

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

Before:-

Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.

Mr. Justice Javed Iqbal, Judge.

Mr. Justice Shahbaz Khan, Judge.

C. Appeal. No. 17/201

In

CPLA. No. 13/2015.

1. Provincial Government through Chief Secretary Gilgit-Baltistan.
2. Secretary Forest, Gilgit-Baltistan.
3. DFO, District Astore.
4. DFO, Circle Gilgit.
5. Conservator Forest Gilgit Circle Gilgit. **Petitioners.**

Versus

1. Tauqeer Ahmed son of Abdul Rahim Forest Guard (at present contingent Chowkidar) Forest Department Astore Gudi.
2. Shakeel Ahmed Son of Sher Ahmed Forest Guard (at present contingent Chowkidar) Forest Department Astore Bolan.
3. Basharat son of Abdul Rashid Chowkidar Forest Department Astore.
4. Ejaz Ali son of Ali Dad.
5. Nasir Hussain son of Shakoor Muhammad.
6. Ikram Ali son of Hazaroo.
7. Imran Ali son of Baz.
8. Madad Jan son of Khan r/o Chongra Astore. **Respondents.**

PRESENT:-

1. The Advocate General Gilgit-Baltistan alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Amjad Hussain Advocate alongwith Mr. Johar Ali Khan Advocate on behalf of the respondents.

DATE OF HEARING: - 02.08.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has been directed against the impugned judgment dated 11.12.2014 in Suo Moto Case No. 09/2013 passed by the learned Gilgit-Baltistan Chief Court, whereby the application of the respondents was

accepted and the petitioners No. 01 to 05 were directed to appoint the respondents against the posts they were appointed since 01.04.2013. The respondents were declared fully entitled for back service benefits thereto. The petitioners feeling aggrieved by and dissatisfied with filed petition for leave to appeal. The leave was granted on 20.05.2015 and the operation of the impugned judgment was also suspended. The case was finally fixed for hearing today i.e. 02.08.2016.

2. Briefly the facts of the case are that the respondent No. 01 was initially appointed as Forest Guard on 01.11.2007 temporarily on a fix pay under a development project titled “Capacity Building of Forest Department Northern Areas”. On the expiry of the period of the said project, the respondent No. 01 again re-appointed as Forest Guard on 01.03.2012 purely on temporary basis with a fixed pay under an another project i.e. “Forest Resource in Gilgit-Baltistan”. Later on the respondent No. 01 was appointed as Chowkidar under contingent head on 01.01.2008 whereas the respondent No. 03 was appointed as contingent paid Chowkidar on 14.12.2010 and they are performing their duties as Chowkidars on contingent basis till date. The record of the case transpires that afterward some other posts had been sanctioned in the office of the Conservator of Forest, Gilgit-Baltistan against which individuals amongst the Forest Department Gilgit-Baltistan were appointed /adjusted. The respondents feeling aggrieved filed application before the learned Gilgit-Baltistan Chief Court which

was treated as a Suo Moto case and upon hearing it was allowed vide judgment dated 11.12.2014 by the learned Gilgit-Baltistan Chief Court.

3. The learned Advocate General submits that the learned Chief Court Gilgit-Baltistan in exercise of its jurisdiction under Article 71 of “The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009” was not supposed to enter into the realm of factual controversy and give any opinion/verdict thereto. He also submits that the learned Gilgit-Baltistan Chief Court has no jurisdiction to take the Suo Moto notice as it is only the domain of Supreme Appellate Court Gilgit-Baltistan under Article 61 of the Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 read with Article 184 (3) of the Constitution 1973 Islamic Republic of Pakistan. He also submits that under no circumstances the learned Chief Court Gilgit-Baltistan could meddle with the affairs in which an adequate and efficacious remedy can be had from the Courts below. He also submits that “Article 71 of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009”, does not provide to the Chief Court to exercise of Suo Moto jurisdiction and an order passed in exercise of such jurisdiction shall be corrum-non-judice. He finally submits that the impugned judgment dated 11.12.2014 in Suo Moto Case 09/2013 passed by the learned Gilgit-Baltistan Chief Court is illegal, void ab-initio and without jurisdiction, hence, the same is not sustainable. While saying so he relied upon the case laws of the Hon’ble Supreme Court of Pakistan

reported as PLD 1960 SC 295, 2000 SCMR 1046, 1982 SCMR 549 and 2014 SCMR 122. He also cited the judgment of this court in Petition No. 86/2014 titled The Secretary Works Gilgit-Baltistan & 03 others versus Talib Shah & others.

