

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

BEFORE:

*Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge*

CPLA Under Objection No. 45/2019

(Against the Judgment dated 27.09.2019, passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 79/2018)

1. Muhammad Yaqoob S/o Akbar Shah R/o District Astore
2. Mushtaq Hussain S/o Muhammad Musa R/o District Gilgit.
3. Salahuddin S/o Ashraf Khan r/o District Ghizer
4. Jaffar Hussain S/o Qader Shah R/o District Nagar
5. Shabbir Hussain S/o Jawad Ali R/o District Astore
6. Akbar Hussain S/o Ghulam Hussain R/o District Gilgit
7. Haider Shah S/o Shamsher Khan R/o District Ghizer
8. Asif Hussain S/o Rehman R/o District Skardu
9. Wahid Ali S/o Ghulam Muhammad R/o District Nagar
10. Tahir Hussain S/o Muhammad Anwar R/o District Nagar

.....**Petitioner(s)**

Versus

1. Provincial Govt. through Chief Secretary Gilgit-Baltistan
2. Secretary Services & General Administration Gilgit-Baltistan
3. Inspector General Police Gilgit-Baltistan
4. Registrar Department of GB Police CPO, Gilgit
5. Assistant Inspector General of Police (Establishment/SSP KKSF GB, Gilgit

.....**Respondent(s)**

PRESENT:

For the Petitioner (s) : Mr. Asadullah Khan Sr. Advocate

For the Respondent(s): The Advocate General Gilgit-Baltistan

On Court Notice : DIG (Establishment) Police, GB

Date of Hearing : **19.11.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This Civil Petition for Leave to Appeal arises out of a judgment dated 27.09.2019 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 79/2018, whereby the Writ Petition filed by the petitioners was dismissed being meritless.

2. Necessary facts giving rise to the *lis* in hand are that in the month of December, 2014, respondent No. 3 advertised some posts of FC Drivers BPS-05 in Karakoram Security Force (KKSF) on contract basis to provide security for Chinese Nationals working on KKH from Raikot to Basari Check Post. In pursuance of the said advertisement, the petitioners applied for the said posts and after passing of test/ interview held on 06.01.2015, succeeded to secure appointments against the respective posts on 16.01.2015. After appointment on contract basis against the posts, the petitioners continued their services till 31.12.2015, when the respondent No. 3 verbally discontinued their services. The petitioners, after discontinuation of their services, filed a departmental appeal before the Inspector General of Police, GB (respondent No. 3 herein) for regularization of their services, copy whereof was also endorsed to the Chief Minister GB. It appeared that upon receipt of this application, a resolution with regard to regularization of services of the petitioners was moved in the Gilgit-Baltistan Legislative Assembly. Consequent to the resolution, a special committee was constituted by the then Chief Minister Gilgit-Baltistan to resolve the matter in question, as such, the committee in order to resolve the issue, convened a meeting on 31.10.2016 wherein it recommended regularization of services of the petitioners in the same line as was done in the case of first batch of 437 FCs and subsequent batch of 22 Foot Constables. The said recommendations were sent to the respondent No. 3 for implementation, however, he failed to comply with the recommendations of the Special Committee apparently on the ground of non-availability of requisite posts with the Police Department, GB. The petitioners, being fed up with the stubborn behavior of the respondent No. 3 and in

order to get a writ issued to the respondents, knocked at the doors of the learned GB Chief Court by way of writ petition, however writ petition filed by the petitioners before the learned Chief Court met the fate of dismissal holding it to be meritless, which has now been assailed before this Court through the CPLA in hand.

