

IN THE SUPREME APPELLATE COURT NORTHERN AREAS GILGIT
C.P.L.A.No.12/2009

Before: Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.
Mr. Justice Syed Jaffar Shah, Judge.
Mr. Justice Muhammad Yaqoob, Judge.

All Gilgit Baltistan Workers through their representative **Petitioners.**
Versus

1. Federation of Pakistan through Secretary Kashmir Affairs & Northern Areas division Islamabad.
2. Provincial Government through Chief Secretary Northern Areas Gilgit.
3. Chief Executive Northern Areas Gilgit.
4. Federal Minister of Labour and Main Power through Secretary Labour and Main Power Islamabad. **Respondents.**

PETITION UNDER ARTICLE 27 OF NORTHERN AREAS GOVERNANCE ORDER 1994 READ WITH A ARTICLE 4,8,15,16,17,19, & 25 OF THE CONSTITUTION OF PAKISTAN.

Present: Mr. Ehsan Ali Advocate for the petitioners
Advocate General Northern Areas for the Respondents
Muhammad Issa Advocate, President Supreme Appellate Court, Bar Association Gilgit.
Mr. Manzoor Ahmed Advocate, President Chief Court, Bar Association Gilgit.
Mr. Abid Hussain Mento Senior Advocate Supreme Court of Pakistan, as Amicus Curie.

Date of hearing: 24.08.2009

J U D G M E N T

Mr. Justice Muhammad Nawaz Abbasi, CJ: This direct petition under Article 27 read with Article 19-A of the Northern Areas Governance Order, 1994, has been filed by “All Gilgit Baltistan Workers Federation” against the Federation of Pakistan through Secretary Kashmir Affairs & Northern Areas Division Islamabad, and three others seeking directions to the following effect: -

- (a) The respondents may very kindly be directed for immediate extension of Industrial relations Act, 2008, and other Labour related laws including Workers Welfare Fund Ordinance, 1971, Workman Compensation Act 1923, Payment of Wages Act 1936, Factories Act 1934, Mines Act 1934, provincial Employees Social Security Ordinance 1965, Employees Old Age Benefit Act 1976, West Pakistan shops and Establishments Workers Welfare Ordinance 1971, Companies

Profit (Workers Participation) Act, Employees Cost of Living (Relief) Act, Road Transport Workers Ordinance 1961, West Pakistan Industrial & Commercial Employees (Standing Workers) Ordinance 1968, workers Welfare Fund Ordinance 1971 and the Finance Act 2008 in the Northern Areas.

(b) The respondents may also be directed to make arrangements for implementation of payment of increased minimum wages up to Rs. 6,000/- per month to the Workers/Employees serving in all Government Sámí Government, Private Commercial, Industrial, Education Institutions and NGOs.

(c) Any other relief which this august Court deems fit and proper according to the nature of instant petition, may also be granted to the petitioners in the larger interest of Public at large of Northern Areas to achieve the ends of Justice.

This Court while taking cognizance of the matter in original jurisdiction under Article 27 of Northern Areas Governance Order 1994 in the public interest litigation passed the following Order on 10. 06. 2009:-

“The Petitioner being Secretary General Gilgit Baltistan Trade Union Federation has filed this petition under Article 27 of Northern Areas Governance Order, 1994 readwith Article 8,15,16,17 and 19 of the Constitution of Pakistan on behalf of Gilgit Baltistan workers for extension of Industrial Relation Act 2008, in Northern Areas. The learned counsel for the petitioner has submitted that the people of Northern Areas being citizens of Pakistan are equally entitled to the benefit of Labour laws enforced in Pakistan, and that without the application of **I.R** Act, 2008 in Northern Areas, the Labour Class and Trade Unions of this area are not only deprived of their basic right of access to Justice but also are denied equal treatment and protection of law in terms of Article 4 and 25 of the Constitution of Pakistan.

The contention raised involves Constitutional question of public importance, therefore subject to all just exceptions, and removal of defects in the petition, we grant leave in this petition to consider inter alia the above question relating to the fundamental rights of the people of Northern Areas. The copy of this petition will be sent to the Secretary KA/NA Division for reply and concise statement. In view of the importance of the matter, we deem it proper to ask learned Attorney General for Pakistan to assist the Court and would also request to Mr. Abid Hussain Minto Senior Advocate Supreme Court of Pakistan, based at Lahore and Mr. Tariq Mahmood Senior Advocate Supreme Court based at Islamabad to assist the Court as Amicus

Curia. Dr. Aslam Khaki President High Court Bar Association Islamabad and Mr. Muhammad Issa President Supreme Appellate Court, Bar Association as well as president Chief Court Bar Association Gilgit, and the Advocate General Northern Areas, will also provide assistance to the Court. The appeal shall be set down for hearing on the present record with permission to the parties to place on record additional documents”.

This petition in representative capacity has been filed by the petitioner on behalf of the workers of Government, Sámi Government and private Organizations in the Northern Areas mainly on the ground that this is not practicable for the individual workers to raise the common grievance through separate petitions therefore this direct petition on behalf of workers on the basis of common cause may be entertained. The request seems to be reasonable therefore in the interest of justice and without prejudice to the right of respondents to raise the objection to the maintainability of this petition, we entertain the same and grant permission to the petitioner to represent the workers in representative capacity.

The sole question raised before us requiring determination is that labour class in NAs has not been provided the machinery of statutory law for enforcement of their rights available to them under different laws of Pakistan enforced in Northern Areas and have been deprived of the fundamental right of equality and equal protection of law guaranteed under Article 25 of the Constitution of Pakistan read with Article 19-A of the Northern Areas Governance Order, 1994.

