

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
BRANCH REGISTRY SKARDU**

Before:

1. Mr. Justice, Syed Arshad Hussain Shah, CJ
2. Mr. Justice, Wazir Shakil Ahmed, Judge

CPLA No. 20/2016

(Against the judgment dated 26.11.2015, passed by the GB Chief Court, Gilgit in Writ Petition No. 03 /2015 and order passed in Review Petition No. 65/2015)

Muhammad Ilyas S/O Haji Ali R/O Manthokha Tehsil & District Kharmang

(Petitioner)

VERSUS

1. Provincial Government Gilgit-Baltistan through the Chief Secretary, Gilgit
2. Secretary Education Gilgit-Baltistan, Gilgit.
3. Secretary Finance, Gilgit-Baltistan, Gilgit
4. Director Education, Baltistan Region, Skardu
5. Deputy Director Education Kharmang

(Respondents)

PRESENT:

For the Respondents: The Prosecutor General Gilgit-Baltistan, on behalf of Advocate General Gilgit-Baltistan .

For the Petitioner: Mr. Basharat Ali Advocate.

Date of Hearing : 03.11.2020

JUDGMENT

Wazir Shakil Ahmed, J..... Through this petition for leave to Appeal filed under Order 13 of Supreme Appellate Court Gilgit-Baltistan, Rules 2008 read with Article 60 of Gilgit-Baltistan (Empowerment & Self Governance) Order 2009, the Petitioner has called in question the Judgments/Orders passed by the learned Gilgit-Baltistan Chief Court dated 26.11.2015 passed in Writ Petition No. 03/2015 and Order dated 17.08.2016 passed in

Review Petition No. 65/2015, whereby, the Writ Petition as well as the review petition were negated.

3. As per record of the case, the petitioner was initially appointed as Teacher on contract basis, later on, his services were regularized vide Office Order bearing No.DE-(B)-2(11)/2011/919, dated 09.01.2012. The petitioner was kept on performing his duties to the satisfaction of his superiors and during course of which, he was posted/transferred to number of stations between the year 2012 to 2015. It is also an admitted fact that the Petitioner was receiving his salary alongwith his allied allowances regularly till 1st August, 2013, when the answering respondents without prior notice stopped his salary on the ground that salaries of all the teachers have been withheld as when the scrutiny of their credentials were being ascertained, it was found that the post held by the Petitioner was missing in the NIS, which resulted into the stoppage the pay of the petitioner.

4. The Petitioner filed number of representations/applications to the answering respondents to get redressed his grievances but in vain and he was forced to file Writ Petition against the Education Department, the same was dismissed vide Judgment/Order dated 26.11.2015, which is reproduced here under:

***“This petition has been preferred under Article 71(2) of Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009, read with Article 199 of constitution of the Islamic Republic of Pakistan for release of the salary of the petitioner.*”**

The learned counsel for the petitioner contended that the petitioner initially was appointed as teacher on contract basis the year 2008 and later on his service was regularized in BPS-09 as M.T teacher vide office order No. DE(B)-2(11)/2011/919 dated 09.01.2012 and he accordingly draw salary as government servant but abruptly in the month of August 2013 the respondents stopped his salary on the pretext that NIS against the post was not issued, hence this petition.

We have considered the matter very carefully keeping in view the nature of the case and came to the conclusion that since the petitioner is government servant as such he may redress his grievance by filing an appeal before the proper forum instead of invoking writ jurisdiction of this court.

The instant petition is, therefore, dismissed in limine. The petitioner, however, would be at liberty to file an appeal service tribunal if he so advised. File.”

5. To the utmost dissatisfaction of the petitioner with the above Judgment/ Order, the Petitioner filed a review petition, which also met the same fate and the learned Chief Court was pleased to dismiss the same in limine, hence the petitioner filed a CPLA No. 20/2016 before this Court. After hearing the parties, this Court vide Order dated 14.09.2017, dismissed the same. Thereafter, the Petitioner preferred a Civil Review Petition bearing No. 20/2017 in CPLA No. 20/2016, which was accepted and this Court vide Order dated 20.06.2018, allowed the aforementioned Civil Review Petition and restored the CPLA No. 20/2016 on its original position.

