

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.

Before:-

Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.

**Civil Appeal No. 35/2017
In
CPLA No. 95/2016.**

Provincial Government & others

Petitioners.

Versus

Muhammad Kazim Baig & others

Respondents.

PRESENT:-

1. The Advocate General alongwith Mr. Saeed Iqbal, Deputy Advocate General Gilgit-Baltistan and Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Asadullah Khan Advocate for the respondents.

DATE OF HEARING /SHORT ORDER: - 28.08.2017.

DATE OF DETAILED JUDGMENT:- 29.01.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Civil Appeal has arisen out of the Impugned Judgment dated 06.06.2016 passed by the learned Chief Court whereby the Writ Petition filed by the respondents was accepted by re-instatating the respondents as employees of Excise & Taxation Department Gilgit-Baltistan with all back benefits. The petitioners being aggrieved by and dissatisfied with the Impugned Judgment filed this petition for leave to appeal. This court vide order dated 16.05.2017 issued notices to the respondents and the case was heard on 28.08.2017.

2. Briefly, the facts of the case are that the petitioners are residents of Gilgit-Baltistan who were appointed in the Excise and

Taxation Department Gilgit-Baltistan initially on contingent basis. Subsequently, they were adjusted against the vacant posts on permanent basis in the years 2012 & 2013. Later on, it was transpired that the said appointments have been made in utter violation of the relevant Service Rules and procedure. The then Chief Minister Gilgit-Baltistan while taking notice of the allegations constituted an “Inspection Team” to probe into and to find out facts regarding disputed appointments. The committee investigated the matter and submitted a report containing findings and recommendations. On the basis of the said findings and recommendations, the respondent No.02 i.e. the Secretary Excise & Taxation Gilgit-Baltistan issued notices to the respondents with the allegation that the petitioners in collusion with the then officers/officials of the Excise & Taxation Department have fraudulently drawn salaries from concerned District Accounts Offices. The said appointments were declared void ab-initio as the posts against which the respondents appointed were temporary which were created up to 31st May, 2013. Neither continuations of the said posts have been sought nor have the same been incorporated in the NIS for the financial year 2013-14. The pay drawn by the respondents from 31st May, 2013 & onward being over above of the permissible period, is recoverable from them. Accordingly the respondents were issued show cause as to why their appointment orders should not be cancelled and they should not be terminated from their services. The show cause notices were

replied by the respondents denying the allegations leveled against them. They prayed that their services may not be terminated being lawfully appointed by the competent authority. The respondent No.02 i.e. the Secretary Excise & Taxation Department Gilgit-Baltistan turned down their request. Consequently, on 03.03.2014, the respondent No. 02 terminated the services of the respondents vide Office Order No. Sec(R)-Admin (3)/2012-13 dated 03.03.2014. The respondents being aggrieved filed Writ Petition No. 15/2015 before learned Chief Court which upon hearing was accepted, hence, this petition for leave to Appeal.

3. The learned Advocate General contends that the contingency appointment orders in favour of the respondents were fake and fabricated. He also submits that the said appointment orders were illegally issued to cover up the way to regularize the contingent service of the respondents into permanent basis. Per learned Advocate General, the vacancies against which the respondents were unlawfully appointed on regular basis were purely temporary and ceased to exist up to 1st June, 2013 for the reasons that continuation was not sought by the department from the competent authority. The disputed appointments were made without fulfilling the requisite codal formalities and others prerequisites i.e. the publication of advertisement for inviting the applications from the suitable candidates and conducting test/interview etc. He further submits that the disputed appointments have been made through back door arrangements

without completing the codal formalities. Since, it is proved that an appointment in Government Job has been made without completing the procedure and codal/formalities can be cancelled at any stage even without issuing show cause notice to the individual concerned. He submits that the corruption and malpractice has been committed by the then authorities of the Excise & Taxation Department. The National Accountability Bureau (NAB) has already taken cognizance against the responsible officers/officials. He submits that the learned Chief Secretary Gilgit-Baltistan was competent to entertain departmental appeal but the respondents did not prefer any such appeal. The respondents opted to file Departmental Appeals to the then Chief Minister Gilgit-Baltistan which was illegal in the eye of law. The Chief Minister Gilgit-Baltistan is not competent to interfere and pass restoration orders thereto. Per learned Advocate General, the restoration order dated 16.06.2014 issued by the then Chief Minister Gilgit-Baltistan was without lawful authority has no legal force to be acted upon. He submits that since the appointments have been made in utter violation of law and procedure as such the same could even be cancelled after taking effect and the principle of locus poentiae applies only when any order creating certain legal rights in favour of an individual. He prays that the Impugned Judgment dated 06.06.2016 passed by the learned Chief Court is not sustainable and liable to be set aside.

4. On the other hand, Mr. Asadullah Khan learned counsel appearing on behalf of the respondents supports the Impugned Judgment passed by the learned Chief Court. He contends that admittedly, the respondents were initially appointed on contingent basis and subsequently upon their good performance they were regularized by the respondent No. 02 on permanent basis. He also contends that the respondents have served in the Department for a long period, who gained rich experience. Per learned counsel, the disputed appointments have taken effect as such the same authority not legally competent to cancel and recall the order passed by him. He further contends that any order passed by the competent authority had the power to undo it but such order after creating certain rights in favour of a person could not be withdrawn, amended under the admitted principle of locus poententiae. The termination orders dated 03.03.2014 was illegal and has been issued without lawful authority. He contends that the respondents filed service appeal before the Gilgit-Baltistan Service Tribunal against the termination order but in the meantime, the Chief Minister Gilgit-Baltistan in his capacity as Chief Executive of the Province intervened in the matter and set aside the termination order by re-instating the respondents in their services which attained finality. He contends that the Impugned Judgment dated 06.06.2016 passed by the learned Chief Court is well reasoned and well founded which may pleased be maintained.

5. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the Impugned Judgment. Admittedly the respondents had been appointed by the incompetent authorities without completing the codal formalities of the fundamental service rules against the posts which were not existed and/or no NIS was issued against such posts. The fake appointment order(s) were obtained by the respondents illegally and unlawfully in collusion and connivance with the then authorities. In case the respondents were in Government's Service admittedly no appeal was filed in the learned Gilgit-Baltistan Service Tribunal and in case such appeal was filed no order passed by the Gilgit-Baltistan Service Tribunal was produced either in the learned Chief Court or in this Court by the respondents. The then Chief Minister Gilgit-Baltistan has illegally and unlawfully reinstated the respondents in their services. It is settled principle of law that any appointment in violation of any law & rules if made is always discouraged. The appointments of the respondents undeniably were made in departure of the method for appointment of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973. Under the said rules the vacant positions is necessarily be advertised in the newspapers and the vacant posts be filled purely on merits. The contingent employees cannot as a matter of right be appointed/regularized without completing the codal/formalities. An administrative order can not be cancelled by another administrative order. The learned Chief Court fell in error

while accepting the Writ Petition and failed to follow the parameter laid down in the service matters by the apex Court. In our considered view, the impugned judgment is not sustainable.

6. Consequently, we converted this petition into an appeal and the same was allowed vide our short order dated 28.08.2017. Consequent thereto, the Impugned Judgment dated 06.06.2016 passed by the learned Chief Court and the order No. CM-Sectt.1(14)/2014/ 10473 dated 16.06.2014 issued by the then Chief Minister Gilgit-Baltistan were set aside. These were the reasons of our said short order.

7 The appeal was allowed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or Not?