

**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.5/2019

(Against the judgment dated 28.03.2018 passed by the Gilgit-Baltistan
Chief Court, Gilgit in Writ Petition No. 99/2017)

Provincial Government through
Chief Secretary & others.

Petitioners

Versus

Ishtiaq Ahmed s/o Ibrahim (late)
r/o Yangal, Tehsil Gupis, District Ghizer

Respondent

PRESENT:

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

Date of Hearing : **02.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose of the instant petition directed against judgment passed by the learned Gilgit-Baltistan Chief Court, Gilgit on 28.03.2018 whereby Writ Petition No. 99/2017 filed by the respondent has been accepted.

2. The facts emerging from the record are that the respondent's father while serving the Works Department, GB (B&R Division Chizer) as Road Cooly died in the year 2009. In the light of Prime Minister's Assistance Package to the Families of Deceased Employees, the respondent was appointed against the same post of Road Cooly for a period of 02 years. After expiry of the two years contract period, services of the respondent were terminated on the pretext that no further extension was provided in the said assistance package. Subsequently, another Assistance Package was promulgated in the year 2016 corresponding to the former one with incorporation of certain conditions and modifications. As per the latter package, the condition of contract appointment of one of the legal heirs of

deceased employee for the specific period of “02 years on contract” was expunged/ excluded. It was provided in the new assistance package of 2016 that legal heirs (one child or widow/ widower) of the deceased employee will be appointed to a post in any of basic pay scale 01 to 10 on regular basis without advertising the post. Despite having the right of appointment under the new assistance package, the concerned department did not appoint the respondent against the post of Road Cooly which culminated into institution of a lis by way of the above writ petition before the learned Chief Court, GB.

3. The learned Advocate General, Gilgit-Baltistan argued that the father of the respondent was a contingent/ temporary employee of the Works Department, as such his son (legal) heir could not claim appointment against a permanent post in the said department. He next argued that the respondent had already availed the benefit of appointment under the said packages (packages earlier to the above two packages) and his contract appointment was terminated after expiry of 02 years period as stipulated in the previous packages. Hence he cannot claim another benefit of the same package.

4. The learned Advocate General, GB has been heard. We have also gone through the record of the case as well as the impugned judgment. We observed that the objectives and purpose behind promulgation of the subsequent Assistance Package promulgated and issued in 2016 is to provide relief in terms of provision of government employment to the legal heirs of civil servants who died while serving the government subject to adherence to the terms and conditions laid down in the said package. For ease of reference, the relevant paras are extracted from the said packages as under:

***“Government of Gilgit-Baltistan
General Administration, Information
and Cabinet Department***

Gilgit dated 19th April, 2016

***No. SO (S)-1-1(49)/2016: The Chief Minister, Gilgit-Baltistan has
been pleased to accord approval for extension of revised Prime***

Minister's Assistance Package for the families of deceased employees of Gilgit-Baltistan Government, who died during service and adopt Establishment Division O.M. No. 8/10/2013-E-2(Pt) dated 4-Dec-2015 in letter and spirit, except the component of employment.

The Gilgit-Baltistan Government has also approved assistance package for the component of employment as under:-

1). One legal heir (one child or widow/widower) of such Civil Servant, who died during service, will be appointed to a post in any of Basic Pay Scale in BS-01 to BS-10 on "Regular Basic" without advertising, provided that the child or the widow/widower as the case may be, possesses the minimum qualification and fulfill the eligibility criteria prescribed in recruitment rules, with effect from 2nd-March-2016.

BY THE ORDER OF THE CHIEF MINISTER

**(Tahir Husain)
CHIEF SECRETARY”.**

5. The above notification was followed by another notification regarding the component of appointments. The same is also reproduced herein below:

**“GOVERNMENT OF GILGIT-BALTISTAN
GILGIT-BALTISTAN SECRETARIAT
SERVICE GENERAL ADMINISTRATION,
AND CABINET DEPARTMENT**

Gilgit dated 1st October, 2018

Notification

No. SO (S)-1-1(49)/2018: *The Government of Gilgit-Baltistan has been pleased to accord approval for revision of Assistance Package for the families of deceased employees of Government of Gilgit-Baltistan, to the extent to employment component with immediate effect in the following manner:-*

i. *One eligible family member legal heir (widow, widower or children) of the deceased government employee will be appointed on regular basis against the posts from BS-01 to BS-10.*

BY ORDER OF THE GOVERNOR OF GILGIT-BALTISTAN

**(BABAR HAYAT TARAR)
CHIEF SECRETARY”**

6. As far as the contentions of the learned Advocate General GB regarding the respondent being not a civil servant and that his father was a contingent/ temporary employee of the said department are concerned, it is clarified here that had his father been alive, he would have become

permanent by the time of his death because all contingent/ RTE employees of the said department have been regularized. Secondly the first notification dated 19th April 2016 referred to above was confined to “Civil Servant” for the component of employment. But the second notification dated 1st October 2018 has been extended to “Government employees”. There is difference between a ‘Civil Servant’ and a ‘Government Servant’. The term ‘Civil Servant’ is defined in the Gilgit-Baltistan Civil Servants Act, 2011 and also in Federal Civil Servants Act 1973, both being *pari materia* clearly ousts certain classes of persons from this definition. Those ousted are ‘Government Servants’ but not ‘Civil Servants’. Reliance may be made on a case of Lahore High Court entitled “Muhammad Iqbal versus Government of the Punjab through Secretary Education School, Punjab, Lahore and 4 others’ reported as 2020 PLC(C.S) 247. Relevant is para 8 which is reproduced below for ready reference.

