

**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. 24/2020

(Against the judgment dated 02.06.2020 passed by the learned Gilgit-Baltistan
Chief Court in Writ Petition No. 42/2020)

1. Government of Gilgit-Baltistan through Chief Secretary
2. Secretary Services & GAD, Gilgit-Baltistan
3. Secretary Finance, Gilgit-Baltistan
4. Accountant General, Gilgit-Baltistan

Petitioners

Versus

Muhammad Kamal, Member Gilgit-Baltistan Service Tribunal

Respondent

Principal Secretary to Governor, Gilgit-Baltistan

Proforma Respondent

PRESENT:

For the Petitioners/

Proforma Respondent: Advocate General, Gilgit-Baltistan

For the respondent : Malik Shafqat Wali Sr. Advocate
Mr. Shakoore Khan Advocate

For the Intervener: Raja Shakeel Ahmed, Advocate

On Court Notice: The Secretary Law & Prosecution, GB
The Secretary Services & GAD, GB
Mr. Asadullah Khan Sr. Advocate/ Amicus
Currie

Date of Hearing: **27.05.2021**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- Through this Civil Petition for Leave to Appeal, the Government of Gilgit-Baltistan (the petitioners herein) has impugned the judgment dated 02.06.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 42/2020, whereby the learned Gilgit-Baltistan Chief Court passed orders for making amendment in the Gilgit-Baltistan Service Tribunal Act, 2010 (amended in 2014) by

inserting therein provision of consultation of Chief Judge, Chief Court in appointment of Chairman/Members. The petitioners were further directed to grant Judicial Allowance to the Chairman and Members of the learned Gilgit-Baltistan Service Tribunal with effect from the date of their respective appointments.

2. Brief facts giving rise for institution of the instant civil petition for leave to appeal are that the present respondent filed a Writ Petition No. 42/2020 before the learned Gilgit-Baltistan Chief Court wherein he sought directions against the present petitioners for implementation of Order dated 14.05.2019 and issuance of notification on the basis of this Order regarding his appointment as Chairman, Gilgit-Baltistan Service Tribunal alongwith back benefits. For sake of brevity, the prayer clause of the said writ petition is reproduced as under:

“I. Direct the respondent No. 1 to 3 to implement the order dated 14.05.2019 in true spirit and issue Notification of appointment petitioner as Chairman GBST, alongwith back benefits

II. Any other relief this Hon’ble Court deems fit”

3. The learned Gilgit-Baltistan Chief Court, after hearing the parties, passed the impugned judgment and directed the present petitioners as under:

“16. In view of above we direct the Provincial Government to amend Sub-section 3 and 4(a) of section 3 of the Gilgit-Baltistan Service Tribunal 2010 (amended in 2014) by following the pattern of Sub-section 3 and 4 of Section 3 of the Punjab Service Tribunals Act, 1974 accordingly, whereby the consent of the Chief Judge, Gilgit-Baltistan Chief Court for appointment of Chairman and Members of the Gilgit-Baltistan Service Tribunal shall be mandatory and in disregard of above shall be deemed to have been made illegally. The Chief Secretary Gilgit-Baltistan is directed to incorporate the above amendment through the concerned quarter and if the above amendment will not be accomplished within two months from the date of passing of this judgment, Sub-Section 3 and 4(a) of Section 3 of the Act would be deemed to be repealed Sub-section 3 and 4 of Section 3 of Punjab Service Tribunal Act 1974 deemed to have been inserted automatically.

4. Regarding the actual relief sought by present respondent (petitioner before the learned Chief Court) in the writ petition, it was held as under:

“17. The contention of present petitioner in the prayer clause is that the notification bearing No. G.Sec.PS-4(6)/2015 dated 14th May, 2019 be implemented in true letter and spirit, is not tenable as discussed supra the office of the Governor has requested to the Chief Minister for appointment of Chairman of Gilgit-Baltistan Service Tribunal twice even after issuance of the said notification, realizing that the same was not issued under the mandate of law. Moreover, the proper summary of the petitioner has not been routed through proper channel.