Mr. Ihasn Elahi Advocate Learned Counsel for the Petitioner tracing out the history of Labour Laws in Pakistan submitted that initially **IRO** 1969 was enforced in Northern Areas in 1989 but subsequently its application in Northern Areas was withdrawn without providing an alternate statute for Labour and Trade Unions activities. The IRO 1969 was repealed by IRO 2002 which was also not extended to NAs and then IRO 2002 was substituted with Industrial Relation Act 2008, but this Act also has not been extended to Gilgit Baltistan, similarly, the application of

certain other Labour Laws in the NAs has been withheld, although more than 200 laws of the Federal Government are enforced in NAs. The learned Counsel submitted that despite regular demand made and assurance given by the Kashmir Affairs & Northern Areas Division for extension of IRO 2002 and IR Act 2008 with other labour laws in NAs, nothing has been done so far, as a result of which the poor and depressed Labour Class in this region is being exploited in respect of their legal rights by the employers and the management of different public and private Organizations, in violation of Article 3 of the Constitution of Pakistan. The learned Counsel submitted that non application of IRO 2002 or IR Act 2008 or an alternate statute and other labour laws referred to above in NAs is discriminatory and violative of Articles 4,8,15,16,17,19 & 25 of the Constitution of Pakistan read with Article 19-A of the Northern Areas Governance Order 1994 as a result of which the workers on large scale in Government and Semi Government departments, Autonomous bodies and Private Organizations functioning in Northern Areas in which Transport companies, Construction companies, NA PWD, Municipal Corporation, Flour Mills, Hotel Industries and many other Public and Private Organizations are included are deprived of their basic right and are not being treated at par to those of the workers of similar organizations in the other parts of the country in respect of their rights under Labour Laws.

The Learned Advocate General Northern Areas has submitted that the Federal or a Provincial law cannot be ipso facto made applicable in Northern Areas unless it is extended by a notification to be issued by the Federal Government and has placed a list of 226 laws on record which have already been made applicable to Northern Areas. He has submitted that although the territory of Northern Areas is not as such included in the territory of Pakistan as defined in Article 1 of the

Constitution of Pakistan, but factually NAs is a part of Pakistan and the people of Northern Areas are citizens of Pakistan by virtue of Citizenship Act 1951 and informed the Court that Workman Compensation Act 1923, The Factories Act 1934, The Old Age Employees Benefit Act 1976, have been made applicable in NAs, whereas the other Labour Laws referred to above which are enforced in Pakistan have not been extended to Northern Areas. The Learned Advocate General has thus conceded that non-application of Labour Laws in Northern Areas is discriminatory to the people of this area in terms of Article 25 of the Constitution of Pakistan read with Article 19-A of NAs Governance Order 1994 and consequently the labour class in NAs is deprived of equal protection of law for exercise of their right of formation of union under Article 19-A of Governance Order 1994 read with Article 17 (1) of the Constitution of Pakistan for effective protection of their rights recognized under the law.

Mr. Muhmmad Issa, Senior Advocate and President Supreme Appellate Court Bar association has submitted that during British rule the control of Northern Areas of Pakistan was given to Maha Raja Kashmir by the British Government and six months after partition the people of Northern Areas by giving defeat to the forces of Maha Raja Kashmir with the help of Government of Pakistan occupied this area and established self Government system in the form of different states under the Control of Government of Pakistan but subsequently on the abolishment of these states, Northern Areas came under the direct control of Federal Government of Pakistan.

The Learned Counsel with reference to Article 1 of the Constitution of Pakistan has submitted that the territory of Northern Areas under the constitution of Pakistan is not as such included in the territory of Pakistan but by virtue of

clause (d) of Article 1 of the constitution, this area is included in Pakistan for all practical purposes and being part of Federation of Pakistan is under the direct control and supervision of the Government of Pakistan with De-facto status of territory of Pakistan, therefore all Federal Laws without any formal notification would ipso facto be operative in Northern Areas and notwithstanding the exemption of the application of certain laws for the benefit of people of Northern Areas, the exclusion of a law including Labour Laws referred to above recognizing certain rights of people from operation in Northern Areas is against the public policy and natural justice.

Mr. Manzoor Ahmed, Advocate, President Northern Areas Chief Court Bar Association, argued that in the light of definition of “territory of Pakistan” in the constitution of Pakistan and the factual status of Northern Areas, it is natural part of Pakistan and consequently no special order or notification is required for the application of the Labour Laws in Northern Areas but unfortunately on the basis of wrong notion, the policy of pick and choose has been adopted for application of Federal Laws in this area as a result of which the basic rights of people are infringed for want of proper forum and remedy .

Mr. Abid Hussain Minto, senior Advocate, Supreme Court of Pakistan, on request of Court, appeared as Amicus Curie for assistance and while tracing the history of the state of Jammu and Kashmir he has submitted that originally Northern Areas was not part of Jammu and Kashmir, rather the British Government by virtue of a contract handed over the control of this area to Maha Raja State of Jammu and Kashmir and after partition of sub continent Northern Areas came under the administrative control of Pakistan, therefore notwithstanding the fact that it was not as such included in the territory of Pakistan which has been defined in

