

**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.60/2018

(Against judgment dated 25.04.2018 passed by the Gilgit-Baltistan Chief Court, Gilgit in Writ Petition No. 156/2016)

1. Provincial Government through Chief Secretary Gilgit-Baltistan
2. Secretary Health Gilgit-Baltistan
3. Director Health Services, Gilgit
4. Deputy Director Health Services, Gilgit
5. District Health Officer, Gilgit
6. Medical Superintendent District Headquarter Hospital, Gilgit
7. Section Officer Health Department, Gilgit

.....Petitioners

Versus

1. Raja Muhammad Haleem Khan s/o Faiz Muhammad Khan (Sweeper) BS-1 working as JMT Health Department, Gilgit
2. Muhammad Ijaz s/o Alif Khan (Naib Qasid) BS-02, working as Vaccinator Health Department, Gilgit
3. Khadim Hussain s/o Mehrban Ali, Ward Servant BS-01, working as JMT, Health Department, Gilgit
4. Shafeeq ur Rehman s/o Muhammad Yousuf (Naib Qasid) BS-02, working as JMT, Health Department, Gilgit
5. Ali Shah s/o Maddad (Watchman) working as JMT, Health Department, Gilgit

..... Respondents

PRESENT:

For the Petitioners : The Advocate General Gilgit-Baltistan

For the respondents: Muhammad Saleem Khan, Advocate

Date of Hearing: 22.03.2021

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose of the instant CPLA directed against judgment dated 25.04.2018 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 156/2016 whereby, the present petitioners were directed to adjust services of the present respondents against the posts held by them with immediate effect.

2. Brief facts of the case are that the present respondents while working against grade-1 & 2 posts in various offices of Health Department, Gilgit-Baltistan and upon getting trainings in relevant fields were allowed to perform their duties against the posts of Junior Medical Technicians (JMTs) and Vaccinator. They continued to work as such till advertisement of the said posts on 19.07.2016 for fresh appointments. The present respondents, being expectants for adjustment against the said posts, felt aggrieved because other similarly placed persons were adjusted/appointed without advertisement of the posts and putting them to go through the process of test/interview. As such, they resorted to legal remedy before the Courts of law by way of Writ Petition No. 156/2016 in the learned Gilgit-Baltistan Chief Court. The learned Chief Court, after hearing the parties, accepted their writ petition and directed the present petitioners to adjust services of the present respondents against the said posts with immediate effect. Being aggrieved and dissatisfied with the impugned judgment, the present petitioners have now approached this Court with the instant civil petition for leave to appeal.

3. The learned Advocate General, Gilgit-Baltistan argued that the learned Gilgit-Baltistan Chief Court failed to apply its judicious mind to the facts and grounds of the case because claim of the present respondents for adjustment of their services against the posts of Junior Medical Technicians and Vaccinator was not permissible under the law/rules without exhausting the procedure prescribed there-under. The learned Advocate General next argued that posts meant for direct recruitment could only be filled through open merit by advertising the said posts followed by test/interview; hence claim of respondents of direct adjustment without observing the legal formalities could not be entertained. It was next argued by the learned Advocate General that assigning of the additional duties to the present respondents was with a view to overcome the deficiency in the relevant fields which did not confer any right on the present respondent to claim regular adjustment against the said posts and prayed that since the impugned judgment suffered from illegality and infirmity, hence the same may please be set aside.

4. On the other hand, the learned counsel for the respondents while defending the impugned judgment argued that other similarly placed person were adjusted by the present petitioners without putting them to undergo the test/interview process, hence the present respondents also deserved similar treatment. It was next argued by the learned counsel for the respondent that act of the present petitioners of adjusting other similarly placed persons and ignoring present respondents is a clear discrimination and injustice and against the principle of equal protection enshrined under the Constitution. Concluding his submissions, the learned counsel for the present respondents prayed for maintaining/upholding the impugned judgment.

5. Arguments pro and contra heard. With the able assistance of the learned counsels, we have also gone through the case record as well as the impugned judgment minutely.

