

**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. 80/2016

In

CPLA No.117/2016.

Provincial Government through Chief Secretary Gilgit-Baltistan and
others. Petitioners.

Versus

Rehmat Jan Deputy Superintendent of Police (Legal) & 05 others.

Respondents.

2. Civil Appeal No. 81/2016

In

CPLA No.71/2016.

All Police Officers (AISPs to DSPs) of Gilgit-Baltistan Police through
representatives. Petitioners.

Versus

Rehmat Jan Deputy Superintendent of Police (Legal) & 11 others.

Respondents.

PRESENT:-

1. The Advocate General alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioners in Civil Appeal No.80/2016 and for the respondents Nos. 07 to 12 in Civil Appeal No. 81/2016.
2. Mr. Johar Ali Advocate for the respondents in Civil Appeal No. 80/2016 and for the respondents Nos. 01 to 06 in Civil Appeal No. 81/2016.
3. Mr. Asadullah Khan Advocate alongwith Mr. Munir Ahmed Advocate for the Petitioners in Civil Appeal No. 81/2016.

DATE OF HEARING: - 20. 07. 2018.

DATE OF DETAILED JUDGMENT: - 25.07.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... These Appeals have arisen out of the Impugned Judgment dated 26.05.2016 in Writ Petition No. 84/2015 passed by the learned Chief Court

whereby the said writ Petition filed by the respondents was accepted by directing the petitioners to maintain the combined seniority list of PDSPs with DSPs of general cadre with effect from the date i.e. 12.10.2010 and then process the promotion case of respondents at par with DSPs of general cadre, hence, these petitions for leave to appeal. This court vide order dated 04.11.2016 granted leave to appeal and the case was heard on 20.07.2018.

2. Briefly, the facts of the case are that the respondent No. 01 to 06 in both the aforementioned Writ Petition No. 84/2015 in the learned Chief Court Gilgit-Baltistan contending therein that the “Separate Seniority List” of the PDSPs of the Police Department Gilgit-Baltistan maintained by the official petitioners is illegal and unlawful. The respondents prayed for maintaining of “Combined Seniority List” of General Cadre DSPs and PDSPs for promotion etc in order to remove the disparity and discrimination. Upon hearing, the said Writ Petition was allowed by the learned Chief Court with the directions to the petitioners to prepare the “Combined Seniority List” of both DSPs and PDSPs. The official petitioners submitted parawise comments that all the respondents are serving as Deputy Superintendant of Police (DSP) in the Police Department of Gilgit-Baltistan since 12.10.2010. Initially all the respondents were appointed as Sub-Inspectors of Police (SIPs) in the Police Department and then obtained promotions at different times to the existing rank and scales. The Combined Seniority List of

respondents and the petitioners i.e. the general cadre officers was maintained by the official petitioners till 1982-83. Whereafter on 22.03.1999, the competent authority of Gilgit-Baltistan police separated both the cadres and maintained two different categories of seniority at par with the Province of Punjab in line with The Punjab Police Rules, 1934. The petitioners being aggrieved by and dissatisfied with filed this petition for leave to appeal.

3. Mr. Asadullah Khan Advocate appearing on behalf of the petitioners in both the appeals submits that the Writ Petition filed by the respondents i.e. the DSPs Legal Branch was not maintainable being barred by time as the separate seniority was implemented by the officials petitioners vide Office Memorandum dated 07.02.2000 in line with the Punjab Police Rules, 1993 adopted by the Government of Gilgit-Baltistan. The DSPs Legal Branch filed Writ Petition in the year 2015 after lapse of 15 years. The respondents should have approached the Gilgit-Baltistan Service Tribunal under Article 212 of The Constitution of Islamic Republic of Pakistan, 1973 instead of invoking the Writ Jurisdiction of the learned Chief Court. The seniority and promotion are not the vested right under Section 08 of The Civil Servants Act, 1973 read with Article 212 of The Constitution of Islamic Republic of Pakistan, 1973. He submits that both the cadres i.e. the General Cadre DSPs and the PDSPs are different cadres and the Prosecuting DSPs cannot be equated with general cadre who are governed differently.

Per learned counsels, as far as the cadre for the general police is concerned, they prior to their promotion have to qualify certain “Mandatory Training Courses” likes Probation Course, Intermediate Course, Upper Course, Advance Course and Command Course which the respondents PDSP(s) are lacking & not qualified. He further submits that the Police Inspectors of General Cadre were never promoted to the rank of PDSPs. On contrary, the Prosecuting Inspectors were upgraded from PSI (BS-14) to PI (BS-16) and then to PDSPs (BS-17) which the respondents have deliberately concealed from the learned Chief Court. He also submits that the respondents deliberately have not impleaded the petitioners in Writ Petition No.84/2015. Likewise, the respondents have also not impleaded the petitioners Nos. 06 to 12 in CPLA No. 71/2016 as they were “Affectees” and necessary party in the learned Chief Court. Consequently, the DSPs of General Cadre have been condemned unheard in the learned Chief Court. Per learned counsel, this act on the part of the respondents was malafide as the one who seeks equity must come with clean hands. He added that the respondents PDSP(s) were admittedly governed under The Punjab Police Rules 1934 and the same pattern was adopted at the time of establishing the Prosecution Branches in all the districts of Gilgit-Baltistan, the then Northern Areas. He reiterated that the Notification No. SOS-IV-7(5) /2008, the Governor Gilgit-Baltistan has been pleased to adopt the Punjab Government Service Rules

