

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

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Muzaffar Ali, Judge.**

**C.Misc.No.113/2015
C. Misc No. 114/2015 in
C.Appeal. No. 25/2015 in
CPLA No. 87/2015.**

Chief Minister & others

Petitioners.

Versus

Justice (Rtd) Muhammad Khursheed Khan

Respondent.

PRESENT:-

1. The Advocate General Gilgit-Baltistan alongwith the Assistant Advocate General Gilgit-Baltistan for the petitioners.
2. Mr. Muhammad Issa Senior Advocate alongwith Mr. Asadullah Khan Advocate and Mr. Johar Ali Advocate-on-Record on behalf of respondent.

DATE OF HEARING: - 12.11.2015.

DATE OF DELIVERY OF DETAIL JUDGMENT:- 30.11.2015.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This appeal has been arisen out of the impugned judgment in Writ Petition No. 19/2012, dated 04.12.2013 passed by the learned Chief Court Gilgit-Baltistan. Whereby, the learned Chief Court Gilgit-Baltistan accepted the Writ Petition of the respondent and declared him as retired Chairman Chief Court entitled for pension and all post retirement benefits and privileges as admissible to a Judge of the High Court (Chairman of Chief Court Gilgit-Baltistan).

The learned Advocate General alongwith Assistant Advocate General submits that prior to establishment of Chief Court in the year 1994, the court of Judicial Commissioner was the apex Court of Northern Areas. Through a Notification

No.AII.2/17/94 dated the 17th September, 1994, Chief Court was established by abolishing the Court of Judicial Commissioner as apex Court of Gilgit-Baltistan. The respondent and Mr. Muzaffar Malik the then Session Judges, BPS-20 of District Judiciary Gilgit-Baltistan were appointed as Members of the then Chief Court in BPS-21. Later on, through an establishment order the above referred Notification and establishment order of the Chief Court was abolished, creating a new Chief Court under the new establishment order, which is reproduced as under:-

ORDER

To provide for the establishment of the Chief Court for Northern Areas

WHEREAS it is expedient to provide for the establishment of the Chief Court for Northern Areas and to provide for certain incidental and ancillary matter;

NOW, THEREFORE, the Government of Pakistan is please to make the following Order:-

1. Short Title, Extent and commencement:
 - (1) *This Order may be called the Northern Areas Chief Court (establishment) Order, 1998.*
 - (2) *It extends to whole of the Northern Areas.*
 - (3) *It shall come into force at once.*
2. Definitions:- In this Order:-
 - (a) *“Chairman” means the Chairman of the Chief Court,*
 - (b) *“Chief Court” means Member of the Chief Court established under this Order; and*
 - (c) *“Member” member of the Chief Court.*
3. Establishment of Chief Court:- *There shall be a Chief Court for Northern Areas.*
4. Construction of Chief Court:- *The Chief Court shall consist of a Chairman and two members.*
5. Appointment of Chairman and Members:-
 - (1) *The Chairman and members shall be appointed by the Federal Government.*
 - (2) *A person shall not be appointed the Chairman unless he is or has been a Judge of a High Court or is qualified to be a member.*
 - (3) *A person shall not be appointed a member unless he is not less than forty years of age and;*
 - (a) *has for a period of or for periods aggregating, not less than fifteen years practiced law as an advocate in the Northern Areas or in any part of Pakistan; or*

