

**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.75/2019

(Against the judgment dated 31.10.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No.461/2016)

1. Prov. Government through Chief Secretary GB
2. Secretary Services, Gilgit-Baltistan, Gilgit
3. Secretary Finances, Gilgit-Baltistan, Gilgit
4. Secretary LG&RD, Gilgit
5. Secretary Health, Gilgit-Baltistan, Gilgit
6. Deputy Director LG&RD, Gilgit
7. Accountant General, Gilgit-Baltistan, Gilgit

.....

Petitioners

Versus

Saadat Khan s/o Muhammad, Development Officer (Rtd.), Local Bodies and Rural Development, Mehboob Hotel, Hospital Road, Gilgit

..... **Respondents**

PRESENT:

For the Petitioners: The Advocate General, GB

For the respondents: Mr. Amjad Hussain Sr. Advocate
Mr. Muhammad Saleem, Advocate

Date of Hearing: **18.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This single judgment shall dispose of the following two Civil Petition for Leave to Appeal directed against the same judgment dated 31.10.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 461/2016, whereby service

appeal filed by the present respondent was partially allowed to the extent of his reinstatement in service from the date of retirement on medical grounds till institution of service appeal before the Service Tribunal while relief claimed for holding him entitled for financial benefits for that period was declined by the learned Service Tribunal. Being aggrieved and dissatisfied with the judgment, both the petitioners as well as the present respondent have impugned the said judgment by means of filing Civil Petition for Leave to Appeal No. 73/2019 and 75/2019 before this Court. The facts and grounds involved in both the Civil Petitions for Leave to Appeal are separately summarized below for their disposal:

Prov. Govt. of GB Vs. Saadat Khan CPLA No.75/2019

2. Brief facts of the case are that while working with Local Bodies and Rural Development Department (LB&RD) now (LG&RD) as Development Officer (BS-16), respondent developed a kidney problem and lost both of his kidneys which necessitated him to undergo kidney transplantation in the year 1992. Upon successful operation, one kidney was transplanted and after completion of medical procedure, the respondent joined back to his department. In consequent to transplantation of one kidney and as per advices of doctors, the respondent was required to undertake visits to the doctors at Karachi and Islamabad and was on medication. The department felt that medical reimbursement and TA/DA on account of his visits to doctors and the medication has put an extra financial burden on the department, therefore the then Deputy Director, LG&RD referred case of the respondent to Medical Board for examination and opinion. The Medical Board after medical examination, vide its report dated 22.07.1999, declared the respondent incapacitated for further

government service and was recommended to be boarded out of service in disability class “AYE” aggravated by service conditions. On the basis of this report of Medical Board, vide Office Order dated 26th August, 1999, the respondent was retired from government service on medical grounds. Against retirement order, respondent claimed to have submitted a departmental appeal to the Federal Minister for KA&NA on 15.09.1999 which remaining pending for a long period was rejected on 23.04.2013. The rejection order of departmental appeal of respondent was impugned before the learned Gilgit-Baltistan Service Tribunal by way of a service appeal wherein the respondent made certain prayers i.e. orders for setting aside the impugned retirement order dated 26.08.1999; constitution of second medical board at Islamabad for reviewing decision/findings of earlier medical board; and reinstatement in service from the date of retirement with financial benefits. The learned Gilgit-Baltistan Service Tribunal, after adjudication upon the matter, passed the impugned judgment whereby reinstatement in service of the present respondent was ordered while prayers for holding him to be entitled for pay and allowances for the period from his retirement on medical grounds till institution of service appeal before Service Tribunal was declined and that period was held as EOL without financial benefits.

3. The learned Advocate General, GB argued that the learned GB Service Tribunal, while adjudicating upon the service appeal, failed to apply its judicious mind to the facts and circumstances prevailing with the case and went on to pass the impugned judgment which was not sustainable under the law. The learned Advocate General, GB next argued that the learned Gilgit-Baltistan Service Tribunal without

