

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

- 1. Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.**
- 2. Mr. Justice Muzaffar Ali, Judge.**

ADMINISTRATIVE APPEAL/REPRESENTATION
NO.01/2013.

**REPRESENTATION/APPEAL UNDER THE CIVIL
SERVANTS (APPEAL) RULES 1977 READ WITH THE
SUPREME APPELLATE COURT GILGIT-BALTISTAN
EMPLOYEES, SERVICE (AMENDED) RULES 2009
AGAINST THE ILLEGAL, VOID AB INITIO TERMINATION
ORDER DATED 2ND JANUARY, 2012, WHEREIN THE
SERVICES OF THE APPELLANT/PETITIONER WERE
TERMINATED ARBITRARILY AND WITHOUT ASSIGNING
ANY CAUSE, WHICH IS AGAINST THE PRINCIPAL OF
NATURAL JUSTICE.**

Present:-

Muhammad Ibrahim appellant present in person.

DATE of HEARING: - 14-09-2015.

ORDER

Dr. Rana Muhammad Shamim,, CJ..... The appellant is present before us today in person and states that he was initially appointed as Assistant Registrar Judicial BPS-17 on adhoc basis vide Office Order No. SAC.E.12/2009 dated 09.07.2009. Later on his services have been regularized vide Office Order NO. SAC.E-12/2010 dated 24th April 2010 after advertising the posts in the newspaper and conducting proper test/interview. He further submits that he has been upgraded along with 04 others officers to the extent of the up-gradation of the incumbents only vide Notification No. SAC.E-2 (admin-1)/2011 dated 10.05.2011. That there were no terms and conditions laid down in the last order of his up-gradation for probation period. He also submits that during the vacations of this Court his termination order was issued on 02.01.2012 without issuance of show cause notice and explanation etc. which is according to him unlawful, void and has been issued without any lawful authority being against the principles of natural justice. That about termination of his services, he was informed telephonically and as such he was condemned unheard. He further states that

comments/Para-wise reply submitted by the learned Registrar on the directions of this Court dated 16.05.2013, in which no allegation was leveled against him and no reason was given for termination of his services. He read out the order dated 24.04.2010, which is reproduced as under:-

“OFFICE ORDER:

As recommended by the Departmental Promotion/Selection Committee and approved by the Hon’ble Chief Judge Supreme Appellate Court Gilgit-Baltistan, Mr. Muhammad Ibrahim, already working as Assistant Registrar, on adhoc basis is appointed as Assistant Registrar Judicial (BPS-17) on regular basis, with immediate effect.

He will be on probation for a period of one year under the provision of existing rules. If no order is issued on expiry of first probation period if the services of incumbent are found not satisfactory, the probation period shall be extended for further period as prescribed in the relevant Rules”.

He contended that in the above Office Order, it was mentioned that he would be on probation for a period of one year and in case of not satisfactory services his probation period will be extended for further a period of one year as prescribed in the relevant Rules.

Since, he was confirmed after completion of one year probation, consequently, he was up-graded in BPS-18 on his satisfactory services and good performance. He also referred the GBLR publication dated **30.11.2011**, which is reproduced as under:-

“The Supreme Appellate Court Gilgit-Baltistan is also regularly publishing Gilgit-Baltistan Law Reports (GBLR) containing important decisions of the court in the supervision of Assistant Registrar, In-charge Printing, Publication and Human Rights Wing and he has rendered valuable contributions in compilation and publication of this book and GBLR.”

He further submits that his services were recognized by the then Chief Judge of this apex Court regarding the Annual Report 2010 and his work has also been admired at that time. He further submits that during

the vacation it was shocking for him to know that his services were terminated, which is against the principles of natural justice and equity.