Article 1 of the Constitution of Pakistan, this area for all practical purposes, is treated as a part of Pakistan so much so internationally it is not as such recognized a Disputed Territory, and in view thereof this is not fair to deprive the people of Northern Areas from their legal and constitutional rights recognized under the constitution of Pakistan for mere reason that constitutionally this area is not included in the territory of Pakistan. The learned Counsel with reference to Article 25 read with Article 17 of the constitution submitted that in consequence to the right of freedom of association recognized under the constitution, the Supreme Court of Pakistan has examined the vires of the relevant statutes including political parties Act 1962 and IRO 1969 in the cases involving the question relating to the validity of certain provisions of these statutes which offended the constitutional right of association on the touch stone of Article 17 read with Article 25 of the Constitution of Pakistan. In support of the argument learned counsel has relied upon the case titled “Civil Aviation Authority v. Union of Civil Aviation Employees” (PLD 1997 S.C 781) in which it was held by the Supreme Court of Pakistan as under: -

“It may be pointed out that the effect of the exclusion of application of the provisions of IRO to the employees of the establishment mentioned in clauses (a) to (h) of subsection (3) of Section 1 thereof, which includes the Corporation (i.e Pakistan Television Corporation), is that there is no statute in the field corresponding to IRO under which the employees of the establishments mentioned therein can formulate and operate a union or to press into service the mechanism provided in the IRO for regulating relations, between employers and workers and for avoidance and settlement of differences disputes. It may further be observed that section 23 of the Ordinance by providing that IRO shall not apply to or in relation to the Authority or any person in the service of the Authority, purports to achieve the above objective.”

Learned Counsel has submitted that certain laws included in schedule 2 of this order are within the legislative dominion of Northern Areas Legislative Assembly, whereas the laws on the subject under discussion for enforcement of right of formation of union as provided under Article 17 (1) of the Constitution of

Pakistan is to be enacted by the Federal Government or the law already enforced in Pakistan has to be extended to NAs by issue of notification by the Federal Government, as no Federal or Provincial Law can be made applicable to Northern Areas without issuance of a proper notification by the Federal Government. The Learned Counsel has laid much emphasize on the point that mere extension of laws in NAs is of no use unless the labour union activities in term of Article 17 (1) of the Constitution read with Article 19-A of Governance Order 1994 are allowed and added that in absence of labour unions the right of individual workers can not be effectively protected in the spirit of constitution as has been held by Supreme Court of Pakistan in PLD 1997 SC, Page 781. Learned Counsel while concluding his argument has submitted that IR Act 2008 is a temporary legislation which is operative for a limited period, therefore a permanent law on the subject is required to be enacted as the problem being faced by the worker class in NAs will not be solved by application of a temporary legislation.

The contention of the learned counsels has given birth, inter alia to the following questions for our consideration.

- (a) whether all Federal Laws would be deemed to have been automatically applicable to Northern Areas which is considered as part of Federation of Pakistan and is under direct control of Federal Government without issue of formal notification for the extension of such laws to the Northern Areas or not.
- (b) whether non application of IRO 1969 or 2002 or IR Act 2008 to Northern Areas is not violative of Article 17 (1) read with Article 25 of the Constitution of Pakistan and Article 19-A of Northern Areas Governance Order 1994 and is not discriminatory.

(c) Whether fundamental right of formation of union provided under Article 17 (1) of the Constitution of Pakistan being subject to integrity and security of Pakistan, non application of IRO 1969 and 2002 or IR Act 2008 to Northern Areas because of its location is justified.

Mr. Ehasan Ali Advocate, learned counsel for the petitioner, Mr. Muhammad Issa Senior Advocate and President Supreme Appellate Court Bar Association, Mr. Manzoor Ahmed Advocate and President Chief Court Bar Association, the Advocate General Northern Areas, and Mr. Abid Hussain Mento Senior Advocate Supreme Court of Pakistan Amicus Curie have rendered valuable assistance to the Court. The Federal Government has filed comments to this petition, after the judgment was reserved after the close of arguments of learned counsel whereas Deputy Attorney General without appearing in Court has submitted comments on behalf of Attorney General for Pakistan.

In view of the importance of the matter we before proceeding further and diluting upon the question of law raised in this petition, at the first instance deem it proper to determine the constitutional status of Northern Areas which was originally called Gilgit Baltistan. This is noticeable that on establishment of British rule in the sub-continent the British Government had given the administrative control of NAs to Maharaja Jammu and Kashmir and soon after partition of sub continent Maharaja lost the control of this area which came under the control of Government of Pakistan but in the Constitution of Pakistan this area as such has not been included in the territory of Pakistan which is defined in Article 1 of the Constitution of Pakistan as under:-

1. **“The Republic and its territories.** (1) Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.
- (2) The territories of Pakistan shall comprise_

- (a) The Provinces of Baluchistan, the North-West Frontier, the Punjab and Sind;
 - (b) The Islamabad Capital Territory, hereinafter referred to as the Federal Capital;
 - (c) The Federally Administered Tribal Areas; and
 - (d) Such States and territories as are or may be included in Pakistan, whether by accession or otherwise.
- (3) [Majlis-e-Shoora (Parliament)] may by law admit into the Federation new States or areas on such terms and conditions as it thinks fit.]”

In the light of definition of territory of Pakistan, NAs by virtue of clause (d) of Article (1) of the Constitution is treated as part of territory of Pakistan and is included in Federation of Pakistan, notwithstanding the fact that before the partition it being under the control of Maharaja Jammu and Kashmir was considered as part of state of Jammu and Kashmir for allied purposes. The essential question for determination in view of the constitutional status of Northern Areas would be the considerations for the classification of laws for the purpose of application of a particular law to this region. The people of Northern Areas are citizens of Pakistan and notwithstanding the location and importance of this area from strategic point of view, the fundamental rights guaranteed in Chapter I Part II of the Constitution of Pakistan have been made part of Northern Areas Governance Order 1994 by virtue of Article 19-A of said Order without any distinction or discrimination and in case of any violation of the fundamental rights the Courts in Northern Areas are empowered to pass appropriate order for enforcement of these rights.

