

**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. 43/2019

(Against the judgment dated 18.10.2018 passed by the GB Service Tribunal, Gilgit in Appeal No. 37 /2017)

**Provincial Government through
Chief Secretary & others.**

Petitioners

Versus

Niaz Ali

Respondent

PRESENT:

For the Petitioners : The Deputy Advocate General, GB
Mr. Abbas Khan, Advocate on Record

Date of Hearing : 12.03.2020

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- Through the instant CPLA, the petitioners have challenged judgment dated 18.10.2018 passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit whereby service appeal of the respondent, amongst 17 others, was allowed. Through this single judgment, we intend to dispose of the above CPLA No. 43/1999 alongwith 17 connected CPLA Nos. 27, 29, 30, 31, 32, 33, 35, 37, 40, 42, 44, 45, 46, 47, 49, 52 & 53/2019 as all the petitions involve similar facts and grounds.

2. Facts in brief, giving rise to institution of these petitions are that the respondents were appointed as MT Teacher BS-09 in 2011 in Education Department GB. Subsequently, as per decision of the Gilgit-Baltistan Cabinet, a Special Recruitment Committee was constituted to verify professional competency and eligibility criteria of those employees/teachers who were appointed during the year 2011. The said Committee, after conducting interview and checking the credentials, declared 107 employees (teachers) including the respondents eligible for the posts already held by them. In pursuance of the said verification, services of the respondents were reconfirmed from the date of their respective initial appointments. In the meantime, provincial government of Gilgit-Baltistan upgraded various posts of teachers, but leaving over the cases of the respondents. Being aggrieved, the respondents invoked jurisdiction of the learned Service Tribunal for the reliefs such as upgradation, back benefits and arrears of salaries of 11 months. During pendency of appeals before the learned GB Service Tribunal, their posts were upgraded with back benefits whereas relief as to payment of arrears of 11 months remained there to be decided. The learned GB Service Tribunal, after adjudicating upon the service appeals, passed its judgment to the extent of payment of arrears for the relevant period only. Be that as it may, the provincial government of Gilgit-Baltistan admitted the claim of arrears by the respondents before the learned GB Service Tribunal, however, the government resorted to lingering on the payment of arrears for alleged want of funds and

stated that to this effect demand has been initiated with the Finance Department GB which could not be materialized till date. It is a simple matter of entitlement of respondents to the pay and allowances for the period during which they have admittedly performed their duties. Notwithstanding this admitted position, depriving the respondents from their legal right and putting them to unnecessary litigation is against the principles of natural justice as well as against the rights of the respondents guaranteed under the constitution. Instead of honoring the judgment of the learned GB Service Tribunal by releasing the requisite funds and payment thereof to the respondents, the concerned departments of GB opted to make the respondents waiting with false hope for such a long period and thus deliberately did not comply with the orders of the learned GB Service Tribunal.

3. When the concerned authorities were called in Court to explain the position to the satisfaction of the Court as to why requisite funds could not be arranged for payment of arrears to the respondents so far, they repeated the same story and tended to seek time for solution of the matter regardless of the fact that they have already taken a considerable time whereas nothing positive has been noticed, as such, it appears to be an attempt to hoodwink the Courts by narrating useless stories. This negative attitude on the part of government functionaries is not understandable as to why they are bent upon to satisfy their false ego at the cost of low paid employees. It is to be noted here that arrears for 11 months salary of the respondents have not been

denied by them before the learned GB Service Tribunal, hence it is an admitted position of fact that the respondents are entitled to get the arrears without putting them to sustain further mental agony and financial loss. Despite knowing that institution of such cases before this Court will yield no desired result, is nothing more but is an abortive attempt on the part of concerned govt. departments to involve the Courts in hearing unnecessary cases to gain time. It may be noted here that, as held by superior Courts of the country, salary of an employee who has rendered his services to the state/department cannot be withheld on the ground of technicalities. Such view has also been taken by the Hon'ble Supreme Court of Pakistan in a case reported as **2001 SCMR 1320**. For the sake of reference, **page 1322 para 3** of the said judgment is reproduced herein below:

“In our considered opinion their salaries cannot be withheld on the ground that their appointment was illegal being made in violation of the relevant recruitment rules and in fact action should have been initiated against those who are sitting the helm of affairs for such irregularities. The respondents cannot be held responsible in any manner whatsoever. On our view substantial justice has been done vide impugned order which cannot be disturbed on mere technicalities.”

