

**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.51/2018

1. Govt. of Gilgit-Baltistan through Chief Secretary GB
2. Secretary Home Gilgit-Baltistan
3. D.G. Gilgit-Baltistan Scouts Gilgit
4. Dy. Superintendent Armed Reserve GB Gilgit
5. Superintendent Armed Reserve Force, GB, Gilgit
6. Inspector General of Police, GB, Gilgit..... **Petitioners**

Versus

Luqman wali s/o Badin Khan
r/o Darel, District Diamer **Respondent**

CPLA No.52/2018

1. Govt. of Gilgit-Baltistan through Chief Secretary GB
2. Secretary Home Gilgit-Baltistan
3. D.G. Gilgit-Baltistan Scouts Gilgit
4. Dy. Superintendent Armed Reserve GB Gilgit
5. Superintendent Armed Reserve Force, GB, Gilgit
6. Inspector General of Police, GB, Gilgit. **Petitioners**

Versus

Shah Faisal s/o Abdul Saboor
r/o Chilas District Diamer **Respondent**

PRESENT:

For the Petitioners : The Advocate General GB
(in both the above CPLAs)

For the respondents: Mr. Basharat Ali, Advocate
(in both the above CPLAs)

Date of Hearing : **15.10.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- Since both the above Civil Petitions for Leave to Appeal carries similar facts and common question of law we through this single judgment intend to dispose of both the CPLAs directed against judgments dated 26.04.2018 passed by the learned Gilgit-

Baltistan Service Tribunal, whereby, Service Appeal No. 566//2015 and Service Appeal No. 565/2015 filed by the respondents were accepted thereby directing the petitioners to reinstate the respondents with effect from the respective dates of termination of their services.

CPLA No.51/2018 (govt. of GB & others Vs. Luqman Wali)

Facts as available on record are that vide office order dated 30.01.2006, respondent was inducted in police services GB as Foot Constable BS-05. Consequent to the appointment order, the respondent joined his duties and started to perform as such. The appointment of the respondent, amongst others, was made in accordance with the law i.e., through adopting all legal formalities prescribed under the relevant law/ rules. Subsequently, on 4th October, 2006, the petitioner No. 4 (Dy. Superintendent Armed Reserve GB, Gilgit) terminated services of the respondent on the ground of being deserter from GB Scouts. Being aggrieved, the respondent claimed to have submitted a departmental representation to the authorities of police department, GB followed by further applications and personal visits to get his departmental representation decided, but remained unsuccessful. Thereafter, the respondent invoked the jurisdiction of the learned Gilgit-Baltistan Service Tribunal by way of a service appeal which was accepted.

CPLA No.52/2015 (govt. of GB & others Vs. Shah Faisal)

Facts as available on record are that vide office order dated 22.06.2006, respondent was inducted in police services GB as Foot Constable BS-05. Consequent to the appointment order, the respondent joined his duties and started to perform as such. The appointment of the respondent, amongst others, was made in accordance with the law i.e.,

by adopting all legal formalities prescribed under the relevant law/ rules. Subsequently, on 03.10.2006, the petitioner No. 4 (Dy. Superintendent Armed Reserve GB, Gilgit) terminated services of the respondent on the ground of being deserter from GB Scouts. Being aggrieved, the respondent claimed to have submitted departmental representation to the authorities of police department, GB followed by further applications and personal visits to get his departmental representation decided, but remained unsuccessful. Thereafter, the respondent invoked the jurisdiction of the learned Gilgit-Baltistan Service Tribunal by way of a service appeal which was accepted. Now both the judgments passed by the learned Gilgit-Baltistan Service Tribunal have been assailed by the petitioners by way of the above Civil Petitions for Leave to Appeal.

