

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN, AT
GILGIT
C.P.L.A. NO. 27/2011**

Before:- **Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.**
Mr. Justice Syed Jaffar Shah, Judge.
Mr. Justice Muhammad Yaqoob, Judge.

Ikhlaq Hussain, Assistant Engineer, 18-MW Hydro Power Project
Naltar Gilgit.

Petitioner/Appellant

Versus

1. Mohammad Hassan, Sub Engineer, presently Assistant Engineer, Water & Power Division, Ghanche.
2. Ali Rehbar, Sub Engineer, presently Assistant Engineer, Water & Power Division, Gilgit.
3. Qari Shams-ur-Rehman, presently Assistant Engineer, Water & Power Division, Gilgit.

Proforma Respondents

4. Provincial Government through Chief Secretary Gilgit-Baltistan.
5. Secretary Works Gilgit-Baltistan.
6. Superintending Engineer Works, Water & Power Gilgit.
7. Chief Engineer Water & Power Gilgit.
8. Executive Engineer 18-MW Hydro Power Project Naltar Gilgit.

Respondents

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER 2009, FOR SETTING ASIDE THE IMPUGNED JUDGMENT/ORDER DATED 15-06-2011 PASSED BY HON'BLE DIVISION BENCH CHIEF COURT, GILGIT-BALTISTAN, IN WRIT PETITION NO. 38/2009 FILED BY RESPONDENTS NO.1 TO 3 AGAINST PETITIONER AND RESPONDENTS NO. 4 TO 8.

Present:- Muhammad Isa, Senior Advocate for petitioner
alongwith Mohammad Abbas, Advocate-on-Record.
Malik Shafqat Wali and Shoukat Ali, Senior Advocates
for respondents No. 1 to 3.
Advocate General, Gilgit-Baltistan, for respondents No.
4 to 8.

Dated of Hearing:- 12-10-2011.

JUDGMENT

Syed Jaffar Shah, J..... This appeal by leave of this Court
is directed against judgment dated 15-08-2011, passed by Chief

Court, Gilgit-Baltistan, in writ petition no. 38/2009, whereby the learned Chief Court, Gilgit-Baltistan, while accepting the writ petition of respondents No. 1 to 3, declared the appointment of petitioner as void and without lawful authority and also directed the department to fill up the vacant post of Assistant Engineer afresh after fulfilling the legal requirements and codal formalities under the relevant rules.

The facts, in brief, leading to the present petition are that the petitioner who is B.Sc Engineer on work charge basis at a fixed pay of Rs. 3500/- per month for a period of six months vide office order dated 15-02-2005 and later on, on creation of regular post of Assistant Engineer, the petitioner was adjusted against vacant post as an Assistant Engineer in BPS-16 on regular basis vide office order dated 18-03-2009. The respondents who are also diploma holders were appointed as Sub Engineer BPS-11, in 1984, in than NAPWD and until filing of writ petition they served as such without any promotion and on creation of a post of Assistant Engineer, BPS-16, in the year 2009, the official respondents, without considering the cases of respondents No. 1 to 3, for promotion under relevant service rules, directly appointed/adjusted the petitioner as Assistant Engineer in BPS-16.

The respondents No. 1 to 3, having been aggrieved with the direct appointment order of petitioner against the vacant post of Assistant Engineer, filed a writ petition in the Chief Court, Gilgit-Baltistan, and the learned Chief Court, Gilgit-Baltistan, after hearing both the parties accepted the writ petition and declared the appointment of petitioner as illegal and against relevant service rules. Leave was granted by this court vide order dated 02-08-2011, to consider whether the post in dispute was quota promotion or direct recruitment as per rules and whether the writ petition was maintainable in a service matter.

We have heard the learned counsel for the parties Mr. Mohammad Isa, learned counsel for petitioner vehemently contended that the writ petition pertaining to service matter wa not maintainable and the learned Chief Court, Gilgit-Baltistan, has illegally exercised its jurisdiction vested under section 71 of (Empowerment & Self Governance) Order 2009, that during pendency of writ petition in Chief Court, Gilgit-Baltistan, the

respondents were promoted as Assistant Engineer and their main grievance was redressed as such the writ petition having become in-fructuous was liable to be dismissed. He further added that the case of petitioner does not pertain to a new appointment or promotion but it is purely adjustment case as he was already serving in the department as Assistant Engineer on work charge basis for the last 4 years in running pay scale. The learned advocate general also relied upon the arguments of counsel for petitioner.

On the other hand, the leaned counsel for respondents Malik Shafqat wali and Shoukat Ali Senior Advocates of this Court, appearing for respondents No. 1 to 3, controverted the above submission of learned counsel for petitioner and submitted that according to service rules framed by competent authority i.e. the then Ministry of Kashmir Affairs and Northern Areas, the criteria for promotion to the post of Assistant Engineer BPS-16, was 5 years experience as Sub Engineer in BPS-11 and the present post was meant for 100% by promotion as such the respondent No. 1 to 3, having fulfilled the required qualification for promotion were eligible/entitled for promotion to the post of Assistant Engineer, BPS-16. They submitted that where a cadre has definite quota reserved for Departmental Promotions and Direct Recruitment, Promotion against the Departmental Quota is required to be made in preference to direct recruitment, that the official respondents in utter disregard of service rules have promoted the petitioner as Assistant Engineer, BPS-16, in violation of rights of promotion of respondents, the next limb of their arguments is that the petitioner who is a blue eyed person of some influential officers of department, has from the very beginning of his appointment as work charge employee has been treated by department in a special manner, the petitioner was appointed on work charge basis in the year 2005 and on creation of post of Assistant Engineer, was directly appointed as in BPS-16, on regular basis in utter disregard of relevant rules and in-violation of precious right of respondents No. 1 to 3, as the respondents had a legitimate expectancy to be considered for their promotion on availability or creation of post/posts in higher grade.

