

**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.106/2018

(Against the Order dated 09.07.2018 passed by the Gilgit-Baltistan Chief Court in writ Petition No. 111/2018)

1. Zahoor Ahmed s/o Nawaz Khan Driver BS-04 DDA Office Astore
2. Nabi ur Rehman s/o Muhammad Nazar Budder BS-04 DDA F/N Bunji Astore
3. Abid Hussasin s/o Nawab Khan Chowkidar BS-01 DDA Office Astore
4. Jamshid Alam s/o Juma Khan, Mali BS-01 F/N Goriktoe Astore
5. Manzoor Ahmed s/o Inayat Khan, Mali BS-01 F/N Goriktoe Astore
6. Muhammad Shafa s/o Ishaq, Chowkidar BS-01 F/N Khangrool Astore
7. Faqir Ullah s/o Mayoon Mali BS-01, F/N Gorikote Astore
8. Siraj ud Din s/o Lal Din Mali BS-01, F/N Pakora Astore
9. Gul Zaban s/o Mian Gul Mali BS-01, F/N Khangrool Astore
10. Ibadat s/o Zaban Ali, Mali BS-01 F/N Hercho Astore
11. Imran s/o Shakoor Muhammad Mali BS-01 F/N Hercho Astore
12. Ismail s/o Ali Madad Mali BS-01 F/N Pakora Astore
13. Ghulam Muhammad s/o Ghulam Rasool Mali BS-01 F/N Chongrah Astore
14. Imtiaz Ahmed s/o Abdul Latif, Mali, BS-01 F/N Khangrool Astore
15. Nazir Ahmed s/o Bashir Muhammad Chowkidar BS-01 F/N Pakora Astore

Petitioners

Versus

1. Provincial Government through Chief Secretary
2. Secretary Agriculture Gilgit-Baltistan
3. Secretary Services Gilgit-Baltistan
4. Director Agriculture Gilgit-Baltistan

Respondents

PRESENT:

For the Petitioners : Malik Shafqat Wali, Sr. Advocate

For the respondents: The Advocate General Gilgit-Baltistan

Date of Hearing : 22.10.2020

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose of the instant Civil Petition for Leave to Appeal directed against a short Order dated 09.07.2018, passed by the learned Gilgit-Baltistan Chief Court,

Gilgit in Writ Petition No. 111/2018 whereby the writ petition has been disposed of by referring the case of the petitioners to the Regularization Committee.

2. Brief facts of the case are that office of D.D. Agriculture Astore published an advertisement in Daily Baidar dated 27.11.2009 whereby applications were invited for filling up certain posts in a new established Development Project namely "***Fruit Development in District Astore***". Pursuant to the said advertisement, the petitioners applied, participated in the test/ interview and succeeded to get appointments against the posts applied for. Thereafter, the respondents continued to serve the department under the said Project till termination of their services on 31st May, 2018. The reason assigned for termination of services of the respondents was that the department was running out of the budget to meet the expenses on their salaries. The project was shifted to non-development budget in the year 2016 with creation of certain permanent posts. The petitioners claimed that they continued to serve the department after conversion of project and creation of posts but all of a sudden and to their disappointment, instead of adjusting them against the newly created posts, the respondents terminated their services. Being aggrieved, the petitioners submitted applications/ appeals for regularization of their services against the newly created posts instead of publishing the same in the newspapers for new inductions. Their applications/ appeals failed to yield positive result which necessitated them resorting to legal remedy by way of a Writ Petition before the learned Gilgit-Baltistan Chief Court. The learned Chief Court through an order dated 09.07.2018 disposed of the writ petition and directed the respondents to refer cases of petitioners to the Regularization Committee. Now the petitioners have impugned the said order before this Court by way of the CPLA in hand.

3. The learned counsel for the petitioners contended that the learned Gilgit-Baltistan Chief Court failed to appreciate the fact that the respondents were continuously performing their duties to the entire satisfaction of authorities of Agriculture Department till the date of

