

**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. 105/2019

(Against the judgment dated 17.08.2018 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 50/2017)

1. Chief Secretary Govt. of Gilgit-Baltistan, Gilgit
2. Secretary Finance Govt. of Gilgit-Baltistan, Gilgit
3. Secretary Education Govt. Gilgit-Baltistan, Gilgit
4. Director Education Govt. of Gilgit-Baltistan, Gilgit
5. Accountant General Gilgit-Baltistan, Gilgit..... **Petitioners**

Versus

1. Ali Jan BPS-19 Ex-Principal, Govt. College of Education, Gilgit
2. Mehboob Ali BS-18 Ex Headmaster, Govt. Middle School Khomer Gilgit.
3. Syed Muzaffar Hussain Ex Headmaster High School Gulmit
4. Muhammad Karim Khan, Ex Headmaster High School Haramosh
5. Sultan ullah Baig Ex Headmaster High School Bubar
6. Muhammad Karim Ex Headmaster High School Gupis
7. Abdul Jabbar Instructor College of Education Gilgit
8. Imam Yar Baig Ex Principal Govt. College of Education Gilgit
9. Amir Haider Ex Headmaster Middle School Minapin Nagar
10. Ibrahim Khan TGT High School Askurdas
11. Syed Sabit Rahim Ex Headmaster High School Taus Yasin
12. Muhammad Iqbal Ex DIS Gilgit
13. Shan Muhammad Ex Headmaster Middle School Sultanabad
14. Abdul Majid Ex Headmaster High School Damote
15. Shah Mirza Khan Ex Headmaster Middle School Jutal
16. Ibrahim Khalil Ex ADI Hunza Nagar
17. Muhammad Zahid Khan Ex DDE DOE Gilgit
18. Muhammad Qudoos Ex Headmaster High School Gullapure
19. Doulat Mir Ex Headmaster High School Danyore
20. Muhammad Jabir Ex Headmaster High School Jalalabad
21. Muzaffar Shah Ex Headmaster High School Gahkuch
22. Hazrat Shah Ex Headmaster High School Sherqilla
23. Abdul Karim TGT B-18 High School Gullapur
24. Ibad Ullah Ex Headmaster High School Sharote
25. Ehsan Ali Ex Headmaster High School Amphari
26. Shahbaz Khan Ex Headmaster High School Oshikhandas
27. Lal Mast Khan Ex Headmaster High School Jalalabad

28. Afiat Khan Ex Headmaster TGT Jalalabad
29. Abdul Razaque Ex Headmaster High School Bargo
30. Nisar Hussain Ex Headmaster High School Nomal
31. Habib ur Rehman Ex Headmaster High School Darel
32. Hamidullah Ex DDE Diamer
33. Muhammad Irshad Ex DIS Gilgit
34. Muhammad Jaffar Ex ADI, High School Khaplu
35. Naik Alam Ex Headmaster High School Astore Bala
36. Muhammad Hadi Ex Headmaster Chorkah
37. Yasmin Kousar TGT KGS Town Skardu
38. Syed Abdullah Shah Middle School Gial Skardu
39. Muhammad Nasir Headmaster Boys Middle School Bargo
40. Shahida Khurshid Instructor College of Education Gilgit.

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Respondents

PRESENT:

For the Petitioner(s) : The Advocate General GB

For the Respondent(s) : Munir Ahmed Advocate
Shakoor Khan AoR

Date of Hearing : **19.11.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- The petitioners, through this Civil Petition for Leave to Appeal, has challenged the judgment dated 17.08.2018 passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 50/2017 whereby service appeal filed by the respondents was accepted and the present petitioners were directed to grant benefits of the timescale upgradation granted vide Notification No. F.1-I/2011-Edu dated 14th October, 2011 to the respondents subject to fulfillment of eligibility criteria.

