

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

Before:

**Mr. Justice, Wazir Shakil Ahmed, Judge
(In Chamber)**

CPLA No. 113/2018

(Against the judgment dated 28.08.2018, passed by the GB
Service Tribunal, Gilgit in Service Appeal No. 61 /2017)

Syed Khalid Hussain s/o Syed Ibrahim Shah Account
Assistant BPS-11 Gilgit-Baltistan Population Welfare
Department posted at Gupis R/o District Ghizer

(Petitioner)

VERSUS

1. Government of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan, Gilgit
2. Secretary Health & Population Government of Gilgit-Baltistan
3. Director Population Jutial Gilgit
4. Secretary Services Government of Gilgit-Baltistan, Gilgit
5. Secretary Finance Government of Gilgit-Baltistan, Gilgit

(Respondents)

6. Altaf Hussain, Superintendent BPS-17 Population Welfare Office PIA Link Road, Gilgit
7. Noor Muhammad Superintendent BPS-17, Population Welfare Office Khaplu District, Ghanche
8. Muhammad Shafique, Superintendent BPS-17 Population Welfare Office Hameed Garh Skardu
9. Akhtar Hussain Superintendent BPS-17, Directorate of Population Welfare Jutial, Gilgit
10. Shafiullah Superintendent BPS-17 Population Welfare Office, Chilas District Diamer
11. Musa Karim Superintendent BPS-17 Directorate of Population Welfare Jutial, Gilgit

(Proforma Respondents)

CPLA No. 02/2019

(Against the judgment dated 28.08.2018, passed by the GB
Service Tribunal, Gilgit in Service Appeal No. 61 /2017)

1. Government of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan, Gilgit
2. Secretary Health & Population Government of Gilgit-Baltistan
3. Director Population Jutial Gilgit
4. Secretary Services Government of Gilgit-Baltistan, Gilgit
5. Secretary Finance Government of Gilgit-Baltistan, Gilgit

(Petitioners)

VERSUS

1. Syed Khalid Hussain s/o Syed Ibrahim Shah Account Assistant BPS-11 Gilgit-Baltistan Population Welfare Department posted at Gupis R/o District Ghizer

(Respondent)

2. Altaf Hussain, Superintendent BPS-17 Population Welfare Office PIA Lin Road, Gilgit
3. Noor Muhammad Superintendent BPS-17, Population Welfare Office Khaplu District, Ghanche
4. Muhammad Shafique, Superintendent BPS-17 Population Welfare Office Hameed Garh Skardu
5. Akhtar Hussain Superintendent BPS-17, Directorate of Population Welfare Jutial, Gilgit
6. Shafiullah Superintendent BPS-17 Population Welfare Office, Chilas District Diamer
7. Musa Karim Superintendent BPS-17 Directorate of Population Welfare Jutial, Gilgit

(Proforma Respondents)

CPLA No. 112/2018

(Against the judgment dated 28.08.2018, passed by the GB Service Tribunal, Gilgit in Service Appeal No. 62 /2017)

Sajid Hussain S/o Ghulam Hussain Account Assistant BPS-11 Gilgit-Baltistan Population Department posted at Skardu R/o District Skardu

(Petitioner)

VERSUS

1. Government of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan, Gilgit
2. Secretary Health & Population Government of Gilgit-Baltistan
3. Director Population Jutial Gilgit
4. Secretary Services Government of Gilgit-Baltistan, Gilgit

5. Secretary Finance Government of Gilgit-Baltistan, Gilgit

(Respondents)

6. Altaf Hussain, Superintendent BPS-17 Population Welfare Office PIA Lin Road, Gilgit
7. Noor Muhammad Superintendent BPS-17, Population Welfare Office Khaplu District, Ghanche
8. Muhammad Shafique, Superintendent BPS-17 Population Welfare Office HameedGarh Skardu
9. Akhtar Hussain Superintendent BPS-17, Directorate of Population Welfare Jutial, Gilgit
10. Shafiullah Superintendent BPS-17 Population Welfare Office, Chilas District Diamer
11. Musa Karim Superintendent BPS-17 Directorate of Population Welfare Jutial, Gilgit