5. Through the impugned judgment, the present petitioners were further directed by the learned Chief Court as under:

However, it is admitted fact that the petitioner is performing his duties in Gilgit-Baltistan Service Tribunal as a senior most member of the Tribunal since 12.12.2019 after demise of Mir Akhlaq Hussain, the Chairman of Gilgit-Baltistan Service Tribunal. The present petitioner was appointed as member of the Tribunal on 20.10.2017 and the post of Chairman became vacant on 12.12.2019. The petitioner is entitle for all perks and privileges admissible to the Chairman of the Tribunal with effect from 12.12.2019 till the appointment of Chairman of the Tribunal/expiry of the hallmark service of the petitioner in terms of section 2(aa) of the Gilgit-Baltistan Service Tribunal (Amended) Act, 2014. The learned counsel, though not mentioned in the writ petition, but during course of arguments submitted that vide notification No. Fin.Geg-3(1)/2019 dated 18.05.2020, Judicial Allowance at the rate of Rs. 300,000/- (three lac only) and Rs. 250,000/- (two lack fity thousand only) has been granted to the Chairman and Members of the Service Tribunal respectively. The learned counsel prayed that the same may be allowed from the date of their appointment. The employees of Service Tribunal were allowed special judicial Allowance w.ef. 26.02.2019 vide judgment/order of this Court passed in Writ Petition No. 85/2017 dated 26.02.2019, whereby the writ petition was allowed and the Special Judicial Allowance to employees was ordered to be granted, with all the back benefits.

18. It would be in the interest of justice, if the Chairman/Members of Service Tribunal are granted Judicial Allowance with effect from the date of their appointment, as they performing their judicial functions, since their appointment. Office of Finance Secretary is directed to issue necessary amendment in the notification No. Fin.Geg-3(1)/2019 dated 18.05.2020. Needless to say that the Chief Court has ample powers to mould a relief even if the same has not been prayed by any of the party, provided that the same falls within jurisdiction of Chief Court. Reliance in this regard can safely be placed on PLD 2000 Karachi 74 and 1998 Cr.L.J 1935”

6. On the basis of this judgment, legal heirs of the then Chairman, Mir Akhlaq Hussain (late) has approached this Court with Civil Misc. Application No. 61/2020 titled Mir Waheed Akhlaque & others Vs. Provincial Government & others with the prayers of impleading them in the list of respondents as party to the case so as to avail benefits of judgment of the learned Gilgit-Baltistan Chief Court with regard to grant of Judicial Allowance to the Chairman/Members of GBST from the date of their appointments.

7. The learned Advocate General, GB argued that neither a writ was brought to the learned Gilgit-Baltistan Chief Court seeking declaration of Gilgit-Baltistan Service Tribunal Act, 2010 *ultra vires* to Gilgit-Baltistan Order 2018 or any other law nor any amendments in the Gilgit-Baltistan Service Tribunal Act, 2010 (amended in 2014) was sought therefore the judgment passed by the learned Chief Court by traversing beyond its powers is not sustainable in the eyes of law. It was next contended by the learned Advocate General that when no grievances seeking amendments in Gilgit-Baltistan Service Tribunal Act, 2010 or grant of Judicial Allowance were before the learned Chief Court therefore, neither it could pass orders for making amendments in the Gilgit-Baltistan Service Tribunal Act, 2010 by inserting the provision of consultation of Chief Judge, Chief Court in making the appointment of Chairman/Members of Service Tribunal nor could grant Judicial Allowance with retrospective effect. The learned Advocate General next argued that the only relief sought by the present respondent before the learned Chief Court was with regard to issuance of a

writ against the present petitioners for Implementation of an Order and issuance of notification of his appointment as Chairman, GB Service Tribunal, while the learned Chief Court traversed beyond its scope and passed the impugned judgment and directed the present petitioners to amend the Gilgit-Baltistan Service Tribunal Act inasmuch as granted judicial allowance to the Chairman and Members of Service Tribunal from the respective dates of their appointments which was neither claimed nor the same was subject issue before the learned Chief Court. The learned Advocate General next contended that it is prerogative of legislature to enact law(s) or to make amendments therein hence, except declaration of any law to be *ultra vires* to the constitution or any other law for the time being in force, that too when the same was brought before it by any aggrieved party, no directives in the writ petition could be passed by the learned Chief Court.