Article 27 of the Northern Areas Governance Order 1994 is substitution of Article 184 (3) of Constitution of Pakistan for the purpose of enforcement of fundamental rights, which provides an expeditious and inexpensive remedy for the enforcement of the fundamental rights in the matter involving question of public importance. The superior Courts in Pakistan as well as in Northern Areas have very

wide powers to pass an order for enforcement of fundamental rights or give direction in the form of declaration and for implementation of such order or direction all Executive and Judicial authorities are bound to act in aid of the Courts. The Governance Order of Northern Areas not only provide protection of fundamental rights envisaged in Chapter I of Part II of Constitution of Pakistan but also empowers the Superior Courts i.e. Chief Court and Supreme Appellate Court for enforcement of these rights. The Supreme Appellate Court in exercise of its original jurisdiction under Article 27 of the Northern Areas Governance Order 1994, in a case involving question of public importance relating to the enforcement of any of the fundamental rights conferred by Article 19-A of the Order read with Chapter I Part II of the Constitution of Pakistan may pass an appropriate order and give direction, therefore any rigid interpretation in respect of the exercise of the powers by the Court for enforcement of fundamental rights would be against the concept and spirit of the above provision. The language of Article 27 of the Northern Areas Governance Order 1994 and Article 184 (3) of the Constitution of Pakistan is open ended and legislation did not intend any rigid or ceremonious exercise of Jurisdiction to place any restraint on the power of the Supreme Appellate Court, Northern Areas and Supreme Court of Pakistan for enforcement of fundamental rights.

The objection to the maintainability of this petition on the ground that the petitioner is not a recognized agent or a representative body of the labour class in NAs would be a rigid interpretation to recognize fundamental right of formation of Labour union of people of Northern Areas under Article 17 (1) of the Constitution of Pakistan read with Article 19-A of NAs Governance Order 1994. This is settled principle of law that a direct petition involving a question of public importance

with reference to the enforcement of any of the fundamental rights guaranteed under the Constitution and law can be brought by any person and the question of locus standi of a person, whether he is directly aggrieved or not is of no significance. Reliance may be placed on Miss Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416.

The learned Deputy Attorney General in the comments filed on behalf of the Attorney General of Pakistan without denying the right of forming labour union by the workers in different organization in NAs in terms of Article 17 (1) of the Constitution of Pakistan and the law on the subject has laid much stress on the maintainability of this petition under Article 27 of the Governance Order 1994 whereas the Federal Government through Chief Secretary has submitted comments as under:-

“with all respect and humility, it is submitted as under: -

- (1) That the petitioners have no locus standi to file the titled CPLA.
- (2) That the status of titled CPLA may be petition of representative nature, therefore, it was obligatory for the petitioners to obtain necessary permission before filing the same but such permission is missing in the titled CPLA.
- (3) That the petitioners have failed to provide any documentary proof for agitating “the matter in issue” before relevant authority, who was authorized under “The Northern Areas Governance Order, 1994”, since the Petitioners have an adequate remedy to redress their grievance, therefore, they are not legally entitled to get any relief from this Hon’ble Court under Article 27 of the above order.
- (4) That the Government of Pakistan is doing sincere efforts for the prosperity of the people of Northern Areas, recently the Federal Cabinet have approved many amendments in legal and political field, the said amendments are under the process of acceptance by the competent authority. Some press clippings are attached herewith as Annexures “A” and “B”.

Keeping in view the above submission, it is most respectfully prayed that the titled CPLA No. 12/2009, may very kindly be dismissed.”

The Federal Government in its comments has not raised serious objection to the extension of Industrial Relation Act 2008 to the Northern Areas rather impliedly conceded the legal rights of the Labour Class in Northern Areas without any distinction. Be that as it may the question as to whether the IR Act 2008 should be extended to NAs or not is a question of great public importance which directly relates to the fundamental rights of the people of NAs, therefore this question requires decision on the touch stone of fundamental right of formation of union for collective benefit of Labour class. Northern Areas is governed by Northern Areas Governance Order 1994 and different Federal and Provincial laws including certain labour laws except IRO 1969, 2002 and IR Act 2008 have been made applicable to this area by issuance of separate notifications. The forming of Labour union as such is not prohibited but without application of IR Act 2008 or an alternate statute for enforcement of right of forming of labour unions under Article 17 (1) readwith Article 19-A of the Governance Order 1994 in an effective manner, this right would be meaningless because a labour union without legal recognition would not be in a position to render any service to Labour Class or plead their cases in representative capacity before the appropriate forums. The fundamental right in terms of Article 17(1) of the Constitution without the machinery of law for its enforcement would be of no significance and in view of the legal position no exception can be taken to the maintainability of this petition which involves question of public importance relating to the enforcement of fundamental rights. Consequently, the objection of the Deputy Attorney General that this direct petition under Article 27 of Northern Areas Governance Order 1994, is not maintainable.

The general principal for invoking the original jurisdiction of the court under Article 27 of Governance Order 1994 is the same as in the spirit of Article 184(3)

of the Constitution of Pakistan. The consideration for direct petition before this court is that whether or not a question of public importance is actually involved with reference to the enforcement of any of the fundamental rights conferred by the Northern Areas Governance Order 1994 and if the above two essential elements are found in the case before the court notwithstanding the availability of an alternate remedy under the law, the court can take cognizance of the matter on a petition moved by an individual or by an association in representative capacity. This is recognized principle that if the proceedings are in the nature of public interest litigation the power conferred on this court under Article 27 read with Article 19-A of the Governance Order 1994 can be exercised liberally without the fetters of technicalities to advance the cause of justice. In consequence thereto we hold that this direct petition under Article 27 read with Article 19-A of the Governance Order 1994 in the original jurisdiction of this court involving the question of public importance relating to the enforcement of fundamental rights of the labour class is maintainable in public interest litigation.

