

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

BEFORE:

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

CPLA No. 54/2019

(Against the Order dated 05.12.2018, passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 257/2017)

1. Provincial Govt. through Chief Secretary Gilgit-Baltistan
 2. Secretary Livestock & Agriculture Gilgit-Baltistan
 3. Secretary Services Gilgit-Baltistan
 4. Director Agriculture Gilgit Region
 5. Deputy Director Agriculture Diamer Chilas... **Petitioners**

Versus

1. Muhammad Rafiq S/o Shah Zaman Khan Chowkidar BPS-1
Office of DDA Office Diamer
 2. Mir Azam S/o Syed Nabi Chowkidar BPS-1 Fruit Nursery
Manikal Darel
 3. Basher Ahmed S/o Baja Khan Mali Seed Farm, Biari Darel
 4. Afsar Wali S/o Sameer Khan Mali BPS-1 Seed Farm Bari,
Darel
 5. Zubair S/o Gul Zafaran Malik BPS-1 Fruit Nursery Nagaran
R/o Niat
 6. Khaista Rehman S/o Ubaid Chowkidar BPS-1 Fruit Nursery
Nagaran.
 7. Zubair Ahmed S/o Sabir Driver BPS-04 DD Office Chilas
 8. Altaf Hussain S/o Rahim Shah Chowkidar BPS-01 Fruit
Nursery Gummari **Respondents**

PRESENT:

For the Petitioner (s) : The Advocate General, GB
Mr. Ali Nazar Khan, AOR

Date of Hearing : **02.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge: This petition for leave to appeal arises out of an order dated 05.12.2018

passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 257/2017, whereby the Writ Petition filed by the present respondents was allowed directing the present petitioners to regularize the services of the respondents.

2. Brief facts essential for disposal of this petition are that upon recommendation by the DSC the above respondents were appointed to their respective posts in a development scheme namely "***Establishment of new and improvement of existing fruit nurseries in district Diamer***". The Petitioner No. 5 made the appointments of the respondents on different dates i.e. respondents No. 1 to 4 on 02.02.2008 and respondents 5 to 6 on 07.05.2007 respectively. Similarly, appointment of the respondent No. 7 as Driver was made on 18.12.2007 and respondent No. 8 as Chowkidar on 10th March, 2010. Subsequently, upon completion of project, through a single order bearing No. DDA-Estt-1(1)/2011 dated 21.06.2011, services of the respondents stood terminated. The respondents assailed the termination order issued by the office of the petitioner No. 5 before the learned GB Chief Court and the learned GB Chief Court after hearing the parties, accepted the writ petition and directed the present petitioners to regularize the services of the respondents against the posts held by them before termination of their respective services. Being aggrieved and dissatisfied with the judgment/order of the learned GB Chief Court, the petitioners have now approached this Court by way of the instant CPLA.

3. The learned Advocate General Gilgit-Baltistan argued that the learned GB Chief Court failed to consider the points involved in the case and passed the judgment without giving any justifications based on legal and factual positions. He

further argued that the respondents could not claim regularization of their services as they were appointed purely on temporary basis against a development scheme/project mentioned above and that after completion of the project, their services, being no more required, stood terminated. He maintained that respondents, being project employees, did not have vested right to claim regularization as there was no law /rules regulating regularization of project employees. In support of his arguments, he referred several judgments of this Hon'ble Court as well as Hon'ble Supreme Court of Pakistan. The learned Advocate General next argued that the impugned judgment was passed without taking into consideration the material facts and relevant law as well and was liable to be set aside.

