

IN THE SUPREME APPELLATE COURT GILGIT BALTISTAN

Civil Appeal . No.02/2016

Before :-

1. Mr.Justice Dr.Rana Mohammad Shamim, Chief Judge.
2. Mr.Justice Javed Iqbal, Judge.
3. Justice Shahbaz Khan, Judge.

1. Provincial Government through Chief Secretary Gilgit-Baltistan
2. Secretary Services Gilgit Baltistan
3. Secretary Health Gilgit Baltistan

Petitioners/Appellants

VERSUS

Dr. Johar Ali S/O Mohammad Taqi R/O Gilgit

Respondent

PETITION FOR LEAVE TO APPEAL UNDER ATICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER 2009 READ WITH ENABLING ARTICLES OF GILGIT BALTISTAN SUPREME APPELLATE COURT RULES 2008 AGAINST THE IMPUGNED JUDGMENT DATED 20-10-2015 PASSED BY THE LEARNED SERVICE TRIBUNAL GILGIT-BALTISTAN IN APPEAL NO.518/2015 WHEREBY THE APPEAL FILED BY RESPONDENT HAS BEEN ACCEPTED AND PETITIONERS ARE DIRECTED TO PREPARE WORKING PAPERS FOR PROMOTION OF RESPONDENT AS CHIEF CONSULTANT BPS-20.

PRESENT:-

1. The Advocate General Gilgit Baltistan along with Mr. Ali Nazar Advocate On Record on behalf of petitioners.
2. Mr. Amjad Hussain Advocate along with Mr. Johar Ali Advocate On Record

Date of Hearing and Judgement: 12/04/2016

JUDGEMENT

Shahbaz Khan, J : This judgment shall dispose of the titled C.Appeal.No.02 /2016 as a result of converting CPLA.No.3/2016 into appeal by this court vide order dated 15/01/2016 filed against the judgment of the learned Gilgit-Baltistan Services Tribunal passed in Appeal No. 518/2015 vide which the appeal of the respondent was allowed and it was directed as follows.:

“In view of what has been discussed above appeal accepted. Respondents are directed to prepare working papers for promotion of appellant as chief consultant BS 20 and the same be placed before departmental promotion committee for consideration with effect from due date with pensioner benefits of the higher

grade after retirement and complete the process within three months with compliance report to the registrar of this Tribunal. No order as to cost”

2. Learned Advocate General Gilgit-Baltistan seeks reversal of the impugned judgment on two grounds, firstly that the case of respondent was not tenable under Subsection 5 of Section 8 Gilgit-Baltistan Civil Servant Act 2011 wherein a civil servant has been barred from getting promotion after retirement. Secondly, the Health Department was not competent to process the case for promotion to BPS 20 hence the submission of working paper for placing before the DPC by the services department is without authority.
3. Learned Counsel for respondent defended the impugned judgment by submitting that the Respondent was entitled to get his promotion with effect from 2104 on the basis of fitness com seniority. The respondent was the senior most in the specialist cadre and qualified for promotion against the vacant post of BS 20 of Chief Consultant. It was not his fault in respect of any kind of delay in processing of his promotion case or convening the meeting of departmental promotion committee rather the delay in holding the DPC was fault of concern departments or malafide act of the concerned officials by not deciding the objections of a very influential junior colleague of respondent namely Dr. Shahbuddin who had challenged the seniority list in 2013. The Health Department being a competent authority willfully delayed the case of the respondent avoiding decision on merit and waited until withdraw of objection application of the objector Dr. Shahab Ud Din on 15/09/2014 and then the working papers for promotion of the respondent were submitted on 29/09/2014 to the services department for placing the same before DPC at the verge of his retirement. The DPC meeting was held on 23/10/2014 after attaining the age of superannuation of the respondent and his promotion case was not considered on the sole ground that the respondent has already been retired on 07/10/2004. The counsel of respondent stated that the respondent exhausted all the forums against the erroneous findings of the Departmental Promotion Committee before filing his appeal to GB Services Tribunal by submitting review petition before the Chief Secretary and appeal to Chief Minister as well. He further argued that the rejection of case

of the respondent by the DPC on 23/10/2014 on the sole point of retirement of the respondent earlier is misconceived and against the Sub Section 5 of the Section 8 of GB Civil Servants Act which allows a civil servant to get his pro forma promotion even after his retirement.

