

**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.145/2019

(Against the Order dated 06.03.2019 passed by the Gilgit-Baltistan Chief Court, Gilgit in C.F.A Nos.64, 58 & 66/2016)

1. Govt. of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan
2. Secretary Education Gilgit-Baltistan
3. Director Education Gilgit-Baltistan **Petitioners**

Versus

Mehboob Hussain s/o Matam Shah A-4 Lecturer IT Project
Member Boys Campus, Gilgit at present IT System
Administrator KIU BPS-18 Gilgit **Respondent**

1. Vice Chancellor KIU GB, Gilgit
2. Registrar KIU, GB Gilgit **Proforma Respondents**

PRESENT:

For the Petitioners : The Advocate General GB
D.D. Legal Education
Department, Gilgit

For Respondent : Present in person

For Proforma Respondents: Deputy Attorney General for
Pakistan, GB
Registrar KIU GB

Date of Hearing : **13.10.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- Through this judgment, we intend to dispose of the above Civil Petition for Leave to Appeal (under objection No. 145/2019) directed against judgment dated 06.03.2019 passed by the learned Gilgit-Baltistan Chief Court, Gilgit whereby Civil First Appeal No. 64/2016 filed by the present respondent was accepted

while Civil First Appeal No. 58/2016 filed by the present petitioners alongwith Civil First Appeal No. 66/2016 filed by the proforma respondents was dismissed.

2. Brief facts leading to institution of the *lis* in hand are that the present respondent was employed by Education Department GB as A-4 I.T Lecturer on contract basis initially for a period of 1 year, extendable for further period. After appointment on contract, he was posted in Postgraduate College Gilgit where he continued his services as such. Subsequently, under a decision taken in a meeting between the stakeholders, this project was handed over to Karakorum International University where the respondent performed his duties till his permanent appointment as System Administrator in KIU. The present respondent claimed that after transferring the project to KIU by Education Department, GB, he was not paid his salary for a period of 14 months owing to creeping up of a dispute over the budget between KIU and Education Department. He further claimed that he was assured of extension of his contract for further period and it was on this basis /assurance/ hope that he performed his duties under the project. He further claimed that even otherwise, as per the advertisement, he was required to perform his duties as A-4 I.T. Lecturer till completion of the project life i.e., 2006. The respondent claimed to have submitted applications for release of his salary, but his requests were not entertained. Being aggrieved, the present respondent instituted a civil suit before the learned Trial Court for recovery of his outstanding pay and allowances (Rs. 420,000) for the relevant period. After adjudicating upon the suit, the learned Trial Court partially decreed the suit for a sum of Rs. 180,000/- against the

petitioners. Being aggrieved and dissatisfied with the partial decree, all the above parties moved the learned Gilgit-Baltistan Chief Court with their respective Civil First Appeals. The learned Gilgit-Baltistan Chief Court through a common judgment, allowed appeal of the present respondent and dismissed the civil first appeals of the present petitioners and proforma respondents, which has now been impugned by the petitioners before this Court by way of the above Civil Petition for Leave to Appeal.

3. The learned Advocate General, alongwith the Deputy Director Legal, Education Department, GB appearing on behalf of the petitioners argued that the learned Gilgit-Baltistan Chief Court failed to appreciate the fact that the present respondent was no more a contract employee of Education Department after 31.12.2004, hence there did not arise a question of payment of salary to the present respondent for the period claimed for. They next submitted that no further extension in contract period was granted to the respondent after 31.12.2004 as such, he could not claim payment of salary from the Education Department, GB, while the learned Courts below did not take into consideration this core issue and went on to pass the decree/ judgment basing them on ambiguous, vague and flimsy grounds. The learned Advocate General, GB contended that the learned Courts below failed to discuss the issues so framed besides the issue of limitation raised by the petitioners. At the conclusion of his arguments, the learned AG, GB prayed that the judgments/ decrees passed by the learned Courts below being against the facts, grounds and law are liable to be set aside.

4. Before we discuss the factual and legal issues involved in the case in hand, we would like to mention here

that the parties, particularly the authorities of Education Department & KIU, were given chances for amicable settlement of the issue out of the Court, but despite of giving chances on two dates, the parties failed reaching to an amicable settlement and submitted a report to this effect.