3. The learned counsel for the petitioners contended that the petitioners were initially appointed on 16.01.2015 as FC Drivers BP-5 in KKSF on contract basis after fulfilling all codal formalities i.e advertisement of posts, conducting test/interview. He next contended that respondent No. 3 regularized services of 437 other contract employees amongst them, 22 employees were those whose appointments was made without observing the codal formalities i.e. advertisement, test/interview, even then, their services were regularized. He next added that when the petitioners filed departmental appeal before the competent authority seeking regularization of their services in the same manner as of their counterparts whose services were regularized earlier, the respondent No. 3 did not consider their departmental appeal which was a case of clear discrimination. He next argued that the case of regularization of the petitioners was also taken up in the GB Legislative Assembly whereon a committee was constituted for the purpose of resolution of the issue. He maintained that the committee after convening its meeting held on 31.10.2016 recommended regularization of services of the petitioners subject to availability of posts in GB Police Department in BPS-5 but respondent No. 3 did not bother to honor the recommendations passed by the Special Committee which is clear violation of recommendations of executive authority. The learned counsel for the petitioners submitted that one of the colleagues of the petitioners, namely Mir Iqbal

who was initially appointed as Cook BPS-1 on contract basis alongwith the petitioners and a similarly placed person, was regularized by respondent No. 3 as Foot Constable BPS-5. But to the extent of the present petitioners, the respondent No. 3 was reluctant, as such, this action on the part of the respondent No. 3 was a clear discrimination with the petitioners which was against the Law /Rule and natural justice (However no document was produced by the learned counsel for the petitioner in support of his claim of regularization of one similarly placed person, namely Mir Iqbal). The learned counsel for the petitioners went on to argue that since the learned GB Chief Court failed to exercise its judicious mind to take into consideration all material facts and legal aspects of the case, hence, the impugned judgment so passed by the learned Chief Court is liable to be set aside.

4. On the other hand, the learned Advocate General Gilgit-Baltistan argued that the impugned judgment passed by the learned GB Chief Court is in accordance with law and facts. He next argued that the petitioners could not claim regularization as their initial appointments were made purely on contract basis for provision of security to Chinese Nationals working on KKH from Raikote Bridge to Basari Check post and as such, their services were terminated in pursuance of the letter issued by the General Manager, NHA vide No. 1(58)/GM (NAs)/NHA/Abtd: /15/885 dated 31st December, 2015. He further argued that during the process of recruitment, it was clearly mentioned in the advertisement that the appointments were purely on contract basis and were liable to be terminated without assigning any reason and without any notice on completion of project period or on expiry of contract agreement dated 29th October, 2014 signed between GM NHA, Abbottabad and GB Police. As to the

contentions of learned counsel for the petitioners regarding noncompliance of Special Committee's recommendations, the learned Advocate General Gilgit-Baltistan contended that the Committee constituted for that purpose clearly recommended regularization of services of the petitioners subject to availability of posts, however at the relevant time, the requisite posts were not available with the Police Department GB.

5. We have heard the learned counsel for both the parties. The record as well as impugned judgment perused.

6. Admittedly, vide office order No. SP.KKSF-215-14 dated 16th January, 2015, appointments of petitioners as FC Drivers BPS-5 on contract basis were made after observing the procedure prescribed under the relevant law/ rules. There is no denial to this effect by the learned Advocate General, GB also. It is also an admitted fact that services of the petitioners were terminated without issuing any proper order in writing rather the same was done verbally. There is no denial of the factum of submission of departmental appeal by the petitioners for regularization of their services in line with other 437 Foot-Constables whose appointments in Karakorum Security Force (KKSF) were also made initially on contract basis and subsequently their contractual services were brought on regular side. In order to strengthen the factum of regularization of these 437 Foot Constables (FCs), we deem it appropriate to reproduce the relevant lines from the regularization order(s) of 437 FCs as under:

*"OFFICE OF THE INSPECTOR GENERAL OF
POLICE, GILGIT-BALTISTAN, GILGIT*

No. IGP-1(2)AP-E-V/9105-9107/2019

Dated 8th August, 2019

(Muhammad Yaqoob & others Vs Prov. Govt)

OFFICE ORDER:

In pursuance of Finance Division(Regulation Wing) Islamabad Office Memorandum No. 7(9)R-1/2012 dated 31.05.2013 tilted “Protection of contract employees on regularization/ appointments on regular basis” the competent authority has been pleased to grant pay protection with effect from the first appointment basis in respect of following FCs and FC/ Drivers who were initially appointed in KKSF on contact basis and later on have been regularized against newly created posts of KKSF”.

