-Baltistan
Gilgit-Baltistan Secretariat
Finance Department*

Gilgit dated the 18th October, 2011

NOTIFICATION

The Prime Minister of Pakistan has been pleased to declare Gilgit ad Big City vide Prime Minister Secretariat, Islamabad letter No. 2910/PSPM/2011, for the purpose of House Rent Allowance and Conveyance Allowance with the following terms and conditions:-

- i) The territorial areas of Municipal Committee Gilgit for the purpose of Big City will be from newly constructed Bab-e-Gilgit Jutial to Basin RCC Bridge and Agriculture Complex near KIU to Sakarkoi Gilgit.
- ii) The Big City Allowance (HRA & Conveyance Allowance) would be admissible to the employees working within the territorial municipal limits of the city.
- iii) House Rent Allowance would be admissible with immediate effect. As regard Conveyance Allowance it has been made admissible irrespective of place of posting w.e.f. 1st July, 2011, vide Finance Division U.O. No. F.2(2) R-4/2002-452/706/5/13/11/ dated 20th August, 2011.
- iv) Employees working outside the municipal limits of the city and drawing at from any office/ department situated within the municipal limit would not be entitled to avail the facility of 45% HRA.
- v) Employees working within the municipal limits and drawing pay from any office/ department situated outside of municipal limjts would be entitled to the grant of 45% HRA.

The expenditure involved therein will be met out from sanctioned budget grant 1-General Public Services, 014-Transfers (Inter Government), 014101 Provinces under demand No. 033FC21G01 for the financial year 2011-12

Mansoor Alam
Deputy Secretary (Admin)"

Through the above notification, certain conditions were laid down with regard to applicability or otherwise of House Rent Allowance and Conveyance Allowance to the employees

working within the municipal area. Nowhere in the notification it was mentioned that employees who did not undertake travel or stay at homes during the winter and summer vacations would not be entitled to conveyance allowance. But the government of Gilgit-Baltistan started deducting the conveyance allowances from the salaries of teachers by misinterpreting the said notification. The government also failed to bring on record before the learned Gilgit-Baltistan Service Tribunal any such notification(s) which could have been issued earlier to this notification with regard to deduction of conveyance allowance of teachers during winter and summer vacations. Interestingly, no specific order(s) to the effect of discontinuation of the said allowances to teachers was brought on record either before the learned Service Tribunal or before this Court. In absence of any specific orders/ notifications regarding deduction of conveyance allowances from the salaries of the teachers, deduction of the said allowance by the concerned authorities manifested that this was done just to hurt a segment of employees for the reasons best known to the authorities who did it. The learned Law Officer failed to produce any order(s)/ notification(s) of government justifying deduction of the conveyance allowance from the salaries of the respondents before the learned Gilgit-Baltistan Service Tribunal, rather he took a plea that the appellants (now respondents) were not required to go to school during the winter and summer vacations hence they were not entitled to the said allowance and tried to equate the leave with vacations. It is to be noted that vacations are not optional for the employees/ teachers rather the vacations were observed under the orders of higher authorities of government thus could not be equated with leave for depriving them from the conveyance allowance.

6. The conveyance allowance was granted to all the government employees and no condition was placed that during vacation conveyance allowance shall not be paid. While granting the conveyance allowance, the executive authority of the country has not made classification of the employees for applicability of this allowance, hence the public functionaries are not permitted to make unreasonable classification of employees for reducing or extending the benefit of the conveyance allowance. The act of discontinuing the conveyance allowance to the teachers of Gilgit-Baltistan on the part of the concerned departments is held to be violative of legal rights of employees depriving them from the vested financial benefits of the said employees. A similar issue came up before August Supreme Court of AJ&K and the court decided the matter in favour of employees of Education Department. The case is titled "Finance Department of Azad Government of the State of Jammu & Kashmir v Mehboob Ahmed Awan" reported as 2020 PLC (CS) 741. The relevant paragraph is reproduced below;

"The controversy involved in the matter is, as to whether during the summer/winter vacations, the respondents, herein, who are admittedly serving in different Government schools/colleges, where these vacations are observed, are entitled to Conveyance Allowance during these vacations? A perusal of the above reproduced Rule and the Note appended therewith sufficiently suggest that vacation cannot be treated as leave and teaching staff would be deemed as on duty, therefore, Conveyance Allowance cannot be refused/deducted from their emoluments without amendment in the Rules through some executive order"

Now the question arises that if the relevant rule of leave and vacation prevalent in Education Department of GB is *pari materia* with that of AJ &K then the above interpretation would hold equally good for GB. The relevant rule was rule 25-A of AJ& K Civil Servants Revised Leave Rules 1983. There is no *pari materia* rule in rules applicable in GB i.e. Revised Rules 1980. But the relevant rules on the subject are 32 & 33 of Revised Rules 1980 which lay down that only during leave certain allowances shall be discontinued. There is no mention of deduction of allowances during vacation. Secondly in the above-mentioned judgment the term "Duty" is defined in rule 25-A which includes vacation. Though in Revised rules of 1980 the term 'Duty' is not defined but all Government Servants are presumed to be on 'Duty' during vacation and even leave that is why they are paid salary during leave and vacation. If the interpretation of Petitioners herein is accepted then no government servant shall be entitled to pay during vacation as he would not be on duty during vacation. In fact, if a government intends to deprive any servant of any part of pay and allowances then some express rule shall have to be framed like rules 32 & 33 mentioned above. It is now an established jurisprudence that even a statute be given beneficial interpretation if enacted for the benefit of a particular class in case of more than one possible interpretation. In this respect we borrow support from the following judgment of august Supreme Court of Pakistan.

"Sindh Employees' Social Security Institution v Messrs. Spenser & Company Limited" reported as 1998 PLC 103. The relevant para is reproduced below for ready reference.

"9. We may also refer to the judgment of this Court in the case of Shaheen Airport Services

v. Sindh Employees' Social Security Institution (1994 SCMR 881), wherein it has been held that while construing a beneficial enactment, the Court can take into consideration the objects for which it was enacted and the mischief which it intended to suppress and if two possible constructions of a provision of such a statute are possible; one which favours the class of persons for whose benefit the statute has been enacted would be favoured”

7. In view of what has been discussed/observed above, we hold that the learned Gilgit-Baltistan Service Tribunal, on the basis of facts and law, arrived to a fair and just conclusion. No illegality and infirmity in the impugned judgment is found which could call for interference of this Court. Consequently, leave in the case is refused. The impugned judgment dated 08.12.2017 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 669/2016 is maintained with the direction to the petitioners to comply with it in its true spirit. The above were reasons for our short order dated 23.09.2020 which is reproduced below:

“The learned Advocate General, Gilgit-Baltistan has been heard. For the reasons to be recorded later, the above CPLA No. 36/2018, being devoid of merit, is dismissed”

Chief Judge

Judge

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