6. Heard. The record of the case file also perused, which transpires that vide Office Order dated 27.03.2008, the Petitioner

was appointed as contract teacher in Primary School Manthokha at the fixed pay @ Rs. 2,000/- per month. The services of the Petitioner was duly regularized as M.T Teacher in BPS-09 against a vacant post in Primary School Manthokha with effect from 01.03.2012, vide Office Order bearing No. DE-(B)-2(11)/2011/919, and the petitioner duly submitted his joining report as regular M.T Teacher BPS-09, on 05.03.2012. Nothing to further mention here that, alongwith the joining report, the medical fitness certificate, issued by the competent authority which is attached in original to support his first pay bill. The case file also contains a last pay certificate issued by the Headmaster High School Kharmang dated 15.12.2014, whereby, it has been certified that the petitioner was serving in Middle School Kinderk Kharmang(Hard Area), wherein, all the particulars i.e Basic pay, 25%, HRA, Conveyance Allowance, Med. Allowance, 50% Ad. R. Allow. 15/% Ad. R. Allow. 20% Ad.R. Allow, 10% Ad. R. Allow and Hill Allow etc, and the net pay payable to the Petitioner was also mentioned as Rs. 16570/-. There is also a certificate dated 14.10.2016, issued by the In-charge Primary School Soq Madupur, vide which, it is certified that the Petitioner is performing his duties as M.T BPS-09 regularly till then and his performance as regular teacher was shown to be excellent and satisfactory.

7. The Law Officer appearing on behalf of the Provincial Government has rightly and frankly admitted that 05 incumbents

of the Education department of the same subject matters of Kharmang District has been restored in their services, whose pays were also withheld on the basis of non-inclusion in NIS and the Government had to pay fair amount of money on account of back benefits.

8. It is also a hard fact that the answering respondents did not challenge the orders of dismissal of Writ Petition before this Court as the Learned Chief Court has disposed of the said Writ Petition on the sole ground that the Petitioner being a regular appointee should avail remedy from the proper forum i.e the Gilgit-Baltistan Service Tribunal. Had the answering respondents any doubt in their minds about the regular service of the Petitioner, they should have challenged the order of dismissal in Writ Petition on above ground before this Court, meaning thereby the respondents are still on right assumption that the Petitioner was actually a permanent regular employee of the Education Department. In the circumstance, no fruitful purpose shall be served by getting the Petitioner dragged before the Gilgit-Baltistan Service Tribunal, just for getting withheld salary. Admittedly there is no sign of any order pertaining to discontinuation the service of the Petitioner from Teacher as MT. BPS-09 till date.

9. As has discussed above, the only flimsy ground, on which the salary of the Petitioner has been stopped was said to be

the non-inclusion of the post of the Petitioner in the NIS, resulting which the Petitioner was thrown out from his long term of services w.e.f 2008 to 2015, which is nothing else than to deprive the Petitioner from the vested right accrued to him and which has been protected under Constitution of the Country as well as in the relevant provision of the prevailing Gilgit-Baltistan (Empowerment & Self Governance) Order, 2018.

10. In the light of what has been stated above, this petition is hereby converted into an appeal and accepted by setting aside the impugned Judgments/Orders of the learned Chief Court dated 26.11.2015 passed in Writ Petition No. 03/2015 and 17.08.2016 passed in Civil Review Petition No. 65/2015. The respondents are directed to reinstate the service of the Petitioner from the date when his salary was stopped. i.e 01.08.2013 and release the pay of the Petitioner with effect from 01.11.2020, forthwith, however, the period from the date of discontinued i.e.01.08.2013 to 30.10.2020, shall be deemed to be leave without pay. The Secretary Education Gilgit-Baltistan shall furnish the compliance report within 15 days from passing of this Order.

Announced
03.11.2020

Chief Judge

Judge

Whether the case is Fit to be report or Not?