6. It is an admitted fact that the present respondents were working against various grade-1 & 2 posts in health Department, Gilgit-Baltistan. There is no denial to the fact too that the present respondents got trainings of Junior Medical Technicians and Vaccinator and were assigned additional charge of the said posts and they worked as such. It is the case of the present respondents that they deserved to be adjusted against the disputed posts in line with other similarly persons who were adjusted against various technical posts on the basis of having relevant trainings by them. In order to substantiate the fact of adjustment of other similarly placed persons, the learned counsel for the respondents, through a civil misc. application, produced certain office orders of Health Department, Gilgit-Baltistan which are reproduced below:

(1)

**"GOVERNMENT OF GILGIT-BALTISTAN
DIRECTORATE OF HEALTH SERVICES
GILGIT-BALTISTAN**

**NO. 1727/DHS/ESTB/2013
DATED 27TH MARCH, 2013**

OFFICE ORDER

Mr. Arab Hussain Chowkidar BPS-1 (Trained Nursing) DHQ Gilgit is hereby adjusted/appointed against the clear vacant post of Junior Medical Technician BPS-09 C.D. Khomar Jutial DHQ Gilgit with immediate effect and till further orders.

He will be on probation for a period of 01 year under section 6 of the Civil Servants Act, 1973. If no order is issued after expiry of 01 year, the probation shall be deemed to have been extended for further period of one year under section 03 of the said rules.

*(Dr. Muhammad Nazeem Khan)
Director Health Services Gilgit”*

(2)

**“OFFICE OF THE MEDICAL SUPERINTENDENT
DISTRICT HEADQUARTER HOSPITAL GILGIT**

OFFICE ORDER

With the approval of the competent authority and in exercise of the Administrative Powers Delegated to the Medical Superintendent DHQ Hospital, under Kashmir Affairs, Northern Affairs and Saffron Division Islamabad letter NO. F.3(6)/99-NA-1 dated 01.02.2000, the following Ward Servants/ Chowkidar (Trained Nursing Assistant) of DHQ Hospital are hereby adjusted against the clear vacant posts of Nursing Assistant (BPS-05) with effect from 01.04.2009 until furthers orders

S	Name & Designation	Adjusted against
1	<i>Mr. Niat Khan, Ward Servant (Trained Nursing Assistant)</i>	<i>Adjusted against the post of Nursing Assistant (BPS-05)</i>
2	<i>Mr. Farman Ali, Ward Servant (Trained Nursing Assistant)</i>	<i>Adjusted against the post of Nursing Assistant (BPS-05)</i>
3	<i>Mr. Qadir Khan, Ward Servant (Trained Nursing Assistant)</i>	<i>Adjusted against the post of Nursing Assistant (BPS-05)</i>
4	<i>Mr. Muhammad Sabir, Ward Servant (Trained Nursing Assistant)</i>	<i>Adjusted against the post of Nursing Assistant (BPS-05)</i>
5	<i>Mr. Hidayat Hussain, Ward Servant (Trained Nursing Assistant)</i>	<i>Adjusted against the post of Nursing Assistant (BPS-05)</i>
6	<i>Mr. Zafar Iqbal, Ward Servant (Trained Nursing Assistant)</i>	<i>Adjusted against the post of Nursing Assistant (BPS-05)</i>

They will be on probation for a period of 01 year extendable for a further period of one year under section 3 of the Civil Servants Act, 1973. If no order is issued under sub section 3 of rule 21 of Civil Servant (Appointment, Promotion and Transfer) Rules, 1973, and after expiry of first year of probation period shall be deemed to have been extended for further period of one year.

*(Medical Superintendent)
DHQ Hospital Gilgit*

*No. 1115/DHQ/2009
DATED 26TH MARCH, 2009”*

(3)

**“GOVERNMENT OF GILGIT-BALTISTAN
DIRECTORATE OF HEALTH SERVICES
GILGIT-BALTISTAN**

*NO. 1727/DHS/ESTB/2013
DATED 1st April, 2013*

OFFICE ORDER

Mr. Niat Murad Ward Servant BPS-02 ((Trained Nursing) DHQ Gilgit attached with DHO Ghizer and already working as Nursing Assistant is hereby adjusted/appointed against the clear vacant post of Nursing Assistant BPS-04 DHQ Gilgit with immediate effect.

He will be on probation for a period of 01 year under section 6 of the Civil Servants Act, 1973. If no order is issued after expiry of 1st year, the probation shall be deemed to have been extended for further period of 01 year under section 03 of the said rules.

