

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN

S.M.C.No. 15/2010

(Pension of Ex. Chief Judge Supreme Appellate Court)

Advocate General Gilgit-Baltistan.

Date of hearing: 24-03-2011

JUDGMENT

Muhammad Nawaz Abbasi, CJ: This matter relates to the grant of pensionary benefit to Mr. Justice Qazie Ehsan Ullah Qureshi, former Chief Judge, Supreme appellate Court, Gilgit-Baltistan. The former Chief Judge Mr. Justice Qazi, Ehsan Ullah Qureshi, was appointed for a terms of three years as Chairman Court of Appeal Northern Areas in September, 2005 under Northern Areas Governance Order, 1994 and at the time of appointment he was drawing pension as a retired judge of the Peshawar High Court Peshawar under President Order No. 3 of 1997 (high Court Judges (Leave, pension and privileges) Order, 1997 issued under Article 205 read with fifth schedule of the Constitution of Pakistan. Subsequently in consequence to an amendment made in Northern Areas Governance Order, 1994 in 2007, the nomenclature of the Court of appeal was changed as Supreme Appellate Court, and the Chairman of Court of Appeal was redesignated as Chief Judge, Supreme Appellate Court, Gilgit-Baltistan. The former Chief Judge and two other Judges of the Supreme Appellate Court on completion of the tenure of three years of their service stood retired on 27 September 2008.

2. The Northern Areas Governor Order 1994 was substituted by Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009, wherein Part XI relates to (Judicature) of Gilgit-Baltistan. The former Judges of Supreme Appellate Court on the basis f Judgment of Supreme Court of Pakistan in AG Sindh and Others V/S M.U. Ahmed Ali PLD 2008 SC 522 on the question relating to the pension of the Judges of high Court and Federal Shariat Court of Pakistan filed a representation for grant of pension to them and Government of Pakistan of recommendation of incumbent Chief Judge Supreme Appellate Court having considered the matter in terms of article 60 (10) of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 allowed pension and other retirement benefits to the former Judges of Supreme Appellate Court as are admissible to the Judges of Supreme Court of Pakistan under President Order No.2 of 1997, Supreme Court Judges (Leave, Pension and privileges) Order, 1997. Mr. Justice Qazi Ehsan Ullah Qurshi, former Chief Judge, Supreme Appellate Court, Gilgit-Baltistan also opted pension under Para 19 (ii) of President Order No. 2 of 1997 referred above and Registrar of this Court vide letter dated 27-11-2010 with the approval of Chief Judge Supreme Appellate Court forwarded the matter to the Accountant General Pakistan Revenue/Gilgit-Baltistan

for necessary action and Accountant General Pakistan Revenue, Gilgit-Baltistan referred the case to the concerned quarter in the Federal Government of Pakistan for guidance. However in view of the importance of the matter involving interpretation of certain provisions of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 read with Constitution of Pakistan, it was considered necessary to place the matter before the Court for Judicial determination.

The composition of Supreme Appellate Court Gilgit-Baltistan, the qualification for appointment of Chief Judge and Judges of the Court and method of their appointment for a tenure of three years, the remuneration and other terms and condition of their service have been provided in article 60 of Gilgit-Baltistan (Empowerment and self Governance) Order 2009 as under:-

“60. Gilgit-Baltistan Supreme Appellate Court.- (1) There shall be constituted a Gilgit-Baltistan Supreme Appellate Court, referred to as the Supreme Appellate Court to be the highest Court of Appeal.

(2) Subject to the provisions of this Order, the Supreme Appellate Court shall have such jurisdiction as is or may be conferred on it by this Order or by under any law.

(3) The Supreme Appellate Court shall consist of a Chief Judge to be known as Chief Judge of Gilgit-Baltistan and **two other Judges:**

(4) The person holding office as Chief Judge or other Judge of the Supreme Appellate Court immediately before the commencement of this Order shall be deemed to be the Chief Judge or other Judge as the case may be appointed under this Order.

(5) The Chief Judge of Supreme Appellate Court shall be appointed by the Chairman of the Council on the advice of the Governor and other Judges shall be appointed by the Chairman on the advice of Governor after seeking views of the Chief Judge.

(6) a person shall not be appointed as the Chief Judge or Judge of the Supreme Appellate Court of Gilgit-Baltistan unless he

(a) has been a judge of Supreme Court of Pakistan or is qualified to be a judge of the Supreme Court of Pakistan: or

(b) has for a period of, or for periods aggregating, not less than five years been a Judge of a Chief Court: or

(c) for a period of or for periods aggregating, not less than fifteen years has been an advocate of a High Court.

Explanation.- in this sub-clause, the expression High Court includes,-

(a) the Chief Court of Gilgit-Baltistan, or an equivalent Court that existed in Gilgit-Baltistan before the 1st day of August, 2009” and
(b) a High Court in Pakistan including a High Court that existed in Pakistan at any time before the 1st day of July, 2009.

(7) Before entering upon office, the Chief Judge of Gilgit-Baltistan shall make before the Governor and any other Judge of the Supreme Appellate Court of Gilgit-

Baltistan shall make before the Chief Judge, oath in the form set out in the First Schedule.

The Chief Judge and Judges of Supreme Appellate Court Gilgit-Baltistan are appointed for a term of three years and can be appointed for such further term as the Government of Pakistan may determine under sub article (8) of article 60 of Governance Order 2009 as under:-

“(8) The Chief Judge and judges of the Supreme Appellate Court of Gilgit Baltistan Shall be appointed for a term not exceeding three years and may be appointed for such further term as the Government of Pakistan may determine, unless they sooner resign or are removed from office in accordance with law.