issuance of illegal termination orders. He maintained that since the initial appointments of the petitioners were made on merit and in accordance with the prescribed method they could not be ousted with a single stroke of pen that too merely under the false premise of running out of the budget. He next contended that the learned Chief Court failed to take into account a very core factor of the case that at the time of conversion of the project into one of non-development project with posts, the petitioners were continuing their services, as such they stood permanent employees of the Department. He next argued that after conversion of the project with posts, all that the department required to do was to just issue regularization orders of the petitioners instead of resorting to remove them from their services. The learned counsel next contended that in view of length of services without break, the petitioners were entitled to hold the posts as regular employees, but the Agriculture Department illegally denied the accrued right to the petitioners which smacked malafide on the part of the respondents. Apart from the above facts, the learned counsel went on to argue that as per agreement executed between some of the petitioners with Agriculture Department, the latter was under obligation to provide employment in lieu of the donated piece of land measuring 10 Kanals. Taking into consideration all the above essential facts and circumstances, the learned counsel prays for declaring the termination order dated 31.05.2018 as null and void being discriminatory in nature and further prayed for issuance of necessary orders for regularization of services of the petitioners.

4. On the other hand, the learned Advocate General, Gilgit-Baltistan defended the order dated 09.07.2018 passed by the learned Chief Court and argued that since the matter pertained to regularization of contract employees, it fell within the ambit of Regularization Committee to consider the eligibility of petitioners for regularization of their services or otherwise and prayed for maintaining/ upholding the impugned Order dated 09.07.2018 passed by the learned Gilgit-Baltistan Chief Court, Gilgit in Writ Petition No. 111/2018.

5. Case is heard. Record as well as order dated 09.07.2018 passed by the learned Gilgit-Baltistan Chief Court; Gilgit in Writ Petition 111/2018 is also perused.

6. We would like first to advert to the facts regarding appointments of the petitioners on contract basis for the project in question. Record available on file, without any shadow of doubt, speaks that the appointments were made strictly in accordance with the method prescribed under the rules. Thus, it can easily be held that there is no illegality or procedural flaws in their initial appointments. Second fact for consideration is with regard to conversion of the project from developmental to non-developmental budget with creation of the requisite posts. The project was converted into non-development one with concurrence of posts on 01.07.2016. The pivotal aspect of the case is whether, at the time of conversion of the project, the respondents were continuing their services with the department against their respective posts or not? Of course, the project was converted into non-developmental one with creation of posts much before termination of their services i.e. about two years. As such, at the time of conversion of the project into non-developmental one, the petitioners were still serving the department. We also observed that there is no break in services of the petitioners when the project was transferred to non-developmental side with posts, rather it was much after the conversion of project and creation of posts that services of the petitioners were terminated.

7. No cogent reasons were assigned in the termination orders which compelled the respondents to advertise the posts that too during the period when the petitioners were performing their duties by holding their respective posts in Agriculture Department. In this scenario, one can easily imagine that the department attempted to recruit new candidates for the reasons best known to them, that too at the cost of the petitioners. It is made clear that it was best known to the departmental authorities that appointments of petitioners were made strictly in accordance with the prescribed procedure i.e., through test/ interview and upon

recommendation of DPC and there were no procedural or legal flaws which could have necessitated the department to go for another exercise of recruitment process. Furthermore, the termination orders do not reflect any charges/ misconduct/ inefficiency on the part of the petitioners. The purpose of conducting test/ interview/ DPC is reflected in the minutes of the meeting of DPC. The relevant extract from the minutes of the meeting of DPC is as under:

“All the above vacancies were advertised through daily Baidar newspaper dated 27.11.2009 for information of general public and interested candidates of Astore District to set a competition amongst the participants so that only efficient and qualified candidates could be selected”. (Underlines supplied)

The above para from the Minutes of meeting of DPC make it crystal clear that the purpose of advertising the vacancies was to select only efficient and qualified person amongst the candidates. Thus, appointments of the petitioners under the above-mentioned advertisement could be termed as merit-based appointments as per the qualification and efficiency of the petitioners. Again, we are unable to understand that as to why the department wanted to replace these efficient and qualified employees with new ones through a fresh DPC compelling the already serving candidates to sit in another test/ interview. It must be within the knowledge of Agriculture Department that there are no hard and fast testing rules or qualification for recruitment to the Class-IV posts. The government has already devised a policy based on a very lenient consideration for appointments to the Class IV posts. For the sake of brevity, the same is reproduced herein below:

**“GOVERNMENT OF GILGIT-BALTISTAN
GILGIT-BALTISTAN SECRETARIAT
(SERVICES, GENERAL ADMINISTRATION
AND CABINET DEPARTMENT)**

No. SO(S)-I-1(49)/2018

Dated 16th January, 2018.