4. On the other hand, Mr. Amjad Hussain the learned Counsel appearing on behalf of the respondents supports the impugned Judgment and argued that the learned Chief Court on getting information about infringement of any fundamental right was well within its rights to step in and pass an appropriate order. He contends that where fundamentals rights of the citizens are trampled over, the Chief Court can exercise of its Suo Moto Jurisdiction. He finally submits that the learned Chief Court, Gilgit-Baltistan has rightly taken cognizance of the matter and passed an appropriate order redressing the grievances of the persons aggrieved as held in a case of similar nature by learned High Court of Baluchistan reported as PLD 2013 Quetta 75.

5. We have heard the learned Counsels for the respective parties at length, perused the record of the case file and gone through the impugned Judgment dated 11.12.2014 in Suo Moto Case No. 09/2013 passed by the learned Gilgit-Baltistan Chief Court. The case law cited by the learned counsel for the respondent is distinguishable whereas the case laws relied by the learned Advocate General are applicable.

6. The question arises as to whether Article 71 of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 read with

Article 199 of the Constitution of Pakistan, 1973, expressly or by implication, provides for exercise of Suo Moto Jurisdiction by the learned Chief Court Gilgit-Baltistan or otherwise.

7. For convenience we hereby reproduced both the articles i.e. Article 71 of “The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009”, and “Article 199 of the Constitution of Islamic Republic of Pakistan 1973” as under:-

Under Article 71:- Jurisdiction of Chief Court Gilgit-Baltistan:-

- (1) *The Chief Court shall have such jurisdiction as is conferred on it by this Order or by any other law.*
2. *Subject to this Order , the Chief Court may if it is satisfied that no other adequate remedy is provided by law:-*
 - (a). *The Government, exercising any power or performing any function in, or in relation to, Gilgit-Baltistan as may be appropriate for the enforcement of any of the fundamentals rights conferred by this order. On the application of any aggrieved party, make an order.*
 - (i). *Directing a person performing functions in connection with the affairs of Gilgit-Baltistan or local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do; or*
 - (ii). *Declaring that any act done or proceedings taken by a person performing functions in connection with the affairs of Gilgit-Baltistan or a local authority has been done or taken without lawful authority, and is of no legal effect; or*
 - (b). *on the application of any person, make an order.*
 - (i). *Directing that a persons in custody in Gilgit-Baltistan be brought before the Chief Court so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or*
 - (ii). *Requiring a persons holding or purporting to hold a public office in connection with the affairs of Gilgit- Baltistan to show under what authority of law he claims to hold that office; or*

- (c). *On the application of any aggrieved person, make an order giving such directions to the persons or authority including the council.*
3. *an order shall not be made under clause (2) on application made by or in relation to a person in the Armed forces of Pakistan in respect of his terms and conditions of his service, in respect of any matter arising out of his service or in respect of any action in relation to him as a member of the Armed Forces of Pakistan.*
3. **Where:-**
- (a). *an application is made to the Chief Court for an order under sub clause (a) or sub-clause (c) of clause (2); and*
- (b). *The court has reason to believe that the making of an interim order would have the effect of prejudicing or interfering with the carrying out of public work or otherwise being harmful to the public interest, the Court shall not make an interim order unless the Advocate General has been given notice of the application and the Court, after the Advocate General or any officer authorized by him in this behalf has been given an opportunity of being heard, is satisfied that the making of the interim order would not have the effect referred to in sub-clause (b) of this clause.*
4. *in this article unless the context otherwise requires , the expression "person" includes anybody politic or Corporate, any authority of or under control of the Council or the Government and any Court or Tribunal other than the Gilgit-Baltistan Supreme Appellate Court , the Chief Court or a Court or Tribunal Established under a law relating to the Armed Forced of Pakistan.*

Under Article 199, Jurisdiction of High Courts of Pakistan:-

- (1) *Subject to the Constitution, a High Court may, if it is satisfied that no oilier adequate remedy is provided by law,*
- (a) *on the application of any aggrieved party, make an order.*
- (i) *directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, o to do anything he is required by law to do; or.*
- (ii) *declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a*

Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

- (b) On the application of any person, make an order.**
 - (i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or**
 - (ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or**
- (c) on the application of any aggrieved person, make order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of part II.**
- (2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11 shall not be abridged.**
- (3) An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan. Or who is for the time being subject to any law relating to any of those Forces. In respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.**
- (4) Where—**
 - (a) an application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1) , and**
 - (b) the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest or State properly or of impeding the assessment or collection of public revenues,**

The Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorized by him in that behalf has had an opportunity of being heard and

the Court, for reasons to be recorded in writing, is satisfied that the interim order---

- (i) Would not have such effect as aforesaid; or**
- (ii) Would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.**

- (4A) An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any law which is specified in part 1 of the First Schedule or relates to, or is connected with, State property or assessment or collection of public revenues shall cease to have effect on the expiration of a period of six months following the day on which it is made:**

Provided that the matter shall be finally decided by the High Court within six months from the date on which the interim order is made.

- (4b) Every case in which, on an application under clause (1), the High Court has made an interim order shall be disposed of by the High Court on merits within six months from the day on which it is made, unless the High Court is prevented from doing so far sufficient cause to be recorded.]**

- (5) In this Article, unless the context otherwise requires---**

Person” includes any body politic or corporate, any authority of or under the control of the Federal government or of a Provincial government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan; and

“Prescribed law officer” means---

- (a) In relation to an application effecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney General, and**
- (b) In any other case, the Advocate General for the Province in which the application is made.**

8. A careful perusal of both the articles reproduced above would show that the learned Chief Court Gilgit-Baltistan & High

Courts of Pakistan would exercise its extraordinary discretionary constitutional Jurisdiction where it is satisfied that, subject to the constitution, no other adequate remedy is provided by law, on the application of a person whether aggrieved or not on an information or on its own knowledge.

9. In support of the above discussions we have also been fortified by the judgments of the Hon'ble Supreme Court of Pakistan, although, the judgments of the Hon'ble Supreme Court of Pakistan are not binding on this court yet it have persuasive affect. In a case Fazl-e-Haq, Accountant General, West Pakistan versus The State (supra) the larger bench of the Apex Court of Pakistan was pleased to hold that the High Courts of Pakistan are not empowered to initiate suo moto proceedings. In case any Writ so issued by the High Court, the proceedings in Writ Petition were quashed, in the case of Mian Muhammad Nawaz Sharif & other versus Muhammad Habib Wahab Alkhairi & others (supra) the larger bench of the learned Apex Court of Pakistan did not interfere with the judgment passed by the Division Bench of Lahore High Court Lahore in an intra-Court appeal. The learned Division Bench of Lahore High Court Lahore in intra-Court appeal has held that the suo moto jurisdiction exercised by the learned single Judge under Article 199 of the Constitution was without jurisdiction. Consequently, the entire proceedings were quashed, in the case of Akhter Abbas & others versus Nayyar Hussain (supra) the Apex Court of Pakistan was pleased to hold that the High Court cannot

issue a Writ under suo moto jurisdiction, in the case of Dr. Imran Khattak and others versus Ms. Sofia Waqas Khattak & others (supra) the Apex Court of Pakistan was pleased to hold that the High Courts of Pakistan are not empowered to exercise suo moto jurisdiction. We have also earlier followed the aforementioned parameters laid down in petition No. 86/2014 titled The Secretary Works Gilgit-Baltistan & 03 others versus Talib Shah & others.

10. In view of the above discussions, in our considered view the learned Chief Court Gilgit-Baltistan cannot exercise suo moto Jurisdiction under Article 71 of The Gilgit-Baltistan (Empowerment & Self-Governance) Order, 2009. Consequently, we convert this petition into an appeal and the same is allowed. Consequent thereto, the Impugned Judgment dated 11.12.2014 in Suo Moto Case No. 09/2013, passed by the learned Gilgit-Baltistan Chief Court is set aside being passed without jurisdiction. The respondents or any other person, if, aggrieved may approach the proper forum /Court of Law for redressal of their grievances in accordance with law, if they so advised.

11. The appeal is allowed in above terms.

Chief Judge.

Judge.

Judge.

Whether the case is fit to be reported or not?