“Whereas the liberal interpretation of term ‘Government Savant’ referred to in Rule 3(v) of the Rules, 1976 already includes the contract employee. Had the Rules making authority intended to extend the benefit of this Rule to “Civil Servant” only, it could have used these words in explicit terms in the said Rule. The term “Govt. Servant” connotes all Govt. Servants including “Civil Servant” and not vice versa”.

7. So far as the contention of the learned Advocate General regarding availing of the facility under package and termination of services of the respondent after expiry of 02 years contractual appointment are concerned, we have been able to find a letter from the record of the file that before expiry of his contact period, his services were terminated on the premise of being under age. The relevant para of the said letter is reproduced below for ready reference: the letter has been addressed to Chief Engineer HQ, PWD Gilgit by Superintending Engineer Circle Office, GBPWD, Hunza/Nagar, Ghizer Gahkuch dated 22.01.2013.

“During the verification of service documents of RTE/ WC staff, the service of the applicant has been terminated from the service due to underage”

8. Perusal of the above para makes it crystal clear that termination of services of the respondent was not because of expiry of contractual period, but it was a result of being underage. Therefore, it is understood that as if he was never given the benefit of the said packages. It must be borne in mind that such sort of packages announced by government from time to time requires to be strictly implemented by all public functionaries to extend benefits to bereaved families of deceased employees which cannot be denied merely on the basis of whims and wishes of the public functionaries. In the case in hand, even for the sake of arguments, if it is assumed that no further extension or adjustment was provided in the former package which restrained the authorities of Works Department from extending the contract period or adjustment of the respondent against the post of Road Cooly, yet after announcement and circulation of the two new assistance package of 2016 and 2018, there was no bar for the department to appoint him against any post from BS-01 to BS-10 as per eligibility criteria of the respondent. Such packages being beneficial must be extended to all those deceased prior to new notification. Reliance may be placed on a case entitled: Government of Pakistan through Secretary Ministry of Commerce Pak Secretariat, Islamabad versus Messrs. Village Development Organization, reported as 2005 SCMR 492 relevant is para 6 which is reproduced for ready reference:

“It is well settled principle of law that the executive orders or notifications which confer right and, are beneficial, would be given retrospective effect and those which adversely affect or invade upon vested rights cannot be applied with retrospective effect”.

In another case titled Abdul Hafeez Abbasi and others versus Managing Director, Pakistan International Airlines Corporation, Karachi & others reported as 2020 SCMR 1034, the Supreme Court of Pakistan has been pleased to hold that Court/Tribunal seized with the matter was competent to interpret the law with the object to extend its benefits largely to the aggrieved persons.

For the sake of convenience, the relevant para is reproduced herein below:

“ 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”.

9. In the instant case the new notification is an amendment to earlier notification to the extent of component of employment, hence the benefit of new amendment should have been given to those deceased who were covered by earlier notification fully or partially. The new package is unambiguous and explicit in its nature that the government is bound to provide employment to one of legal heirs of the deceased employee irrespective of the fact whether the parent department has any vacant post or not. The new assistance packages of 2016 and 2018 does not contemplate the condition that the same department should have a vacant post where the deceased employee had been working, rather it has been made obligatory/responsibility upon the government to provide employment to one of the legal heirs of deceased employees in any other department against any vacant post in view of his/her eligibility criteria. Again it is emphasized that if B&R Division Ghizer had no vacant post, the Executive Engineer B&R Ghizer should have approached the high ups for accommodation of the respondent under the said Assistance Package 2016 while the record does not speak that any such effort was undertaken by him. If still the respondent is insisting for appointment as Road Cooly/ Grade-1 or 2 (which is not a high profile post) in B&R Division Ghizer and the department has no vacant post then there are other options that a Class-IV post lying vacant in any other government department shall be transferred and placed at the strength of B&R Division Ghizer on temporary basis till such a post falls vacant or is created in B&R Division, Ghizer.

10. After considering the contentions of provincial government, perusal of record and in view of our observations made hereinabove, we

find no illegality or infirmity in the judgment of the learned Gilgit-Baltistan Chief Court as cogent reasons have been assigned for extending the relief.

11. In sequel to the above discussion, leave in the CPLA under Objection No. 05/2019 is refused and the Civil Misc. Application Nos. 180/2019 and 21/2019 are dismissed.

Announced:
02.09.2020

Chief Judge

Judge

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