3. The learned Advocate General, Gilgit-Baltistan contended that the learned Gilgit-Baltistan Service Tribunal badly failed to apply its judicial mind while deciding the appeals both on the facts and grounds that respondents were deserter from Armed Force which attributed a criminal liability to them; hence they did not deserve to be taken back in employment of a disciplined force. He next argued that respondent in CPLA # 51/2015 deserted from police during training from RTC and it was not possible to make him present for inquiry. That similarly respondent in CPLA # 52/2015 was behind the bar on the charge of desertion from GB Scouts and it was not possible to hold inquiry. He next maintained that as far as exercising of wrong jurisdiction by petitioner No. 4 (Dy. Superintendent Armed Reserve) is concerned, he was duly delegated the powers by IGP to exercise powers under rule 12.21 of Police Rules whereas, the

learned Service Tribunal without taking into account this fact went on to pass the impugned judgment. The learned AG, GB next argued that the learned Service Tribunal did not advert to the issue of limitation as the service appeals were hopelessly time barred and condoned the delay of a considerable period on a flimsy pretext. With regard to the question of taking back into employment a similar placed person namely Abdul Hakeem the learned, AG, Gilgit-Baltistan argued that his case was different and could not be taken as a precedent for its application to the cases in hand. On the basis of his above submissions, the learned AG, GB prayed for setting aside the impugned judgments to meet the ends of justice.

4. Conversely, the learned counsel for the respondent defended the impugned judgment by reiterating the arguments advanced by him before the learned Service Tribunal and prayed for upholding the same by this Court.

5. We have considered the arguments advanced from both the sides. We have also gone through the record, the impugned judgment passed by the learned Gilgit-Baltistan Service Tribunal and the relevant rules of Police Rules, 1934. With a view to reach fair conclusion, it would be more appropriate and in the interest of justice to reduce the controversies in questions and then deal with each question separately. The probable questions are as below:-.

- (i) Whether it was responsibility of the respondents to inform the police authorities at the time of their induction that they were deserters?

- (ii) Whether on the ground of desertion, legal formalities in terms of conducting an inquiry and issuance of show cause could be dispensed with?
- (iii) Whether a power vested in a particular authority could be exercised by another authority without specific delegation that too having a lower post and grade to the former?
- (iv) Whether after pardon to and exoneration from the criminal charges by former department the respondents were still barred from availing the opportunity of employment in other departments?
- (v) Whether the learned Service Tribunal committed any illegality in condoning the delay in institution of service appeal? Whether Abdul Hakeem, who was also a deserter and similarly placed person was allowed to continue his services and if so then what was the effect of this on the case of respondents?

6. Now we would like to deal with all the questions separately as under.

- (a) With regard to question (i), it is clarified that it is the responsibility of police to collect the personal information of each selected candidate before issuance of appointments order. It is known to the police authorities that antecedent's verification is a must for all appointments with impunity and other civil/armed/uniform force do get the character of candidates verified by police across the country at the time of recruitment whom they intend to recruit. But it is astonishing to note that in these cases the police authorities did not verify the character/ personal information of selected

candidates. The learned AG has also not shown any rule whereby such antecedent verification is not required by Police Department.

- (b) With regard to question (ii) the stance of the learned Advocate General, GB is not tenable. The proper course was to issue notices via print media as is the normal course in all services, but record does not show such effort was ever made by police department, GB. The reason is that no person can be condemned unheard and decision without notice is doomed to crumble. Non issuance of notice militates against due process and is void on its own strength. We are fortified on this by the following dicta of the Supreme Court of Pakistan.

2009 SCMR 615 entitled ‘Muhammad Hanif versus Secretary to Government to Government of Pakistan Ministry of Interior and another. The relevant paragraph is reproduced below;

“It has been held in Sajjad Hussain Bhatti v The Post Master General, Pakistan Post Office, Metropolitan, S.S.C. Karachi and 2 others, 2002 PLC (C.S) 843 that , “ Ex parte Inquiry conducted against accused civil servant without giving opportunity of defence would vitiate the order of dismissal from service recorded against him.” The demand of justice required that the authorities should have waited the return of the petitioner from abroad who could not come to Pakistan for reasons beyond his control”

In the case in hand the department has not only failed to issue notice but failed to conduct any ex parte inquiry as well which is extreme position and order so passed cannot sustain being violative of principle of due process. The learned AG has also not shown any rule where-under notice or inquiry could be dispensed with under circumstances of the cases in

hand though any such rule, if any, being violative of due process would be of no effect.