4. Case heard and record as well as the impugned judgment perused. Perusal of record revealed that in view of the administrative approval of the Finance Division Islamabad, the Gilgit-Baltistan Finance Department converted the project to non-developmental side with creation of 9 posts against the said project on 04.04.2017. The respondents claimed that their contract appointments were made after due observance to the procedures/ method prescribed under the rules, as such their services deserved regularization against created posts. They further claimed that when the departmental authorities showed their reluctance, the respondents resorted to legal remedy before the learned Chief Court and succeeded in getting the directives as prayed for. The respondents further claimed in their writ petition before the learned Chief Court that, the Finance Division Islamabad created 86 posts against various projects in Gilgit-Baltistan which were converted from

development side to non-developmental and the employees working against those projects were regularized. They further claimed that upon directives of the learned Chief Court, Gilgit-Baltistan in Writ Petition No. 143/2015, similar project employees in Live Stock Department were also regularized, as such, the respondents, on the same analogy, should have been regularized, but the concerned department with malafide intentions did not regularize their services, thus they were discriminated by treating them differently.

5. It is observed that in view of contractual appointments of respondents made through a proper DSC as well as conversion of the project with creation of posts, the respondents deserved to be considered for regularization of their services. We further observed that, as claimed by the respondents, after conversion of other projects into non-developmental side with the alleged creation of 86 posts, if the Provincial Government of Gilgit-Baltistan had regularized services of project employees of other departments against those posts, then the authorities have excluded/ rejected the present respondents which is a clear discrimination to the present respondents. Law demands equal treatment amongst equals without favoritism and nepotism and the superior Courts of Gilgit-Baltistan as well as Pakistan from time to time have been issuing directives for elimination of discrimination from all governmental/non-governmental Institutions. On the issue of discrimination, we rely upon a case having direct relevancy to the case in hand reported as 2017 PLC (C.S) 428 entitled "*Qayum Khan v Divisional Forest Officer Mardan and others*". The relevant portion is reproduced below:

"The present appellant was appointed in the year 2010 on contract basis in the project after completion of all the requisite codal formalities, when on 25.05.2012, the project was taken over by KPK Government. It appears that the appellant was not allowed to continue after the change of hands of the project.

6. Apart from above, during perusal of record of the case, we came across with a copy of the termination order. In order to highlight the grounds which necessitated termination of services of the respondents, we reproduce the relevant excerpt of termination order. Urdu language is translated into English language.

"You are aware that your appointment was made under " Establishment of new and improvement of existing fruit nurseries in district Diamer. The period of the project was of 5 years and the same is ending on 30th June, 2011. In order to bring these posts on permanent footings, this department has submitted a PC-IV for approval. However, through this notice, you are informed that after 30th June, 2011 you will not be considered employees of Agriculture Department Diamer.

The sentence "*In order to bring these posts on permanent footings, this department has submitted a PC-IV for approval*" gives an implied hope/expectation to the respondents that in case of approval of PC-IV, they would be considered. Otherwise, why the authorities of Agriculture Department Diamer felt it necessary to bring into knowledge of the respondents that a PC-IV was submitted for creation of posts. This sentence in other words, gives a sense that regularization of services of the respondents was conditioned with approval of PC-IV. However, we understand that after conversion of the project to non-developmental side with creation of posts, intention of the departmental authorities of the concerned department was changed.

7. The upshot of the above observations is that we did not find any illegality, irregularity or infirmity in the judgment dated 05.12.2018 passed by the learned GB Chief Court in Writ Petition No. 257/2017 which could call for interference of this court. Consequently, leave in the CPLA is refused and the judgment so passed is maintained. The petitioners are directed to regularize services of the respondents from the date of institution of writ petition before the learned Chief Court. The intervening period between date of termination of their services and the date of regularization of their services shall be treated as leave without pay. These were the reasons for our short order dated 02.09.2020, which is reproduced below:

“The learned Advocate General, Gilgit-Baltistan has been heard. For the reasons to be recorded later, the above CPLA No. 54/2019 along with Civil Misc No. 31/2019 is dismissed and the judgment dated 05.12.2018 passed by the learned Chief Court, GB in Writ Petition No. 257/2017 is maintained”

Chief Judge

Judge

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