On the other hand, the comments/Para-wise reply submitted on behalf of the learned Registrar of this court on the direction of this court vide order dated 16.05.2013, which are reproduced as below:-

Subject:- **Parawise reply on behalf of Registrar, Supreme Appellate Court Gilgit-Baltistan in Administrative appeal submitted by Mr. Muhammad Ibrahim Ex.Assistant Registrar, Supreme Appellate Court Gilgit-Baltistan.**

As per direction of the Hon'ble Supreme Appellate Court Gilgit-Baltistan , in Court notice dated,16-05-2015, the parawise reply on behalf of the undersigned is as under:-

Para 1 to 3 is admitted being factual position, whereas the reply on Para 4 to 9 along with grounds of appeal is as under:-

Mr. Muhammad Ibrahim was appointed in Supreme Appellate Court, vide Order dated 09-07-2009 as Assistant Registrar, on adhoc basis for a period of six months. Thereafter, vide order dated 04-01-2010; his adhoc appointment period was extended for a further period of six months w.e.f 09-01-2009.

Vide office order dated 24th April, 2010, he was appointed on regular basis as Assistant Registrar and was placed on probation period of one year, with the condition that if during first year of probation period of one year, with the condition that if during first year of probation his service had not been found satisfactory, the same shall continue for another year.

On expiry of one year of his employment on probation no order regarding termination of his probation period was passed, therefore, his probation period was deemed to have been extended for further one year as per terms of his appointment.

The present appeal can be considered in the light of the following rules supported with the decisions of the superior Courts:-

Rule 3 of Supreme Appellate Court, Service Structure (Modified/Re-enacted) Rules, 2009, provided as under:-

3. Terms and condition of service.

(1) Subject to any special provisions contained in these, Rules, the rules and orders for the time being in force and applicable to Civil Servants of corresponding grade/scale of the Federal Government shall regulate the terms and conditions of service of officers and servants of the Supreme Appellate Court Northern Areas (now Gilgit-Baltistan).

Section 21(2) (3) and (4) of Civil Servant (Appointment, Promotion and Transfer), Rules 1973 provides as under:-

21. Probation

(1)

(2) The period of probation may be curtailed for good and sufficient reasons, to be recorded, or, if considered necessary, it may be extended for a period not exceeding one year as may be specified at the time of appointment.

(3) On successful completion of probation period, the appointing authority shall, by specific order, terminate the probation.

(4) If no order is issued under sub-rule (3), on the expiry of the first year of probation period, the period of probation shall be deemed to have been extended under sub-rule (2).

Section 11 of Civil Servants Act, 1973 provides as under:-

“11. Termination of Service: - (1) The Services of a Civil Servant may be terminated without notice:-

(i) During the initial or extended period of his probation.”

Rule 5 of Supreme Appellate Court Service structure (Modified/Reenacted Rules, 2009 provided as under:-

“5. Opportunity of showing cause. When an action is proposed to be taken against an officer or servant of the Court under Rule 4, he shall be informed in writing of the action proposed to be taken in regard to him and the grounds of the action and he shall be given a reasonable opportunity of showing cause against the action:-

Provided that no such opportunity shall be given when the Chief Judge or the Registrar, as the case may be, is satisfied that in the circumstances of the case, it is not expedient in the public interest to give such opportunity.”

The above provisions clearly indicate that Mr. Muhammad Ibrahim was on probation and the competent authority was authorized to terminate his service without any notice on account of his service on probation.

In this view of the matter it is for the competent authority to decide whether an employee is fit to be retained in service or not being an administrative matter and there seem no illegality in such exercise of power, by the competent authority. In this connection the Superior Courts in a number of judgments has decided as under:-

In case titled Syed Tahir Hussain Shirazi Versus the Governor of the Punjab and others (1990 SCMR 1510) it was held as under:-

“The services of Mr. Tahir Hussain Shirazi, Additional District and Sessions Judge, R.Y.Khan, are terminated with immediate effect during the probation period. No vested rights of the Petitioner are involved and his service having been competently terminated, leave no scope for going deeper into the recording of remarks. Leave refused”

In this case of Muhammad Siddique Javed Chaudhry and others (PLD 1974 SC 393) it was held as under:-

"Petitioner could make out no case for successful challenging order of termination of service while on probation. Order of termination of service contained no stigma and required no show-cause procedure, as such."

As the case titled Muhammad Sami Ullah Ghauri Versus secretary, Population Welfare Division, Islamabad and others (1991) SCMR 382) it was held as under:-

"Civil servant was no probation and during probation competent authority could dispense with his services. No illegality thus was committed by the authority. No point of law was involved in petition. Leave to appeal was refused."

