

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

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge

CPLA No. 34/2020

(Against the judgment dated 13.03.2020 passed by the Gilgit-Baltistan
Service Tribunal, Gilgit in Service Appeal No. 07/2018)

1. Provincial Government through
Chief Secretary & others
2. Secretary Revenue E&T, Z&U and Cooperative Department GB
3. The Secretary Services Gilgit-Baltistan
4. Section Officer Excise & Taxation Department

Petitioners

Versus

Amir Munir s/o Muhammad Munir r/o Juglote at present Gilgit, District
Gilgit

Respondent

PRESENT:

For the Petitioners : The Advocate General Gilgit-Baltistan
Mr. Ali Nazar, Advocate on Record

Date of Hearing : 03.09.2020

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:-This judgment shall dispose of the instant CPLA directed against the judgment dated 13.03.2020 passed by the learned Gilgit-Baltistan Service Tribunal, whereby Service Appeal No. 07/2018 filed by the respondent had been accepted and the petitioners were directed to reinstate services of the respondent with back benefits.

2. Brief facts giving rise to institution of the instant CPLA are that, the respondent was appointed as LDC BS-07 (now upgraded to BS-11) in the Excise & Taxation Department, GB. After serving the department as LDC for some time, he was adjusted against the vacant

post of Assistant Sub-Inspector BS-11 in the same department. Subsequently, in the wake of an inquiry conducted in the matter of fake appointments in Excise & Taxation Department GB, services of appellant alongwith other similarly placed persons were terminated holding that their appointments were made without following proper procedure. Immediately after termination of his service, the respondent reported back to the department against the post of LDC BS-07 on the basis of lien claimed to be retained by him vide joining report dated 10.03.2014. The department did not accept his joining report against the post of LDC BS-07 on the premise, that as per record, no lien was granted in favor of the respondent, inasmuch as the Office Order whereby the appellant claimed to have been granted lien was stated to be a fake order. Against refusal to accept the joining report, the respondent submitted an appeal to the Secretary Excise & Taxation Department GB, which remained not responded. On 06.07.017, the appellant submitted another appeal in the shape of reminder which was replied on 11th March, 2018 vide Excise & Taxation Department GB letter No. Sectt-E&T-Admin-2(5)/17-PT-15/2281 dated 12th March, 2018 wherein the respondent was informed that record of the department had no such lien order in his favor. The respondent, being aggrieved, resorted to legal remedy by way of filing the above mentioned service appeal before the learned GB Service Tribunal. The learned Gilgit-Baltistan Service Tribunal, after adjudication upon the matter, accepted appeal of the respondent, which judgment has now been impugned before this Court through the above CPLA.

3. The learned Advocate General, GB argued that the Office Order whereby the respondent claimed lien is a fake one because no such lien was granted. He next argued that the concerned Section Officer, whose signatures are affixed on the said office order, had also been denied by him. He next argued that appointment of the respondent as ASI in the same department had been made without fulfilling codal formalities. He next maintained that the respondent joined his service against the new post, but subsequently, an inquiry into fake

appointments in the Excise & Taxation Department was conducted, which resulted in termination of his services against the post of ASI and the officers/ officials involved in such illegal appointments had also been departmentally proceeded against and punished. The learned Advocate General, GB lastly argued that appointment of the respondent against the post of ASI had been made illegally and that the respondent had not been granted lien against the post of LDC BS-7, therefore the department rightly did not accept his joining report.

4. Case heard. Record perused and the impugned judgment delivered by the learned GB Service Tribunal has also been gone through. First, we would like to advert to the factual position of the case. Appointment of the respondent as LDC in Excise & Taxation Department is not disputed. Secondly, submission of application for lien by the respondent and marking thereof to the then Section Officer for further process has also been admitted/ proved before the learned Service Tribunal. It is an admitted fact that the respondent had submitted proper application for lien. The right of retention of lien by an employee in his/ her parent department in case of his appointment in another department has been provided by law/ rules. A right given to the civil servants through legislative instruments cannot be denied by the public functionaries, if otherwise provided in any other law/ rules to do so. The wisdom and purpose behind enactment of such laws/ rules is to protect the rights of the concerned beneficiaries. The relevant Rule covering the subject is F.R 14-A (a) which is reproduced below:

“Except as provided in Clause (c) of this rule and rule 97, a Government Servant’s lien on a post may in no circumstances be terminated even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. (The underlining is ours)

This rule protects the right of lien of a government servant to the extent that even with his own consent the lien cannot be terminated if the result would be to leave him without a lien or suspended lien upon a permanent post. In cases where a government servant is confirmed on another post

then he would acquire lien on new post and his earlier lien may be terminated. A similar rule has been inserted in the Federal Civil Confirmation Rules, 1993. The relevant rule is produced herein below.