OFFICE MEMORANDUM

Subject: **MECHANISM TO ENSURE MERIT BASED RECRUITMENTS IN VARIOUS DEPARTMENTS OF GOVERNMENT OF GILGIT-BALTISTAN**

In supersession of this department's M.M of even number dated 11th January, 2018 on the subject cited above:

- (i)
- (ii). *For appointments to BS-01 to BS-05 posts there shall be no screening test, whereas candidates shall only have to qualify particular skill test, if required for the said post, in accordance with the Establishment Division, Islamabad OM No. F.53/1/2008/SP, dated 3rd March, 2015 titled "Mechanism to ensure merit based recruitments in the Ministries/ Divisions/ Subordinate offices/ Autonomous/ Semi-Autonomous Bodies/ Corporations/ Companies/ Authorities".*

8. We now consider it apt to discuss the termination order to further highlight the conduct of department in terminating the petitioners. The termination order is in Urdu language which is translated into English and is reproduced below:

"All development project staff is informed that due to running out of the development project budget you are terminated from duty w.e.f. 01.06.2018".

It is noted that the project was converted and posts were created in the year 2016 while termination of services of the petitioners took place in the year 2018 i.e., after about two years of conversion of the project. The authorities of Agriculture Department Astore might know that allocation of budget for meeting the expenditure of newly created posts is the responsibility of Finance Division who sanctioned creation of the said posts. After transferring the project from development to non-development side with posts, budget alone had no relevancy for terminating services of the project employees, who otherwise, in view of transfer of project with posts to non-development side, could stand on permanent footing automatically, however subject to the condition that their initial appointments in the project were made in accordance with the prescribed method. In a similar case when a project employee was terminated on being transferred to regular side the Supreme Court of Pakistan reinstated him. The case is 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. Instead the Government by cherry picking, had appointed some other person in place of the appellant. The case of the present Appellant is covered by the principle laid down by this Court in the case of Civil Appeals Nos.134-P of 2013 etc.(Government of KPK through Secretary, Agriculture v Amanullah and others) as the appellant was discriminated against and was entitled to continue the job with the employees who were similarly placed and were allowed induction on regular basis”

9. Coming to the contention of the learned Advocate regarding grant of employment in lieu of grant of land is held illegal by superior Courts of Pakistan as enshrined in a judgment reported as 1993 SCMR 1287 titled as “*Muhammad Khan v Niaz Muhammad*”. The relevant para is reproduced below: -

“7. As regards the policy of making appointments against land grants we find that this amounts to in fact, sale of public office for property. Not only it is against the Constitutional Law applicable to public office but is not conducive to public interest. What could be done within the framework of the law was to create a margin of preference for those who make such grants, other conditions of eligibility and suitability and fitness being equal. We, therefore, overrule this practice prospectively.”

In the above backdrop, termination of services of the petitioners is not sustainable. The learned Chief Court, Gilgit did not consider the above material facts and went on to pass a non-speaking order on the ground that indulgence of Court in each and every matter relating to policies/ acts introduced for smooth functioning of Government was not desirable. There is no cavil to this proposition of law, however we observe that this issue is not of policy but pertains to the legal rights of the petitioners as discussed above. Even policies for that matter cannot be framed to violate laws.

9. In sequel to the above discussion, we convert the above CPLA No. 106/2018 into an appeal and the same is allowed. We hold the action of respondents, to terminate services of the petitioners and advertising the posts for making fresh appointments to be oppressive and against their rights. Consequently, order dated 09.07.2018 passed by the learned Gilgit-

Baltistan Chief Court; Gilgit in Writ Petition 111/2018 along with termination orders dated 31.05.2018 issued by the Deputy Director Agriculture Astore is set aside. The respondents are directed to regularize services of the petitioners against the newly created posts from the date of termination against the posts, which were held by them before termination.

10. We observe that similar cases are brought to this Court relating to regularization of project employees. It is made clear that such cases require to be decided on their own facts and grounds, keeping in view the peculiar circumstances of each case. Therefore, this judgment shall not be made a precedent for its application to the cases of other project employees whether they are pending adjudication before this Court or to be brought to this Court in future. This judgment is also delivered keeping in view the peculiar circumstances of the present case.

11. The above were the reasons for our short order dated 22.10.2020 which is reproduced below:

“Case heard and record perused. For the reasons to be recorded later, we convert the above CPLA No. 106/2018 into an appeal and same is allowed. The order dated 09.07.2018 passed by the learned Chief Court, Gilgit-Baltistan in W.P. No. 111/2018 is set aside”

Chief Judge

Judge

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