

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

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge

Mr. Justice Wazir Shakeel Ahmed, Judge

CPLA Under Objection No.142/2019

(Against the order dated 13.05.2019 passed by the Gilgit-Baltistan
Chief Court, Gilgit in Writ Petition No. 248/2018)

1. Inspector General of Police Gilgit-Baltistan, Gilgit
2. Govt. of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan
3. Secretary Services Gilgit-Baltistan
4. Secretary Home Gilgit-Baltistan **Petitioners**

Versus

1. Waqar Hussain s/o Late Mukhtar Alam (HCKKSF)
r/o Napura Basin,
Tehsil and District Gilgit **Respondent**

PRESENT:

For the Petitioners : The Advocate General, GB
Mr. Aurangzeb Khan AOR

Date of Hearing : **10.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose-of the instant CPLA directed against order dated 13.05.2019 passed by the learned Gilgit-Baltistan Chief Court, Gilgit whereby, Writ Petition No. 248/2018 filed by the respondent has been accepted.

2. Facts in brief leading to institution of the instant CPLA are that respondent's father, while working as Head Constable (BPS-07) died on 18th November, 2016. Under the Prime Minister's Assistance Package for families of deceased

Govt. employees, respondent was appointed as Foot Constable (FC) BS-05. It is the claim of the respondent that keeping in view his qualification as well as the maximum benefits provided in the Assistance Package, he should have been appointed as ASI (BPS-09) instead of Foot Constable (BPS-05). To this effect, he claimed to have submitted various representations/ appeals to the high ups, but to no avail. Being aggrieved, the respondent resorted to legal remedy by way of Writ Petition before the learned Gilgit-Baltistan Chief Court, which has been accepted by directing the petitioners to appoint the respondent as ASI (BPS-09) instead of FC (BPS-01), hence this CPLA by the petitioners.

2. The learned Advocate General, GB argued that the learned Chief Court failed to appreciate the material fact that the respondent had already availed the opportunity of appointment as Foot Constable under the Prime Minister's Assurances package. He next argued that the respondent was barred by his own conduct to claim appointment against the post of ASI BPS-09 as he had already accepted appointment as Foot Constable (BPS-05), as such under the principle of estoppel, no cause of action accrued to him to file writ petition before the learned Gilgit-Baltistan Chief Court. The learned Advocate General, Gilgit-Baltistan maintained that since the learned Chief Court, while delivering the impugned judgment, failed to take into consideration all the above material facts, therefore, the judgment so passed is liable to be set aside.

3. Heard. Record as well as the impugned judgment perused.

4. The intent and purpose of promulgation of assistance packages from time to time is to provide support of government to bereaved families of the deceased employees in recognition of their services in terms of employment etc. The implementing authorities are under obligation to provide maximum benefits of such packages to the beneficiaries in its true spirit irrespective of favoritism/ nepotism. While deciding/ dealing with such cases, the public functionaries should take into account the intent and purpose of legislation. We have noticed that the package under which the respondent was appointed contemplates two important components which are reproduced as under:-

*“(1). will be appointed to a post in any of Basic Pay Scale **in BS-01 to BS-10** on regular basis without advertising, provided that the child, widow/ widower, as the case may be, possesses the minimum qualification and fulfill the eligibility criteria;*

*(2) If there are more than one Vacancies in different pay scales available at a time and the child, widow/ widower, as the case may be, possesses the qualifications making him or her eligible for appointment in more than one post, he/ she shall ordinary be appointed to the post **carrying higher pay scale**”.*

In the above backdrop, the appointees are entitled to have appointments to higher basic scales, however, subject to condition that they possess the qualification required for higher basic scale.

5. If the above two components are put in juxtaposition, it is cleared that it is obligatory upon the implementing authority to provide maximum permissible benefits of the package to the bereaved families of the deceased employees which of course, has been the intent of

promulgation of the packages from time to time. In this regard, it would be helpful to quote observations of the Hon'ble Supreme Court of Pakistan in a case titled Abdul Hafeez Abbasi and others versus Managing Director, Pakistan International Airlines Corporation, Karachi & others reported as 2020 SCMR 1034, wherein it has been held as under:

“It is also to be borne in mind that the Court/ Tribunal seized with the matter is competent to interpret the law liberally with the object to extend its benefits largely to the aggrieved persons”.

6. In addition to the above, we further observed that a number of other employees who have also availed the opportunity under the *ibid* package, have been appointed as ASIs. In the case in hand, as per spirit of the package and keeping in view the qualification, the respondent deserved to be appointed to higher post i.e. ASI BS-09 instead of FC BS-05. It is made clear to the government authorities that while dealing with such cases, if they resort to discrimination on the basis of favoritism, nepotism or to please the political bosses, not only they deprive the deserving persons from their legal right, but also commit violation of the fundamental rights guaranteed under the Govt. of Gilgit-Baltistan Order, 2018. Equal protection of law under the above order is the inalienable right of every citizen which cannot be taken away by the public functionaries just on the basis of their whims and wishes. The Hon'ble Supreme Court of Pakistan is very much clear about the practice of discrimination and has been repeatedly issuing directives to eradicate this evil from the society and the institutions as well. With a view to fortify our

observations, we rely upon a judgment of the Hon'ble Supreme Court of Pakistan as under:

In the case of Messrs Arshad & Company Vs. Capital Development Authority Islamabad through Chairman 2000 SCMR 1557, the Hon'ble Supreme Court of Pakistan has held as under:

“Every exercise of discretion is not an act of discrimination as discretion becomes an act of discrimination only when it is improbable or capricious exercise or abuse of discretionary powers”

6. The upshot of the above observations is that we did not find any illegality, irregularity or infirmity in the judgment passed by the learned Gilgit-Baltistan Chief Court which could call for interference of this Court. Consequently, leave in the above CPLA (Under Objection) No. 142/2019 is refused. The impugned judgment dated 13.05.2019 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No.248/2018 is maintained. These were the reasons for our short order dated 10.09.2020, which is reproduced below:

“The learned Advocate General, Gilgit-Baltistan has been heard at length. For the reasons to be recorded later, the above CPLA (under Objection No. 142/2019) alongwith Civil Misc. Application No. 166/2019, is dismissed”.

Chief Judge

Judge

Whether fit for reporting **(Yes / No)**