(9) At any time when the office of Chief Judge of Gilgit-Baltistan is vacant, or the Chief Judge, is absent or unable to perform the functions of his office due to any other cause, the next senior, Judge of the Supreme Appellate Court to act as Chief Judge of Gilgit-Baltistan.

The remuneration and other term and condition of service of Chief Judge and Judges of Supreme Appellate Court are provided under Article 60 (10) as admissible to the Chief Justice and Judges of Supreme Court of Pakistan as under:-

(10) The remuneration and other terms and conditions of service of the Chief Judge and of a Judge of the Gilgit-Baltistan Supreme Appellate Court shall be such as are admissible to the Chief Justice of Pakistan and Judges of the Supreme court of Pakistan.”

3. The term remuneration has been defined in Article 2(n) of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 as under:-

“(n) remuneration includes salary and pension”

4. The “Government” and “Judge” have been defined in Article 2 (h) and (j) of Governance Order 2009 as under:-

“(h).**Government**. means the Government of Gilgit-Baltistan”

“(j).**Judge**. In relation to the Gilgit-Baltistan Supreme Appellate or the Gilgit-Baltistan Chief Court, includes the Chief Judge of the Gilgit-Baltistan Supreme Appellate Court and the Chief Court;”

5. The Chief Judges and Judges of Supreme Appellate Court under Article 60(10) supra have been placed at Para in respect of remuneration and other terms and condition of service to the Chief Justice and Judges of the Supreme Court of Pakistan by implication of President Order No.2 of 1997, (Supreme Court Judges (Leave, Pension and privileges) Order, 1997) promulgated under Article 205 read with fifth schedule of constitution of Pakistan, which are read as under:-

FIFTH SCHEDULE

(Article 205)



REMUNERATION AND TERMS AND CONDITIONS OF SERVICE OF JUDGES THE SUPREME COUT

1. There shall be paid to the Chief Justice of Pakistan a salary of Rs.[9,900] per mensem, and to every other judge of the Supreme Court a salary of Rs.[9,500] per mensem [,or such higher salary as the president may, from time to time, determine.]
2. Every Judge of the Supreme Court shall be entitled to such privileges and allowances, and to such rights in respect of leave of absence and pension, as may be determined by the President, and until so determined, to the privileges, allowances and rights to which, immediately before the commencing day, the Judges of the Supreme Court of Pakistan were entitled.
3. The pension payable to a retired Judge of the Supreme Court, not be less than Rs. 1,500 per mensem or more than Rs. 1,950 per mensem, depending on the length of his service as Judge in that Court or a High Court:

Provided that the President may, from time to time, raise the minimum or maximum amount of pension so specified:-

Judge	Minimum amount	Maximum Amount
*****	*****	*****
*****	*****	*****
4. The widow of a Judge of the Supreme Court shall be entitled to a pension at the following rates, namely:		
	(a) If the Judge dies after retirement-50 per cent of the net pension payable to him' or (b) If the Judge dies after having rendered not less than three years' service as Judge and while still serving as such-50 per cent of the pension admissible to him at the minimum rate.	
5. The pension shall be payable to the widow life or, if she remarries, until her marriage.		
6. If the widow dies, the pension shall be payable;—		
	(a) To the sons of the judge who are less than twenty-one years of age, until they attain the age; and (b) To the unmarried daughters of the Judge who are less than twenty-one years of age, until they attain that age or are married, whichever first occurs.”	

6. Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 is a Legal Framework Order for the governance of Gilgit-Baltistan, which is deemed to have been issued by the Government of Pakistan under Article 258 of the Constitution of Pakistan 1973 and has the status of a sub-constitutional document for Gilgit-Baltistan like interim

Constitution of AJK Act 1974 in respect of internal affairs of Gilgit-Baltistan. The President Order No. 2 of 1997 Supreme Court Judges (Leave, pension and privileges) Order, 1997 issued under article 205 read with fifth schedule of constitution of Pakistan is not directly applicable to the Chief Judge and Judges of Supreme Appellate Court Gilgit-Baltistan rather it has been made applicable to them by implication under Article 60 (10) of Gilgit-Baltistan (Empowerment and Self governance) Order, 2009, Therefore for removal of doubt, the Supreme Appellate Court in its full Court meeting held on 07-07-2010 decided to issue a formal notification of adoption of President Order No. 2 of 1997 and in pursuance thereof, the notification incorporating President Order No. 2 of 1997 with additional notes and explanations attached therewith has been issued as under:-

**SUPREME APPELLATE COURT GILGIT-BALTISTAN
(LEAVE, PENSION AND PRIVILEGES)**

Dated:-7th July, 2010

NOTIFICATION.

No.SAC.E-1(1)(Admin-1)/2010 whereas, Article 60 (10) of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009, provides that remuneration and other terms and condition of service of the Chief Judge and of a Judge of Gilgit-Baltistan Supreme Appellate Court, shall be the same as are admissible to the Chief Justice of Pakistan and Judges of Supreme Court of Pakistan.