This may be pointed out that initially Industrial Relations Ordinance 1969 was made applicable to the Northern Areas but subsequently for the reasons best known to the concerned authorities in the Federal Government the operation of this law from Northern Areas was withdrawn. The exclusion of the application of provisions of Industrial Relations Ordinance 1969 or non application of Industrial Relation Act 2008 to the Northern Areas being violative of Article 17(1) of the constitution of Pakistan and Article 19-A of Northern Areas Governance Order 1994, was without any constitutional or legal justification. This is correct that Article 17(1) does not recognize the right of union of employees of all organizations rather this right is subject to the limitation and restriction imposed by the law in special circumstances and withholding of the law for enforcement of

fundamental right guaranteed under Article 17(1) in respect of an organization for special reasons may not be discriminatory or against the principle of equality before law and equal protection of law. The Industrial Relation Ordinance or Act as the case may be, provides the mechanism of registration and operation of union and the recognition of collective bargaining agent to raise the charter of demand and the manner of settlement of the dispute between employers and employees through negotiation. In Northern Areas no such statute is available for the registration and operation of labour union for redressal of the grievances of individual workers or their collective demand, as a result thereof the right of formation of unions as a legitimate representative body of workers cannot be effectively exercised for the welfare of labour class in the area. In absence of law on 'Industrial relations' for invoking the provision of Article 17(1) of the constitution in Northern Areas the labour class in this Areas would not be able to protect and enforce their legal and constitutional right in proper manner. The concept of formation of association or union is based on the fact that certain rights are inherent in such associations or unions including the right to act as a legally recognized agent of the labour class and non availability of law for enforcement of above right would be direct denial of the right of labour and worker to enforce their rights before the appropriate forums such as labour courts or NIRC as the case may be. The union is an organization of workers to watch their interest in respect of their wages and working conditions and an unregistered union may have legal entity for certain other purposes but it cannot function as a representative body because it has no legal recognition to act as representative of workers to enter into a binding contract with the employer. Whereas a registered union having the legal recognition can perform all acts permissible under law and can also enter into a binding contract with employer on behalf of the employees. It was held in the

case of Civil Aviation Authority v. Union of Civil Aviation Employees (PLD 1997 SC 781) as Under: -

“In order to make Article 17(1) of the Constitution meaningful for the purpose of formation of the unions and their operation, it is incumbent for the legislature to provide a legal framework either in the form of IRO or any other alternate statute, seems to be correct. We have already pointed out hereinabove that the IRO provides an exhaustive mechanism for the formation, registration and operation of the unions. It also provides the procedure, as to how a collective bargaining agent on behalf of workers is to be elected and in what manner a charter of demands can be raised by the employees, how it is to be negotiated and in case of failure to arrive at an amicable settlement between the employer and the employees, what coercive steps the employees can take. It also caters for the hierarchy for resolving the industrial disputes.”

In the light of the contention of Mr. Abid Hussain Minto, Senior Advocate, Supreme Court of Pakistan that the right of freedom of association and forming of union in terms of Article 17(1) of the constitution read with Article 19-A of the Governance Order 1994 is a constitutional right which cannot be denied except in the cases of organization which have been excluded from the purview of Article 17 of the Constitution by law for special reason and consideration and in consequence thereto, the classification of Northern Areas for the purpose of law of Industrial Relation was unconstitutional and without any legal justification is not without force and substance.

Article 17 (1) of the Constitution of Pakistan guarantees the right of freedom of association and forming of union, whereas separate machinery of law is provided for the enforcement of right of association and this right of freedom of association and forming of union is guaranteed by virtue of Article 19-A of Northern Areas Governance Order 1994 to the people of Northern Areas which is fundamental document to run the affairs of Northern Areas but in the absence of machinery of law for the implementation of this right, the question requiring consideration would be whether non application of Industrial Relation Act 2008 or

an alternate statute on the subject is not a restriction on the exercise of right of association/union in Northern Areas and if this restriction is considered essential and reasonable then what is the substantial reason for this classification and if it is not so, how the unions without legal recognition can effectively work for the rights of individual worker or for collective interest of workers. In absence of any substantial reason for such restriction we have found much force in the arguments of Mr. Abid Hussain Minto, Senior Advocate, Supreme Court of Pakistan that to make the Article 17(1) of the constitution meaningful, the formation of the unions and for their proper functioning the extension of IR Act 2008 or enactment of alternate statute for Northern Areas was essential.

The labour union is an organization of workers and basic function of the labour union is to bargain with the employer for their rights and service benefit and these labour unions without legal recognition may not be in a position to negotiate with the employers with full strength and legal force. There is no bar on the working of a union without registration, but a labour union is not recognized as a representative body without registration under the law and also it cannot effectively protect the rights of workers, therefore, subject to the reasonable restriction imposed by law in the interest of sovereignty or integrity of Pakistan, public order and morality, the right of registration of union under the law must be recognized as constitutional right in terms of Article 17(1) of the constitution as without authority of law the right of association in the form of legally recognized representative body cannot be exercised. This being so, the statutory law for registration of union is necessary as without registration a union cannot be in a position to act as an agent of the workers, which is its inherent right and without legal recognition also cannot adopt coercive measures for acceptance of the

demands of workers. The net result of the above discussion is that statutory law for the purpose of forming of a union in term of Article 17(1) of the constitution is not necessary but the legal sanction for a representative body for the negotiations with employees on behalf of workers is essential and a union without such authority and recognition under statutory law cannot perform such function therefore it is constitutional duty of the government to provide the statutory law for implementation and enforcement of rights recognized under Article 17(1) of the constitution failing which this right would deem to have been denied.