issuing orders for reviewing the findings/decision of earlier Medical Board by another Medical Board could not issue certificate of fitness in his favour declaring him to be fit for continuing service. It was further contended by the learned Advocate General GB that the present respondent having kidney disease was not able to perform proper and efficient duty, while this factor has totally been overlooked by the learned Gilgit-Baltistan Service Tribunal. It was next contended by the learned Advocate General GB that the learned Gilgit-Baltistan Service Tribunal failed to take into consideration the legal position of case before it because the present respondent under the law was required to apply for review of the decision/findings of Medical Board by a second Medical Board within the stipulated time provided in the rules, while the respondent failed to discharge his legal obligation under the relevant rules, as such the judgment passed by the learned Service Tribunal was not sustainable in the eyes of law. The learned Advocate General, GB next argued that immediately after the respondent was declared incapacitated by the Medical Board, Board's report was duly communicated to respondent, but the respondent failed to apply for review of the said report and findings of Medical Board. He next argued that service appeal before Gilgit-Baltistan Service Tribunal was hopelessly bared by time and was liable to be dismissed while the learned Service Tribunal failed to consider this decisive legal aspect of the service appeal and went on to pass the judgment, hence the impugned judgment is liable to be set aside by this Court.

Saadat Khan Vs. Prov. Govt. of GB CPLA No.73/2019

By way of this CPLA, petitioner, Saadat Khan has called in question observations of the learned Gilgit-Baltistan

Service Tribunal recorded at part 2 of para 10 of the impugned judgment. By means of impugned observations, the learned Gilgit-Baltistan Service Tribunal held the petitioner to be on duty for the period from the date of retirement till institution of service appeal before it, however that period was held as extraordinary leave without pay. It is the contention of the learned counsel for the petitioner that the respondent was retired on medical grounds with malafide intentions as he was declared fit for continuing his services vide Opinion of Medical Board dated 18.11.1993, hence he was entitled for pay and allowances for the period in dispute. It was further contended by the learned counsel for present petitioner that as required by law, no report of first medical board was communicated by the respondents to the petitioner for reviewing the medical report by second medical board enabling him to apply for review of findings/decision of the first Medical Board, hence retirement of petitioner from government service on the basis of medical report of first medical board was against the law, hence he was entitled to pay and allowances for period as held by the learned Gilgit-Baltistan Service Tribunal to be EOL. Concluding his arguments, the learned the learned counsel submitted that decisions taken in violation of the law could not be attributed to the petitioner for depriving him of from pay and allowances for the disputed period and prayed for setting aside the observations recorded in part 2 of para 10 of the impugned judgment passed by the learned Gilgit-Baltistan Service Tribunal.

4. We deem it appropriate to first take up the case of Prov. Govt. of GB Vs. Saadat Khan CPLA No.75/2019. Admittedly, respondent after losing both of his kidneys underwent transplantation of one kidney in March, 1992 and

in the year 1993, a Medical Board at DHQ Gilgit examined the respondent and declared him fit to continue his services. Thus the respondent resumed his duty and continued as such till another Board was constituted in the year 1999 on the request of the then DD LG&RD. It appears that, after transplantation of one of his kidneys, the respondent continued medical checkups at down country and submitted medical reimbursement and TA/DA bills to the department. On 22.02.1999, the department once again approached the MS DHQ for fresh opinion of Medical Board on the ground that expenses on account of medical checkup and continuous medication was posing financial hardships to the department. The respondent was asked to appear before the Board who did so and the Medical Board, after medical examination of the respondent, submitted its medical report/findings whereby the respondent was declared unfit to continue government services In consequence whereof, the respondent was retired from government service on medical grounds on 26.08.1999. It is observed that under the law, immediately after submission of report/findings by the Medical Board the same was required to be officially communicated to the respondent enabling him for reviewing report/findings by second medical board. But the respondent was not supplied with the copies of medical report and was kept unaware of the same until the department issued his retirement order on 26.09.1999. The department contended that medical report was supplied to the respondent immediately after medical checkup, however no material was placed on record to substantiate that in fact the medical report was supplied to the respondent. It is the requirement of the relevant law/rules that when medical checkup of a government servant is ordered by concerned department or on his own

request of an employee, report of medical board be supplied to the concerned employee enabling him to apply for second opinion in case of non-satisfaction with the medical report of first medical board. However, in present case, the concerned department for sure, deliberately did not supply copy of report of the medical board to the respondent within the stipulated time, hence the respondent was debarred from availing legal remedy of reviewing the report/findings of first medical board to obtain second opinion by second medical board. In order to deal with medical cases and to resolve the peripheral issues thereof, F.R. 10 has been inserted in the Fundamental Rules. For the sake of convenience of understanding, F.R. 10 alongwith sub-rules made thereunder is reproduced below:

F. R. 10. *Except as provided by this rule, no person may be appointed in Pakistan to a post in Government service without a medical certificate of health, which must be affixed to his first pay bill. A local Government may make rules prescribing the form in which medical certificates should be prepared, and the particular medical or other officers by whom they should be signed. It may, in individual cases, dispense with the production of a certificate, and may by general orders exempt any specified class of Government servants from the operation of this rule.*

F. R. 10-A. *(a) The authority competent to fill the post held by a Government servant may require him to appear before a medical authority for medical examination if, in the opinion of the competent authority, the Government servant is suffering from a disease which renders him unfit for the proper and efficient discharge of his duties or from a disease which is communicable and is likely to endanger the health of other Government servants.*

(b) *If the medical authority concerned, after examining the Government servant, certifies that the Government servant requires a period of absence from duty for the purpose of rest and treatment and that there is reasonable prospect of his recovery, the competent authority may grant him leave, including extraordinary leave, for such period as the medical authority recommends, provided that it is due and admissible to*

the Government servant, and the competent authority may do so as if the Government servant had himself applied for the leave.

(c) (i) *If the medical authority after examining the Government servant, certifies that the Government servant is permanently incapacitated for service, the findings of the medical authority shall be communicated to the Government servant immediately. The Government servant may, within seven days of the receipt by him of the official intimation of the findings of the medical authority, apply to the Director General, Health, for a review of his case by a second medical board. Such an application shall be accompanied by fee the amount of which shall be fixed by the Director General, Health. The Director General, Health, shall then arrange for the convening of reviewing medical board consisting of persons who were not members of the first medical board. If the reviewing medical board also certifies that the Government servant is permanently incapacitated for further service, the competent authority may require him to retire from service and may grant him such invalid pension and/or gratuity as may be admissible to him under the rules, and the competent authority may do so as if the Government servant had himself applied for an invalid pension.*

(ii) *In case the reviewing medical board holds that the Government servant is fit for Government service, he shall be reinstated forthwith and the period of his absence will be treated as duty. If, however, the board certifies that the Government servant is not fit but there is a reasonable prospect of his recovery, the case will be regulated under the provisions of clause (b) above.*

(iii) *In case the Government servant concerned does not apply for a review of his case within seven days of the receipt by him of the official intimation of the findings of the first medical board, the competent authority may require him to retire from service and may grant him invalid pension and/or gratuity as provided for in sub-clause (i) above.*

5. F.R. 10-A quoted above, clearly contemplates that the authority requiring an employee of his department to appear before a medical board be an authority competent to fill the said post held by the incumbent whose medical examination is required. However, in the case in hand, the authority which got medical examination of the present

petitioner was the then Deputy Director of the concerned department, as such, under the law, he was not competent to fill the post of Development Officer (BS-16) which squarely fell within domain of the Federal Public Service Commission (FPSC) upon sending the requisition by the provincial government. The best the then D.D. LG&RD could do was to refer the medical case of the respondent to competent authority for taking appropriate action in accordance with the law, however contrarily he chose to deal with the case himself without having any authority to do so. According to the above rules, first responsibility lies on the authorities of concerned department to communicate findings of the first Medical Board to the civil servant immediately and thereafter the responsibility lies on the civil servant to apply for review of adverse findings, if recorded against the concerned government servant. The word "Immediately" used in the rule emphasizes the department to give special importance or significance to communicate the medical report to concerned employee. No material was placed on record to substantiate that the finding of Medical Board were ever communicated to the respondent. Thus, authorities the concerned department failed to discharge a legal responsibility and committed violation of the rules. It may not be out of context to mention here that under sub-rule (c)(i), had the concerned departmental authorities provided medical report to the respondent within stipulated time, the situation would have been different because after reviewing the medical case, if second medical board confirmed/seconded the opinion of first Medical Board in review, the respondent could be barred under the law to claim reinstatement in service. However, declining the respondent to avail a legal opportunity of reviewing his medical case by the second medical board led to