Now, in pursuance of the decision taken in full court meeting of Supreme Appellate Court held on 05-07-2010, the President Order No. 2 of 1997 in respect of remuneration, leave, pension, privileges and allowances of Judges is made part of this notification, which shall take effect at once and shall be deemed to have taken effect accordingly with additional note to some provision retrospectively. The other benefits mentioned in this notification as per decision of full Court will be permissible prospectively within the allocated budget of the Court, as under:-

**PRESIDENTIAL ORDER NO.2 OF 1997
PAT-1 PRELIMINARY**

1. **Short title and commencement:** (1) This order may be called the Supreme Court Judges (Leave Pension and privileges) Order, 1997.
(2) It shall come into force at once and paragraph 16 shall be deemed to have taken effect on the 27th July, 1991
2. **Definitions:** In this Order, unless there is anything repugnant in the subject or context:-
 - (a) "acting Chief judge" means a Judge appointed under Article 180 of the Constitution to act as Chief Justice;
 - (b) "acting Judge" means a Judge of High Court appointed under Article 181 of the Constitution to act temporarily as a Judge.
 - (c) "actual Service" means the time spent by a Judge on duty as such or in the performance of such other functions as he may perform under the Constitution and law, or at the request of the President, and includes vacations;
 - (d) "Chief Justice" means the Chief Justice of the Supreme Court.
 - (e) "High Court" means the High Court of a Province and shall include a High Court which existed in Pakistan at any time before the commencement of the Constitution, 1973;

- (f) "Judge" means a Judge of the Supreme Court and includes the Chief Justice, an acting Chief Justice and an acting Judge;
- (g) Judge of high Court includes the Chief Justice of a high Court;
- (h) "serving as judge" means service rendered as a Judge either in supreme Court only or in that Court and in one or more of the High Court;
- (i) "service for pension" means actual service and includes thirty days of the amount actually taken, whichever is less of each period of leave on full allowance;
- (j) "Supreme Court" means the supreme Court of Pakistan and shall include the Supreme Court which existed in Pakistan at any time: and
- (k) "vacation" means a vacation fixed by or under the Rules of the Supreme Court.

Note: The expressions "Chief Justice" "Supreme Court" and High Court in definition clause par-1 may be read as "Chief Judge" "Supreme Appellate Court" and "High Court."

PART-II LEAVE

2. Kinds of leave:-(1) subject to the provisions of this Order, leave granted to a Judge may, at this option, be either:-
 - (a) Leave on full salary; or
 - (b) Leave on half salary; or
 - (c) Leave partly on full salary and partly on half salary.

(2) For the purpose of this part, any period of leave on full salary, shall be reckoned as double that period of leave on half salary.
4. Leave account:- A leave account shall be kept for each Judge showing therein the amount of leave due to him in terms of leave on half salary and in such account three shall be:-
 - (i) credited to him in two separate columns
 - (a) a period equal to one-fourth of actual service: and
 - (b) where any duties are assigned to a Judge and, for reasons of such assignment, the judge does not avail of any vacation or avails of less than thirty days of vacation in any calendar year, in addition to the leave credited under the preceding sub-clause, a further period equal to double the period by which the vacation availed of by him falls short of thirty day; and
 - (ii) debited to him the period of all leave on full for half salary granted to him:

Provided that the opening credit at the commencement of this Order shall not exceed six months in the case of any Judge.
5. **Aggregate amount of leave:- (1)** The aggregate amount of leave granted to a Judge during his whole period of service as such shall not exceed, in terms of leave on half salary, thirty-six months.
- (2) This aggregate amount of leave on full salary granted to a Judge during his whole period of service as such shall not exceed one twenty-fourth of the period spent by him on actual service, but the leave credited to a Judge under sub-clause (b) of clause (i) of paragraph 4 shall not be subject to the limit herein specified.
- (3) The period of leave granted at any one time shall not exceed, in title case of leave on full salary six months and, in the case of leave of any other kind specified in paragraph 3, sixteen months.
6. **Grant of leave not due:-** Subject to the maximum limit specified in sub-paragraph (1) of paragraph 5, leave on half salary may be granted to a Judge in excess of the amount at his credit-

(a) on a medical certificate: and
(b) for a period not exceeding sixth months and not more than once during the whole period of his service as Judge, otherwise than on medical certificate.

7. leave salary.- (1) The monthly rate of leave salary payable to a Judge while on leave on full salary shall be equal to the monthly rate of his salary

(2) The monthly rate of leave salary payable to a Judge while on leave on half salary shall be equal to half the monthly rate of his salary.

(3) A Judge appointed after the commencement of this Order, shall not be entitled to draw his leave salary, otherwise than in Pakistan rupees unless he, immediately before such appointment, was entitled, in the service of Pakistan to draw leave salary in foreign exchange in which case he may draw leave salary in foreign exchange on the same terms and conditions as were applicable to him as pension in the service of Pakistan.

(4) A Judge who was holding office as such immediately before the commencement of this Order may draw leave salary in foreign exchange in respect of any period of leave spent outside Pakistan as if he were a Federal government servant recruited prior to the 17th May 1958.

8. Extraordinary leave.- (1) A Judge who has, at the time of retirement, three hundred and sixty five days leave on full salary to his credit, shall be paid six months' salary in lieu of leave not availed of.

9. Extraordinary leave.- (1) leave in excess of any leave admissible under the foregoing provisions of this Order may be granted to a Judge for a period not exceeding six months and more than once during the whole period of his service.

(2) No leave under subparagraph (1) shall be granted to a judge so as terminate with his retirement nor after he has tendered his resignation.

(3) no leave salary shall be payable to Judge in respect of the period of leave granted under sub-paragraph (1)

10. Combining leave with vacation:- a Judge may be permitted to combine vacation with leave of any kind if the leave is either at the commencement or at the end of vacation but not at both:

Provided that no such permission shall be granted to a Judge if it becomes necessary thereby to appoint an acting Judge.

