

**IN THE SUPREM APPELLATE COURT GILGIT-BALTISTAN
AT GILGIT**

C.P.L.A.No.10/2013

**Before:- Mr. Justice Raja Jalal- Ud- Din, Judge.
Mr Justice Muzaffar Ali, Judge.**

1. Dr. Shahid Iqbal s/o Sheikh Sardar Ali.
2. Mrs. Zahida Shahid Iqbal R's/o House No. 11/51 Muhallah Rehman Gardens, Habib Ullah Eoad Lahore Pakistan Presently residing at 10631 Echo Lake Driver, Odessa, Florida 3355, USA

Applicants

Versus

1. Public at Large.
2. Provincial Government through Secretary Home, Gilgit- Baltistan, Gilgit.

Respondents

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT – BALSTAN EMPOWERMENT AND SELF GOVERNANCE) 2009 R/W ENABLING ARTICLES OF SUPREME APPELLATE COURT GILGIT- BALSTAN RULES 2008 AGAINST THE JUDGEMENT/ ORDER OF THE CHIEF COURT GILGIT- BALSTAN DATED 30TH MAY 2013 AND JUDGMENT/ ORDER DATED 26-04-2013 PASSED BY THE DISRICT AND SESSIONS JUDGE GILGIT, WHEREBY THE LEARNED CHIEF COURT DISMISSED THE APPEAL OF THE PETITIONERS AND MAINTAINED THE IMPUGNED JUDGMENT/ ORDER OF DISTRICT AND SESSIONS JUDGE, GILGIT PASSED IN C.MISC.29/2013 DATED 26-04-2013.

BY CONVERTING THIS PETITION FOR LEAVE TO APPELA INTO APPELA AND ACCEPTING THE APPEAL THIS HON'ABLE COURT MAY BE PLEASED TO SET ASIDE THE IMUGNED JUDGEMENT/ ORDER PASSED BY THE CHIEF COURT GILGIT- BALSTAN, DATED 30-05-2013 AND JUDGMENT/ ORDER OF THE DISTRICT JUDGE GILGIT IN C.MISC. NO.29/2013 DATED 26-042013 AND DIRECT THE LEARNED DISTRICT JUDGE TO ISSUE GUARDIANSHIP CERTIFICATE INFAVOR OF PETITIONERS AND GUARDIANS OF MINOR PARENTLESS CHILD ATIF ALI, PRESENTLY IN CUSTODY OF CEENA HEALTH AND WELFARE CENTER GILGIT.

Present:-

Advocate General Gilgit- Baltistan.
Mr. Amjad Hussain, Advocate for petitioners.

Date of Hearing:-08-07-2013.

JUDGEMENT

Raja Jalal- ud-Din, J----- This petition has been directed against the judgment/ order dated 30th May 2013, passed by the learned single Bench of Chief Court Gilgit- Baltistan, whereby appeal bearing No. C.F.A. No. 12/2013 against the judgment of the learned District/ Guardian judge Gilgit was dismissed.

The brief background of the case is that the applicant namely Dr. Shahid Iqbal and his wife Zahida Shahid Iqbal filed an application in the Court of District & session Judge Gilgit Seeking issuance of guardianship certificate of a minor Atif Ali from the CEENA Health and Welfare Center Gilgit.

The District Judge as well as the Chief Court Gilgit- Baltistan turned down the request of petitioners in view of the direction laid down in the judgment in a Suo Motu Case No. 12/2011 of the Apex Court of Gilgit Baltistan.

Being aggrieved the petitioners preferred their appeal with the contention that the decision of the Chief Court Gilgit- Baltistan as well as the District & Sessions Judge/ Guardian Judge are ill- founded and based on the misreading of the directions laid down in the judgment of Supreme Appellate Court Gilgit-Baltistan dated 22-06-2011

The petitioners submitted that out of seven conditions laid down a few of them need interpretation of require elaboration of the true sense and spirit of the requirements. The requirements are causing confusion as the same are not being understood in its perspective. Adopting parents are running from pillar to post which is ending up in a wild goose chase.

The State on the other hand represented by the Advocate General Gilgit- Baltistan, had been noticed and with his able assistance the matter was seriously thrashed out. He has also frankly opinioned that the directions and requirements laid down in the Judgment of Supreme Appellate Court dated 22-06-2011, need to be looked into for interpretation as it is being misunderstood.