(Underlines supplied)

7. In addition to regularization of above 437 contract FCs, the file contains another Office Order whereby 22 contractual employees of KKSF were regularized. For ease of reference, we quote below the said office order:

*“INSPECTOR GENERAL OF POLICE
GILGIT-BALTISTAN, GILGIT*

No. IGP-1(2)/657-60/2015

Dated 3rd March, 2015

OFFICE ORDER:

In pursuance of Gilgit-Baltistan Cabinet Decisions taken in its meeting dated 19.02.2014 and 10.09.2014 the Inspector General Gilgit-Baltistan has been pleased to approve regularization of services of the following 22 contractual employees of Gilgit-Baltistan Police (KKSF) against clear vacancies with effect from 1.2015”

(Underlines supplied)

The last few lines extracted from the above Office Order depicts that those 437 and subsequent 22 FCs were initially appointed on contract basis and subsequently their services were regularized against the newly created posts. In view of this situation, it can safely be held that these two sets of FCs were appointed in KKSF; in the case of first set of FCs, their contractual services were regularized on creation of new posts

while the latter set of FCs/ Drivers (now petitioners in the present case) were not regularized for want of posts. In addition to this, it is also an admitted fact that Gilgit-Baltistan Legislative Assembly (GBLA), which is a legislating forum/house for the citizens of Gilgit-Baltistan and the implementation of its decisions/ recommendations are *de rigueur* for public functionaries of Administration branch of government. The GBLA, recommended, rather directed the respondent No. 3 (Inspector General of Police) GB for regularization of services of the petitioners on availability of posts. However, at the relevant time, for want of vacant posts, the recommendations/ directions of the Committee could not be implemented. For the sake of brevity and convenience, the composition of Committee and its recommendations are reproduced as under:

- (i) Muhammad Ibrahim Sanai, Minister Education/ Chairman Special Committee
- (ii) Mr. Jafarullah Khan, Deputy Speaker
- (iii) Mr. Aurangzeb Khan, Par. Secretary Law
- (iv) Mr. Rizwan Ali, Member GBLA
- (v) Mr. Ghulam Hussain, Member GBLA

The special committee after convening meeting held on 31st October, 2016, made their recommendations which are reproduced herein below:

“1) The Chairman of the Committee pointed out that all the employees must be treated equally. He further added that those employees who meet all the prescribed codal formalities i.e who had been inducted through proper test/ interview and got trained from police Recruitment training center shall be regularized at the earliest.

2) The forum unanimously recommended that since 437 personnel were regularized in Phase-I and Phase-II and 22 more constables were regularized vide office order No. IGP-1(2)/657-60/2015 dated 03.03.2015, thus remaining 10 Nos of security FC Personnel shall also be regularized in BPS-05.

3) The forum further recommended that as the above 10 Nos. of FC security personnel had been inducted purely on merit basis after being appeared in test/interview and training

sessions at PRTC Gilgit-Baltistan thus their services shall be regularized subject to immediate availability of vacant posts in Gilgit-Baltistan Police Department in BPS-05 provided that the said employees should be exempted from the test/interview as they had gone through the process already”

In furtherance to above and with regard to conclusive nature of decisions of the Cabinet/public functionaries, we would like to borrow some support from a judgment of the Hon’ble Supreme Court of Pakistan titled Pir Imran Sajid Vs Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan 2015 SCMR 1257. The relevant paragraph is reproduced as follows:

“8. In addition to the benefit of the above dictum, we may observe here that TIP's non-compliance, rather defiance of the decision of the cabinet sub-committee to regularize the services of the appellants, and not heeding to the directive of their Ministry to comply with said decision, compliance whereof is being sought by the appellants, is wholly illegal and mala fide”