(Proforma Respondents)

CPLA No. 03/2019

1. Government of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan, Gilgit
2. Secretary Health & Population Government of Gilgit-Baltistan
3. Director Population Jutial Gilgit
4. Secretary Services Government of Gilgit-Baltistan, Gilgit
5. Secretary Finance Government of Gilgit-Baltistan, Gilgit

(Petitioners)

VERSUS

1. Sajid Hussain s/o Ghulam Hussain, Accounts Assistant Population Welfare Department posted at Skardu r/o District Skardu

(Respondent)

2. Altaf Hussain, Superintendent BPS-17 Population Welfare Office PIA Lin Road, Gilgit
3. Noor Muhammad Superintendent BPS-17, Population Welfare Office Khaplu District, Ghanche
4. Muhammad Shafique, Superintendent BPS-17 Population Welfare Office HameedGarh Skardu
5. Akhtar Hussain Superintendent BPS-17, Directorate of Population Welfare Jutial, Gilgit
6. Shafiullah Superintendent BPS-17 Population Welfare Office, Chilas District Diamer
7. Musa Karim Superintendent BPS-17 Directorate of Population Welfare Jutial, Gilgit

(Proforma Respondents)

CPLA U/O No. 125/2019

(Against the judgment dated 24.05.2019, passed by the GB Service Tribunal, Gilgit in Service Appeal No. 64/2017)

1. Government of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan, Gilgit
2. Secretary Health & Population Government of Gilgit-Baltistan
3. Director Population Jutial Gilgit
4. Secretary Services Government of Gilgit-Baltistan, Gilgit
5. Secretary Finance Government of Gilgit-Baltistan, Gilgit
6. Altaf Hussain, Superintendent BPS-17 Population Welfare Office PIA Lin Road, Gilgit
7. Noor Muhammad Superintendent BPS-17, Population Welfare Office Khaplu District, Ghanche
8. Muhammad Shafique, Superintendent BPS-17 Population Welfare Office Hameed Garh Skardu
9. Akhtar Hussain Superintendent BPS-17, Directorate of Population Welfare Jutial, Gilgit
10. Shafiullah Superintendent BPS-17 Population Welfare Office, Chilas District Diamer
11. Musa Karim Superintendent BPS-17 Directorate of Population Welfare Jutial, Gilgit

(Petitioners)

VERSUS

Farhan Ahmed S/o Iftikhar Ahmed, Account Assistant
Population Welfare Department posted at Gilgit R/o
District Gilgit

(Respondent)

PRESENT:

For the Petitioners in
C.Misc. No. 148/2019
in CPLA U/O No. 125/2019,
CPLA No. 02/2019 &
CPLA No. 03/2019:

The Advocate General
Gilgit-Baltistan.

For the Petitioner in CPLA No.
113/2018, 112/2018 & Respondent
In C.Misc. No. 148/2019 in
CPLA U/O No. 125/2019 :

Mr. Yaseen Baltistani
Advocate

Date of Hearing : 28.05.2021

JUDGMENT

Wazir Shakil Ahmed, Judge... Since common facts and law is involved in all the above civil petitions for leave to appeals, therefore, through this single judgment, I intend to dispose of the above titled petitions directed against the impugned judgments dated 28.08.2018 and 25.05.2019 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeals No. 61, 62 and 64/2017.