4. The record on case file reveals that the respondent was appointed as Medical Officer in BPS 17 in GB Health Department on 24/08/ 1983 through FPSC and was promoted as Senior Medical Officer in BPS 18 in the year 1990. After getting post graduation qualification in Paeds Medicines in 1995, the respondent served as Child Specialist against a temporary post at DHQ Hospital Chilas and assumed his charge as Child Specialist against the regular post on 05th April 1995 . Along with other promotion cases of the specialist cadre, the case of the respondent was also submitted before the DPC meeting of which was held on 14/11/2000. On acquiring Post Graduate qualification as specialist in Paeds Medicine in 1995 and on request to adjust as child specialist he was then transferred from Senior Medical Office BPS 18 to Child Specialist BPS 18 by the competent authority against a temporary post at DHQ Chilas on 5th April 1995. On July 1st 2000 the post of Child specialist became regular and the Director Health Department sent the working paper for holding meeting of DPC for promotion as child specialist of the respondent instead of making a simple case of transfer of service from SMO BPS 18 to Child Specialist. The DPC was held on 28/10/2000 but respondent was not considered due to faulty presentation of working paper by the department and case was deferred for submitting the same after correction. The second DPC was held on 14/11/2000 but surprisingly no findings appeared in the minutes of meeting despite the fact that the working papers of the Respondent were included in the agenda of the meeting of DPC but surprisingly the case of the respondent was neither accepted for promotion nor rejected and the minutes of meeting in this regard became silent, as a result the cases of three junior officers were considered and promoted in the Specialist Cadre in 2000 and naturally they became senior to respondent due to negligence, willful act of the concerns present in

the DPC meeting, however the respondent was promoted as child specialist later on 14/03/2001. In the meanwhile, the posts of Specialist cadre in GB upgraded to BS 19 under newly service structure and all the specialist doctors including the respondent promoted to BS 19. Resultantly three junior colleagues got promoted in BS 20 much more before the Respondent. Being the most senior in specialist cadre as per seniority list issued by the Health Department on 31/12/2012, the respondent once again applied for promotion for BS 20 on 08/02/2013. In the meanwhile one junior colleague name Dr. Shahab Ud Din challenged the said seniority list on 13/02/2013 . The competent authority instead of taking decision of the seniority dispute on the basis of merit and record promptly delayed the matter and later on referred the matter to a committee comprising Director Health Service, office bearers of Pakistan Medical Association GB, which decided in favor of the Respondent and the working paper for promotion of the respondent was processed in Health Directorate and thereafter were sent to Secretariat for onward submission of the same before the DPC but the case was not proceeded further by the Health Secretariat due to refusal of said Junior colleague Dr. Shahab Ud Din once again to give NOC in writing. However, the said objector voluntarily withdrew from his seniority case against the respondent and submitted a No Objection Certificate before the Health Secretariat on 15/09/2014 as a result, the working papers of promotion of the Respondent were sent to Services & General Administration on 29/09/2014 for placing the same before the DPC , the meeting of which was held on 23/10/2014 and in the meanwhile the respondent attained the age of superannuation and got retired on 07/10/2014. The DPC meeting declined to consider the case of the Respondent on the sole point of his retirement before holding of the DPC meeting.

5. Coming to facts of the case as explained in para 4 above, it has not been disputed before this court :

- i. That three colleague doctors junior to the respondent became senior as a result of consideration of their

- ii. promotion cases by the DPC meeting held on 14/11/2000 but failure of giving any finding in respect of the case of the respondent available on the agenda of the same DPC meeting either accepting or rejecting the same caused effect adversely on the seniority as well as promotion of the respondent.
- iii. That the Respondent was entitled to be promoted in BS 20 against the vacant post of newly created Chief Consultant as well with effect from 14/01/2014 being a senior most and duly qualified Specialist.
- iv. That the representation of the Respondent for promotion in BS 20 was already under consideration since 08/02/2013.
- v. That delay in decision of seniority dispute was not because of the Respondent but it was a fault and lapses of the authorities of Health Department showing their negligence and inefficiency.
- vi. That the non submission of promotion case before the S & GA Department by the health department and extra ordinary delay in holding DPC meeting since issuance of seniority list dated 31/12/2012 was not a fault or mistake of the Respondent rather it was due to the reasons best known to the departments concerned.
- vi. That the working papers for the promotion of the respondent in BS 20 were submitted to Services & GA Department by the Health Department for holding DPC Meeting on 29/09/2014 much before the attaining age of superannuation of the respondent dated 07/10/2014.
- vii. That delayed holding of DPC Meeting on 23/10/2014