make the case of respondent dubious besides deliberate departure from set rules by the concerned departmental authorities. Without prejudice to this, perusal of record shows that the respondent, after his retirement by the department on medical ground, run from pillar to post for reinstatement and knocked at the doors of every concerned authority for redressal of his grievances, including Federal Ombudsman, Islamabad, Supreme Court of Pakistan, Federal Minister for KA&GB, National Assembly, Chief Minister GB. These physical and intellectual efforts undertaken by the respondent for redressal of his grievances show that he was physically and medically fit to perform his duties in the concerned department while he was wrongfully prevented from doing so by the departmental authorities and ousted him from service on the pretext of medical incapability on the basis of report of first medical board and further to avoid expenses in connection with his medical treatment. Examination of record led us to note with concern that the then DD LG&RD remarked on the application of the present respondent that "*Allowed this time as a special case. He should find some way to avoid visiting Doctors in future*". It is made clear that DD LG&RD was not competent to record such remarks, rather he was bound under the law to forward the case of the respondent to the competent authority for deciding the fate of the case in accordance with the law. It was also known to the then DD LG&RD that a civil servant could not be ousted from service merely on the ground medical that his medical treatment was a source of burden on the budget of department, save in accordance with the prescribed law/rules. However, it is noted that a civil servant can be ousted from the service on the ground of having a disease described in F.R. 10-A which is communicable and is

likely to endanger health of other Government servants, whereas transplantation of kidney is not communicable disease which could endanger health of other government servants. Retirement of the respondent from government service on medical ground without having exhausted the procedure prescribed in the law/rules and behind his back tantamount to compulsory retirement of the respondent from government service. It is observed that under the relevant law, compulsory retirement of government servant from service is a measure of major penalty which could not be imposed on the concerned government servant without having committed misconduct by the concerned government servant and without following the due process of law.

6. It must be borne in mind by the departmental authorities that they are not left scot-free to decide the cases of government servants as per their convenience and choices as to what part of relevant rules is taken into consideration and what part of the same rules would not be considered that too by acting in total departure from the relevant law. Rather, they are bound under the relevant law/rules to discharge their obligations set out in the relevant law/rules besides strict adherence to the provision of the General Clauses Act. This Court in a number of cases have directed the departmental authorities to decide such cases especially bearing in the mind the relevant section(s) of the General Clauses Act. For the sake brevity, directive contained in one those titled Provincial Government of Gilgit-Baltistan & others Vs. Niaz Ali CPLA No. 43/2019 is reproduced below:

“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, it is pertinent to mention here that in order to make the public functionaries realize their responsibilities, the legislature has felt it imperative to insert Section 24A in the General Clauses Acts laying down responsibilities of the public functionaries. For the sake of brevity, 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".

In a case having similarity to the case in hand, the Supreme Court of Pakistan in case reported as 1994 PLC (C.S) 957 Divisional Superintendent, Post Office Gujrat & 02 others Vs. Rehman Khan, Ex. Sub-Postmaster, has held as under:

"Admittedly in the present the respondent did not challenge the decision of the medical authority and

received his invalidity pension etc. However, subsequently his vision improved and he found fit for efficiently discharging his duties that he made efforts to be examined by the medical board in which he ultimately succeeded. He was certified by the medical board appointed by the competent authority fit for discharging his duties in the service”

The adherence to the laws and rules applicable to the given cases is not choice for the public authorities rather it is their duty, under the constitution as well as under the Islamic law. The justness, fairness and openness is to be ensured in every aspect of matters regarding the employees of an organization by the executive authorities at all levels even to top most position as well. The supreme Court of Pakistan in case of Tariq Aziz ud Din reported as 2010 SCMR 1301 has held as under” –

“Once it is accepted that the Constitution is supreme law of country, no room is left to allow any authority to make departure from any of the provisions of law and rules made thereunder. By virtue of Arts. 4 and 5(2) of the Constitution, even Chief Executive of the Country is bound to obey command of the constitution and to act in accordance with law and decide issues after application of mind with reasons.”

In addition to the above, it has also been provided under the rule 519 of Chapter XXI of the Civil Service Regulations that a civil servant can be reemployed who has regained health after obtaining invalid pension. For ease of reference and sake of brevity, this rule is reproduced as under:

519. There is no bar to the re-employment of an officer who has regained health after obtaining Invalid pension, or if an officer is invalidated as being incapacitated for employment in a particular branch of the service, to his reemployment in some other branch of the Service. The rules in such a case as to

refunding gratuity, drawing pension, and counting service, are the same as in the case of re-employment after Compensation pension”

The executive authorities are therefore required to act fairly, without any shadow of prejudice to any employee. The authorities in the present case should have considered the above provision of Civil Service Regulation to ensure rule of law and advance the cause of justice. This phenomenon is accepted internationally, reliance is placed on a Judgment of Hon’ble Supreme Court of India which in a case titled “Delhi Transport Corporation v. DTC Mazdoor Congress reported AIR 1991 SC 101, wherein it is held as under: -

“Obligation to act fairly on the part of administrative authority has been evolved to ensure rule of law and to prevent failure.”

