

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

**Before:-**

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.  
Mr. Justice Javed Iqbal, Judge.**

**1. Civil Appeal No. 46/2017**

**In**

**CPLA No. 78/2017.**

Sher Madad Khan & others

**Petitioners.**

**Versus**

Governor Gilgit-Baltistan & others

**Respondents.**

**2. Civil Appeal No. 47/2017**

**In**

**CPLA No. 87/2017.**

Governor Gilgit-Baltistan & others

**petitioners.**

**Versus**

Sher Madad Khan & others

**Respondents.**

**PRESENT:-**

1. Mr. Asadullah Khan Advocate for the petitioners in Civil Appeal No. 46/2017 in CPLA No. 78/2017 and for respondents in Civil Appeal No. /2017 in CPLA No. 87/2017.
2. Malik Shafqat Wali senior Advocate on behalf of the respondents in Civil Appeal No. 47/2017 in CPLA No. 78/2017 and for petitioners Civil Appeal No. /2017 in CPLA No. 87/2017.

**DATE OF HEARING: - 06.09.2017.**

**JUDGMENT.**

**Dr. Rana Muhammad Shamim, CJ.....** This petition for leave to appeal has arisen out of the impugned judgment dated 19.04.2017 passed by the learned Chief Court whereby the Writ Petition filed by the petitioners was partially allowed prospectively, however, the perks & privileges have not been granted retrospectively. The petitioners being aggrieved by and dissatisfied with the said impugned judgment filed this petition for leave to

appeal. This court vide order dated 16.06.2017 issued notices to the respondents and the case is heard today.

2. Briefly, the facts of the case are that the petitioners are performing their duties as Advocate General, Additional Advocate General, Deputy Advocates General and Assistant Advocate General Gilgit-Baltistan respectively. The petitioners filed Writ Petition No. 96/2016 in the learned Chief Court contending therein that they were/are entitled for the perks & privileges and other monetary benefits at par with their counterparts of the four (04) Provinces of Pakistan as well as Azad Jamu & Kashmir (AJK). The petitioners earlier filed departmental appeal to the competent authorities but the respondents granted only Rs. 50,000/- per month to the petitioner No. 01, Rs. 25,000/- per month to the petitioner No. 02 and Rs. 20,000/- to the petitioner No. 03 & 04 as non-practicing allowance vide order dated 12.05.2016. Whereafter the petitioners were constrained to file the said Writ Petition in the learned Chief Court claiming for equal treatment under Articles 17, 19, 25 & 27 of the Constitution of Islamic Republic of Pakistan, 1973 and Article 19, 25 & 27 of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009. The said Writ Petition was partially allowed with prospective effect, however, the said perks & Privileges have not been granted retrospectively.

3. The learned counsel for the petitioners submits that after promulgation of The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009, the Government of Pakistan has been

pleased to upgrade and equate all the Government Organizations in Gilgit-Baltistan at par with their counterparts in all the four (04) Provinces of Pakistan including Azad Jamu & Kashmir (AJK). Whereas the petitioners have been discriminated. Per learned counsel, the posts of the petitioner No. 01 to 03 are purely Constitutional Posts which can not be placed in any "Basic Pay Scale". The posts of petitioner No. 04, however, can be placed in BPS-19 at par with the rest of provinces of the country. He further submits that the learned Advocate General has the status of Provincial Minister in all the provinces of Pakistan. He is entitled for all the perks & privileges which have been granted by the rest of the Provinces particularly at par with the Province of Punjab. Similarly, the petitioner No. 02, 03 & 04 are also entitled for all the perks & privileges at par with the Province of Punjab. He submits that there is no financial constraints as mentioned in the impugned judgment. The Government of Gilgit-Baltistan has all the resources to pay the said monetary benefits to the petitioners. Although the Writ Petition filed by the petitioners was partially allowed by the learned Chief Court yet the back benefits were declined to them which is against the spirit of law and the rule of consistency.