2009 to the extent of PDSPs BPS-17 Prosecuting Inspector Legal (BPS-16) and Prosecuting Sub Inspector Legal (BPS-14). He submitted that the impugned Judgment passed by the learned Chief Court in violation of the mandatory Police Rules, hence, the same is not tenable. The Writ Petition filed by the respondents in the learned Chief Court was otherwise barred by time. He prays that the said impugned judgment may graciously be set aside. While saying so he relied upon the case laws reported as 2013 SCMR 1752, 2004 NLR 507, 1994 NLR Lahore, 129 & 1998 SCMR, 969. The learned Advocate General adopted the arguments of Mr. Asadullah advocate for the petitioners and relied upon the same case laws.

4. On the other hand, the learned counsel for the respondents (DSPs Legal) supports the impugned judgment passed by the learned Chief Court. He contends that his clients filed the writ Petition in the learned Chief Court seeking combined seniority from the officials of police department Gilgit-Baltistan, therefore, they have not impleaded the DSPs General Cadre as they are/were strangers and they have nothing to do with the case in question. He submits that the Writ Petition filed by the respondent was not barred by time as they had submitted a departmental appeal which was pending. Per learned counsel, the separate seniority list of both the cadres of police department Gilgit-Baltistan is illegal, void and unlawful being based on malafide and discrimination. In case the

separate seniority list of PDSP(s) is continued, the respondent will suffer irreparable loss, who will retire as PDSP without any further promotion in their careers. Earlier, there was a combined Seniority list of both the cadres till 1999 which was illegally and unlawfully separated in the year 2000 in order to block the promotion of the respondents. According to Article 8(2) (4) of the Police Order, 2002, The police establishment constituted under Article 7 shall, for practical purpose be organized on functional basis into branches, divisions, bureaus and sections, It is manifest from Article 8 (4) of the said Order, 2002 that every police officer shall be liable for posting for any branches, divisions, bureaus and sections or anywhere in or outside the police. He prays that the well reasoned impugned judgment passed by the learned Chief Court may graciously be maintained. In support of his contentions he relied upon case law reported as 2010 SCMR 1301.

5. We have heard the learned counsels for the respective parties, perused the materials on record, gone through the impugned judgment passed by the learned Chief Court and also gone through the case laws relied upon by both the parties. We have also perused The Punjab Police Rules, 1934 & Police Order, 2002 cited by the learned counsel for the parties as well. Admittedly, the Writ Petition of the respondent was barred by time for a period of more than 14 years and no plausible reasons and explanations were offered by the respondents either in the learned

Chief Court or in this Court. It was lawful to approach the competent Court of law well within the time prescribed by law. Mere filing of departmental appeal is not sufficient ground for filing Writ Petition. In case the departmental appeal is not heard and decided within 90 days, the respondents should have approached the Service Tribunal for redressal of their grievance which they admittedly failed to approach the learned Service Tribunal. It is also an admitted fact that the PDSPs/DSPs Legal Branch, have not gone through/qualified the various "Mandatory Training Courses" i.e. Probation Course, Intermediate Course, Upper Course, Advance Course and Command Course etc, therefore, they cannot be equated with the General Cadre Police officials. In case they are equated/merged, it will fall in category of "Out of Turn Promotion" which is illegal, ab-initio void and unlawful and this Court has already declared such kind of promotion illegal in SMC No. 10/2017 case titled "Shoulder/Out of Turn Promotion. The Punjab Police Rules, 1934 was adopted in 2000 by the Government of the then Northern Areas. We have also gone through the case laws referred by the learned counsels for the respective parties. Punjab Police Rules, 1934 & the case laws cited by the learned counsels for the petitioners are applicable whereas the case law relied upon by the learned counsel for the respondents is distinguishable. Consequent thereto, the impugned judgment passed by the learned

Chief Court is not sustainable being passed contrary to the mandatory Police Rules and being barred by time.

6. In view of the above discussions, both the aforementioned Appeals were allowed vide our short order dated 20.07.2018. The Impugned Judgment dated 26.05.2016 in Writ Petition No. 84/2015 passed by the learned Chief Court was set aside. The official(s) from Legal Branch if merged or promoted in a General Cadre of Police be reverted back in their original position(s) forthwith. The respondents i.e. (the DSPs Legal etc) may, however, approach to the proper forum for redressal of their grievances if they are so advised. The Government of Gilgit-Baltistan may consider in creating vacancies/seats for the Prosecution Superintendent of Police, so as, their promotion may not be blocked in their own cadres. These were the reasons for the said short order.

7. The appeals were allowed in above terms.

Chief Judge.

Judge.