4. Under the law, it is obligatory upon the public functionaries to redress grievances of general public including their subordinate employees in accordance with the law. In this regard, it is pertinent to mention here that in order to make the public functionaries realize their responsibilities, the legislature has felt it imperative to insert Section 24A in the General Clauses

Acts laying down responsibilities of the public functionaries. For the sake of brevity, the said section is reproduced herein 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”.

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. The Hon’ble Supreme Court of Pakistan in a case reported as **2015 SCMR 630** has held as under: **(at page 37 para 9).**

“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”.

5. It is pertinent to mention here that when judgment of the learned Service Tribunal does not involve any question of law of public importance, filing of petitions before Supreme Appellate Court just on factual position recorded by Service Tribunal will be a futile exercise. This practice will create unnecessary hassle for

the concerned departments and wastage of precious time of this Court as well. In this case, we have noted that no question of law having public importance as contemplated in article 212 of the Constitution of Islamic Republic of Pakistan, 1973 (corresponding to article 75 of the Gilgit-Baltistan (Empowerment & Self Governance) Order, 2018) has been made out. Besides this, in a number of cases, the Hon'ble Supreme Court of Pakistan has held that when the Supreme Court of Pakistan or Service Tribunal decides a point of law relating to terms and conditions of a civil servant and there are others who may have not participated in the legal proceedings, in such a case, the dictates of justice and rule of good governance demand that benefit of the said decision be extended to other civil servants, who may not be parties to that litigation instead of compelling them to approach the Service Tribunal or other forums. These observations have been taken by the Hon'ble Supreme Court of Pakistan in a case reported as Hameed Akhtar Niazi V. The Secretary, Establishment Division, Government of Pakistan and others **1996 SCMR 1185** as under: **(at page1193 para16).**

Para 16. "If a Tribunal or this Court decides a point of law relating to terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forums"

Same view has also been applied to the case of Tara Chand and others V. Karachi Water & Sewerage Board, Karachi **2005 SCMR**

499 (at page 506 para 10) and Govt. of Punjab through Chief Secretary Education & others Vs. Sameena **Parveen 2009 SCMR 1 (at page 4 para 6)**.

6. It must be borne in mind by all public functionaries that withholding/ denial of salary of an employee vests neither in their sweet will nor in their sole discretion if there is no other legal issue. Such unlawful and illegal action on the part of public functionaries is a classical case of abuse and misuse of authority and is a breach of fundamental rights of civil servants as enshrined in the constitution. Salary against the duty performed by an employee is his absolute legal right which can neither be denied nor can the employee be put to unnecessary litigations to get his legal right and further compel him to sustain mental agony and financial loss for no fault of his, that too when the duty rendered by the employee has duly been admitted by the employer. 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 Ahadis 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 Majah 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 public functionaries are expected to apply the same diligence in quick disposal of genuine grievances of their

subordinates as their personal ones and the concerned employee(s) should not be compelled to run from pillar to post. One of the purposes of placing the public functionaries at the elevated positions with sound perks and privileges by government is to redress the genuine grievances of public as well as their subordinates justly, fairly, without favoritism, nepotism and within shortest possible time without putting them to suffer mental torture.

7. After considering the contentions of provincial government, perusal of record, case laws referred to, and the observations made hereinabove, this Court has come to the conclusion that no illegality or infirmity has been attributed to the judgment of the learned Service Tribunal. We find no merit and substance in these petitions which could call for interference with impugned judgment of the learned GB Service Tribunal, inasmuch as the petitions lack questions of law of public importance which may put the Court to decide the same. As a result, the instant petitions are dismissed being devoid of merit and the leave is refused. The above are the reasons for our short order dated 12.03.2020.

Announced
12.3.2020

Chief Judge

Judge

Whether the case is fit for reporting **(Yes / No)**