2. Brief facts leading to institution of the CPLAs No. 112 & 113/2018, are that Petitioners Sajid Hussain and Syed Khalid Hussain, were appointed as Assistant Accountants (BPS-11) in Population Welfare Department Gilgit-Baltistan in the year 2006 alongwith the respondents Nos. 6 to 8, while the respondents No. 9 to 11 were appointed as Assistant Accountants (BPS-11) in the year 2011, 2009 and 2007 respectively. The respondents (Population Welfare Department Gilgit-Baltistan) upgraded the posts of respondents No. 6 to 11 from BPS-11 to 16 and further redesignated those posts as Superintendent (BPS-17) but the department did not consider upgradation of posts of the petitioners. To this effect, the above incumbents claim to have submitted departmental appeals to the competent authority, but the same remained not responded. Being aggrieved, petitioners approached the Gilgit-Baltistan Service Tribunal for redressal of their grievances. The learned Gilgit-Baltistan Service Tribunal partially accepted the service appeals filed by the petitioners. For the sake of brevity, operative parts of the impugned judgments passed by the learned Gilgit-Baltistan Service Tribunal in their respective service appeals are reproduced herein below:

In Service Appeal No.61/2017: *In the light of what, has been discussed above, this instant service appeal 61/2017 is hereby accepted subject*

to the condition that the appellant will not be entitled for any back benefits from the date of upgradation /redesignation. However, seniority of the appellant shall be counted from the date of upgradation/redesignation of other six batch mates of the appellant where his standing falls in the combined seniority.

In Service Appeal No.62/2017: *In the light of what, has been discussed above, this instant service appeal 62/2017 is hereby accepted subject to the condition that the appellant will not be entitled for any back benefits from the date of upgradation /redesignation. However, seniority of the appellant shall be counted form the date of upgradation/redesignation of other six batch mates of the appellant where his standing falls in the combined seniority.*

Both the parties felt aggrieved and dissatisfied with the impugned judgment passed by the learned Gilgit-Baltistan Service Tribunal and approached this Court by filing CPLAs No. 112 & 113 of 2018 by the Petitioners (Sajid Hussain and Syed Khalid Hussain) and CPLAs No. 02 & 03 of 2018 by the respondents (the provincial government of Gilgit-Baltistan).

3. Mr. Yaseen Baltistani, Advocate, the learned counsel for the Petitioners argued that in the year 2005, the Population Welfare Department Gilgit-Baltistan advertised 08 posts of Accounts Assistants (BPS-11) on contract basis, wherein the petitioners applied and qualified. In consequence of their being qualified in the test/interview and upon recommendations of DPC, vide Office Order No. DPW-2(2)/APT/2000 dated 03.05.2006, the petitioners were appointed as Assistant Accountant (BPS-11) on regular basis alongwith Respondents No. 6 to 8, while the respondents No.9, 10 &11 were adjusted/regularized against the post of Assistant Accountants (BPS-11) in the year 2011, 2009 and 2007 respectively which showed that both the petitioners

were batch-mates of respondents No. 6 to 8, as such stood senior to respondents No. 9 to 11. It was next contended by the learned counsel that despite the fact narrated above, the posts of respondents No. 6 to 11 were upgraded from BPS 11 to 16 and further their posts were redesignated as Superintendent BPS-17, while both the petitioners are still working as such, which is a clear discrimination and injustice to them. He finally prayed that the order of the learned Gilgit-Baltistan Service Tribunal may kindly be modified by granting all back benefit to the petitioners.

4. On the other hand the learned Advocate General Gilgit-Baltistan vehemently opposed the contentions made by the learned counsel for the petitioners and argued that petitioners in CPLA No. 112/2018 and 113/2018 were not extended the benefit of upgradation and redesignation in line with the respondents No. 6 to 11 on the ground that the petitioners were appointed as Assistant Accountants in Reproductive Health Service which is just a Component/Unit of Population Welfare Department Gilgit-Baltistan. It was next argued by the learned Advocate General, Gilgit-Baltistan that respondents No.6 to 11 were appointed as Assistant Accountants (BPS-11) in District Welfare Department Gilgit-Baltistan and Directorates of Population Welfare Gilgit-Baltistan, hence, the posts of respondents No. 6 to 11 were upgraded/ re-designated. At the conclusion of his arguments, the learned Advocate General, Gilgit-Baltistan submitted that since the Gilgit-Baltistan Service Tribunal failed to consider the factual and legal position involved in the instant cases and went on to pass the impugned judgment, hence the judgment so passed was liable to be set aside.

