

**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.151/2020

(Against the judgment dated 19.10.2020 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 12/2020)

1. Govt. of Gilgit-Baltistan through Chief Secretary
2. Secretary Education Gilgit-Baltistan
3. Director General Schools, Gilgit-Baltistan
4. Deputy Director Education, Astore
5. Accounts Officer AGPR, Astore

Petitioners

Versus

Nazia Yaqoob d/o Yaqoob Khan, currently serving as Elementary School Teacher (BPS-14) at Girls High School Rehmanpore, Astore

Respondent

PRESENT:

For the Petitioners: Advocate General, Gilgit-Baltistan

Date of Hearing: **22.03.2021**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:-This judgment shall dispose of the instant Civil Petition for Leave to Appeal directed against the judgment dated 19.10.2020 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 12/2020, whereby service appeal filed by the present respondent was accepted, whereby the present petitioners were directed to release the stopped salary of the respondent

and to constitute Medical Board for medical checkup of the ailing baby daughter of the respondent as well.

2. The respondent, while working as Elementary School Teacher (BS-14) underwent a maternity operation gave birth to a baby girl having diseases of Hydrocephalus and Melingomyel. In view of her medical condition, the new born baby girl was referred to PIMS, Islamabad for neurosurgical operation which was conducted by a Neurosurgeon on 13.10.2019 at Ali Medical Hospital and was discharged on 17.10.2019. The present respondent in her service appeal before the learned Gilgit-Baltistan Service Tribunal contended that the Neurosurgeon advised her to keep the ailing baby daughter at high care under the supervision of a Child Specialist. It was further contended that another Child Specialist, Dr. Manzoor Alam also advised her to keep the ailing baby daughter close to a hospital where pediatric caring was available. The respondent further contended in her appeal before the learned Service Tribunal that since there was no pediatric facility available in District Astore, therefore, in order to avail proper care and treatment of her ailing baby daughter, the respondent requested for transfer of her services from District Astore to HQ Gilgit on medical grounds. The next aspect of the case in hand is stoppage of salary of the respondent for the period she allegedly remained absent from duty in connection with the treatment of her ailing baby daughter. The respondent claims to have submitted a departmental appeal on 27.11.2019 to the authorities of Education Department, Gilgit-Baltistan for release of her salary but the same remained unattended. Being aggrieved, the present respondent invoked the jurisdiction of the learned Gilgit-Baltistan Service Tribunal by

means of Service Appeal No. 12/2019 wherein she sought two reliefs (i) issuance of directions to the concerned authorities for transfer of her services from District Astore to District Gilgit on medical ground; and (ii) directions for release of her stopped salary. Keeping in view the financial hardships owing to medical expense in connection with treatment of her ailing baby daughter, learned Service Tribunal directed the petitioners to release salary of the present respondent within 10 days from the date of receipt of the judgment while with regard to the prayers regarding transfer of services from Astore to Gilgit on medical ground, the concerned authorities were directed to constitute a medical board and as per recommendations of the Medical Board, her case for transfer of services was ordered to be considered. Being aggrieved and dissatisfied, the present petitioners have now impugned the judgment passed by the learned Gilgit-Baltistan Service Tribunal before this Court by way of the CPLA in hand.

3. The learned Advocate General, Gilgit-Baltistan argued that the respondent could not claim transfer of her services from District Astore to District Gilgit on the medical ground as the medical facility required for ailing baby daughter of the respondent were already available in District Astore. It was next contended by the learned Advocate General that the learned Gilgit-Baltistan Service Tribunal erred in law and held the present respondent entitled for salary for the period she remained absent from duty without leave. It was next contended by the learned Advocate General Gilgit-Baltistan that an inquiry is under progress against the present respondent on account of her absence; therefore, release of her salary at this stage would spoil the purpose of

inquiry. At the conclusion and on the basis of submissions, the learned Advocate General, Gilgit-Baltistan prayed for setting aside the impugned judgment passed by the learned Gilgit-Baltistan Service Tribunal.

4. We have heard the arguments advanced by the learned Advocate General, Gilgit-Baltistan and also gone through the record and the impugned judgment as well.

5. We observe that the impugned judgment does not contain any order detrimental to the interest of department. Perusal of judgment and record reveals that two question are hovering round the matter in hand for consideration and decision. First is the directive of the learned Service Tribunal regarding release of salary of the respondent in view of her financial constrains owing expenses in connection with treatment of her ailing baby daughter. The contention of the learned Advocate General that release of salary of the respondent at this stage would cause to spoil the inquiry proceedings against the respondent is not tenable because perusal of impugned judgment reveals that the learned Service Tribunal has not restrained the petitioners from conducting inquiry against the respondent. As such, the department is at liberty to continue with the inquiry proceedings against the respondent for her alleged absence from duty without leave. The second directive of the learned Gilgit-Baltistan Service Tribunal is with regard to constitution of Medical Board for medical checkup of ailing baby daughter of the respondent and upon recommendations of the Medical Board, decision as to transfer of her services from District Astore to District Gilgit or otherwise has to be taken by the authorities of education department. It is observed that the

order for constitution of Medical Board does not involve any element of grievance to the petitioners as the learned Service Tribunal has not bound the Medical Board to form its opinion/recommendations in favour of the respondent. Therefore, we see no encumbrance for the department in constituting Medical Board and the department in the light of recommendations of the Board shall decide the matter of transfer of services of respondent.

6. Without prejudice to above, perusal of case record depicts grave irregularities and discrepancies on the part of authorities of education department in dealing with the case of the respondent. What an irony it is, that the present respondent underwent operation and gave birth to the said ailing baby daughter in the month of May, 2019, while her maternity leave was sanctioned on 12th September, 2019 w.e.f. 30.04.2019 to 28.07.2019 vide Office Order No. DE(DA)-1(4)/Esstt/2019/3946-50. Though through this office order, proper maternity leave was sanctioned in favour of the respondent, but in the attendance sheets attached with the case in hand, she has been shown absent for the period from 30.04.2019 to 28.07.2019. In addition to this, the department contends that the respondent remained absent from duty till 19 December, 2019, but in the attendance sheet, she has not been marked absent in the month of August, 2019. The inaction showed by the department in dealing with the absence case of the respondent indicates that it was the department which allowed the respondent to remain absent from duty, otherwise within short time of absence, she should have been proceeded against strictly in accordance with the law, but the department did not do so which made the absence case of the respondent dubious.

7. In view of what has been discussed above, we do not find any illegality or infirmity in the impugned judgment which could call for inference of this Court. Therefore, leave in the above CPLA No. 151/2020 is refused. The impugned judgment dated 19.10.2020 passed by the Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeal No. 12/2020 is maintained. However, the concerned authorities of education department shall continue and conclude inquiry proceedings initiated against the present respondent without being influenced by judgment of the learned Service Tribunal. These were the reasons for our short order dated 22.03.2021 which is reproduced below:

Case heard and record perused. We did not find any illegality or infirmity in the impugned judgment. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 151/2020 is refused. The impugned judgment dated 19.10.2020 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal No. 12/2020 stands maintained.

Chief Judge

Judge

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