

**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.28/2019

(Against the judgment dated 18.10.2018 passed by the Gilgit-Baltistan Service Tribunal
in Service Appeal No. 07/2017)

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| 1. Provincial Government through Chief Secretary
2. Secretary Education Gilgit-Baltistan
3. Director Education Gilgit-Baltistan
4. Deputy Director Education District Skardu
5. District Accounts Officer Skardu. | Petitioners |
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Versus

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| Attaullah s/o Amanullah r/o Satellite Town
Tehsil & District Skardu. | Respondent |
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PRESENT:

- For the Petitioners : The Advocate General Gilgit-Baltistan
 Date of Hearing : **10.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose of the instant petition directed against judgment dated 18.10.2018 passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 07/2017 filed by the respondent which was accepted.

2. Brief facts gathered from the record of case are that in pursuance of an advertisement of Education Department Skardu published in daily K2 on 13.07.2011, the respondent applied and got selected against the post of Lab Assistant (BPS-09) and joined his duties as such w.e.f. 01.03.2012. The respondent claimed to have not been paid salary from the date of joining of service till institution of service appeal before the learned GB Service Tribunal. Prior to institution of service appeal, the respondent submitted several representations to the concerned authorities of Education Department, GB, but remained unsuccessful. The learned Service Tribunal, after discussing all material facts and grounds, accepted the service appeal

and directed the petitioners to release salary of the respondent from the date of joining and the employment of the respondent as Lab Assistant (BPS-09) was also ordered to be protected. The petitioners have now assailed the impugned judgment before this Court by way of the present Civil Petition for Leave to Appeal.

3. The learned Advocate General, Gilgit-Baltistan contended that judgment dated 18.10.2018 passed by the learned Service Tribunal was against the facts and grounds because the respondent was appointed as Lab Assistant without fulfilling the codal formalities i.e. test/ interview. The learned AG, GB next contended that the respondent claimed appointments against a non-existent post i.e. that no post of Lab Assistant BS-09 existed in the Middle School Gamba. He next argued that the respondent got the appointment order on the basis of a fake and forged document; as such the appointment order was itself *void ab-initio*. He maintained that the learned Service Tribunal did not advert to this crucial factual point as how a person could be appointed on a post which did not exist at all. The learned AG, Gilgit-Baltistan further argued that the learned Service Tribunal did not consider the legal point that the service appeal before it was barred by time and that the learned Service Tribunal went beyond its jurisdiction.

4. Case heard. Record as well as impugned judgment perused.

5. The plea of the learned Advocate General regarding appointment of the respondent without adherence to the prescribed method of appointment is not tenable. We are unable to understand that whether the appointment order was forcibly got by the petitioner? It is made clear that it was the concerned authority of Education Department, Skardu who issued appointment order, accepted his joining report and started taking duty from the respondent. Illegality or discrepancies committed by the authorities of Education Department could not be attributed to the respondent. Even if the appointment order is assumed to be got under illegal manner, again a question arises as to why the petitioners accepted joining report and started taking duty from a person who was alleged to have got an illegal appointment order? As far as plea regarding non-availability of the post of

Lab Assistant is concerned, it is clarified for correction of record of Education Department, Skardu that it was not the respondent who advertised the post in the newspaper; rather it was the Education Department, Skardu who advertised the post thereby calling applications for appointment to the said post. If the post of Lab Assistant did not exist with the department, then what were the reasons for placing the advertisement. Publication of this advertisement in the newspaper was neither disputed before the Service Tribunal nor before this Court. If for the sake of arguments, the post was mistakenly advertised and the appointment was made on the basis of this mistaken advertisement, then the appointing authority should have taken necessary steps for issuing corrigendum and withdrawal of the appointment order straightaway. But the file does not contain any document to prove that such steps were taken by Education Department, Skardu. Contrarily, the authorities of Education Department Skardu accepted his joining and started taking duty from the respondent from the year 2012 till now. We found a number of certificates issued by the concerned school administration of Skardu which showed that the respondent has been satisfactorily performing his duties, but without pay, such certificates have never been disputed nor objected to by the Education Department neither before the learned Service Tribunal nor before this Court.

6. In addition to the above, there is nothing available on record to show that the respondent had done anything unlawful to secure his appointment against the said post. If the department had any reason to believe that the respondent had done anything unlawful and illegally secured the appointment order, there must be a final order after due process of inquiry. In absence of adopting proper procedure under the law, stoppage of salary of an employee who rendered his duty is totally unjustified and unlawful and against the injunctions of Islam inasmuch as the same fall within the ambit of forced labour. In similar issue, the Hon'ble Supreme Court in a case reported as 2001 SCMR 1320 has held as under:

"In our considered opinion their salaries cannot be withheld on the ground that their appointment was illegal being made in violation of the relevant recruitment rules and in fact action should have been initiated against those who are sitting at the helm of affairs for such irregularities. The respondents cannot be held responsible in any manner whatsoever"

In addition to the above, in a recent judgment in the case titled Govt. of Gilgit-Baltistan & others Vs. Niaz Ali (CPLA No. 43/2019), this Court has also decided that non-payment of salary against the work obtained is illegal. For ease of reference, the relevant paragraph from the said judgment is reproduced below:

"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 Hadis in this regard. Abdullah ibn Umar reported: The Messenger of Allah (ﷺ), 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"

7. In sequel to the above discussion, we did not find any illegality, irregularity or infirmity in the impugned judgment dated 18.10.2019 passed by the learned Service Tribunal in Service Appeal 07/2017. Therefore, leave in the above CPLA No. 28/2019 is refused. The petitioners are directed to comply with the impugned judgment.

8. The above were the reasons for our short order dated 10.09.2020 which is reproduced below:

"The learned Advocate General, Gilgit-Baltistan has been heard at length. For the reasons to be recorded later, the above CPLA No. 28/2018 is dismissed"

Chief Judge

Judge

Whether fit for reporting (Yes / No)