CPLA U/O No. 125/2019:

5. Brief facts leading to filing the instant CPLA are that in the year 2010, the respondent (Farhan Ahmed, Assistant Accountant), was appointed as Assistant Accountant on contract basis and his services were regularized on 30.05.2016. Meanwhile, the provincial government upgraded and redesignated the posts of the petitioners No. 6 to 11 and did not consider case of the respondent for upgradation/redesignation in the same analogy wherein the petitioners Nos. 6 to 11 were upgraded and redesignated, he also approached the learned Gilgit-Baltistan Service Tribunal with the Service Appeal No.64/2017 claiming upgradation/promotion and redesignation in line with his other counterparts from the date of regularization of his service. The learned Gilgit-Baltistan Service Tribunal, after hearing the parties, accepted the service appeal in to and directed the provincial government of Gilgit-Baltistan to upgrade/redesignate the post of the respondent with effect from 30.05.2016 with all back benefits. The operative part of the impugned judgment is reproduced below:

For the reasons discussed above the instant service appeal is hereby accepted and respondents No. 1 to 5 are directed to up-grade/re-designate the post of appellant from accountant BS-16 w-e-f 30-05-2016 and further up-grade/re-designate the said post of accountant BS-16 to superintendent BS-17 w-e-f 05-12-2016 with all back benefits.

6. The provincial government of Gilgit-Baltistan, who was party to the service appeal as respondent before the learned Gilgit-Baltistan Service Tribunal, aggrieved by the impugned judgment and approached this Court by way of institution of CPLA U/O No. 125/2019.

7. The learned Advocate General Gilgit-Baltistan argues that in the year 2010 the respondent was appointed as Assistant Accountant (BS-11) on contract basis under Prime Minister package, which extended from time to time and in the year 2016 his services were regularized in Reproductive Health Service as Assistant Accountant (BS-11). It was further contended by him that if the post of respondent is upgraded and redesignated as directed by the learned Gilgit-Baltistan Service Tribunal, he will stand senior to the said petitioners No. 6 to 11. The learned Advocate General, Gilgit-Baltistan next argued that the impugned judgment was not sustainable as the learned Gilgit-Baltistan Service Tribunal failed to take into consideration material fact that in case the post of respondent is upgraded by re-designation, he will stand senior to petitioners No. 6 to 11 on the ground that services of respondent were regularized in the 2016 while petitioners No. 6 to 11 were appointed in the years 2005, 2007, 2009 and 2011. At the conclusion of his submission, the learned AG prayed for setting aside the impugned judgment.

8. On the other hand, the learned counsel for the respondent supported the impugned judgment and argued that posts of all Assistant Accountants in Population Welfare Department Gilgit-Baltistan were upgraded and redesignated except the posts of Assistant Accountants who were posted in RHS. He argued that the act on the part of official petitioners is a clear discrimination amongst equally placed persons and also against the fundamental rights of the respondent. It was next contended by the learned counsel for the respondent that the up-gradation and re-designation of post held by respondent would have no adverse effect to the seniority of the petitioners No. 6 to 11, hence prays for upholding/maintaining the impugned judgment.

9. I have heard and considered arguments advanced by the learned counsel for the parties and also perused the case files and impugned judgment minutely.