2. Brief facts leading to the institution of the instant Civil Petition for Leave to Appeal are that the respondents were serving in Education Department Gilgit-Baltistan in same cadre in different pay scales and stood retired on attaining the age of superannuation on different dates. All the respondents stood retired before the year 2014. In the year

2011, the Prime Minister of Pakistan vide Directive No. 2605 dated 17.02.2011, granted Timescale upgradation to all the teachers in BPS-16 & above under a Timescale Formula, which was published in Part-II of the Gazette of Pakistan and the Cabinet Secretariat, Capital Administration & Development Division, Govt. of Pakistan vide Notification No. F.1-1/2011-Edu. dated 14.10.2011, circulated those directive to all the Provinces including Gilgit-Baltistan & Azad Jammu & Kashmir for its implementation w.e.f 01.01.2011. On 10th June, 2014 vide Notification No. Sec.Edu-2(31)/2014, the Secretary Education, Social Welfare & Women Development Gilgit-Baltistan, upon approval of the competent authority/ the then Chief Minister Gilgit-Baltistan, allowed adoption of Timescale upgradation Formula for teachers in BPS-17 & above in Gilgit-Baltistan. The respondents, who retired on different dates in between the years 2011 & 2014, approached the Director of Education and the Chief Secretary Gilgit-Baltistan with the request for making the said Timescale upgradation effective from the date when the Federal government employees were allowed the same benefit (i.e. 01.01.2011) through the Prime Minister's Directive (i.e. Directive No. 2605 dated 17.02.2011). The said request was not acceded to by the petitioners, which culminated into institution of service appeals by the respondents before the learned Gilgit-Baltistan Service Tribunal. The learned Gilgit-Baltistan Service Tribunal allowed appeals of the respondents and directed the petitioners to allow benefits of the Timescale upgradation with effect from the year 2011. Being aggrieved and dissatisfied with the judgment passed by the learned GBST, the petitioners have now approached this Court by way of the instant Civil Petition for Leave to Appeal.

3. The learned Advocate General Gilgit-Baltistan argued that the respondents cannot claim benefits of the Timescale upgradation at this belated stage on the ground that the Govt. of Gilgit-Baltistan granted timescale to the teachers under Timescale upgradation Formula in the year 2014 and the respondents approached the GB Service Tribunal in the year 2017 after a lapse of about 03 years. He next argued that as per Notification No. Sec.Edu-2(31)/2014 dated 10th June, 2014, Timescale upgradation Formula was applicable to the teachers of Gilgit-Baltistan w.e.f 01.07.2014 only, hence in this view of the matter, the respondents, who retired prior to 01.07.2014 were barred to claim the Timescale w.e.f. 01.01.2011. The learned Advocate General Gilgit-Baltistan next argued that since the learned GB Service Tribunal failed to apply its judicious mind to take into consideration the material facts and legal aspects of the case, hence, the impugned judgment so passed by the learned GBST was liable to be set aside.

4. The arguments advanced by the learned Advocate General Gilgit-Baltistan have been heard. We have also gone through the record of the case as well.

5. It is an admitted fact that Notification No. F.I-I/2011-Edu. dated 14.10.2011 was issued in compliance with the directives of the Prime Minister of Pakistan, whereby certain posts of teaching cadre were accorded timescale upgradation for Federal Directorate of Education, Islamabad and a copy thereof was also endorsed to Government of Gilgit-Baltistan. It is a matter of record that in line with the above Notification, the government of Gilgit-Baltistan also issued a Notification granting the benefit of timescale upgradation facility to a set of teachers of grade-16 and

below, while timescale upgradation facility was refused to the teachers in BPS-17 and above. This factum is evident from the contents of Summary dated 8th June, 2014 initiated by the office of Secretary Education, GB. The relevant lines are extracted and reproduced below:

“Government of Gilgit-Baltistan
Office of the Secretary Education, Social
Welfare & Women Dev.

No. Sec./Edu.2(31)/2011
Dated 8th June, 2014.