was not due to any act or fault of the Respondent rather the same was due to departments concerned.

viii. That the case file does not show any kind of adverse remarks or complaint against the respondent which reveals that his performance as a doctor has remained excellent and unblemished.

6. Keeping in view of the conclusion on facts drawn in para 5 above and coming to the main contention raised by the learned Advocate General referring Sub Section 5 of Section 8 GB Civil Servants Act 2011 that a retired civil servant is not eligible for grant of promotion or pro forma promotion thus the respondent as well lacks eligibility in the instant case as of retired civil servant. But interestingly the Learned Advocate General forgot to quote the Sub Section 4 of Section 8 of the same Act which entitles a civil servant to get antedated pro forma promotion and also the learned Advocate General failed to refer the clause “h” of Sub Section 1 of Section 2 of GB Civil Servants Act 2011 which recognizes the pro forma promotion of the retired civil servants in case of accruing their rights of promotion before attaining the age of superannuation which reads as under :-

2. Definitions

1. (a)---- , (b)----, (c)---- (d)----, (e)----, (f)----, (g) -----
(h) “ Pro forma promotion” means predating of promotion of civil servant or retired civil servant with effect from the date of regular promotion of his junior, for the purpose of fixation of pay and payment of arrears as may be prescribed”

Moreover the Learned Advocate General had no explanation about the Sub Section 4 of Section 8 of the **GB Civil Servant Act 2011** as well which recognizes the entitlement of pro forma promotion of a civil servant from an earlier date which reads as under:

8. Promotion

- (1) -----
- (2) -----
- (3) -----

- (4) A civil servant shall not be entitled to promotion for an earlier date except in the case of Pro forma promotion.

7. As per Federal Government policy duly approved by the Prime Minister of Pakistan, the guide lines for FR-17(1) in respect of committees to consider the cases of pro forma promotion has been amended vide office memorandum F. No.4(6) Imp/FR-17/2013-277 dated 18th September, 2015 wherein Para-I has declared the civil servant to be promoted from a particular date who for no fault of his own has been wrongfully prevented from rendering service to the Federation in the higher post and such civil servant has been entitled to get the arrears of pays and allowances of such higher post through pro forma promotion or up gradation arising from the ante-dated fixation of his seniority. Moreover a new **clause (a) (1) has been inserted in Para-iv of the said M.O** whereby the Departmental Promotion Committees have been declared to be under obligation to consider the cases of civil servants for **pro forma promotion** to next higher post in their own cadre of the cases of **retired civil servants** who could not be considered for promotion for no fault of their own and retired on attaining the age of superannuation. The relevant provisions of the O.M of Finance Division dated 18/09/2015 are as under:

051-9245853



Government of Pakistan
FINANCE DIVISION
(Regulations Wing)
PBC Building, Near State Bank of
Pakistan

F.No.4(6)Imp/FR-17/2013-277

Islamabad, the 18th September, 2015

OFFICE MEMORANDUM

Subject:- REVISED GUIDELINES FOR FR-17(1) COMMITTEES TO CONSIDER THE CASES OF PROFORMA PROMOTION.

The undersigned is directed to refer to the subject noted above and to forward herewith revised guidelines for FR-17(1) Committees incorporating the amendments approved by the Prime Minister alongwith its annexure containing a list of documents, required for consideration of cases for proforma promotion, for necessary action by all concerned.

(Muhammad Azam Awan)
Section Officer (Imp/FR-17)

All Ministries/Divisions/Departments

**GOVERNMENT OF PAKISTAN
Cabinet Secretariat
ESTABLISHMENT DIVISION**

Subject: **REVISED GUIDELINES FOR THE FR-17(1) COMMITTEES TO CONSIDER THE CASES OF PROFORMA PROMOTION,**

Part-I Rule Provisions.