The perusal of the comments of Federal Government would show that the comments have not been offered in context to the real question relating to the enforcement of fundamental rights and providing the remedy for the enforcement of such rights, rather the side issues have been discussed, which have no direct nexus with Article 17 of the Constitution of Pakistan read with Article 19-A of Governance Order 1994 and the remedy to be provided for enforcement of the rights guaranteed thereunder. The Federal Government also has not offered any reason for non extension of Industrial Relation Act 2008 to the Northern Areas or enactment of an alternate statute to recognize the right of labour class in terms of Article 19-A of Governance Order 1994 and treat them at par to the labour class and workers in other parts of the country. The right of formation of union is recognized as fundamental right under NAs Governance Order, therefore no exception can be taken to accept the right of registration of labour union of the labour class in the Northern Areas either under Industrial Relation Act 2008, a temporary statute enforced in Pakistan or by providing an alternate statute on the subject for recognition of the legal status of these unions. The statutory law on the subject is certainly in the interest of both employees and the employers for the

purpose of regulating their relation inter se on equitable basis with certain restrictions, therefore the Federal Government subject to the reasonable restrictions on the functioning of unions by making suitable amendments in the Industrial Relation Act 2008 may extend it to Northern Areas until an alternate statutory law is framed for enforcement of the right of association of union in Northern Areas in terms of Article 17(1) of the constitution of Pakistan read with Article 19-A of Northern Areas Governance Order 1994.

The crucial question requiring determination would relate to the extension of Industrial Relation Act 2008 to NAs and there is no cavil to the proposition that there is no right without a remedy and any restriction on the enforcement of legal or constitutional right impliedly or expressly directly or indirectly would amount curtailment of such right. The right of forming the Labour Union is recognized under Article 17 (1) of the Constitution read with Northern Areas Governance Order, 1994 and notwithstanding the fact that Northern Areas is not as such included in the territory of Pakistan which has been defined in Article 1 of the Constitution of Pakistan it is for all intents and purposes is an integral part of Pakistan and is under direct control of the Federal Government. The people of NAs by virtue of Citizenship Act 1951 are citizens of Pakistan and have been granted fundamental rights provided in Chapter I Part II of the Constitution of Pakistan readwith Article 19-A of the Northern Areas Governance Order 1994. This is matter of record that except a few all federal laws have been extended to NAs and are enforced without any distinction. The basic document for Governance of Northern Areas is Governance Order 1994 (now Gilgit Baltistan (Empowerment and Self Governance) Order 2009) which having the status of constitution for this areas set out the fundamental principles in respect of the rights and duties of the

State and the system of government in Northern Areas whereunder the government

is obliged to provide the machinery of law with remedies for the enforcement of the rights, guaranteed under the Constitution and law. The Supreme Court of Pakistan in the case title Al Jihad Trust Versus Federation of Pakistan (1999 SCMR 1379), while holding that people of Northern Areas are citizen of Pakistan, for all intents and purposes and like other citizens of Pakistan have the right to invoke any of the fundamental right mentioned in Part II Chapter- I of the Constitution of Pakistan issued direction for the enforcement of the fundamental rights through a Independent Judiciary.

The Federal Government having made Chapter I Part II of the Constitution relating to the fundamental rights as part of the Northern Areas Governance Order, 1994 has recognized the right of forming of Labour Union by the Labour Class but has not provided any law for enforcement of this fundamental right in Northern Areas which is open discrimination in terms of Article 25 of the Constitution of Pakistan read with the Article 19-A of Northern Areas Governance Order 1994. The provision of Article 25 of the Constitution which are embodied in Article 19-A of Northern Areas Governance Order 1994 may be subject to reasonable classification and there is no general standard for the test of reasonableness, rather it depends upon the circumstances which may justify different treatment on the basis of principal of reasonable classification but the restriction on the exercise of legal rights for the reason which may not be capable to justify the restriction before the Court of law, will make the restriction on the right guaranteed under the law and constitution unreasonable.

The universal principal of legislation at provincial or federal level, that it is made on the basis of geographical situation, the cultural environment, the social and economic considerations. The classification in respect of legislation merely on territorial basis is not recognized rather it may be one

considerations among others. This may be pointed out that the principle of equality before law and equal protection of law is recognized in the Constitution with the concept of reasonable classification but this classification is not as such applicable in respect of fundamental rights rather the same is applied in ordinary law for enforcement of constitutional rights.

The concept of reasonable classification under Article 25 of the Constitution of Pakistan is based on certain principles which may permit the application of a particular law to a particular area or group of people or class of persons and these principals are laid down in *I.A Sherwani v. Government of Pakistan* (PLD SCMR 1041) as under: -

- “(i) The equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
- (ii) The reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
- (iii) The different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;
- (iv) That no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances may be unreasonable in the other set of circumstances;
- (v) The law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- (vi) The equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;
- (vii) In order to make a classification reasonable, it should be based
 - a. on an intelligible differentia which distinguishes person or things that are grouped together from those who have been left out;
 - b. the differentia must have rational nexus to the object sought to be achieved by such classification.”

In the light of above criterion of reasonable classification the withholding of machinery of law for enforcement of the right of forming association which is recognized under Article 19-A of the Northern Areas Governance Order 1994 is discriminatory.