- (b) *has for a period of not less than fifteen years held a judicial office.*
6. Retiring age: - (1) *Subject to sub- paragraph (2) the Chairman or a Member shall retire on attaining the age of sixty years.*
- (2) *A Chairman who has been a judge of High Court shall hold office until he attains the age of sixty five years.*
7. (1) Resignation and removal:- *the Chairman or a member may resign his office by writing under his hand addressed to the Federal Government.*
- (2) *The Federal Government may remove the Chairman or a member if the Judicial Committee consisting of the Secretary, Ministry of Law, Justice and Human Rights, Kashmir Affairs & Northern Areas and States and Frontier Regions Division and the Chief Executive Northern Areas reports that the Chairman or, as the case may be a Member is incapable of properly performing the duties of this office by reason of physical or mental infirmity or has been guilty of misconduct.*
8. Terms and conditions:- *the remuneration and other terms and conditions of service of the Chairman and Members shall be such as the Federal Government may from time to time, determine, and such terms and conditions as have not been provided for in this Order and determined under this paragraph shall be the same as of a civil servant in equivalent grade or scale.*
9. Seat of the Chief Court: - (1) *the permanent seat of Chief Court shall, subject to sub-paragraph 2 be at Gilgit.*
- (2) *The Chief Court may from time to time sit at such other places as the Chairman, with the approval of the Federal Government, may appoint.*
10. Jurisdiction: - (1) *The Chief Court shall have the jurisdiction and exercise the powers vested in a High Court only under any law applicable to the Northern Areas and shall not have jurisdiction save as in herein conferred on it.*
- (2) *The Federal Government may confer jurisdiction of the Chief Court in respect of such other matters as it may from, time to time, determine.*
11. Transfer of Chairman and members: - *the Chairman and Members shall be liable to serve anywhere within outside Pakistan and in any post under the Federal Government, or any provincial Government or local authority or a corporation or body set up or established by any such Government.*
12. Acting Chairman: - *At any time when the office of the Chairman is vacant or he is absent or unable to perform the functions of his office the most senior of the Members shall act as the Chairman.*
13. Appointment of ad-hoc Members:- *If at any time it is not possible for want of quorum of Members to hold or continue any sitting of the Chief Court the*

Chairman may in writing, with the approval of the Federal Government, require any District and Sessions Judge qualified for appointment as Member to attend sitting of the Chief Judge as ad-hoc Member for such period as may be necessary and while so attending an ad-hoc Member shall have the same power and jurisdiction as a Member.

14. Rules of Procedure:- Subject to law and any order made by the Federal Government, the Chief Court may make rules regulating the practice and procedure of the Court including the prescription of cases which may be disposed of by one or two the full court.

Explanation:- in this paragraph Member shall include Chairman.

15. Registers, books, returns, statements and reports:- the Chief Court shall keep such registers, books and accounts as may be necessary for transaction of its business.

16. Repeal and saving:- (1) Subject to sub- paragraph (2) the Kashmir and Northern Areas Division's Notification No. AII.2/17/94, dated the 17th September, 1994, is hereby repealed, and the Chief Court established thereunder is hereby abolished.

(2) Any judgment given, sentence or decree passed, decision or order made by, or any appeal, suit, application, or other proceedings instituted for pending before, the Chief Court constituted under the notification referred to in sub-paragraph (1) shall be deemed to have been given, passed, made, or instituted before the Chief Court constituted under this order, and it shall not be necessary for the later Court to rehear any evidence or any witness for the decision of any pending matter.

He further contends that later on, in the year 2008, the Government of Pakistan through Gazette Notification part II issued Notification No.F. No.1 (16)/99-NA-II dated the 28th April, 2008 renamed the Chairman and Members of the Chief Court Northern Areas as Chief Judge and Judges of the Northern Areas Chief Court. Which is reproduced hereunder:-

TO BE PUBLISHED IN THE NEXT
GAZETTE OF PAKISTAN PART-II

**GOVERNMENT OF PAKISTAN
MINISTRY OF KASHMIR AFFAIRS AND NORTHERN AREAS**

Islamabad, the 28th April, 2008

NOTIFICATION

No.F. No.1 (16)/99-NA-II This is to notify that with the enactment of Northern Areas Governance Order, 1994 on 15th December, 2007 the Chairman and members of the Chief Court, Northern Areas have been renamed as Chief judge and Judges of the Northern Areas Chief Court.

In exercise of powers conferred on him as the competent authority, the Prime Minister has been pleased to accord approval to bring the Chief

Judge and Judges of the Chief Court, Northern Areas at par with their counterparts in the High Court in Azad Jammu and Kashmir for the purposes of pay and related monetary benefits w.e.f 17.4.2008

-Sd-
(Muhammad Akhtar Khan)
Deputy Secretary

*The Manager
Printing Corporation of Pakistan Press
Stadium Road
Karachi.*

Copies to:-

1. *The Chief Secretary, Northern Areas Gilgit.*
2. *The Deputy Accountant General Pakistan Revenues, Gilgit.*
3. *The Supreme Appellate Court, Northern Areas, Gilgit.*
4. *The Registrar Northern Areas Chief Court, Gilgit with the advice to obtain copies of existing pay and related monetary benefits of Judge of AJ&K High Court and take further action accordingly.*
5. *Finance Division, Finance Adviser KA&NA, Government of Pakistan, Islamabad.*
6. *PS to Minister of KA&NA/Chairman Northern Areas, Government of Pakistan, Islamabad.*
7. *PS to Secretary Law, Justice & Human Rights Division, Government of Pakistan, Islamabad.*