The principle of fair dealing and fair play is also of great import in Islamic justice system. The authorities are bound to obey the commands of Holy Quran and Holy Sunnah of ﷺ. Holy Quran also command to treat people justly and deal them in a fair manner as under:-

“God commands justice and fair dealing...” [Quran, 16:90]

7. As far as contentions of the learned Advocate General, Gilgit-Baltistan regarding entertainment of time barred appeal by the learned Gilgit-Baltistan Service Tribunal are concerned, it is observed that the learned Service Tribunal has rightly come to conclusion that action of rejection of departmental appeal of the respondent by the Chief Minister, Gilgit-Baltistan on 23.04.2014, a fresh cause of action accrued to the respondent, hence he approached the learned Service Tribunal with the service appeal within 6 month of establishment of the Tribunal.

8. It is further observed that due process of law has not been followed by the authorities of the concerned department for re-examination of medical condition of the respondent despite request allegedly made by the respondent in this regard and for that the present respondent could not be held responsible. However, as observed in para 5 of this judgment as well as in view observations recorded in the judgment passed by the learned Gilgit-Baltistan Service Tribunal, Keeping in view the intellectual and physical condition respondent should have been allowed to continue with his services. Therefore, the impugned judgment passed by the learned Service Tribunal being based on law and cogent reasons does not call for interference of this Court.

9. We now take up the case of Saadat Khan Vs. Prov. Govt. of Gilgit-Baltistan CPLA No.75/2019. This case has been filed by the present petitioner, Mr. Saadat Khan against the same judgment passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No.461/2016 whereby the learned Gilgit-Baltistan Service held him to be on duty for the period from the date of medical retirement till institution of service appeal before it, however that period was ordered to be treated as extraordinary leave without financial benefits i.e. pay and allowances. We observe that the petitioner has remained out of duty for the period from his retirement till institution of service appeal before the learned Service Tribunal and has been receiving invalidated pension etc. as well as receipt of payment on account of medical reimbursement and TA/DA., therefore, further grants could not be reasonably claimed by the present petitioner. Therefore, we hold that claim of the petitioner is not based on substantial ground, hence the same is refused. The learned

Gilgit-Baltistan Service Tribunal while refusing to grant relief in terms of treating the petitioner on duty for the disputed period has assigned well reasons, as such, the judgment of the learned Gilgit-Baltistan Service Tribunal to this effect too does not call for interference of this Court.

10. The nutshell of the above discussion is that no illegality, irregularity and infirmity has been attributed to the impugned judgment. Therefore, leave in both the above Civil Petitions for Leave Appeal No. CPLA No.75/2019 and CPLA No.73/2019 is refused. In consequence whereof, the impugned judgment 31.10.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No.461/2016 is maintained. The concerned department is directed to implement the impugned judgment, if not implemented earlier. These were the reasons for our short orders dated 18.09.2020 which are reproduced herein below:

Saadat Khan Vs. Provincial Govt. CPLA No. 73/2019

"The learned counsel for the respective parties have been heard. We have also gone through the impugned judgment as well as record of the case minutely. We do not find any illegality or infirmity in the impugned judgment. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 73/2019 is refused. Impugned judgment dated 31.10.2018 passed by the learned Service Tribunal, Gilgit in Service Appeal No. 461/2014 is maintained."

***Prov. Govt. & others Vs. Saadat Khan
CPLA No. 75/2019***

The learned counsel for the respective parties have been heard. We have also gone through the impugned judgment as well as record of the case minutely. We do not find any illegality or infirmity in the impugned judgment. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 75/2019 is refused. Impugned judgment dated 31.10.2018 passed by the learned Service Tribunal, Gilgit in Service Appeal No. 461/2014 is maintained"

Chief Judge

Judge

Whether fit for reporting (**Yes / No**)