The reasonable classification means that every citizen is not to be treated alike in all circumstances rather it contemplates that person facing similar situation are to be treated alike. There is no cavil to the proposition that reasonable classification for the purpose of application of a law is permissible but it must be founded on the reasonable distinction or basis. The different laws can validly be made for different classes of the people in the society to protect their rights on the basis of reasonable classification therefore, no standard of universal application to the test of reasonableness of classification can be laid down, because a reasonable classification in a particular set of circumstance may be unreasonable in another set of circumstances. The application of law to a group or class of person in the society may be legally valid if there are sufficient basis or reasons for such classification but if it is not founded on any rational basis it is certainly beyond the scope of Article 25 of the Constitution. The equal protection of law means that all person equally placed be treated alike in respect of the privileges and the liabilities and a reasonable classification must be based on an intelligible differentia which distinguishes a person or group of person from other person or group of person and this differentia must have rational basis to the object sought to be achieved by the classification.

The constitutionality of law may not be affected on account of its applicability to a group or class of persons in special circumstances or reasons but in absence of such reasons or circumstances there would be no justification for creation of classes for the purpose of application of a particular law. There is always a presumption in favour of validity of a law unless it is proved that a law has been enacted in transgression of the constitutional principles. The essential ingredient of Article 25 of the Constitution read with Article 19-A of Northern

Areas Governance Order 1994 is that the violation must not be only confined to the extent that a person has been treated differently from others rather he has been treated differently from others in similar circumstances without any reasonable base and such deferential treatment has been made unjustifiably. The legislative presumption is in favour of beneficial interpretation of the provision and in the light thereof the Industrial Relation Act 2008 which is applicable in whole of the Pakistan would impliedly be extended to Northern Areas notwithstanding the fact that this area as such is not defined as territory of Pakistan in the constitution of Pakistan. The principle of classification laid down in Article 25 of the constitution read with Article 19-A of the Governance Order 1994 cannot be made applicable as general proposition to every case in all circumstances rather the application of this principle depends on the facts of each case and the purpose of enactment of statute therefore in particular circumstances the classification may be legal and valid but if the enactment is on the basis of arbitrary or versical consideration it is not valid.

It is clear from the plain reading of Article 17 of the constitution read with Article 19-A of the Governance Order 1994 that without providing machinery of law for the enforcement of fundamental rights provided therein would negate the concept of the fundamental rights. The Industrial Relation Act 2008 was enacted for the enforcement of the right of freedom of association and union therefore withholding of the application of such law to Northern Areas without providing an alternate statute would amount to deprive the labour class in Northern Areas from exercising their right of association and union for effective enforcement of their legal rights under labour laws. This necked situation clearly offends the principal of reasonable classification as envisaged in Article 25 of the Constitution of

Pakistan and has negated the right of forming union guaranteed to the people of NAs under Article 19-A of Northern Areas Governance Order 1994. The Supreme Court of India in the case of All India Bank Employees Association v. The National Industrial Tribunal (Bank Disputes), Bombay and others (AIR 1962 SC 171) held as under:-

“we do not consider the inference sought to be drawn well founded. What the learned Judges of the Supreme Court were referring to as a fundamental right was not with reference to a fundamental right as recognized or guaranteed by the Constitution, but in the sense of a right of unions which enacted law recognized or respected, and as other decisions of the United States Supreme Court show, was subject to regulation by the legislature. We have, therefore, reached the conclusion that the right guaranteed by sub-clause (c) of clause (1) of Article 19 does not carry with it a concomitant right that the unions formed for protecting the interest of labour shall achieve the purpose for which they were brought into existence, such that any interference to such achievement by the law of the land would be unconstitutional unless the same could be justified as in the interest of public order or morality. In our opinion, the right guaranteed under sub-clause (c) of clause (1) of Article 19 extends to the formation of an association and is so far as the activities of the association are concerned or as regards the steps which the union might take to achieve the purpose of its creation, they are subject to such law as might be framed and that the validity of such laws is not to be tested by reference to the criteria to be found in clause (4) of Article 19 of the Constitution.”

The question regarding discrimination in respect of right guaranteed under Article 25 of the Constitution of Pakistan read with Article 19-A of the Governance Order 1994 would require consideration in the light of principle of equal protection of law. The preamble of Industrial Relation Act 2008 (Act No IV of 2008) is to expedite, consolidate and reconcile the law relating to Labour unions for regulation of relation between employer and workman and in case of any difference of opinion on a matter or dispute arise between them the method for the settlement of dispute has been provided. The IR Act 2008 has been extended to the whole of Pakistan and in plain meanings it would also be applicable to the Northern Areas, notwithstanding the fact that Northern Areas as such constitutionally is not

included in territory of Pakistan by virtue of Article 1 of constitution of Pakistan but factually it is an integral part of the Federation of Pakistan for all practical purposes and is directly governed by the Federal Government of Pakistan therefore, it can safely be said that Northern Areas is defacto territory of Pakistan and laws of Pakistan may not ipso facto be applicable but the Government of Pakistan is obliged either to extend the federal laws beneficial to the Northern Areas by issuing a formal notification or enact the law for public welfare and interest.

The Industrial Relations Act 2008 is substitution of IRO 2002 and IRO 1969 which were enacted for recognition of the fundamental rights of forming of union provided under Article 17(1) of the constitution of Pakistan, which is part of Article 19-A of Northern Areas Governance Order 1994 and in the light thereof the right of association and union of the people of Northern Areas has been acknowledged, but the forum for the enforcement of this right has not been provided as a result of which a distinction has been created in respect of the right of equality and equal protection of law as envisaged in Article 25 of the constitution of Pakistan read with Article 19-A of the Governance Order 1994.

