

**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. 89/2020

(against the judgment dated 31.05.2019 passed by the Gilgit-Baltistan
Chief Court in writ petition No. 10/2018)

**Govt. of Gilgit-Baltistan
through Chief Secretary & others** **Petitioners**

Versus

Safiullah ... Respondent

For the petitioners The Advocate General, GB

Date of Hearing: 29.06.2020

JUDGMENT

Syed Arshad Hussain Shah C.J:- - This is a civil petition for leave to appeal against the judgment passed by the learned Gilgit-Baltistan Chief Court, Gilgit on 31.05.2019 in Civil Revision No. 10/2018 whereby the judgment/ decrees passed by the learned 1st Appellate Court was maintained.

1. Brief facts of the case are that the present respondent filed a suit for declaration and perpetual injunction against the present petitioners before the learned Sr. Civil Judge, Gilgit to the effect that the present respondent

was appointed as Plant Operator BS-02 on 12th August, 2010 in the Norway Workshop at Gilgit. The present respondent claimed to have performed his duties and received salary for two months. It is the claim of the respondent before the learned Courts below that from the month of October, 2010, the department stopped paying him salary while he continued to perform his duties till institution of suit before the Court of learned Sr. Civil Judge, Gilgit. The learned Sr. Civil Judge, Gilgit after framing as many as 15 issues and on the basis of evidence and statements of witnesses decreed the suit in favour of the present respondent. The petitioners being aggrieved and dissatisfied with the judgment/ decree passed by the learned Sr. Civil Judge, Gilgit filed Civil First Appeal No. 47/2017 before the learned Additional District Judge, Gilgit. The learned Additional District Judge, Gilgit after hearing the parties dismissed the aforementioned civil first appeal. The present petitioners felt aggrieved with the judgment of the learned Additional District Judge, Gilgit filed Civil Revision No. 10/2018 before the learned Gilgit-Baltistan Chief Court, Gilgit, which too met the same fate, hence this civil petition for leave to appeal before this Court. The instant civil petition for leave to appeal came up for preliminary hearing before this Court on 29.06.2020. After hearing the matter at some length, we through our short order of even date, dismissed the same.

2. The case in hand involves only three questions, first whether the present respondent was appointed as Plant Operator BS-2 in Norway Workshop, Gilgit; secondly whether his service book was prepared in the

office of the concerned department; and thirdly whether he got salaries for the two months and thereafter continued to perform as such till institution of the suit before the learned Sr. Civil Judge, Gilgit. All the above questions have been proved before the Courts of the learned Sr. Civil Judge, Gilgit and the Additional District Judge, Gilgit. The decisive factor of the case is the statements of employees/ representatives of the present petitioners before the learned Courts below whereby the above questions have been proved in affirmative. In addition to the above, the verification list of employees of that department also carries name of the respondent at serial No. 625. Even if it is assumed that the employees of the concerned department had given false statements before the Courts below confirming appointment of the respondent and performance of duties by him, the department ought to have taken legal action against them, but neither record of the case speaks of it nor the learned Advocate General GB could reply to this question. Be that as it may, the matter involves factual controversies which have been resolved before the three learned Courts below through their concurrent findings. When there are concurrent findings of the Courts below as to the facts of a matter, the apex Courts of Pakistan keep their hands off from interfering with the factual position of the matters.

3. Apart from the factual position discussed hereinabove, it would be worthwhile to mention here the legal as well as Islamic parameters of the matter in hand. Salary against the duty performed by an employee is his absolute legal right which can neither be denied nor can the employee be

put to unnecessary litigations to get his legal right and further compel him to sustain mental agony and financial loss for no fault of his, that too when the duty rendered by the employee has duly been proved. Duty/work obtained from an employee without salary is against the Islamic injunctions which have envisaged payment of salary/ wages before sweat is dried. There are various Ahadis in this regard. Abdullah ibn Umar reported: The Messenger of Allah, peace and blessings be upon him, said, "**Pay the worker his wages before his sweat has dried.**" (Source: Sunan Ibn Mājah 2443 & Mishqat Masabih page 208 Volume No. 3). Furthermore, performance of duty without salary/ wages amounts to forced labour which is forbidden in Islam and in the Constitution of Pakistan as well.

4. Under the law, it is obligatory upon the public functionaries to redress grievances of general public including their subordinate employees in accordance with the law. In this regard, the legislature has inserted Section 24A in the General Clauses Acts laying down responsibilities of the public functionaries. The said section is reproduced herein below:

24A. Exercise of power under enactments.- (1). Where by or under any enactment, a power to make any order to give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment".

Perusal of the contents of the above section of the General Clauses Acts makes it abundantly clear that public functionaries are duty bound to decide applications/ grievances of citizen without fear, favour, nepotism, with reasons, within reasonable time and without discrimination. The

Hon'ble Supreme Court of Pakistan in a case reported as **2015 SCMR 630** has held as under: (**at page 37 para 9**).

“The exercise of discretionary power must be rational and have a nexus with the objectives of the underlying legislature, when it confers a wide ranging power it must be deemed to have assumed that the power will be, firstly, exercised in good faith, secondly, for the advancement of the object of the legislation, and thirdly in a reasonable manner. Section 24A of the General Clauses Act, 1897, reiterates the principle that statutory powers is to be exercised “reasonably, fairly, justly and for the advancement of the purposes of the enactment” and further clarifies that executive authority must give reasons for its decisions. Any action by any executive authority which is violative of these principles is liable to be struck down”.

5. Arguments advanced by the learned Advocate General GB have been considered, record of the case perused and the impugned judgment dated 31.05.2018 passed by the learned Gilgit-Baltistan Chief Court, Gilgit has also been gone through. We could not find any infirmity or illegality in the judgment passed by the learned Chief Court, GB. Foregoing in view, the instant civil petition for leave to appeal being devoid of merit and legal force is hereby dismissed and the leave is refused. As a result whereof, the concurrent judgments/ decrees passed by the learned Courts below are maintained. The above were the reasons for our short dated 29.06.2020.

Announced
04.07.2020

Chief Judge

Judge