TO BE PUBLISHED IN THE NEXT GAZETTE OF PAKISTAN PART-II
GOVERNMENT OF PAKISTAN
MINISTRY OF KASHMIR AFFAIRS AND NORTHERN AREAS

Islamabad, the 22nd November, 2004

NOTIFICATION

No.F. No.1 (16)/99-NA-II In supersession of this Division's Notification of even number 20th November, 2004, Mr. Muhammad Khursheed Khan, Acting Chairman Northern Areas Chief Court has retired from Government Service with effect from 13th November, 2004, on attaining the age of superannuation, in terms of NAs Chief Court (Establishment) (Second Amendment) order 2002 issued vide this Division's order of even number, dated 10th September, 2002.

-Sd-
(ABDUL MANAF KHATTAK)
DEPUTY SECRETARY (NAs)

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Printing Corporation of Pakistan Press
University Road,
Karachi.*

Copies to:-

1. *The Chief Secretary, NAs, Gilgit.*
2. *Registrar. NAs Chief Court, Gilgit.*

3. *Officer Concerned.*
4. *The Deputy AGPR, Sub, office, Gilgit.*
5. *PS to Minister/Chief Executive NAs/Addl: Secretary KA&NA Division, Islamabad.*
6. *PS to Secretary, Law, Justice and Human Rights Division, Islamabad.*

-Sd-
(SAJID MIAN)
SECTION OFFICER (NA-II)

The learned Advocate General Gilgit-Baltistan further contended that the respondent did not implead the necessary parties i.e. Chairman Gilgit-Baltistan Council, Secretary Kashmir Affairs & Northern Area and Federal Minister Kashmir Affairs & Northern Area, who were competent authority for appointment of Judges of the learned Chief Court while filing Writ Petition No. 19/2012 before the learned Chief Court Gilgit-Baltistan. He also contends that the benefits given to the Ex- Chairman of Chief Court (Muzaffar Husain Malik) by the competent forum i.e. the Federal Service Tribunal Islamabad vide judgment No. M.P.No. 1422/2006 in appeal No. 1869(R) CS/2005 dated 04.04.2008, not by the Chief Court Gilgit-Baltistan. Secondly, Mr. Muzaffar Hussain Malik was the Chairman Chief Court Northern Areas whereas the respondent was given acting charge Chairman till appointment of regular Chairman and he was also retired as Member in BPS-21 and he is availing the pension benefits since his retirement.

He also contends that the learned Chief Court Gilgit-Baltistan did consider the relevant provision of law while passing the impugned Judgment and the arguments of the petitioners have also not been considered thereto. While saying so, he relied upon reported Judgments in case of West Pakistan Industrial

Development corporation, Karachi versus Aziz Qurashi (1973 SCMR 555), in case of Chief Personnel Officer, Pakistan Railway Headquarter, Lahore & another versus Anjum Farooq & others (1997 SCMR 860), in case of Mir Ghaiz Khan & another versus Chief Executive/Minister Kashmir Affairs Northern Areas Islamabad (2007 SCMR 1300), in case of Multiline Associated versus Ardehair Cowasjee & others (PLSD1995 SC 423), in case of Chourdhy Muhammad Saleem versus Fazal Ahmed and other (1997 SCMR 315), in case of Grosvenor Casino Limited versus Abdul Malik Badar-ud-Din (1997 SCMR 323), in case of Babar Shah zad versus Said Akber & another (1999 SCMR 2518).

The learned Advocate General alongwith Assistant Advocate General further contends that the respondent being a Civil servant in BPS-21 has no locus standie to file Writ Petition and the learned Chief Court has wrongly entertained, adjudicated and decided the said writ petition despite having no jurisdiction. Furthermore, the equal status of High Court was given to the Chief Court in the year 2007, whereas the respondent retired on 13.11.2004. It was further substantiated by promulgation of "The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009".