- (c) Coming to question # (iii), though the learned Advocate General submitted that such powers were delegated to Dy. Superintendent Reserve Armed, but no proof to this effect has been produced neither before the learned Service Tribunal nor before this Court. The only document found on record of file is an office order delegating financial powers to DSP Striking Force Gilgit. The said office order is reproduced herein below:

“NO. IGP-1(7)/8011-13/ 2005

DATED THE 21ST SEPTEMBER, 2005

*OFFICE OF THE
INSPECTOR GENERAL OF POLICE
NORTHERN AREAS, GILGIT*

OFFICE ORDER

Mr. Wasil Khan holding acting charge of DSP Striking Force Gilgit is hereby invested with the powers of Drawing and Disbursing officer in respect of non-gazetted staff, contingencies and controlling officer for the purpose of TA/DA from the rank of FC to SIP respect of Northern Areas Armed Reserve Force w.e.f 01.10.2005”

Contents of the above letter itself showed that the powers delegated were with regard to TA/DA. Under the garb of such an ambiguous office order, nobody could be left scot-free to exercise the powers of appointing/ terminating authority or such other powers of his own choice by taking undue benefit of such office orders. Rule 12.21 of the Police Rules, 1934 which is relevant is reproduced below:

“12.21. Discharge of inefficient:--A constable who is found unlikely to prove an efficient police officer may be discharged by the

Superintendent at any time within three years of enrollment. There shall be no appeal against an order of discharge under this rule”

7. With respect to employment of the respondents with other departments after discharge from the Gilgit-Baltistan Scouts, it is observed that the learned Gilgit-Baltistan Service Tribunal rightly held that pardon/discharge of the respondents amounted to their acquittal; as such they were entitled to employment in other departments. We next advert to the question of condoning the limitation by the learned Service Tribunal by taking support from the judgment of the Hon’ble Supreme Court of Pakistan; it can be said that in view of following judgment, it rightly condoned the delay in institution of the service appeals holding that no limitation could run against an order which was passed without hearing and issuance of notice to the party concerned. For the sake of brevity, the relevant paragraph from the said judgment is reproduced below:

1986 SCMR 962

Mst. Rehmat Bibi & others Vs. Pannu Khan & others

“if an impugned order has been passed without hearing and notice to a party whose presence was other necessary before the authorities concerned, then the order will be nullity in the eye of law, and no question of limitation would arise”

8. As far as the last question of allowing Abdul Hakeem, who was also a deserter during the training and similarly placed person is concerned, we noticed from the record that a wireless message containing list of deserters was forwarded from the office of SP/ Principal, P.R.T.C. N.As Gilgit to SSP Diامر, Chilas for taking disciplinary action

against them. The said list also contained name of Abdul Hakeem. In addition, his name was also included in the termination order, whereas, this recruit was allowed to continue his services. To this effect, the learned Advocate General, Gilgit-Baltistan argued that after clearance from the concerned authorities, he was allowed to continue his services. This assertion of the learned AG, Gilgit-Baltistan is not tenable in the cases of the present respondents too, the concerned authorities vindicated them by pardoning followed by discharge. As such, it can safely be held that the treatment extended to the respondents on different footings was tainted with malafides and discrimination, while this practice of discrimination amongst equally placed person should be discouraged so as to avoid violation of articles of The Government of Gilgit-Baltistan Order, 2018 read with the Constitution of Pakistan which guaranty equal treatment amongst equals. While dealing with the issue of equality amongst equals, 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 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”

9. Resultantly, we have come to the conclusion that in view of the factual and legal position, the learned Gilgit-Baltistan Service Tribunal has given sound reasons in the impugned judgment. Having not been able to find any illegality and infirmity in the impugned judgment, we do not find it a fit case for interference. Consequent thereto, leave in

the both the above Civil Petitions for Leave to Appeal Nos. 51 & 52 of 2018 is refused. The impugned judgments are maintained with the directions to comply with same by the petitioners.

10. The above were reasons for our short orders dated 15.10.2020 containing same grounds. One of which is reproduced below:

“The learned Advocate General, Gilgit-Baltistan has been heard. For the reasons to be recorded later, the leave in the CPLA No. 51/2018 is refused. The impugned judgment dated 26.04.2018 passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit in Appeal No. 566/2015, being without any illegality or infirmity, stands maintained.

Chief Judge

Judge

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