

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

Before:-

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

C. Appeal No. 19/2016

in

CPLA No. 105/2015.

1. Mst. Shabnam Riaz d/o Muhammad Jaffar Resident of Skardu. **Petitioner.**

Versus

1. Provincial Government/Government of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan.
2. Secretary Education Gilgit-Baltistan.
3. Director Education Gilgit-Baltistan.
4. Director Colleges Gilgit-Baltistan/Chairman Inquiry Committee. **Respondents.**

PRESENT:-

1. Mr. Munir Ahmed Advocate alongwith Mr. Ali Nazar Khan Advocate for the petitioner.
2. The Advocate General alongwith Mr. Johar Ali Khan Advocate on behalf of the respondents.

DATE OF HEARING: - 07.09.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has been directed against the impugned judgment dated 02.09.2015 in Appeal No. 480/2014 passed by the learned Gilgit-Baltistan Service Tribunal, whereby, the appeal of the petitioner was dismissed. The petitioner being aggrieved filed this petition for leave to appeal. This Court vide order dated 14.04.2016 granted leave to appeal. Consequently, notices were issued to the respondents for their appearance and the case was finally heard today.

2. The learned counsel for the petitioner submits that the petitioner was initially appointed as teacher on contract basis in Education Department Gilgit-Baltistan. Subsequently, the services of the petitioner were regularized by the respondents vide Office Order No. DE(B) -2(11)/2010 dated 29.10.2010 as MT- Teacher BPS-09 in F.G Girls Meddle School Shinkhanigond Skardu. He also submits that the petitioner was performing her duties with enthusiasm and to the entire satisfaction of the competent authorities. In the mean time, the respondents constituted an Inquiry Committee to determine the suitability /eligibility of the teachers who have been appointed in 2010 in Education Department Baltistan region and she had been performing her duties for three and half years. He argues that the said Inquiry Committee after examining the testimonials of the petitioner including seventy one others teachers illegally and unlawfully declared the petitioner not suitable /eligible as teacher. He adds force to his submissions that the principle of locus-poenitentiae is fully applicable in the case of the petitioner as once a legitimate right accrued the same cannot be rescinded or withdrawn in any illegal manner. He continues his arguments while submitting that the petitioner being aggrieved by and dissatisfied with the findings of the said Inquiry Committee filed Service Appeal No. 480/2014 before the learned Gilgit-Baltistan Service Tribunal which upon hearing was dismissed vide impugned Judgment dated 02.09.2015 on the solely point that no departmental appeal was filed by the

petitioner before the competent authority i.e. the learned Chief Secretary Gilgit-Baltistan against the findings of the said Inquiry Committee. He submits that departmental appeal was filed by the petitioner before the then learned Chief Minister Gilgit-Baltistan who was the competent authority being the Chief Executive of the Government of Gilgit-Baltistan. He concludes his arguments that the impugned Judgment dated 02.09.2015 passed by the learned Gilgit-Baltistan Service Tribunal is not sustainable being not well reasoned and well founded, hence, the same is required to be set aside. While saying so he relied upon the cases of Muhammad Nadeem Arif versus IGP Punjab (2011 SCMR 408), Nadeem Ahmed Panawar versus Government of Sindh (2009 PLC (CS 161), Executive District Officer (Education) Rawalpindi versus Muhammad Yunas (2007 SCMR 1835) and finally the case of Executive District Officer Education Rawalpindi Versus Mst. Rizwana Kausar and others. The principle of locus Poenitentiae would applicable when no lapse on part of employee or any fraud is committed in getting service or non-possession of requisite qualification and/or the appointment to be made by an incompetent officer and finally the services had not been found unsatisfactory which lacks in the case of the petitioner. Consequently, the impugned Judgment dated 02.09.2015 passed by the learned Gilgit-Baltistan Service Tribunal is not sustainable.

3. On the other hand, the learned Advocate General, Government of Gilgit-Baltistan alongwith Mr. Joher Ali advocate

legal adviser for the Education Department contends that the petitioner was appointed and subsequently her services were regularized by unauthorized officers without fulfilling the codal formalities of the Service Rules i.e. without conducting test/interview and advertising the post in the Newspapers. They also contend that her appointment was made against the rules. A Special Inquiry Committee had been established to assess the eligibility/suitability of the incumbents. In the light of the findings of the said committee her appointment order was rightly withdrawn by the respondents. They further contend that show cause notice was issued to the petitioner. She appeared before the said committee but could not prove her eligibility as MT teacher, therefore, the initial illegal and unlawful appointment was withdrawn on 10.03.2014 by the competent authorities in accordance with law. They finally contend that the learned Gilgit-Baltistan Service Tribunal has rightly dismissed the appeal of the petitioner vide impugned judgment dated 02.09.2015. The same is required to be maintained and no interference is warranted into it being in accordance with law and service rule.

4. We have heard the learned counsels appearing on behalf of the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 02.09.2015 in Appeal No. 480/2014 passed by the learned Gilgit-Baltistan Service Tribunal as well as fortified by the case laws referred by Mr. Munir Ahmed learned counsel for the petitioner. The perusal of the case

file transpires that the petitioner was initially appointed as MT teacher BPS-09 and her services were regularized vide Office Order No. DE (B)-2(11)/2010 dated 29.10.2010 by the respondent No. 03 being found satisfactory. The petitioner had performed her duties for approximately three and half years to the entire satisfaction of her superiors. The respondents after lapse of considerable period constituted Special Recruitment Committee on 27.01.2014. In the light of the recommendation of the said committee her services were terminated illegally and unlawfully on 10.03.2014. The appointment of the petitioner has been regularized by the respondents on 29.10.2010 on merit in Education Department. The services of the petitioner cannot be terminated except proven guilty of misconduct as she acquired legitimate expectancy after her services were regularized.

5. In view of the above discussions and in our considered view once the right of the petitioner occurred, the same cannot be taken away by subsequent administrative order. Consequently, we allow this appeal. The impugned judgment dated 02.09.2015 in Appeal No. 480/2014 passed by the learned Gilgit-Baltistan Service Tribunal as well as the order dated 10.03.2014 issued by the respondents are set aside. The respondents are directed to reinstate the petitioner forthwith from the date, her services were terminated. The respondents are also directed to pay/release all the back benefits to the petitioner from the date of her regularization in services i.e. 29.10.2010 within three months. The copy of this order

be sent to the learned Chief Secretary, Government of Gilgit-Baltistan and to the learned Advocate General Gilgit-Baltistan for compliance.

6. The Petition is allowed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?