They further went on saying that on the representation of respondents No. 1 to 3, the Secretary Works on 11-04-2009, had withdrawn his earlier orders but later on vide order dated 23-04-2009, the same order was cancelled and the appointment/adjustment order infavour of petitioner in BPS-16, was maintained without assigning any reason, added that since all actions of respondents No. 4 to 8, were in violation of fundamental and statutory rights of private respondents as such the learned Chief Court, Gilgit-Baltistan, had rightly declared the said order as illegal in exercise of its jurisdiction under Article 71 of (Empowerment & Self Governance) Order 2009.

We have also examined the relevant record with the able assistance of the learned Counsel for both the parties and have also gone through the relevant service rules and judgment passed by the learned Chief Court, Gilgit-Baltistan.

From perusal of record it transpires that the petitioner was appointed as work charge employee in the year 2000, for a fixed period of six months at a fixed pay of Rs. 3500/- vide office order dated 30-05-2000. According to Office Order No. E-1/100/74 WC/2005, dated 15-02-2005, the petitioner was re-appointed as work charge employee for a period of six months by Secretary Works, NAPWD. The Secretary Works vide order dated 23-06-2005, appointed the petitioner in BPS-16, as Assistant Engineer (Work Charge) against 18 MW Naltar, Hydro Electric Power Project, in a fixed pay. On 18-03-2009, a vacant post of Accounts Officer, BPS-16, in 18 MW, Naltar Power Project, was converted into the post of Assistant Engineer, BPS-16 and the petitioner was appointed/adjusted against the regular post of Assistant Engineer, BPS-16.

The change of nomenclature of post of Accounts Officer into the post of Assistant Engineer, BPS-16 and appointment of petitioner against the same post on 18-03-2009, i.e. on the same day when the post of Accounts Officer, was converted into Assistant Engineer, annoyed the respondents No. 1 to 3, who were waiting for their promotion since along, filed the writ petition before the Chief Court.

Perusal of the record would show that the respondents No. 1 to 3, prior to invoking the writ jurisdiction of Chief Court, filed

departmental representation before the Secretary Works, who vide order dated 11-04-2009, withdrew his earlier order dated 18-03-2009, but in a subsequent stage, he while maintaining his earlier order dated 18-03-2009, cancelled the order dated 11-04-2009, on 23-04-2009. However the respondents before making any representation to the concerned quarter against order dated 23-04-2009, filed writ petition in the Chief Court, Gilgit-Baltistan.

We have also gone through the Rules framed by Ministry of Kashmir Affairs and Northern Areas duly published in gazette of Pakistan vide notification dated 21-11-1998, which are placed on page 24 of case file. According to these rules the method of appointment for the post of Assistant Engineer, BPS-16, is by 100% promotion from amongst the Sub Engineer BPS-11, alongwith 5 years experience in the relevant field and to fill up a post meant for promotion or selection no advertisement etc. is required. However recommendations of Departmental Promotion or Selection Committee are to be considered for promotion of eligible incumbents.

Be that as it may, during the course of arguments it was pointed out that the respondents No. 1 to 3, have also been promoted by the department, the learned counsel for respondents No. 1 to 3, when confronted, frankly conceded this fact and promotion to the higher rank was one of relief sought by the respondents in their writ petition.

It is pertinent to mention here that the respondents No. 1 to 3, without seeking redressal of their grievances from the proper forum directly invoked the writ jurisdiction of learned Chief Court, Gilgit-Baltistan and the learned Chief Court, allowed their writ petition and granted the relief as prayed for.

Writ jurisdiction is an extra ordinary jurisdiction which can be exercised in special circumstances, where no other remedy is available to the petitioner otherwise the court can decline to press into service its writ jurisdiction. In the present case the petitioner without availing the opportunity to approach the concerned authorities/forum have voiced their grievance through writ jurisdiction of the learned Chief Court and the learned Chief Court, without examining the crucial point regarding maintainability of the writ granted relief in favour of the writ petitioner. The learned

Chief Court ought to have dismissed the writ petition on account of non-availability in the prevailing circumstances.

For what has been discussed above, we find no substance in the arguments of learned counsel for respondents regarding maintainability of writ, resultantly this appeal is allowed and the impugned judgment is set aside, the respondents No. 1 to 3, may file appeal/representation before the Chief Secretary, Gilgit-Baltistan, for redressal of their grievances, if so advised and the Chief Secretary shall dispose of the matter on merits within a reasonable time.

Parties shall bear their own cost.

Appeal allowed

Chief Judge

Judge

Judge