11. Overstaying leave or vacation:- If a Judge overstays his leave or any vacation, whether combined with leave or not, he shall receive no salary for the period of his absence in excess of the leave granted to him or beyond the end of the vacation, as the case may be: Provided that, if such absence is due to circumstances beyond his control, the period thereof may be treated as leave admissible to him.

12. Abeyance of acting appointments in vacation:- nothing in this order shall be construed as authorized any action Chief Justice or acting Judge to continue to hold his action appointment during vacation.

13. Special disability leave:- Special disability leave may be granted to a Judge when he is disabled by injury intentionally inflicted or caused in, or in consequence of, the due performance of his official duties or in consequence of his official position and the provisions of Fundamental Rule 83 shall, so far as may be, apply to a Judge as they apply to a Government servant under the rulemaking power of the President.

14. Authority competent to grant leave:- the authority competent to grant or refuse leave, or to revoke or curtail leave already granted, shall, in the case of the Chief Justice, be the president and, in the case of other Judges, the Chief Justice

Part-II pension

15. Entitlement:-A Judge shall, on his retirement, resignation or removal, be paid a pension in accordance with the provisions of this Order if he has:-

- (a) attained the retiring age: and
- (b) completed not less than ten years, service as Judge or not less than seven years, service for pension and, before attaining the retiring age, resigned, his resignation have been medically certified to be necessitated by ill health or been removed for physical or mental incapacity.

16. payable pension:- (1) Subject to sub-paragraph (2) the Chief Justice and a judges on his retirement or resignation as provided in paragraph 15 shall be entitled to the minimum amount of pension equal to seventy percent of the salary determined by the President from time to time payable to the Chief Justice, or as the case may be, a Judge plus five per cent of the said salary for each completed year of service either as the Chief Justice or as the Judge not exceeding the maximum amount of pension equal to eight-five percent of the said salary:

Provided that for the period for the period between twenty-seventh day of July, 1991 and the thirty-first day of May, 1994 the minimum arid Judges of Superior Court Order, 1993 (P.O.2 of 1993).

*[Explanation:- The expression salary means the salary referred to in paragraph 1 of the fifth Schedule to the Constitution of the Islamic Republic of Pakistan or such high salary as the President may determine from time to time [and shall include a superior Judicial Allowance] but shall not include any [other] allowance or amount representing any privilege of facility.]

(2) If a Chief Justice or a judge before his appointment is Supreme Court was the Chief Justice or a Judge of a high Court and the pension payable to him as Chief or Judge of the High Court would have been more than the pension payable to him under sub-paragraph (1) if he would have retired on the day he was appointed in the Supreme Court he would have the option to receive pension either under sub-paragraph (10 or of the High Court.

[16A.Pension on re-employment etc.-** (1) Where a retired Judge in receipt of pension is appointed to, or is holding, a post in connection by the Federal Government or a Provincial Government, he shall be entitled to receive full pension in addition to pay, allowances and privileges of the post on which he is re-employed in accordance with the Rules applicable on re-employment to retired Civil Servants].

(2) where a Judge who is receiving a pension-

- (a) is appointed to act an arbitrator by the Federal Government or a provincial Government or a commission of inquiry; or
- (b) is required by such Government to give a legal opinion in any matter,

He shall not receive any fee or compensation for so acting or tendering legal opinion except reimbursement of out of pocket expenses.

(3) Nothing contained in subparagraph (1) and (2) shall apply to a Judge who is in receipt of a pension before the commencement of the supreme Court Judges (Leave, pension and privileges) (Amendment) Order, 1998, and opts not to have his pension increased as a consequence of the increase in salaries provided thereby].

*[17. **Commutation of pension.**- (1) subject to paragraph (2) and (3) the Civil Pension (Commutation Rules shall, with necessary modifications, apply to a Judge.

(2) Where the pension of a Judge increase at any time after his retirement on account of a subsequent increase of salaries payable to Judges, he shall not be entitled to have the differential of the pension payable to him at the time of his retirement and the subsequent increase in pension commuted.

(3) A judge at the time of his appointment to a High Court was in receipt of a pension in respect of any post and had got any part of the said pension commuted, the amount of commutation so paid

shall be deducted from the amount of commutation arrived at under sub-paragraph (1)].

18. **Extraordinary Pension.**- The Central Civil Services (Extraordinary pension) Rules shall apply to a Judge, who may suffer injury or die as a result of violence as they to an officer of the Federal Government subject to the modification that reference in those rules to tables relating to injury gratuities and pensions and family gratuities and pensions, shall be construed as reference to the corresponding tables in the schedule to this Order.

19. **Subsidiary condition of service.**- Subject to the provisions of this Order and such other provisions as the President may make in this behalf, other privileges and rights of a Judge shall be determined by the rules for the time being applicable to an officer appointed by the president holding the rank of Secretary to the Federal Government.

Provided that nothing in this paragraph shall have effect so as to give to a judge who is a member of a civil service less favorable terms in respect of his conditions of service than those to which he would be entitled as member of such service if he had not been appointed as a Judge, his service as judge being treated as service for the purpose of determining those privileges and rights.

20. **Official residence.**- (1) Judge shall be entitled, without payment of rent, to the use of a residence throughout his term of office and for a period of thirty days thereafter and no charge shall fall on him personally in respect of its maintenance.

(2) where a Judge chooses to reside in house provided by Government, he shall be entitled to be paid a monthly allowance of [sixty eight Thousand] rupees and his resident shall also be, maintained as government expense.