He also contends that the Doctrine of Laches & Principle of Estoppel attract barring the respondent to file Writ Petition before the learned Chief Court as the respondent remained silent for a considerable period of eight (08) years and the same has not been considered by the learned Chief Court, Gilgit-Baltistan while

passing the impugned Judgment hence no tenable. He finally contends that the impugned Judgment in Writ Petition No. 19/2012 dated 04.12.2013 is the result of misconception of law, misreading and non-reading of the material/Notification & order 1994, 1998 and 2009.

On the other hand, the learned counsel for the respondent supports the Impugned Judgment. They submit that the respondent retired as acting Chairman Chief Court Gilgit-Baltistan (the then NAs), Gilgit on 13.11.2004 attaining the age of superannuation (62 years) in terms Northern Area Chief Court Establishment (Second Amendment) Order 2002. The respondent was allowed acting Charge of the post of Chairman Gilgit-Baltistan (the then NAs) Chief Court vide Notification No. F.1/1-97-11 dated 14.02.2004. They also submits that the respondent was not confirmed as Chairman Chief Court till his retirement because the respondent was being actively considered and summary was moved for respondent's elevation as member Supreme Appellate Court. The summary was kept pending in the meantime the respondent retired as Acting Chairman Chief Court. The Chairman Chief Court was given perks , privileges and pensionary benefits as admissible to a serving of High Court Judge vide Notification No. NA-II-21/1/87 dated 8th June, 1994, whereas the Members were given perks, privileges as to an officer of BPS-21. The former Chairman Mr. Muzaffar Hussain Malik was given pensionary benefits as admissible to a Judge of the High Court. He further submits that

although the respondent was approved by the Prime Minister of Pakistan for elevation as Member Supreme Appellate Court but subsequently his approval was not notified and the respondent alongwith Mr. Muzaffar H Malik were dropped despite the fact that there was nothing adverse against the respondent. He further submits that the respondent as Acting Chairman was getting pay and allowances as admissible to the Chairman. The respondent applied for the pension in BPS-21 at that time as the same was an option for him submit revised pension case as admissible to a Judge of High Court. He further submits that the respondent was constrained to apply for pension in BPS-21 as he was facing financial hardships He referred Article 260 of the Constitution of Islamic Republic of Pakistan 1973 wherein, the Chief Justice has been defined as under:-

“Chief Justice” in relation to Supreme Court or the High Court, includes the Judge for the time being acting as Chief Justice of the court”.

He submits that the perusal of the above referred article reveals that the respondent was Acting Chairman, Chief Court, Northern Area meaning thereby the respondent was Chairman Chief Court, as such, the respondent is entitle to get pension and other privileges as a Judge of High Court. While saying so he relied upon the reported cases i.e. i. 2006 SCMR 1983 ii. 1995 SCMR 650 iii. 2005 SCMR 25, iv. PLD 1996 SC 324.

He finally submits that the impugned judgment in Writ Petition No. 19/2012 dated 04.12.2013 passed by the learned Chief Court Gilgit-Baltistan is in accordance with law and no-interference is warranted into it.

We have heard the learned Advocate General Gilgit-Baltistan assisted by the learned Assistant Advocate General as well as the learned Counsels for the respondent at length, perused the record of the case file and gone through the impugned judgment as well as the case laws relied upon by both the learned counsel for the respective parties. The case laws referred by the learned Advocate General are applicable and the case laws relied upon by the learned counsel for the respondent are distinguishable.

Admittedly, the respondent retired on 13.11.2004 whereas vide Notification No. F.No.1 (16)/99-NA-II dated 28.04.2008. The Chairman and Members of the Chief Court Northern Area have been renamed as Chief Judge and Judges of the Gilgit-Baltistan Chief Court. Subsequently, under Article 69 (13) of "The Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009", the remuneration & other terms and condition of Service of Chief Judge and Judges of Chief Court shall be as such admissible the Chief Justice and Judges of High Courts of Pakistan.

In view of the above, we accept the appeal and set aside the impugned judgment in Writ Petition No. 19/2012 dated 04.12.2013 passed by the learned Chief Court Gilgit-Baltistan. These were the reasons for our Short Order dated 12.11.2015.

The appeal is allowed.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?