SUMMARY FOR THE CHIEF MINISTER
GILGIT-BALTISTAN

Subject: GRANT OF TIME SCALE TO THE
TEACHERS OF GILGIT-BALTISTAN

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The time scale facility has been sanctioned by the Federal Government for teachers in BS-16 and above under the Federal Directorate of Education, Islamabad w.e.f. 1.1.2011 vide Notification dated 14.10.2011.
Since the said facility to the teachers in BS-16 and below working in Gilgit-Baltistan has already been sanctioned recently, therefore, time scale facility is recommended to the teachers in BS-17 and above working in the Educational Institutions of Gilgit-Baltistan as under”

Consequent upon approval of the summary referred to hereinabove, a Notification No. Sec.Edu-2(31)/2014 dated 10th June, 2014 was issued whereby timescale upgradation formula for teachers in BPS-17 and above under the Directorate of Education, Gilgit-Baltistan was approved w.e.f. 01.07.2014. It was contended by the respondents in their service appeals before the learned Gilgit-Baltistan Service Tribunal that timescale upgradation facility was sanctioned by the Prime Minister of Pakistan in the year

2011 which was implemented by Capital Administration and Development Division, Islamabad, the same should have been adopted by the Government of Gilgit-Baltistan with effect from the same year or the subsequent Notification issued in the year 2014 should have been given retrospective effect so as to make it applicable from the date of issuance of Notification by the Federal Government i.e. 2011 when the respondents were serving the Education Department, Gilgit-Baltistan.

6. They further contended in the service appeals before the learned Gilgit-Baltistan Service Tribunal that act of non-adopting timescale upgradation facility or refusing retrospective effect to the Notification issued by the Government of Gilgit-Baltistan deprived the respondents from their lawful right of benefits of timescale upgradation granted by a lawful authority i.e. the Chief Executive of the country and retired them without benefits of the said facility. It is pertinent to note here that in view of the contents of summary quoted above, although the Notification issued by the Federal Government in the year 2011 was adopted to the extent of timescale upgradation of the teachers of BPS-16 and below. The concerned authorities, for the reasons best known to them, refused the due benefit of timescale upgradation to teachers in BPS-17 and above. It was apprised to the Court that whenever the Federal Government accords timescales/ upgradation to other posts in Federal Government, within no time, the same is implemented in Gilgit-Baltistan. Such examples were stated to be with regard to posts of Superintendents, Assistants, UDCs and LDCs etc. whose Notifications issued by the Federal Government, were implemented in true spirit and without any delay. This

attitude on the part of the concerned authorities of Government of Gilgit-Baltistan manifests that these authorities tend to act as per their own wishes and convenience influenced by their personal liking or disliking.

7. There is another example of upgradation of posts of Private Secretaries, Stenographer and Steno typists. The upgradation to these posts was allowed by the Prime Minister of Pakistan in the year 2012, however, the benefits of this upgradation were not allowed to the incumbents until they got the same through Courts of law after about 4-5 years by sustaining financial loss in terms of litigation fee and mental agony as well. This act on the part of the public functionaries of Gilgit-Baltistan is nothing but a blatant discrimination on the basis of liking or disliking.

8. It can be seen from the documents available on file record, that Government of Gilgit-Baltistan has been giving effect to such Notifications on piecemeal basis as per their own wishes and convenience because, in the present case, implementation of the Notification of Timescale upgradation facility accorded by the Prime of Pakistan in the year 2011 has been acted upon in two phases. As per the summary referred to hereinabove, timescale upgradation facility to the extent of teachers in Grade-16 and below has been granted earlier while the Notification with regard to upgradation of teachers in BPS-17 and above was issued on 1st July, 2014 i.e. after retirement of the respondents, as such, for no fault of them, the respondents have been deprived of from the benefits of said timescale upgradation facility. Such attitude of government functionaries is considered as bad governance. The Hon'ble Supreme Court of Pakistan also in matter with regard to delaying processing of cases of employees/

pensioners reported as 2007 PLD SC 35 laid a principle and held as under:

“Everyone, who was responsible in any manner in delaying the cases of.....(employees/government servants) had to be penalized”

9. It is expected from the government functionaries to give equal importance to all such Notifications and avoid resorting to delaying tactics as well as avoid pick and choose mechanism while granting benefits of such Notifications. The public functionaries must also avoid discrimination while extending the benefits of a policy to the employees of same cadre. It is unjust, unfair and against the natural justice that amongst same cadre employees, one set is given benefits in time and the other set is left to retire without any benefits of the same Notification extended to equally placed persons. This Court, in a number of judgments, has repeatedly directed the public functionaries of Gilgit-Baltistan to be just and fair in order to avoid discrimination amongst equally placed employees. In this regard, this Court in a case tilted Provincial Government through Chief Secretary & others Vs. Niaz Ali (CPLA No. 43/2019) has held as under:

“While dealing with the issue of equality amongst equals, the Hon’ble Supreme Court of Pakistan in a case reported as I.A Sharwani & others Vs. Govt. of Pakistan through Secretary Finance Division Islamabad & others 1991 SCMR 1041 has held as under:

“1. That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike”

4. 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".

- 10.** So far as the arguments of the learned Advocate General regarding entertaining time barred service appeal(s) by the learned Gilgit-Baltistan Service Tribunal is concerned, it is clear that in view of the judgment of the Hon'ble Supreme Court of Pakistan, it is discretion of the learned Service Tribunal to determine the suitability of Condonation

of delay in view of peculiar circumstances of each case. For the sake of brevity, some of those cases are quoted herein. The Hon'ble Supreme Court of Pakistan in a case title Chief Executive Officer, Quetta Electric Supply Company (QESCO) Vs Rana Shamim Akhtar 2010 SCMR 442,

"We have not been persuaded to agree with the prime contention of learned Advocate Supreme Court on behalf of petitioner that learned Federal Service Tribunal was not justified to entertain and decide the time barred appeal for the simple reason that question qua Condonation of delay squarely falls within the jurisdictional domain of learned Service Tribunal and no restriction whatsoever has been imposed by any law and Condonation can be granted in suitable cases and question of suitability is to be assessed by the learned Federal Service Tribunal itself"

The Hon'ble Supreme of Pakistan in another case titled Government of N.W.F.P Vs. Asif Iqbal 2010 SCMR 1345 has also held as under:

"It is well-settled by now that "sufficiency of cause for Condonation of delay being question of fact is within the exclusive jurisdiction of learned Service Tribunal."

11. In the backdrop of what has been discussed above, we are of the considered view that the learned Gilgit-Baltistan Service Tribunal while declaring the respondents entitled for benefits of timescale upgradation from the date of Notification issued by the Federal Government, has not erred, neither in facts nor in law. The Government of Gilgit-Baltistan without any justification has deprived the respondents from the

benefits of the Timescale upgradation besides violation of fundamental rights of benefits of lawful gain. The public functionaries are directed to avoid implementing such Notifications on piecemeal basis, rather such Notifications, if required to be implemented, be implemented as a whole and that too in its true letter and spirit.

12. In view of what has been discussed above, we are unable to find any illegality, infirmity or irregularity in the impugned judgment. Therefore, leave in the above CPLA No. 105/2018 is refused. Impugned judgment dated 17.08.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 50/2017 is maintained. The petitioners are directed to implement the impugned judgment in its true spirit. The above were the reasons of our short order dated 24.09.2020 which is reproduced below:

"The learned Advocate General, Gilgit-Baltistan has been heard. We have also gone through the impugned judgment as well as available record of the case. The learned, AG, Gilgit-Baltistan vehemently opposed the impugned judgment on various factual and legal grounds. However, we have not been able to find any illegally, irregularity or infirmity in the impugned judgment. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 105/2018 is refused. Consequently, impugned judgment dated 17.08.2018 passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 50/2017 stands maintained/ upheld".

Chief Judge

Judge

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