

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

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge

Mr. Justice Wazir Shakeel Ahmed, Chief Judge

Civil Review Petition No. 37/2018

(For reviewing judgment dated 23.05.2018 in CPLA No. 25/2018)

Dilbar Khan s/o Sultan Ali r/o Eidgah, Tehsil & District Astore

..... **Petitioner**

Versus

1. Prov. Government of Gilgit-Baltistan through Chief Secretary, GB
2. Secretary Home, Gilgit-Baltistan
3. Secretary Services, Gilgit-Baltistan
4. Deputy Commissioner Astore
5. Assistant Commissioner/SDM HQ Astore
6. District Accounts Officer, AGPR Astore

..... **Respondents**

PRESENT:

For the Petitioners : Mr. Johar Ali Khan Sr. Advocate

For the Respondents: The Advocate General, Gilgit-Baltistan

Date of Hearing : **11.11.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- Through the above Review Petition No. 37/2018, counsel for the petitioner seeks review of judgment dated 23.05.2018 passed by this Court in CPLA No. 25/2018, whereby judgment dated 21.02.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 318/2014 was maintained by dismissing the above CPLA filed by the petitioner.

2. The petitioner, while working as Naib Qasid in Assistant Commissioner HQ Astore, was retired from service w.e.f. 02.04.2012 on the basis of service record of the petitioner. Contrarily, the petitioner claims that as per his date of birth, his retirement was due on January,

2017. To this effect, he submitted applications to the competent authority, but to no avail. Being aggrieved and dissatisfied with the impugned Retirement Order issued by the Respondent No. 4 (Deputy Commissioner Astore), the petitioner filed a Civil Suit No. 06/2014 before the learned Civil Judge Astore and succeeded to get an *ad interim injunction* order thereby suspending the retirement order issued by the respondent No. 4. The suit appears to have remained pending adjudication before the learned Civil Judge Astore till establishment of the learned Service Tribunal. Consequent upon establishment of the learned Service Tribunal, the said suit stood abated and transferred to Service Tribunal which culminated into Service Appeal No. 318/2014, which was dismissed. Judgment of the learned Service Tribunal was assailed before this Court by way of a CPLA, mentioned hereinabove, which too met the same fate, hence the Review Petition in hand.

3. The scope of review as provided in the Rules of this Court does not allow us to go into deeper appreciation of facts and grounds. However, we observed that, somehow, one important aspect of the matter has been overlooked by this Court while dilating upon the facts and grounds of the CPLA i.e. after issuance of retirement order, the concerned department should have stopped pay and allowances of the petitioner and should not have taken duty from the petitioner till final decision of his service appeal. Contrarily, the department took duty from the petitioner by paying him regular monthly salary till the date of superannuation as claimed to be so by the petitioner and now after the decision against the petitioner, the department tends to recover the pay and allowances from the pension/ commutation of the petitioner for the period he performed duty after 02.04.2012. The fault rests with the department and it would be against the natural justice to attribute the same to the petitioner for punishing him in terms of recovery of pay and allowances of about 5 years. It would also be against the injunctions of Islam to let a worker to work without reward and would also come into the ambit of forced labour. Every government servant is tied with the hope of getting pension/commutation

after putting his life into services of the government. In case of recovery of pay and allowance from the petitioner, though for no fault of his, he will have no option but to go to home with empty hands.

4. In view of what has been discussed above, we modify the judgment dated 23.05.2018 passed by this Court in CPLA No. 25/2018 to the extent that no recovery shall be effected from the petitioner for the period he has performed duty after 02.04.2012 (date of retirement as per Office Order No. Acctt-1(17)/2011-3313 dated 21.12.2011). However, the period from 02.04.2012 shall not be reckoned for the purpose of calculation of pension and commutation. His monthly pension shall be fixed on the basis of last pay drawn on 02.04.2012 but no pension shall be paid for the period he served and for which he has received salary after 02.04.2012. The respondents are directed to process pension case of the petitioner without further loss of time, if not processed earlier.

5. In the above terms, the instant Review Petition No. 37/2018 stands disposed of.

Announced
11.11.2020

Chief Judge

Judge

Whether fit for reporting (YES / NO)