“6(4). A confirmed civil servant who, of his own accord, joins some other service, post or cadre on regular basis shall have, after being selected through a regular selection process, the right of reversion to the previous post against which he shall hold lien only during the period of his probation on his new services, post or cadre”.

5. While dealing with such cases, the Hon’ble Supreme Court of Pakistan in two cases has held as under:

2000 SCMR 1780 (page 1784)

There is nothing on the record to show that the respondent was confirmed under appellant No. 1 and, therefore, the entitlement of the petitioner to retain lien in his parent department is beyond any question”.

2005 SCMR 716

“5. The services of the appellant being regular employee could not have been terminated as he was appointed as Instructor in the Vocational Training School, Hangu, through proper channel and at the best he could be considered as deputationist who retained his lien in the parent department, as he was not confirmed in the borrowing department”.

6. The respondent, immediately after termination of his services from the new post, submitted his rejoining report to the department against the post of LDC i.e. within the probation period which was not accepted. It would not be out of context to mention here that the department has not denied submission of application for lien which was duly marked by the then Secretary of the department to concerned Section Officer. The respondent claimed to have been granted lien but the department denied the same on the premise that such an order did not exist in the file and the then Section Officer too denied to have signed the office order. As observed in Para 3 above, since a right is given to the civil servants under the law/ rules for protection of his/her service rights, therefore, the same cannot be denied by the public functionaries. Even if it is assumed that the lien granting order was a fake one or the department did not have the record, still submission of the application and marking thereof by the Secretary of the Department

to subordinate concerned officer is not denied. Without prejudice to the claim of the respondent of having a properly signed office order, it is to be noted that non-processing of the application by the concerned subordinate officer would be a denial of legal right of the respondent. Section 24A of the General Clauses Act, 1897 is very much clear in this regard. For ease of reference, the said section is reproduced below:

24A. Exercise of power under enactments.- (1). Where by or under any enactment, a power to make any order to give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment”.

7. It must be noted here that a permanent govt. servant shall not be made succumbed to inactions/ negligence on the part of their seniors in dealing with and disposing of their applications etc. which may lead to a situation which will put the subordinate employees to lose their services for no fault on their part. With a view to fortify our views, reliance can be made on a case reported as 2015 SCMR 630 wherein the Hon’ble Supreme Court of Pakistan has held as under:

“The exercise of discretionary power must be rational and have a nexus with the objectives of the underlying legislature, when it confers a wide ranging power it must be deemed to have assumed that the power will be, firstly, exercised in good faith, secondly, for the advancement of the object of the legislation, and thirdly in a reasonable manner. Section 24A of the General Clauses Act, 1897, reiterates the principle that statutory powers is to be exercised “reasonably, fairly, justly and for the advancement of the purposes of the enactment” and further clarifies that executive authority must give reasons for its decisions. Any action by any executive authority which is violative of these principles is liable to be struck down”.

8. In addition to the above, this Court in the recently decided two cases titled: Prov. Govt. of Gilgit-Baltistan through Chief Secretary & others versus Safiullah (CPLA No. 89/2020 and Prov. Govt. of Gilgit-Baltistan through Chief Secretary & others Vs. Niaz Ali & others (CPLA

No. 43/2019) has taken similar view with reference to Section 24A of the General Clauses Act. For ease of reference, the relevant portion is produced below:

“Perusal of the contents of the above section of the General Clauses Acts makes it abundantly clear that public functionaries are duty bound to decide applications/ grievances of citizen without fear, favour, nepotism, with reasons, within reasonable time and without discrimination”.

9. The upshot of the above is that the judgment passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit being a well-reasoned one is unexceptionable and no interference is called from this Court inasmuch as the petition also lacks any legal question having public importance. Therefore, leave in the above CPLA No. 34/2020 is refused. The judgment dated 13.03.2020 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 07/2018 is maintained.

Announced:
03.09.2020

Chief Judge

Judge

Whether the case is fit for report (Yes / No)