5. Now we come to merits of the case. Performance of duty by the respondent till transfer of project to KIU and thereafter till his permanent appointment in KIU as System Administrator is not disputed. Two issues were there to be thrashed out for decision first, extension of contract period of respondent by Education Department and secondly responsibility of payment of salary to the respondent after transfer of project to KIU. It is to be noted that prior to transfer, the project was being handled under the administrative and financial control of Education Department, Gilgit-Baltistan. It is evident that the project was transferred to KIU w.e.f. 16th May, 2005 but the record available on file does not contain a written agreement and settlement of administrative/ financial affairs of the said project as to whether it was the responsibility of KIU or Education Department, Gilgit-Baltistan. The minutes of meeting attached with the file in hand only states that "*the project will be handed over to Karakorum International University for its sustainability*". Nowhere in the said minutes of meeting it was clarified that whose responsibility would it be to provide budget for meeting the expenditure in connection with the said I.T. Centre which was subsumed with KIU. In addition to above, it was within the knowledge of the Education Department; Gilgit-Baltistan that without having extension of contract period, the respondent was rendering his services in the I.T. Centre, and if it was to be

so, the education department, Gilgit-Baltistan should have restrained the respondent from rendering his services to the said I.T. Centre. But contrarily, there is nothing on record to substantiate that Education Department Gilgit-Baltistan had done so rather, for the reasons best known to Education Department, it allowed the respondent to continue his services. Even after transfer of the project to KIU, the Education Department did not intimate the KIU authorities regarding non-extension of contract period of the respondent.

6. Apart from the above facts, there is no record on file which could show that the KIU authorities had undertaken to pay the salaries of the said I.T. Centre or any correspondence with HEC qua provision of budget for this I.T. Centre. Though it is the claim of the Education Department GB that HEC was requested for provision of budget for this I.T. Centre. But what happened next as to sanction of budget and placement of same at the disposal of KIU. Thus, we observe that in absence of any document which could fix responsibility of salary of I.T. Centre on KIU, the responsibility lies on the shoulders of the Education Department to pay outstanding salary to the respondent. The only agreement (minutes of meeting) which was relied upon did not contain any such responsibility required to be discharged by KIU. Even otherwise, it is morally and ethically not suitable for the Education Dept. and KIU authorities to play with the respondent, who being attached to a respectable profession of teaching, and are made to suffer at the hands of two departments for no fault of his. It is clarified that in view of non-denial of performances of duties by the respondent, his salary could not be stopped for the duties rendered by him. Denial of salary against the duty done is

against the Islamic injunctions besides falling it within the ambit of forced labour which is forbidden in Islam and the laws of the land as well. The Hon'ble Supreme Court of Pakistan in the case of Mst. Sajida Vs. Director of Secondary Education Lahore & others reported as 2007 PLC (CS) 364 has held as under:

“Authorities could not be permitted to withhold the salary of a serving employee and to make her starve for no fault of her”

7. In addition to the above, in a recent judgment in the case titled Govt. of Gilgit-Baltistan & others Vs. Niaz Ali (CPLA No. 43/2019), this Court has made clear regarding non-payment of salary against the work taken. For ease of reference, the relevant paragraph from the said judgment is reproduced below:

“Duty/work obtained from an employee without salary is against the Islamic injunctions which have envisaged payment of salary/ wages before sweat is dried. There are various Hadis in this regard. Abdullah ibn Umar reported: The Messenger of Allah, peace and blessings be upon him, said, “Pay the worker his wages before his sweat has dried.” (Source: Sunan Ibn Mājah 2443 & Mishqat Masabih page 208 Volume No. 3). Furthermore, performance of duty without salary/ wages amounts to forced labour which is forbidden in Islam and in the Constitution of Pakistan as well”

The Supreme law of the land is the law of Quran and Sunnah. The Holy Quran in the matter with regard to rights of the people commands as under:

Allah Said:

“Do not withhold from the people the things that are their due” (Quran Surah 7: Verse 85)

Our beloved Holy Prophet Mohammad (ﷺ) in this regard has also been pleased to command on the matter as under:

“Employer must declare the wages to worker before the worker embark on the required work” (Baihai)”

8. The above discussion/ observations brought us to the conclusion that the impugned judgment is not suffering from illegality, irregularity or infirmity which could call for interference by this Court. Hence, leave in the above CPLA Under Objection No.145/2019 is refused. The consolidated judgment dated 06.03.2019 passed by the learned Gilgit-Baltistan Chief Court in Civil First Appeal No. 64/2016, Civil First Appeal No. 58/2016 and Civil First Appeal No. 66/2016 is maintained. The petitioners are directed to comply with the judgment of the learned Gilgit-Baltistan Chief Court and submit compliance report to the Registrar of this Court. These were the reasons for our short order dated 13.10.2020, which is reproduced below:

“The case has been heard and record perused. We have not been able to find any illegality or infirmity in the impugned judgment dated 06.03.2019 passed by the learned Gilgit-Baltistan Chief Court, Gilgit in Civil First Appeal No. 64/2016. Therefore, for the reasons to be recorded later, leave in the above CPLA under Objection No. 145/2019 is refused. The Civil Misc. Application No. 169/2019 is dismissed. Judgment passed by the learned Gilgit-Baltistan Chief Court in the above referred Civil First Appeal, stands maintained”

Chief Judge

Judge

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