

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

Before:-

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

Civil Appeal No. 06/2018

In

CPLA No. 58/2017.

Provincial Government & others

Petitioners.

VERSUS

Muhammad Hussain son of Muhammad Shafi

Respondent.

PRESENT:-

1. The Advocate General alongwith Mr. Saeed Iqbal, Deputy Advocate General and Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Asadullah Khan Advocate for the Respondent.
3. Mr. Behram Khan Advocate/Legal Adviser Water & Power Department Gilgit-Baltistan.

DATE OF HEARING: - 29.08.2017.

DATE OF ANNOUNCEMENT OF JUDGMENT: - 12.04.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Petition has been directed against the impugned order dated 07.11.2016 in Writ Petition No.32/2015 passed by the learned Chief Court whereby the said Writ Petition filed by the respondent was accepted by directing the petitioners for adjustment of the respondent against any post on permanent basis with all back benefits of pay from the date of regularization of rest of the temporary employees i.e. 23.12.2013. The petitioners being aggrieved filed this petition for leave to appeal. This court vide order dated 24.05.2017 issued notice to the respondent and the case was heard on 29.08.2017.

2. Briefly, the facts of the case are that the respondent filed Writ Petition No. 32/2015 before the learned Chief Court contending therein that he is employee of Water & Power Department Gilgit-Baltistan and his salary is being paid from maintenance head. In the year 2013, a number of 4448 posts of different cadres and grades were created for regularization of services of work charge employees. The respondent being work charge employee of Water & Power Department was entitled to be regularized in the said created/sanctioned posts. Later on, for the purpose of regularization, a committee was constituted to prepare a list of existing work charge employees. The said committee accordingly prepared a list wherein the name of respondent was recommended to be entered but the petitioner No. 05 & 06 did not include the name of respondent on the ground that the respondent was over aged whereas other 958 employees were regularized on permanent posts. The respondent being aggrieved filed Writ Petition before the learned Chief Court which upon hearing was allowed. Whereafter, the petitioners being aggrieved by and dissatisfied with the impugned order, filed this petition for leave to appeal.

3. The learned Advocate General submits that the respondent was appointed purely on work charge basis on 02.04.2010 including other 4448 work charge employees. The respondent has neither cause of action nor locus standi to file the writ petition in the learned Chief Court. Per learned Advocate General, the writ petition of the respondent was hopelessly barred

by law because he did not file any departmental appeal to the competent authorities. He further submits that the respondent was over aged as evident from his CNIC according the said CNIC he is 53 years. He submits that the learned Chief Court failed to differentiate between permanent employment and work charge employment, hence, the same is not sustainable. He prays that the impugned order may graciously be set aside.

4. On the other hand, the learned counsel for the respondent supports the impugned order which is according to him is the right appreciation of facts and law. He contends that since the process of regularization was done as special dispensation and during this regularization process the petitioners have regularized the services of Mr. Abdul Siddique against the post of Helper BPS-02 and Mr. Jabbir Hussain Helper BPS-02 who's Date of Births (DoBs) as per their Computerized Pay Slip are 05.10.1959 and 01.01.1960 respectively. The copies of the computerized salary slips are enclosed with the case file. The services of the said employees who are age sack of the respondent have been regularized and they are enjoying their services on regular basis whereas the date of birth of the respondent is 1962 but his services have not been regularized as done with the above two officials which is discriminatory in nature. The respondent was not dealt equally amongst equals, hence, the Writ Petition filed by him was maintainable. Similarly, Mr. Behram Khan Advocate/Legal Adviser BPS-16 has also been regularized at the age of 55 whereas the age

of the respondent at the time of regularization was 53 years who is two years younger than Mr. Behram Khan. He also contends that the respondent has served his duty since 03 years with professional enthusiasm and to the entire satisfaction of the competent authorities. There is no adverse remark reported against the respondent during his service. Per learned counsel, on 29.06.2013 the Gilgit-Baltistan Finance Department created 4448 dine cadre posts in Water & Power Department Gilgit-Baltistan. Accordingly vide Office Order NO. SWP-1(13)/2013/24 dated 17.06.2013, the petitioners constituted a committee to regularize the work charge employees. Likewise, 958 employees have been declared permanent /regular. He contends that the said committee prepared a list excluding the name of respondent from the said list by the petitioner Nos. 05 & 06 malafidely. Consequently, the salary of the respondent was stopped and he was not recommended for the regularization of his service on the ground of over aged at par with others. He submits that in view of the above submissions, the learned Chief Court has rightly entertained and accepted the Writ Petition of the respondent with the direction to adjust the respondent against any vacant post at par with other incumbents of Water & Power Department Gilgit-Baltistan on principles of "equal among equals" and consistency by granting him substantive justice. Per learned counsel, the impugned order is the result of right interpretation of law and right appreciation of the facts of law,

hence, the same is tenable in law which may graciously be upheld to meet the ends of justice.

5. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned order passed by the learned Chief Court. Since, the respondent was a work charge employee and he has no vested rights of employment, therefore, he had no locus standi to file the writ petition in the learned Chief Court. Moreover, there are factual controversies in this case, hence, writ petition does not lie in circumstances. Similarly, no departmental appeal was ever filed by the respondent to the competent authority for redressal of his grievances, therefore, the writ of the respondent was barred by law.

6. In view of the above discussions, we convert this petition into an appeal and the same is allowed. Consequently, the impugned order dated 07.11.2016 in Writ Petition No.32/2015 passed by the learned Chief Court is set aside.

7. The appeal is allowed in above terms.

Chief Judge.

Judge.

