

**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.91/2020

(Against judgment dated 18.08.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 81/2019)

1. Provincial Govt. through Chief Secretary GB
2. Secretary Health, Gilgit-Baltistan
3. Secretary Finance, Gilgit-Baltistan
4. Secretary Services, Gilgit-Baltistan
5. Director Health Diamer-Astore Division
6. District Health Officer, Astore

Petitioners

Versus

Sharafat Ali s/o Ghulam Abbass resident of Chongrah Astore

Respondent

PRESENT:

For the Petitioners : Advocate General, Gilgit-Baltistan

Date of Hearing : **20.11.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This Civil Petition for Leave to Appeal arises out of the impugned judgment dated 18.08.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 81/2019 whereby, writ petition filed by the present respondent was accepted and the present petitioners were directed to regularize services of the present respondent forthwith by including his name in the list of regularization through bio-metric process.

2. Brief facts of the instant civil petition for leave to appeal are that present respondent was appointed as Nursing Assistant on contingent

basis at a fixed pay of Rs. 3000/- per month on 30th November, 2011. Vide Office Order dated 8th August, 2014 issued by the District Health Officer Astore, contingent services of the present respondent were again hired. The District Health Officer Astore vide Office Order dated 20th June, 2016 extended contingent services of the present respondent for another one year from 1st July, 2015 to 30th June, 2016. With a view regularize services of contract/contingent paid staff in the light of letter No. F.53/1/2008-SP dated 11th May, 2017 issued by the Establishment Division Islamabad, the Government Gilgit-Baltistan started bio-metric verification process in respect of all contract/contingent paid staff of all government departments of Gilgit-Baltistan. It was the case of the present respondent that his name was not included in the list for bio-metric verification despite of the fact that he was a contingent paid staff of Health Department Astore. The District Health Officer Astore vide letter No. 3009/DHO/Acctt/2015 dated 2nd January, 2018 furnished names of the left over contingent paid employees of Health Department Astore to the Secretary Finance Office GB for inclusion thereof in the online system, which also included name of the present respondent. The District Health Officer Astore initiated another letter with Section Officer Budget, Finance Department, GB vide No. 3805/DHO/Acctt/2017 dated 10th May, 2018 wherein it was again requested for inclusion of name of the present respondents, amongst others, in the list for bio-metric verification. When grievances of the present respondent were not redressed, he filed Writ Petition No. 81/2019 which was accepted and the present petitioners were directed to regularize services of the respondent by including his name in the list of regularization through bio-metric process. Being aggrieved and dissatisfied with the impugned judgment, the instant civil petition for leave to appeal has been filed by the present petitioners before this Court.

3. The learned Advocate General, Gilgit-Baltistan argued that the impugned judgment passed by the learned Chief Court being incorrect, imaginary and against the facts and law was not sustainable and liable to be

set aside. The learned Advocate General, GB next argued that the learned GB Chief Court failed to apply its judicious mind that being the respondent as contingent paid employee, it was not permissible under the law to regularize his services without adopting the proper procedure prescribed under the law inasmuch as the same were liable to termination at any time, hence the judgment being not maintainable was liable to be aside on this score alone. It was next contended by the learned Advocate General, GB that authorities of the Health Department were bound to adopt the policy issued by the government from time to time and under this very policy the petitioners were not bound to send name of the present respondent for bio-metric verification. It was next contended by the learned Advocate General that after completion of contract/contingent period, services of the present respondent were withdrawn by the present petitioners hence, he was no more a contingent paid employee of the health department. Concluding his submissions, the learned Advocate General prayed for setting aside of the impugned judgment

4. Arguments heard and record perused. We have also gone through the impugned judgment passed by the learned Gilgit-Baltistan Chief Court minutely.

5. There is no denial to the fact that the present respondent was appointed as contingent paid Nursing Assistant (BS-05) by District Health Officer Astore on 30.11.2011. Subsequently, his contingent paid services were extended from time to time and the last extension granted to him was till 20.06.2016. No record is placed on file to substantiate as to what happened after 20.06.2016. However copies of letters initiated by District Health Officer Astore to Section Officer Budget, Finance Department, Gilgit-Baltistan show that the present respondent was still a contingent paid employee of Health Department Gilgit-Baltistan till May, 2018 when the process of Bio-Metric process was initiated by the government of Gilgit-Baltistan earlier on 2016-2017. For ready reference, relevant lines from both the above letters are extracted as under:

**“NO. 3009/DHO/ACCTT/2015
OFFICE OF THE DISTRICT HEALTH OFFICER ASTORE**

DATED 02 JANUARY, 2018

To
The Section Officer Budget
Finance Secretariat GB, Gilgit

**Subject: REQUEST FOR INCLUSION THE NAME OF MISTAKE/LEFT OVER
CONTINGENT PAID EMPLOYEES**

It is submitted for your kind information that the following contingent paid employees of this office have been mistake/left over previously during online of their pay and bio data.

You are requested to kindly included their names and bio data in the online system, please.