8. The respondents' reluctance to regularize services of the petitioners on the pretext of non-availability of requisite posts came to an end now because, as per an Office Note put up by officials of Police Department, GB that as many as 267 posts in the rank of FC (BS-07) are lying vacant with Police Department GB. This factum of availability of posts is further strengthened by a letter dated 23rd September, 2020 of AIG Establishment addressed to the Chief Election Commissioner, which is reproduced herein below:

**OFFICE OF THE
INSPECTOR GENERAL OF POLICE
GILGIT-BALTISTAN
GILGIT**

To,

*The Chief Election Commissioner
Gilgit-Baltistan, Gilgit*

No.IGP-1(2)AP-E-V/ 14587-89/2020

Dated the 23rd Sept, 2020

Subject:

**NOC FOR RECRUITMENT AGAINST
THE VACANT POSTS OF ASIPS &
FCS IN POLICE DEPARTMENT
GILGIT-BALTISTAN**

Please refer to the subject cited above

2.
3. Beside 267 posts Foot Constables are also vacant in various Districts/Units, which impede smooth working of Police in prevention of crimes and maintenance law & order. The service of above strength if recruited timely can also be utilized in smooth of conduct of forthcoming Gilgit-Baltistan General Elections 2020.
4. Therefore, it is requested that NOC for recruitment against the vacant posts of ASIs and FCs may kindly be granted to enable this office to complete recruitment of ASIs and FCs well in time.

The DIG Establishment appearing on Court's notice on behalf of Inspector General of Police, GB and the learned Advocate General, GB also confirmed at bar the availability of 267 posts in GB Police Department.

9. Now we would consider it apt to advert to the aspect of experience. Being a disciplined force, relevant experience and trainings are essentially required for achieving better performance by the personnel of the force. New recruits as compared to the experienced and trained ones can cost government exchequer in terms of time and money. Reference is also made to a judgment of this Court in the case titled Provincial Government of GB through Chief Secretary Vs. Manzoor Ahmed (CPLA under Objection No. 40/2020) wherein it has been held as under:

“4. The second aspect of the case is the experience. Experience is more often than not a prerequisite

attached to a post(s) for all the new recruitments. The appointees on contracts, who worked against a particular post in a government service for whatever period, acquire knowledge and experience of the posts held by them on contract; as such they can produce better result and services than the new appointees. However, it has to be seen that initial appointments of such contractual appointees have been made in accordance with the method prescribed under the relevant law/ rules inasmuch as such appointments were urgently required to cater for the genuine requirements of the concerned departments".

We further observe that besides losing trained manpower by the Police Department GB, it would also not be in the interest of the respondents to undergo another expensive exercise of new recruitments which may cost huge amount. With a view to forty the above observations, we lend support from a judgment of the Hon'ble Supreme Court of Pakistan reported as 2017 PLC (C.S) 397. The relevant lines are reproduced below:

"Fresh recruitment by the Bank in place of the respondents was also against the interest of the Bank as the same would be an expensive exercise in terms of time, money and effort"

10. In view of our observations and coming to the factual as well as legal position explained herein above, we convert the above CPLA No. 45/2019 into an appeal and the same is allowed. The impugned judgment dated 27.09.2019, passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 79/2018 is set aside. Consequently, the respondents are directed to regularize the services of the petitioners from the date of passing of our short order dated 19.11.2020. The intervening period between termination of contractual services of the petitioner and subsequent regularization shall be treated as leave without pay. The

above were the reasons for our short order dated 19.11.2020 which is reproduced herein below:

"The learned counsel for the respective parties have been heard. We have also gone through the record of the case as well as the impugned judgment. Although, the learned Advocate General, Gilgit-Baltistan argued the case vigorously, however, in view of the facts and grounds prevailing with the case in hand, we are not persuaded by his submissions. Therefore, for the reasons to be recorded later, we convert the above CPLA under Objection No. 45/2019 into an appeal and the same is allowed.

2. The respondents are directed to appoint the petitioners out of the 267 vacant posts against the respective cadres previously held by them. The appointments shall be made "with immediate effect", while the intervening period between termination of their services and subsequent appointments shall be treated as leave without pay".

Chief Judge

Judge

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