Explanation.- in this paragraph-

- (a) Maintenance in relation to a residence includes the payment of local rates and taxes and the provision of electricity, gas and water; and
- (b) Residence includes the staff quarters and other building appurtenant to, and the gardens of the residence.

Note: Official residence means a house provided by the Government either owned by the Government or hired/rented engaged for residence of judge at the place of his choice, without any charge in respect of rent and maintenance.

If a Judge chooses to reside in his own house other than provided by the Government he is entitled to monthly allowance of Rs. 68000/- with maintenance at Government expenses

[20- **A Temporary residence-cum-office.- if the official residence of the Chief Justice provided under paragraph 20, is located at a place other than Islamabad, he shall be entitled, without payment of rent, to the use of a designated house, i.e. the Chief Justice House, as a temporary residence-cum-office and no charge shall fall on him personally in respect of its maintenance.] **Note:** If the residence of Chief Judge provide under paragraph 20 above is not located at principal seat at Gilgit, he shall be entitled to the use of temporary residence without any charge in respect of maintainace at Gilgit.

21. **Official Car.**- (1) A Judge shall be entitled to the use of an official car maintained at Government expenses, but shall have to bear the cost of petrol used in the car during a month in excess of*** [six] hundred liters.

(2) A Car provided for the use of a Judge shall be used by him until he retires, subject to its replacement earlier, either because of its having completed the specified number of years of service or distance to be covered or of its having become unserviceable in accordance with rules.

Note (a): The Chief Judge or a Judge of Supreme Appellate Court Gilgit-Baltistan may use the official car as family car and in addition may also use a vehicle from pool put will bear cost of petrol beyond his entitlement of 600 liters per month except while on official duty at a place other than Gilgit, he will get 5 liters petrol per day.

Note (b): A Chief Judge and a judge of Supreme Appellate Court [on expiry of tenure (corrigendum dated 12-07-2010) is entitled purchase a car/vehicle [in his use or (corrigendum dated 12-07-2010] from pool of the Court in terms of the instructions contained in letter dated 31-05-1991 of Ministry of Law & Parliamentary affairs Government of Pakistan on the subject on the basis of book value. [Note (b) is prospective]

*[22. **Superior Judicial Allowance.**- A Judge shall be entitled to be paid monthly, a superior judicial allowance amounting to ***** [fifty] thousand] rupees.

Explanation:- For the purpose of this paragraph "Judge" shall include the "Chief Justice" or "an acting Chief Justice".

24. **Exemption from income tax.**- No income tax shall be payable in respect of the allowance admissible to a Judge under paragraph 20 or paragraph 22**** [XX] or the other benefits and perquisites to which Judge is entitled under the said paragraph 20 or paragraph 21.

25. **Facilities to retired Judges.**- (1) A Judge on retirement, and after his death, his widow, shall be entitled to the following benefits and perquisites at Government expense, namely:-

- a) The service of a driver and orderly;
- b) [3000] (three thousand) free local telephone call per month;
- c) [2000] units of electricity as well as ***** [25 HM of Gas] per month and free supply of water; and
- d) [300] liters of petrol per month.

{(la) If during Service a judge dies or has died before the commencement of this Order, his widow shall also be entitled to the benefits and perquisites provided in sub-paragraph (1)

- (2) No income tax shall be payable in respect of benefits and perquisites to which a judge or a widow, as the case may be, is entitled under this paragraph.
- (3) a judge on retirement opting to avail the facilities specified in sub-paragraph (1) shall undertake to perform the work of arbitration involving Government interest if assigned to him without charging any fee.

Note: (a) A Judge may at his option engage the services of a Driver and an orderly as per his choice.

- (c) 300 local calls and 2000 units of electricity is entitlement of a Judge without the condition of one or more telephone numbers and meters installed at his residence.

OTHER BENEFITS PERMISSIBLE IN PURSUANCE OF THE DECISION OF FULL COURT WITHIN THE ALLOCATED BUDGET OF THE CORUT.

Notwithstanding the privileges contained in P.O.No. 2 of 1997, a Chief Judge and a Judge of Supreme Appellate Court Gilgit-Baltistan on completion of tenure will be authorized to engage the services of Personal assistant BPS- 15 and a contingent employee BPS of his choice within the allocated budget of the Court.

Medical facilities and additional privileges.

A former or a serving Judge of Supreme Appellate Court is entitled to free medical treatment in terms of Para 19 of Presidential Order No.2 of 1997.

Note: Gilgit-Baltistan is hard area and medical facilities as in the down country are not available, therefore, if medical treatment required to the Judge and his dependant family members is not available at Gilgit, he may avail the medical facility in Government hospitals or in recognized private hospitals in down country, on recommendation of authorized Medical Officer, within the allocated Budget.

The staff of Supreme Court will also be entitled Medical facility in the above manner.

The travailing and daily allowances and other traveling facilities as are admissible to the Judge of Supreme Court of Pakistan under Supreme Court Judges (traveling allowance), Rules, 1958.

The Registrar of the Court on expiry of tenure is authorized to engage the services of contingent employee BPS-1 of his choice.

(The other benefits authorized within allocated budget of Court will take effect from the date of this notification)"

The plain reading of article 60(10) of Gilgit-Baltistan Governance Order 2009 would show that president order No. 2 of 1997 (Supreme Court of Pakistan Judges) (Leave, pension, pay and privilege) order 2 of 1997 has been made applicable to the Judges of Supreme appellate Court in respect of the remuneration and other terms and conditions of service without effecting their right of additional benefits and privileges in pursuance of the decision of Court as mentioned in the above notification or under any other law within the allocated budget of the Court.