*(Dr. Muhammad Nazeem Khan)
Director Health Services Gilgit”*

(4)

**“NO. 1408/DHO/ESTB/2010
GOVERNMENT OF GILGIT-BALTISTAN
OFFICE OF THE DISTRICT HEALTH OFFICER GILGIT**

DATED 12 November, 2010

OFFICE ORDER

Mr. Azur Khan, (Trained Nursing Assistant) Chowkidar of DHO Office Gilgit is hereby adjusted as Nursing Assistant (B-04) against a clear vacant post of Nursing Assistant at DHQ Office with immediate effect.

*(Dr. Muhammad Nazeem Khan)
Director Health Services Gilgit”*

7. Through the above 04 Office Orders, 09 persons working as Ward Servant and Chowkidars were adjusted/appointed against the clear vacant posts of Junior Medical Technicians (JMTs) and Nursing Assistants without advertising and following any proper test/interview. The present respondents were also standing exactly on the same footings and were similarly placed persons having the working experience and requisite qualifications and were deserving to be treated alike. But the authorities of the concerned department, for the reasons best known to them, did not do so and left the present respondents to check the fate of adjustment of their services through test/interview. It is made clear that there is no cavil to the legal proposition that every post meant for direct recruitment be filled up through open merit and after observing all the codal formalities, but in the case in hand, the situation is different as perusal of the above Office Orders, it is crystal clear that few similar posts were filled by internally adjusting Ward Servants and Chowkidars while the posts against which the present respondents were working, were advertized for fresh appointments through test/interview which gave rise to resentment and heart burning to the present respondents. This act of pick and chose and failure to treat the similarly placed persons in similar manner on the part of authorities of concerned department smacked malafides and requires to be discouraged for the times to come. The present respondents while working against the disputed posts had also gained experience of those posts which had already been utilized by the petitioners. In number of similar cases, this Court has been issuing directives to the public functionaries for avoiding such practice. For the sake of reference, relevant part from one of those cases titled Provincial Government & others Vs. Raziq Hussain CPLA No. 33/2018 wherein this Court has held as under:

“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"

8. As far as experience gained by the present respondent during performance of duties against the disputed posts and its best utilization by

the health department is concerned, this Court in a case titled Provincial Government & others Vs. Manzoor Ahmed CPLA Under Objection No. 40/2020 has held as under:

"The second aspect of the case is the experience. Experience is more often than not a prerequisite attached to a post(s) for all the new recruitments. The appointees on contracts, who worked against a particular post in a government service for whatever period, acquire knowledge and experience of the posts held by them on contract; as such they can produce better result and services than the new appointees. However, it has to be seen that initial appointments of such contractual appointees have been made in accordance with the method prescribed under the relevant law/ rules inasmuch as such appointments were urgently required to cater for the genuine requirements of the concerned departments".

9. In view of above factual and legal position, we are of the considered view that the Health Department, Gilgit-Baltistan has badly failed to exercise their powers in just and fair manner which tantamount to discrimination and violation of the principal of equal protection of law enshrined in the Constitution of Islamic Republic of Pakistan and Gilgit-Baltistan Order, 2018. The authorities of the Health Department are bound under the law to dispose of such cases strictly in accordance with the law/rules and ensure that their acts do not discriminate or prejudice other employees and create unreasonable classification amongst the similarly placed set of employees. In addition to this, the principle of fair dealing and fair play is also of great import in Islamic justice system. The authorities are bound to obey the commands of Holy Quran and Sunnah which command to treat people justly and deal them in a fair manner as under:-

"God commands justice and fair dealing..." [Quran, 16:90]

10. Foregoing in view, we do not find any illegality or infirmity in the impugned judgment which could call for interference of this Court. Therefore, leave in the above CPLA No. 60/2018 is refused. The impugned

judgment dated 25.04.2018 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No 156/2016 is maintained. These were the reasons for our short order dated 22.03.2021 which is reproduced below:

“Case heard and record perused. From perusal of the record, it reveals that certain counterparts/ co-associates of the respondents have been regularized from time to time while the respondents have not been considered, as such they have been deprived of the benefits of regularization. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 60/2018 is refused. The impugned judgment dated 25.04.2018 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 156/2016 is maintained”

Chief Judge

Judge

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