10. From perusal of record it is manifest that Petitioners, in CPLA No. 112/2018 and 113/2018 were appointed as Assistant Accountants (BPS-11) on the same date and recommendations of same DSC alongwith the respondents No. 6 to 8, while the respondents No. 9 to 11 were appointed in the year 2011, 2009 & 2007 respectively. It is observed that in view of carrying of same date of appointment recommendations of same DSC, both present petitioners are batch-mates of the respondents No. 6 to 8, as such, stood senior to respondents No. 9 to 11. Despite this fact, Population Department upgraded and redesignated only respondents Nos. 6 to 11 and left over the petitioners for extending the benefits of upgradation merely on the ground that the present petitioners were employee of RHS. The ground taken and reasons assigned by the official petitioners for not considering the present petitioners for upgradation and redesignation are not sustainable as perusal of record revealed that RHS being headed by the same Director and Secretary is a component/unit of Population Welfare Department GB and is not a separate department. It is astonishingly observed that being employees of the same department, how the present petitioners were not considered for upgradation/redesignation of their posts by Population Department on the inexcusable ground that they are posted in RHS department. The act of provincial government in exercise of its power failed to deal with the similar cases in similar way and tended to discrimination amongst equally placed person. The superior Courts of Pakistan are very much clear in this regard and have been issuing necessary

directive to the public functionaries to avoid discrimination and making unreasonable classifications amongst equal segment of employees. In order to strengthen my this view, I would like to lend some support from a judgment of the Hon'ble Supreme Court of Pakistan in a case reported as I.A Sharwani & others Vs. Govt. of Pakistan through Secretary Finance Division Islamabad & others 1991 SCMR 1041 wherein the Hon'ble Supreme Court of Pakistan has held as under:

“1. That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike.”

It would not be out of context to mention here that the public functionaries are bound by the law to exercise their authority exactly in accordance with the mandate given to them by the relevant law/rules and do not chose resort to any action which would cause to discrimination and violation of fundamental rights of each government employee. The provisions of General Clauses Act, 1924 are very much clear about setting instructions and guidelines to the public functionaries for dealing with cases brought to them by the government employees for redressal of their grievances. For the sake of brevity, relevant section of General Clauses Act is reproduced herein below:

24A. Exercise of power under enactments.- (1). *Whereby 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”.

11. Now I would like to come to the case of Farhan Ahmed, respondent in CPLA U/O No. 125/2019. From perusal of record, it is manifest that his services were regularized on 30.05.2016 as Assistant Accountant (BPS-11) under Prime Minister Assistant Package. Through the impugned judgment, the learned Gilgit-Baltistan Service Tribunal directed that the respondent be upgraded from 30.05.2016 and redesignated from 05.12.2016. Therefore, the question of seniority of the present respondent over the petitioners No. 6 to 11 does not arise because the petitioners Nos. 6 to 11 being appointed/upgraded prior to 2016 and redesignated on 02.12.2016, could not become junior to the present respondent. In view of the position explained herein above, the institution of the CPLA in hand by the present petitioners does not serve any purpose.

12. This Court has regretfully noted that in similar cases having similar grievances contained in service appeals filed by Syed Khalid Hussain, Sajid Hussain and Farhan Ahmed, the learned Gilgit-Baltistan Service Tribunal delivered two different judgments. The service appeal filed by respondent Farhan Ahmed was accepted strictly in terms as prayed for by the respondent while the learned Gilgit-Baltistan Service Tribunal resorted to partially accept service appeals filed by Sajid Hussain and Syed Khalid Khalid Hussain, which is against the principle of consistency as well as discrimination amongst the same set of employees.

13. Foregoing in view, CPLA No. 112/2018 and 113/2018 are converted into appeals and the same are allowed. Judgment dated 28.08.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeal Nos. 61 &

62/2017 stands modified to the extent that upgradation and redesignation of posts held by the petitioners in the above CPLAs shall be granted from the date(s) when the posts of respondents No. 6 to 11 were upgraded/redesignated with all back benefits. In view of my above observations, leave in CPLAs No. 02/2019, 03/2019 and CPLA U/O No. 125/2019 is refused. As a result, impugned judgment dated 24.05.2019 of Gilgit-Baltistan Service Tribunal passed in Service Appeal No. 64/2017 stands maintained. The answering respondents are directed to deal with the seniority of all incumbents as per the relevant law/rules.

Announced
07.06.2021

Judge

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