In view of what has been discussed in the preceding paragraphs, Mr. Muhammad Ibrahim was appointed on regular basis on 24-04-2010 with probation for a period of one year further extendable to another year. On completion of initial period of probation, no order regarding termination of his probation was passed, therefore, the period of probation would be deemed to have been extended to another year in term of section 21 (4) of Civil Servants (Appointment/Promotion and Transfer), Rules 1973. The probation period of Mr. Muhammad Ibrahim had to be terminated on 23-04-2012, but before completion of his probation period, his services were terminated on 02-01-2012, on account of services on probation without any notice under Section 11 of Civil Servants Act, 1973.

In view of the above discussion it is evident from the record that the services of Mr. Muhammad Ibrahim were competently and lawfully terminated with immediate effect on account of services on probation and such termination of service does not require any notice either under Rule 5 of Supreme Appellate Court Service Structure (Modified/Re-enacted) Rules, 2009, or under section 11 of Civil Servant Act, 1973. Likewise, as per requirement of Rule (11) of Supreme Appellate Court Service Structure (Modified/Re-enacted) Rules, 2009, the subject appeal is not maintainable. However, the relevant rule (11) of Supreme Appellate Court is reproduced as under:-

11. Appeal. I where any penalty is imposed by the Registrar, an appeal shall lie from his order to the Chief Judge, and where any penalty is imposed by the Chief Judge, otherwise than on appeal from an order of the Registrar, an appeal shall lie from his order to the Division Bench of the Supreme Appellate Court Northern Areas.

A careful perusal of the aforesaid rule reveals that a remedy of appeal is available to an aggrieved employee of the Supreme Appellate Court, against any penalty imposed by the Chief Judge of Supreme Appellate Court Gilgit-Baltistan, in the Division Bench of Supreme Appellate Court, whereas in this case under consideration no penalty i.e. Major or Minor penalty which is reproduced as under:-

4. (a) Minor penalties:-

- (i) Censure;
- (ii) Withholding for a specific period, promotion or increment otherwise than for unfitness;
- (iii) Stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar;
- (iv) Recovery from pay of the whole or any part of any pecuniary loss caused to Government by negligence or breach of orders;

(b) Major Penalties:-

- Reduction to a lower post or time-scale, or to a lower stage in a time-scale;
- Compulsory retirement;
- Removal from service; and
- Dismissal from service.
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(2) Removal from service does not but dismissal from service does disqualify from future employment.

(3) In this rule, removal or dismissal from service does not include the discharge of a person.

(a) Appointment on probation, during or in the expiry of the period of probation; or

(b) Appointed otherwise than under a contract, to hold a temporary appointment, on the expiration of the period of appointment; or

(c) Engaged under a contract, in accordance with the terms of the contract.

It is clear from perusal of the aforesaid rules that termination from service has not been shown as major or minor penalty in the Supreme Appellate Court service structure (Modified/Re-enacted) Rules, 2009. Thus in view of the legal position supported with numbers of decisions of the Superior Courts related with relevant rules of the Supreme Appellate Court Service Structure (Modified/Re-enacted) Rules, 2009 showing therein the remedy of appeal available to an appellant against the decision of Chief Judge, Supreme Appellate Court, the appellant has no case and at the present appeal is not maintainable as no penalty has been imposed against appellant by the then Chief Judge, Supreme Appellate Court Gilgit-Baltistan. Likewise, the documents produced and attached by the appellant in support of his appeal have been examined which are not favorable in the case of appellant.

We have heard the appellant and perused the record as well as comments/para-wise reply of the Registrar of this court. We are in agreement with the para-wise reply of the Registrar of this Court and hold that the services of the present appellant were competently and lawfully terminated. Neither Rule 5 of Supreme Appellate Court Service

Structure (Modified/Re-enacted) Rules, 2009, nor Section 11 of Civil Servant Act, 1973, does require any show cause notice prior to the termination of his services during probation period, hence, the instant administrative appeal No. 01/2013 is not maintainable. The appeal is accordingly dismissed being not maintainable.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?