7. Notwithstanding the appointment of the Chief Judge and Judges of Supreme Appellate Court for a fix term of three years, under article 60(8) of Governance Order 2009, they would be entitled to the pension and other retirement facilities/benefits in terms of para 15 to 18 read with Para 25 of president order No. 2 of 1997 Supreme Court Judges (Leave, pension, and privileges) order, 1997 in accordance with the judgment of Supreme Court of Pakistan in Accountant General sindh & others versus M.U. Ahmed Ali, PLD 2008 Page 522 wherein it was held as under:-

"29. The matter relating to, the grant of pension to the retired Judges of High Courts irrespective of their length of service as such Judge, at one stage was seriously considered by the Federal Government but it could not be materialized for the reason of departmental interpretation of Fifth Schedule that a retired Judge of the high Court who has not put in five years minimum service in terms of paragraph 3 of the Schedule, was not entitled to the pensionary benefits whereas the plain reading of Paragraph 2 in the Fifth Schedule, referred to above, would show that every Judge of a high Court shall be entitled to a pension besides other rights and privileges as referred to in the said Paragraph, as may be determined by the president. This paragraph further provides that until such rights and privileges are so determined, a Judge shall be entitled to such privileges and rights including a right to receive pension to which a Judge was entitled immediately before the commencing day. There is no ambiguity in paragraphs 2 and 3 of Fifth Schedule because paragraph 3 provides for a minimum and a maximum pension payable to a Judge of a high Court who has not put in less than five years of service as such Judge whereas paragraph 2 deals with the entitlement of Judges. In short paragraph 3 identifies a particular class of Judges, with reference to the length of service and nothing can be spelt out that paragraph 2 has no independent implication with reference to every Judge of a High Court. It is thus clear that the classification of Judges was made with reference to their Length of service for the purpose of determination of their pension at different rates mentioned therein and not for the purpose of determination of their right of pension is recognized under article 205 of the constitution.

Conclusion:-

31. Before parting with this judgment, we deem it proper to point out that Chief Justice and Judges of Federal Shariat Court are also entitled to the grant of pension and pensionary benefits available to the retired Judges of the Supreme Court and high Court under the Constitution. The appointment of the Chief Justice and Judges of the Federal Shariat Court is made by the President under Article 203-C of the Constitution and the

terms and condition of service of the Judges of the said Court are also determined by the President, therefore, notwithstanding the fixed tenure of the Chief Justice and Judges of the Federal Shariat Court, they are entitled to the terms and conditions of service and remunerations including pension and pensionary benefits at par to the Judges of the Supreme Court and High Court, by virtue of Article 203-C99) of the Constitution which provides as under:-

8. There can be no exception to the right of pension and other retirement benefits of the Chief Judge and Judges of Supreme Appellate Court, recognized under Gilgit-Baltistan Governance Order 2009, but the real question requiring determination would be whether the appointment of a former judge of High Court or Supreme Court of Pakistan as Chief Judge or Judge of Supreme Appellate Court Gilgit-Baltistan is re-employment in service of Pakistan or it is an independent assignment in service of Gilgit-Baltistan.

9. The “Service of Gilgit-Baltistan” has been defined in Article 2(o) of Gilgit-Baltistan (Empowerment and self Governance) Order, 2009 as under:-

“(o) service of Gilgit-Baltistan means any service, post or office in connection with the affairs of Gilgit-Baltistan including the Council, but does not include service as Chairman of the Council, governor, Speaker Deputy Speaker, Chief Minister, minister, federal Minister in-charge of the Council Secretariat or Advisor, Parliamentary secretary, Advisor to the Minister or member of Assembly or member of the Council”

The service of Pakistan has been defined in Article 260 of Constitution of Pakistan as under:-

“service of Pakistan” means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of [Majlis-e-Shoora (Parliament)] or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal minister, Minister of State, Chief Minister, provincial Minister, [Attorney-General, [Advocate General,] Parliamentary Secretary] or [Chairman or member of a Law commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to Chief Minister] or member of a House or a provincial Assembly;”

10. It is clear for the definition of service of Gilgit-Baltistan and service of Pakistan that two services are entirely independent and Judges of Supreme Appellate Court while discharging function in connection with affairs of Gilgit-Baltistan. The expenditure on their pay and pension and other privileges are met from consolidated fund of Government of Gilgit-Baltistan, established

under Article 55 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 as under:

55. Gilgit-Baltistan Consolidated Fund.- (1) All revenues by the Government, all loans raised by the Government with the approval of Government of Pakistan and all moneys received by it in payment of any loan shall form a part of Consolidated Fund, to be known as the Gilgit-Baltistan Consolidated Fund.

(2) All other moneys-

(a) received by or on behalf of the Government' or

(b) received by or deposited with any other Court established under the authority of the Government, shall be credited to the Public Account of the Government.

(3) The custody of the Gilgit-Baltistan Consolidated Fund, the payment of money into that Fund, the withdrawal of money therefrom, the custody of other moneys received by or on behalf of the Government, their payment into, and withdrawal from the Public Account of the Government, and all matters connected with or ancillary to the matters aforesaid, shall be regulated by the Act of the Assembly or, until provision in that behalf is so made, by rules made by the Governor.

Whereas the expenditure in respect of remuneration and other term and condition and privileges of the Judge of the High Courts and Supreme Court of Pakistan are met from consolidated fund of the Government of Pakistan which has been defined in Article 78 of Constitution of Pakistan as under:-

78. Federal Consolidated Fund and Public Account.- (1) All revenues received by the Federal Government, all loans raised by that Government, and all moneys received by it in repayment of any loan, shall form part of a consolidated fund, to be known as the Federal Consolidated Fund.