The FR-17(1) reads as under:

"FR-17(1) subject to any exceptions specifically made in these rules and to the provisions of sub-rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties".

[Provided that the appointing authority may, if satisfied, that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servants shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the ante-dated fixation of his seniority].

Part-II -----

Part-III -----

Part-IV

TYPE OF CASES TO BE CONSIDERED BY THE FR-17(1) COMMITTEE(S).

6. The respective Committee shall consider the cases of Civil Servants for proforma promotion to the next higher post in their own cadre or service/group who have been granted antedated seniority within the meaning of proviso below FR-17(1):

- a) A civil servant who was deferred for any of the reason indicated in the promotion policy but subsequently it is found that the said reason was wrongfully mentioned. For instance Mr. 'A' was deferred for the reasons that he had not undergone the prescribed training or passed departmental examination. Subsequently, it came the notice that he had undergone the mandatory training or passed the departmental examination but the training evaluation report or result of examination could not be submitted to the respective Selection Board/Committee at the relevant point of time.
 - (a) (i) **Cases of retired civil servants who could not be considered for promotion for no fault of their own and retired on attaining the age of superannuation.**
 - b) A civil servant who was not superseded previously on the recommendations of the respective DPC/Selection Board duly approved by Competent Authority but his/her claim had arisen for any other reason.
 - c) A civil servant recommended by respective Selection Board/Committee for supersession and the recommendations were approved by Competent Authority provided that the said supersession has been converted into deferment for reasons, what so ever, either by Court of Law or Competent Authority.

Contd...P/4

8.Learned Counsel for respondent cited several cases on this point however he mainly relied upon the judgment of Supreme Court of Pakistan full bench headed by Honorable Judge Tassaduq Jilani in the case under citation 2012 SCMR 126 titled Secretary School of Education Vs Arshad Khan etc wherein it has been held as under:

“ We find that it has not been disputed before this court that much the retirement of the respondents, a working paper was prepared by the department with regard to their promotion but the matter was delayed without any justifiable reason and in the meanwhile respondents attained the age of superannuation. They cannot be made to suffer on account of the departmental lapse. The arguments of Learned Law Officer that the respondents were not entitled at the relevant time to be granted promotion for one reason or the other is rather Misconceived as the operative part of the impugned judgment has candidly directed that the working paper of the respondents shall be prepared and they will be considered for grant of next grade notwithstanding their retirement, if they are even otherwise found entitled thereto. This fact now would be pro forma promotion”.

9.The Learned Advocate General is of the opinion that the findings of the Honorable Supreme Court of Pakistan of the above referred citation does not apply in the instant case as the same has been based on the provisions of Punjab Civil Servants (Amendment) Act 2005 Act which has nothing to do with services matters of Gilgit-Baltistan. For the making fair comparison to the same provision of GB Civil Servant Act 2011 , the Section 8 of the Punjab Civil Servant (Amendment) Act 2005 is being reproduced here as under

8. Promotion:-

(1) A civil servant shall be eligible to be considered for appointment by promotion to a post reserved for promotion in the service or cadre to which he belongs in a manner as may be prescribed; provided that he possesses the prescribed qualifications.

(2) Promotion including pro forma promotion shall not be claimed by any civil servant as of right.

(3) Promotion shall be granted with immediate effect and be actualized From the date of assumption of charge of the higher post, and shall in no case be granted from the date of availability of post reserved for promotion.

(4) A civil servant shall not be entitled to promotion from an earlier Date except in the case of pro forma promotion.

(5) A retired civil servant shall not be eligible for grant of promotion or Pro forma promotion.