We have gone through the matter and have also scrutinized the record of the case very carefully. In the first instance we fell that the mandatory requirements for adoption of deserted, parentless and abandoned children and their custody has been laid down by the Supreme Appellate Court Gilgit- Baltistan which is reproduced as under;

- a. **“In absence of specific proof to the contrary a deserted/parentless child in custody of welfare center or organization is considered a child of Muslim Faith and the custody of Muslim Child cannot be given to a non Muslim.**
- b. **If the parents of Child are known, the consent of parents in writing with full particular and declaration of adaptation by adoptive parents before the District Judge of the concerned District.**
- c. **If the child is deserted and is in custody of welfare organization as parentless child subject to the police verification and undertaking of the Center or organization that child was genuinely in their lawful custody which was not obtained in a illegal and unauthorized manner with declaration on oath before the District Judge of the concerned District the organization shall be responsible for legal consequences of the concealment of any material fact.**
- d. **In case of adaptation of child from a welfare center or organization in Gilgit- Baltistan in addition to the declaration on oath, the adoptive parents whether citizen or non- citizen, must fulfill the following requirements.**
 - (i) **The proof of origin and faith of child and the origin of adoptive parents with their full particulars with declaration of adoption supported by an affidavit of facts before the District Judge concerned.**

- (ii) The verification certificate of Home Secretary Gilgit- Baltistan regarding the desertion of child and genuineness of adoptive parents and the welfare organization.
- (iii) The NOC of Interior Division of Government of Pakistan to be issued on the basis of verification certificate of Home Secretary, Government of Gilgit- Baltistan and verification of credentials of the adoptive parents by the Foreign Office Through High Commissioner/ Consulate of Pakistan in the Country of adoptive parents.
- (iv) The Interior Division Government of Pakistan before issued of NOC will direct registration of child with NADARA Islamabad.
- (v) The adoptive parents may on the basis of above documents obtain Guardianship certificate with permission to take the Custody of Child out Pakistan from District & Session

The said para “D” has confused the Guardian Judge Gilgit- Baltistan as it has been mis- comprehended. The crux and soul of the historic decision of Supreme Appellate Court Gilgit- Baltistan dated 22-06-2011 has laid down the guidelines for the adoptive parents. The said para clearly indicates that when an adopted child has to leave the country then the provision to obtain guardianship certificate from the District Judge Islamabad will be invoked, the adoptive parents reside within Pakistan then the guardianship certificate of the guardian Judge Gilgit shall be valid for the adopted child but if he has to leave the country then the remaining conditions will be observed strictly in accordance with guide line laid down in the aforesaid judgment.

In the instant case the adoptive parents will firstly fulfill all the laid down criteria as elaborate above and then phase of a guardianship certificate from District & Session Judge Islamabad will follow later on, if the parents and child desire to leave the country and to stay abroad.

We are of the view that the stated para “D” is constituted of the above stated fact.

We have minutely perused the finding of Guardian Judge Gilgit dated 26-04-2013 and we find that the Guardian Judge has not thoroughly perused the Judgment of Supreme Appellate Court Gilgit- Baltistan dated 22-06-2011 supra the order does not disclosed any specific condition of adoption which is not fulfilled or followed by the

petitioners. The Guardian Judge has not appreciated the mandatory provisions which have already been fulfilled by the petitioners.

The learned single Bench in chamber of Chief Court Gilgit- Baltistan has also not applied its judicious mind to the matter in hand and has not given any genuine reason for dismissing the petition in appeal and has upheld the finding of the guardian Judge erroneously. Both the learned Judge of Chief Court as well as District Judge Gilgit have not even bothered to give reasons for neither their findings nor they notice to pass self explanatory judgments.

We feel that a deserted parentless child has got the full right to be adopted by genuine adoptive parents who can provide the facility of good up-bringing, good education and fruitful life. Any individual who can be in a good financial position to provide the facility to a child should be encouraged instead of creating hurdles and problems or discouragements.

The institutions that take care of deserted children will also be relieved of the burden which is being shouldered by any individual. The society will also prosper if genuine sound individuals share the burden of providing home, shelter and education etc. to the needy children to make them honorable members of the society instead of keeping as deserted soul for the whole life.

In the instant case, we are of the firm view that adoptive parents/petitioners are a sound parties who can give a better life compare to that of the institution they are living-in.

In this view of the matter this petition is converted into appeal and same is allowed. The petitioners are issued a guardianship certificate with regard to the parentless child adopted by them.

The petition is disposed of.

Judge

Judge