(2) All other moneys-

(a) Received by or on behalf of the Federal Government; or

(b) Received by or deposited with the Supreme Court or any other Court established under the authority of the Federation; Shall be credited to the Public account of the federation.

11. The territory of Gilgit-Baltistan notwithstanding a sovereign part of Pakistan, and not an independent dominion has been governed by different Governance models since liberation and Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 presently enforced to Govern Gilgit-Baltistan has been promulgated by the Government of Pakistan with the following official version.

**“Gilgit-Baltistan
(Empowerment and Self Governance)
Oder, 2009**

PREFACE

This edition if published officially and is an authentic version of the Gilgit-Baltistan (Empowerment and Self Governance) Oder, 2009. Gilgit-Baltistan (Northern Areas) comprising Gilgit and Baltistan region, after its liberation from the Dogra Rule in 1974, have been governed under various governance models. The first noticeable administrative

improvement came through the Northern areas Legal Framework Order, 1975 wherein major administrative, judicial and political reforms were introduced. To ensure more internal autonomy further democratization was done through the Northern Areas Legal Framework Order, 1994. The elected representatives of the people were thus taken closer to a democratic and just system. Amendments to the Order of 1994 were also made in 1999 and 2007.

The present democratic government Nanking on the efforts started in 1975 and further in 1994 decided to consolidate the democratic process further and to bring the area at par with the provinces of Pakistan. The prime Minister of Pakistan was therefore, pleased to constitute a high Powered Committee to evolve a system of governance under the maximum devolution of powers could be ensured but keeping in view the special status of the area and the international commitments of the Government of Pakistan.

The KA&GB division prepared a draft Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 on the above policy parameters. The draft was improve the document. Finally, the Order was vetted by the Law and Justice division, Islamabad and presented to the Federal Cabinet before soliciting the approval of the President of Pakistan.

It may be mentioned that the provision of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 contain major improvement over all past efforts and may rightly be added as one of the major achievements of the present Government.

Muhammad Ihtesham Khan
Secretary
Ministry of Kashmir Affairs and Gigit-Baltistan.”

12. The careful examination of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 read with constitution of Pakistan, it is clear that service of Gilgit-Baltistan is entirely independent to the service of Pakistan and Gilgit-Baltistan also has complete internal independence in its all affairs. The special territory of Gilgit-Baltistan having been not as such defined in the Constitution of Pakistan is not governed by the Constitution of Pakistan rather it being sovereign part of Pakistan has always been governed by a separate legal frame work order. The Supreme Appellate Court Gilgit-Baltistan has been established under Northern Areas Governance Order 1994 as highest Judicial authority in Gilgit-Baltistan with the status at par to the supreme Court of Pakistan in the territory of Gilgit-Baltistan. The matters relating to the appointment of Judges of Supreme Appellate Court and their terms and condition of service are governed by Gilgit-Baltistan (Empoerment and Self Governance) Order, 2009 and

their status in service of Gilgit-Baltistan is same as the Chief Justice and Judges of Supreme Court of Pakistan. The expenditure in respect of their pay, perks and other privileges including pension and retirement facilities are met from the consolidated fund of Government of Gilgit-Baltistan in the same manner as the expenditure in respect of the pay, pension and other privileges including retirement benefits and facilities of Chief Justice and Judges of Supreme Court of Pakistan are met from consolidated fund of Government of Pakistan. The two service have no nexus with each other, therefore, the appointment of a former Judge of the High Court or Supreme Court of Pakistan as Chief Judge or Judge of Supreme Appellate Court cannot be treated re-employment in service of Pakistan or appointment in service of Gilgit-Baltistan in continuation of service of Pakistan, rather it is an independent appointment with independent right of service and consequently, a former Judge of High Court or Supreme Court of Pakistan in the service of Gilgit-Baltistan on retirement as Chief Judge or a Judge from Supreme Appellate in addition to the right of pension and retirement facilities available to him in the service of Pakistan as Judge would be entitled to the pension and other retirement benefits without any distinction.

13. The appointment of Chief Justice and Judge of federal Shariat Court is made under article 203-c of the constitution of Pakistan for fixed term and similarly appointment of an adhoc Judge in Supreme Court of Pakistan after retirement is made for a specified period under article 182 of the Constitution of Pakistan, as in the case of Judges of Supreme Appellate Court under Article 60(8) of Gilgit-Baltistan governance Order 2009. Therefore, tenure appointment of judges of Supreme Appellate Court is not in conflict to any provision of constitution of Pakistan or any law and consequently, a chief Judge or a Judge of Supreme Appellate Court Gilgit-Baltistan, notwithstanding appointed for a term of three years on retirement in his own independent right would be entitled to pension and other retirement facilities. The net result of the above discussion is that service of Pakistan and the Service of Gilgit-Baltistan are two independent services and appointment of a person in service of Gilgit-Baltistan. Mr. Justice Qazi Ehsan Ullah Qureshi after retirement from service of Pakistan as Judge of Peshawar High Court was appointed as Chief Judge Supreme Appellate Court Gilgit-Baltistan in the service of Gilgit-Baltistan, therefore, he was not re-employed in service of Pakistan, rather his appointment in service of Gilgit-Baltistan was quite independent to the service of Pakistan and without prejudice to the right of pension etc. earned