(6) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotion shall be made as follows:-

(a) in the case of a selection post, on the basis of selection on merit;

and

(b) in the case of non-selection post, on the basis of seniority-cum-fitness

The perusal of the above provisions shows that the contents of the Section 8 heading “Promotion” and other provisions of GB

Civil Servants Act 2011 and the Punjab Civil Servants

(Amendment) Act 2005 are exactly the same having no difference of even a coma or full stop and it appears that the legislature of Gilgit-Baltistan has actually reproduced the same law of Punjab Civil Servant (Amendment) Act 2005 in Gilgit-Baltistan as well without mentioning that the same is being adapted or enforced. Thus any interpretation in respect of pro forma promotion held by the Honorable High Courts or Supreme Court of Pakistan in the light of the above referred provisions concerning subject matter of pro forma promotion after retirement shall be applicable to the same nature cases in Gilgit Baltistan as well. The contention raised by the learned Advocate General regarding non application of interpretation of Superior Courts in Pakistan in respect of the same provisions of law is devoid of any substance at all thus overruled.

10. That the concept or right of promotion of a civil servant after retirement is not limited to Pakistan rather the same exists all over the world. The laws in Pakistan consider such kinds of promotions as of Pro Forma Promotion and in India the same is known as Notional Promotion . The High Courts and Supreme Court in India have thoroughly discussed the issue in their numerous judgments some of which are as under::

Kerala High Court vide its judgment Dated 17/02/2009 in case WP () . No. 29242 of 2008 (F), has held that:

“Going by the facts of the case, petitioner cannot be denied the benefit of notional promotion sought for. It is admitted that the meeting of the D.P.C was delayed due to administrative reasons. Going by the Rules they should have met sufficiently earlier and if so, the select list would have been published before the end of the previous year. Herein, the list was published only on 19/05/2007.

Therefore, the contention that the petitioner cannot claim notional promotion after retirement on the ground that there existed a vacancy prior to his retirement cannot be accepted. As regards the vacancy position also, in the vacancy which arose in 01/07/2006 consequent on the retirement of Shri.T.Rajan, Smt.Ambika Kumari who was Sl.No.1 in Ext.P1 was promoted as Senior Administrative Assistant per order dated 26/06/2007. Even though it is submitted in the counter affidavit that the petitioner cannot claim promotion as a matter of right, it is evident from the facts stated that the other persons have been chosen for promotion. In that view of the matter, it is not a case where the petitioner could be denied it on the ground that he has no vested right. But as a matter of fact, the Government has been conveniently conferring the benefit to other persons in whose case also the promotion was delayed.

11. The writ petition is allowed. Exts.P4 and P8 are quashed. Appropriate orders granting notional promotion to the petitioner as Senior Administrative Assistant with effect from 01/09/2006 will be issued and the consequential benefits by revision of pension and other retirement benefits will be disbursed without any further delay. Appropriate orders shall be passed within two months from the date of receipt of the copy of this judgment.”

The learned DB of High Court of Punjab & Haryana in the case of Chaman Lal Lakhanpal Vs. Union Public Service Commission and Ors., decided on 23.11.1998 and reported in 1998 (3) SLR 436. Giving relief to the petitioner, the held as under:-

“It is the admitted position that the petitioner was eligible to be considered for promotion in the year 1994-95. It is also not disputed that his claim has not been considered. Thus, the petitioner, even if he was approaching the date of retirement when the matter was pending before the Tribunal, had a right to be considered with effect from the due date and on being found suitable, he could be fictionally granted the relief which had been denied to him for no fault of his. The relief could not be denied to him merely because a statutory authority viz. the committee as constituted under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 had not met. The respondents cannot be permitted to take advantage of their own wrong. By sleeping over the matter, they cannot defeat the rights of a citizen available to him under the Constitution as well as the statutory provisions of the regulations”.

Supreme Court of India in P.N. Premchandran Vs. State of Kerala and Others 2004 (1) SCC 245 is relevant. The relevant part of the said judgment reads as under: -

“ It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Directors, in the event, a

Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect.

11.These were the reasons for our short order dated 12-04-2016, therefore no ground to interfere with the decision of Gilgit Baltistan Services Tribunal passed in Appeal No. 518/2015 Dated 09/10/2015 vide which the appeal of the respondent was allowed and the same is upheld. Consequently the appeal, is therefore dismissed with the directions to the Appellants to implement the judgment of the GB Services Tribunal to complete the process of consideration of the case of Pro forma promotion of the respondent with back benefits within the specified period of three months. Parties are, however left to bear their own cost.

Announced.
12-04-2016

Judge

Chief Judge

Judge