S	Name of employee	Father's Name	Designation
1	Saif ul Islam	Muhd.Naseem	N/Assistant
2	Sharafat Ali	Ghulam Abbas	Vaccinator
3	Moeenullah	Liaqat Ali Khan	Vaccinator
4	Muhd. Tufail	Ahmed Khan	G-1
5	Faridullah Khan	Ashoor	G-1
6	Sahib Khan	Juma Khan	G-1
7	Atiq ur Rehman	Alif Khan	G-1
8	Izhar ul Haq	Wilayat Din	G-1
9	Noor Shah	Jan	Sweeper
10	Abdul Qazi	Alif Khan	G-1
11	Naveed	Muhd Ayoub	Execration

Their supported documents like as CNIC and appointment orders photo copy is attached for further necessary action, please.

Dr. Mumtaz Ahmed
District Health Officer Astore”

Another letter addressed to Section Officer Budget, Finance Department, GB by the District Health Officer Astore vide No. 3805/DHO/Acctt/2017 dated 10th May, 2018 contains similar request, wherein name of the present respondent is also mentioned. In this letter, it was confirmed that the present respondent, amongst others, were performing their duties. The relevant para is extracted and reproduced below:

“The above said case has not been included in the list of contingent paid staff till yet and they are performing their duties punctually without any kind of Pay/remuneration in different Health Facilities of District Astore”.

6. Despite of being a contingent paid Nursing Assistant in Health Department, Astore, why the Finance Department, Gilgit-Baltistan refused

inclusion of present respondent's name in the list of bio-metric verification in line with contingent paid employees of other departments. No material was placed on the record to justify the reasons of refusal of including name of the present respondent in the list by the concerned department. Under the law, it is obligatory upon the public functionaries to decide the cases of government employees subject to properly assigning reasons thereof as well as by issuing speaking order(s).

7. Perusal of above two letters made it clear that the present respondent was performing his duties in Health Department Astore till May, 2018. There is no dispute regarding initiation of the above referred two letters by District Health Officer Astore, hence it sufficiently negates the assertions of learned Advocate General with regard to discontinuation of services of the present respondent at the time when the bio metric process was started by provincial government of Gilgit-Baltistan. As far as contentions of learned Advocate General that appointments to the said post could not be internally adjusted without observing the legal formalities and inviting other eligible candidates to compete for the said posts are concerned, it is clarified that there is no cavil to the legal proposition that every post meant for direct recruitment shall be filled up by adhering to the procedure laid down in the relevant rules. However, it is pertinent to mention here that since the disputed post is a class IV post for which the government has already relaxed adopting of test/interview procedure through a government policy quoted as under:

**“GOVERNMENT OF GILGIT-BALTISTAN
GILGIT-BALTISTAN SECRETARIAT
(SERVICES, GENERAL ADMINISTRATION
AND CABINET DEPARTMENT)**

No. SO(S)-I-1(49)/2018

Dated 16th January, 2018.

OFFICE MEMORANDUM

Subject: **MECHANISM TO ENSURE MERIT BASED
RECRUITMENTS IN VARIOUS DEPARTMENTS OF
GOVERNMENT OF GILGIT-BALTISTAN**

In supersession of this department's M.M of even number dated 11th January, 2018 on the subject cited above:

- (i)
- (ii). *For appointments to BS-01 to BS-05 posts there shall be no screening test, whereas candidates shall only have to qualify particular skill test, if required for the said post, in accordance with the Establishment Division, Islamabad OM No. F.53/1/2008/SP, dated 3rd March, 2015 titled "Mechanism to ensure merit based recruitments in the Ministries/ Divisions/ Subordinate offices/ Autonomous/ Semi-Autonomous Bodies/ Corporations/ Companies/ Authorities".*

8. The above discussed circumstances prevailing with the case in hand led us to believe that the authorities of the concerned departments failed to give due consideration to the case in hand, otherwise, being a petty issue, it could be resolved at their end. In addition to this case, generally it has been observed that public functionaries have been showing lethargic attitude towards deciding and disposing of the cases relating to grievances of employees in accordance with mandate of law which causes unnecessary burden on the Courts. They compel every employee to resort to the remedy before the Courts even regarding petting issues which can safely be termed as shifting of their burden on the shoulders of Courts to save their necks. This practice on the part of the public functionaries is of very great concern and Courts is of the view that such practice is nothing but to avoid discharging of their lawful duty.

9. In view of what has been discussed above, we do not find any illegality or infirmity in the impugned judgment. Therefore, leave in the above CPLA No. 91/2020 is refused. Impugned judgment dated 18.08.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 81/2019 is maintained. The present petitioners are directed to implement the impugned judgment. These were the reasons for our short order dated 20.11.2020 which is reproduced as under:

"The learned Advocate General, Gilgit-Baltistan has been heard. We have also gone through the impugned judgment as well as available record on the case file.

We are unable to find any illegality, irregularity or infirmity in the impugned judgment. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 91/2020 is refused. Civil Misc. Application No. 99/2020 is dismissed. The impugned judgment dated 18.8.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 81/2019 is maintained/ upheld”

Chief Judge

Judge

Whether fit for reporting (Yes / No)