In consequence to the above discussion, we are of the considered view that fundamental rights cannot be suspended or taken away by any authority except in the manner provided by the Constitution itself and the machinery of law providing remedy for the enforcement of such rights is part of such fundamental rights therefore the answer to the question as to whether without remedy the right itself has not been taken away is that withholding the remedy would amount to infringement of the right.

This is an admitted fact that most of the federal laws including certain labour laws have already been extended in Northern Areas but this is not understandable that why the application of IRO 1969 or 2002 or IR Act 2008 providing remedy for enforcement of fundamental rights under Article 17(1) of the Constitution read with Article 19-A of Northern Areas Governance Order 1994 have been withheld. The rights of labour class provided in different Labour Laws cannot be enforced and protected without providing the appropriate forum for their enforcement, and thus in absence of specific remedy under the law for enforcement of legal right would amount to deprive the people from their rights.

In the light of above discussion and legal position, we hold that the forming of union is fundamental right of the labour class and withholding the application of law for enforcement of such right would amount to the infringement of fundamental right. This petition thus succeeds in terms of Short Order passed on 23-11-2009 as under: -

“This direct petition under Article 27 of repealed Northern Areas Governance Order, 1994 and now under Article 61 of Gilgit Baltistan (Empowerment and Self Governance) Order 2009 has been filed by All Gilgit Baltistan Workers Trade Union Federation through its General Secretary against the Federation of Pakistan through Secretary KA&NA (KA&GB) Division and others seeking the direction as under: -

“Respondents may very kindly be directed for immediate extension of Industrial Relations Act 2008 and other labour related laws including Workers Welfare Fund Ordinance 1971, Workman Compensation Act 1923, Payment of Wages Act 1936, Factories Act 1934, Mines Act 1934, Provincial Employees Social Security Ordinance, Employees Old Age Benefit Act 1976, West Pakistan Shops and Establishment Workers Welfare Ordinance 1971, Companies Profit (Workers Participation) Act, Employees Cost of living (Relief) Act, Road Transport Workers Ordinance 1961, West Pakistan Industrial & Commercial Employment (standing Workers) Ordinance 1968, Minimum wages for unskilled workers Ordinance 1969, Workers Welfare Fund Ordinance 1971 and the Finance Act 2008 in the Northern Areas.”

Keeping in view the importance of the matter relating to the enforcement of Fundamental Right of formation of trade/labour unions for protection of legal rights of workers in representative capacity in Gilgit

Baltistan (Northern Areas), we have requested Mr. Abid Hussain Mento, Sr. Advocate Supreme Court of Pakistan, Mr. Muhammad Issa, Sr. Advocate and President Supreme Appellate Court Bar Association Gilgit and Mr. Manzoor Ahmed, President Chief Court Bar Association for assistance of the Court as Amicus Curie. The Advocate General Gilgit Baltistan (Northern Areas) has represented the Chief Secretary Gilgit Baltistan whereas the Deputy Attorney General for Pakistan has filed written arguments/comments on behalf of Attorney General for Pakistan. The judgment was reserved for the comments of the KA&NA (KA&GB) Division, Government of Pakistan which have not been filed. The learned Amicus Curie, the learned counsel for the petitioner and the learned Advocate General have rendered very valuable assistance to the Court.

Having heard the learned counsel and learned Amicus at length and given due consideration to the question of law and facts raised in this petition we have examined the matter in depth and have drawn the conclusion as under: -

The trade or a labour union cannot effectively function as a representative body in the industrial disputes between the workers and employers for protection of the rights of workers merely on the basis of provisions of Article 17(1) of the Constitution of Pakistan read with Article 19-A of Northern Areas Governance Order 1994 substituted by Article 09 of Gilgit Baltistan (Empowerment and Self Governance) Order 2009, without statutory recognition and thus the law on the industrial relations for effective enforcement of fundamental right of formation of union in Gilgit Baltistan and for regulating the industrial relations is to be provided with the application of related labour laws as mentioned in the petition.

Consequently for the reason to be given in detail judgment, we with the above declaration allow this petition and direct as under:

Subject to all just exceptions, until a permanent law regulating the industrial relations for protection of labour rights with reasonable restrictions is made for Gilgit Baltistan, the Industrial Relations Act 2008 a temporary legislation with related labour laws as prayed in the petition will be enforced in Gilgit Baltistan (Northern Areas) which would deem to have been extended to Gilgit Baltistan (Northern Areas). The KA&GB (KA&NA) Division in the Federal Government will accordingly issue the formal notification for enforcement of these laws.”

Pending announcement of Short Order, Northern Areas Governance Order 1994 was substituted with Gilgit Baltistan (Empowerment and Self Governance) Order 2009 with recognition of fundamental rights, referred in Part II Chapter I of the Constitution of Pakistan and in Article 3 to Article 19 of Part II of Gilgit Baltistan (Empowerment and Self Governance) Order 2009 therefore for the

purpose of this judgment, Northern Areas Governance Order 1994 may be read as Gilgit Baltistan (Empowerment and Self Governance) Order 2009.

The Ministry of Kashmir Affairs and Northern Areas Division in the Federal Government will take immediate steps for issue of notification for the extension of IR Act 2008 with all other Federal Labour Laws enforced in the country to Northern Areas with in one month failing which IRA 2008 with enabling Labour Laws referred in the body of this Judgment would be deemed to have been made applicable and would become operative in whole of Gilgit Baltistan. This petition with above declaration and direction is allowed with no order as to the costs.

Chief Judge

Judge

Judge