4. On the other hand, Malik Shafqat Wali senior Advocate, learned counsel appearing on behalf of the Provincial Government of Gilgit-Baltistan contends that the petitioners have no cause of action and locus standi to file the Writ Petition in the learned Chief Court against its own Government. At the time of their

appointments for the respective posts, the petitioners have voluntarily accepted the terms & conditions of their services. The petitioners were/are estopped by law from filing the said Writ Petition. Per learned counsel, the petitioner No. 02 to 04 are the Civil Servants and they are getting their pay & allowances as per their Basic Pay Scales. The Government of Gilgit-Baltistan is dependent on the Federal Government in Financial matters. The Gilgit-Baltistan Government has no separate budget to meet with the expenditure on account of extraordinary benefits as granted to the petitioners by the learned Chief Court, hence, not tenable in law. He prays that the impugned judgment passed by the learned Chief Court be set aside in circumstances.

5. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned judgment dated 19.04.2017 passed by the learned Chief Court. The learned counsel appearing on behalf of the Provincial Government of Gilgit-Baltistan could not point out any infirmity or illegality except the financial constraints in the impugned judgment. In our considered view, the petitioners were not treated equally amongst equals i.e. at par with their counterparts in other four provinces.

6. In view of the above discussions, we convert both the petitions into appeals, consequently, the Civil Appeal No. 46/2017 in (CPLA No. 78/2017) filed by the petitioners is disposed off with modifications whereas the Civil Appeal No. 47/2017 (in CPLA.

87/2017), filed by the Provincial Government of Gilgit-Baltistan is dismissed with no order as to cost. The impugned judgment dated 19.04.2017 passed by the learned Chief Court is maintained with the following modifications:-

**(A). THE ADVOCATE GENERAL.**

- i.** The Advocate General office, being detached Department of Law & Prosecution Department Gilgit-Baltistan, shall function independently and assist the courts of law accordingly. All the Additional Advocate(s) General, Deputy Advocate(s) General and Assistant Advocate(s) General appearing in the Courts of law and/or officers and staff shall function under the administrative control of the learned Advocate General.
- ii.** The Gilgit-Baltistan Government is directed to establish a “Separate Office” of learned Advocate General and create a separate budget to run the affairs of the office of Advocate General independently in line with their counterparts serving in all four provinces of Pakistan.
- iii.** The learned Advocate General is entitled for the perks, privileges and status at par with Advocate General of Punjab.
- iv.** He is entitled to fly/hoist Pakistan Flag on his Official/Private vehicle(s) during his tenure as an Advocate General Gilgit-Baltistan.
- v.** He has the status of a Provincial Minister, Gilgit-Baltistan.
- vi.** He shall hold his office during the pleasure of the Governor, Gilgit-Baltistan.
- vii.** He will not engage himself in private practice so long he holds the office of Advocate General.
- viii.** It shall be the duty of Advocate General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Provincial Government.

**ix.** He may by writing, under his hand, addressed to the Governor, resign his office.

**(B). ADDITIONAL ADVOCATE GENERAL/DEPUTY ADVOCATE GENERAL /ASSISTANT ADVOCATE GENERAL.**

- i. The Additional Advocate General and Assistant Advocate General Gilgit-Baltistan shall also be entitled for the perks & privileges at par with their counterparts as granted by the Provincial Government of Punjab. Whereas the Deputy Advocate General would be entitled for the perks & privileges at par with the Khyber Pukhtunkhaw (KPK) Government.
- ii. They will serve under the administrative control of learned Advocate General and perform their functions/appear in the courts of law as instructed & directed by the learned Advocate General Gilgit-Baltistan.
- iii. They shall hold their office during the pleasure of the Governor, Gilgit-Baltistan.
- iv. They will not engage themselves in private practice so long they hold the office of their respective posts.
- v. They may by writing, under their hands, addressed to the Governor, resign their offices.

**(C)** In case of the incumbents being Government Servants in BPS-17, 18 & 19 in the Law & Prosecution Department, Gilgit-Baltistan, serving as Additional Advocate General, Deputy Advocate General and/or Assistant Advocate General and appearing in courts of law, they shall be entitled for grant of Non-Practicing Allowance(s) in line with their counterparts serving in Prosecution department, Government of Sindh and/or they may opt to revert back in the prosecution service in their own pay & scales. The Provincial Government, to replace such officer(s) may appoint new such law officers, if so advised.

7. Both the appeals are disposed of in above terms.
8. The copies of this order be sent to The learned Chief Secretary, Gilgit-Baltistan, The Secretary Law & Prosecution Department, Gilgit-Baltistan and The Secretary Finance Government of Gilgit-Baltistan for information and compliance.

**Chief Judge.**

**Judge.**

**Whether the case is Fit to be reported or Not?**