by him in service of Pakistan as Judge of High Court, he would be entitled to the pension and other privileges in his independent right as Chief Judge Supreme Appellate Court Gilgit-Baltistan. The appointment of the Chief Judge and Judge of Supreme Appellate Court is made by Chairman of the Council of Gilgit-Baltistan who is Prime Minister of Pakistan under Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 and subject to laws of Pakistan made applicable in Gilgit-Baltistan. The government of Gilgit-Baltistan and its all institutions are functioning independently under the Legal Frame work Order i.e. Gilgit-Baltistan (Empowerment and self Governance) Order, 2009. The service of Gilgit-Baltistan also has entirely a separate structure and status therefore, the appointment of a person in service Gilgit-Baltistan after retirement from service of Pakistan is not re-employment or continuation of service of Pakistan and consequently the rights earned by a person in service on Pakistan and also neither the rights in two services can be amalgamated with each other nor merged in service of Pakistan by mere reason of administrative control of Prime Minister of Pakistan as Chairman or Council of Gilgit-Baltistan.

14. Para 16-A of President Order No. 2 of 1997 Supreme Court Judges (Leave, Pension and privileges) Order, 1997 provides that where a retired Judge is appointed to or is holding a post in connection with the Federal Government or a Provincial Government, he shall be entitled to receive full pension in addition to pay, allowances and privileges of the post on which he is reemployed in accordance with the rules applicable on reemployment to retired Civil Servants.

15. The expression Federal or Provincial Government used in Para 16-A above means Federal Government of Pakistan and Provincial Government of a province established under the Constitution of Pakistan and a Judge on reemployment in Federal or Provincial Government is entitled to full pension in addition to the pay allowances and privileges of the post on which he is reemployed. The Government of Gilgit-Baltistan is not provincial Government established under the constitution of Pakistan therefore the appointment of retired Judge of High Court or Supreme Court of Pakistan as a Judge in service of Gilgit-Baltistan is not a re-employment in terms of Para 16-A of President Order No. 2 of 1997, rather it is an appointment in service of Gilgit-Baltistan is not a post in connection with the affairs of Federal Government or Provincial Government of a Province of Pakistan, therefore, a retired Judge of High Court or

Supreme Appellate Court of Pakistan on appointment in service of Gilgit-Baltistan would be entitled to all service benefit of post held by him in the service of Gilgit-Baltistan under Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 independent to his right of pension and other retirement facilities in the service of Pakistan. The President Order No. 2 of 1997 (Supreme Court Judges (Leave, Pension and Privileges) Order, 1997 is special law having overriding effect on the general law of Pension applicable to the person in service of Pakistan and this special law has been made applicable to the Judges of Supreme Appellate Court Gilgit-Baltistan by virtue of Article 60 (10) of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009, therefore, in absence of specific provision in the above special law or in Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 to the effect that appointment of a retired Judge of high Court or Supreme Court of Pakistan as judge of Supreme Appellate Court Gilgit-Baltistan will be treated reemployment in service of Pakistan, or a post in connection with the affairs of federation, he cannot be denied or deprived of the right of pension and other retirement benefits attached with the office of Judge in the service of Gilgit-Baltistan.

16. The right of pension and other retirement benefits of the Judges of Supreme Appellate Court Gilgit-Baltistan is recognized under Article 60(10) of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009, Which is Self-explanatory and self executor provision in the Governance order and in absence of any provision to the contrary or in conflict to the Governance order or in the Constitution of Pakistan or in any law of Pakistan enforced in Gilgit-Baltistan, the interpretation of article 60 (10) of Gilgit-Baltistan Governance Order 2009 in a different manner may redundant the same and result in conflict of Laws. The right of pension of a Judge of Supreme Appellate Court Gilgit-Baltistan with other privileges has been. Acknowledged under Article 60(10) of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 without any exception and consequently, Mr. Justice Qazi Ehsan Ullah Qureshi, former Chief Judge Supreme Appellate Court Gilgit-Baltistan would be entitled to the pension and other retirement benefits admissible to the Judges of Supreme Appellate Court President Order No. 2 of 1997, by virtue of Article 60(10) of Gilgit-Baltistan Governance Order, 2009 in his independent right.

17. The representative of AGPR Gilgit informed that Court that the representation of Mr. Justice Qazi Ehsan Ullah former Chief

Judge of Supreme Appellate Court for grant of pension has been accepted and he has been allowed the pension and other benefits admissible under President Order No. 2 of 1997 by virtue of Article 60(10) of Gilgit-Baltistan (empowerment and Self Governance) Order, 2009.

18. In the light of foregoing discussion and conclusion, we hold that the appointment of a retired judge of High Court of Supreme Court of Pakistan as Chief Judge or a Judge of Supreme Appellate Court Gilgit-Baltistan is not reemployment in service of Pakistan or in continuation of service of Pakistan, rather his appointment is in the service of Gilgit-Baltistan and on retirement from Supreme Appellate Court Gilgit-Baltistan, such Judge notwithstanding having the right of pension and other privileges as a retired Judge of High Court or Supreme Court of Pakistan would be entitled to the pension and other retirement benefit in his own independent right under Article 60(10) of Gilgit-Baltistan Governance Order, 2009 and shall also be entitled to the additional facilities in terms of the Notification of adoption of President Order No. 2 of 1997 issued by the Court reproduced in para 7 of this Judgment and under any other law within the allocated budget of Court.

19. The matter relating to the right of pension and pensionary benefit of the former Chief Judge and the Judges of the Supreme Appellate Court Gilgit-Baltistan is accordingly disposed off.

Chief Judge

Judge

Judge