8. As far as entitlement of present respondent to the grant of perks and privileges from the date when he took the charge of chairman Gilgit-Baltistan Service Tribunal is concerned, the learned Advocate General, GB argued that from the date of appointment as Member GBST, the present respondent has availed the perks and privileges under the Gilgit-Baltistan Service Tribunal Act, 2010, hence he is no more entitled to further perks and privileges. The learned Advocate General, Gilgit-Baltistan submitted that on the basis of a said Office Order, the present respondent claimed appointment as Chairman, which resulted in a judgment containing certain directives which were neither the grievances of the present respondent before the learned Chief Court nor any such relief was sought from the learned Chief Court, therefore, the impugned judgment passed by the learned Gilgit-Baltistan Chief Court was liable to be set aside.

9. On the other hand, the learned counsel for the respondent confined his arguments only to the extent of grant of judicial allowance to the Chairman/Members of Gilgit-Baltistan Service Tribunal from the date(s) of their appointments and argued that in view of decision taken in the National Judicial Policy, 2009 all Judges, Members of subordinate

Courts, Special Courts and their staff were granted the said allowance. The learned counsel next argued that subordinate staff of Special Courts/Tribunals including Gilgit-Baltistan Service Tribunal is receiving the said allowance and referred to a judgment of this Court in the case of Anti Terrorism Court Gilgit. At the conclusion of his arguments, the learned counsel prayed that the judgment of the learned Gilgit-Baltistan Chief Court may be maintained by holding the present respondent entitled to the said allowance from the date of appointment.

10. The learned counsel for the Interveners in Civil Misc. Application No. 61/2020 opted to adopt the arguments advanced by the learned counsel for the present respondent.

11. We have heard the arguments advanced by the counsel for the respective parties and with their able assistance; we have also gone through the impugned judgment and record of the case as well.

12. First of all, in order to decide the legal controversies involved in this case as to whether under the garb of purported availability of power under provisions of the constitutional scheme i.e. the Government of Gilgit-Baltistan Order, 2018, the learned Gilgit-Baltistan Chief Court could grant a relief which was not sought by the respondent in writ petition, it would be advantageous to reproduce the relevant articles from the above Order:

86. Jurisdiction of Chief Court.- (1) *The Chief Court shall have such jurisdiction as is conferred on it by this Order or by any other law.*

(2) *Subject to this Order, the Chief Court may if it is satisfied that no other adequate remedy is provided by law,-*

(a) *on the application of any aggrieved party, make an order,--*

(i) *directing a person performing functions in connection with the affairs of Gilgit-Baltistan or local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do; or*

(ii) *declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Gilgit-Baltistan or a local authority has*

been done or taken without lawful authority, and is of no legal effect; or

(a) on the application of any person, make an order,-

(i) directing that a person in custody in Gilgit-Baltistan be brought before the High Court so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person holding or purporting to hold a public office in connection with the affairs of Gilgit-Baltistan to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to the person or authority, exercising any power or performing any function in, or in relation to, Gilgit-Baltistan as may be appropriate for the enforcement of any of the fundamental rights conferred by this Order.

Islamabad(3) Subject to the Act, the right to move a Chief Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged.

(4) An order shall not be made under sub-section (2) on application made by or in relation to a person in the Armed Forces of Pakistan in respect of his terms and conditions of service, in respect of any matter arising out of his service or in respect of any action in relation to him as a member of the Armed Forces of Pakistan.

(5) Where,-

(a) an application is made to the Chief Court for an order under clause (a) or clause (c) of sub-section (2); and

(b) the Court has reason to believe that the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or otherwise being harmful to the public interest, the Court shall not make an interim order unless the Advocate General has been given notice of the application and the Court, after the Advocate General or any officer authorized by him in this behalf has been given an opportunity of being heard, is satisfied that the making of the interim order would not have the effect referred to in clause (b) of this sub-section.

(6) In this section unless the context otherwise requires, the expression "person" includes any body politic or corporate, any authority of or under control of the Government and any court or tribunal other than the Gilgit-Baltistan Supreme Appellate Court, the High court

or a Court or tribunal establish under a law relating to the Armed Forces of Pakistan.

13. A bare reading of the provisions of the Gilgit-Baltistan Order, 2018 quoted above, it is clear that writ jurisdiction of the learned Gilgit-Baltistan Chief Court could be invoked under Article 86(2) by filing of an application by any aggrieved party. As such, under this article, the present respondent filed writ petition before the learned Gilgit-Baltistan Chief Court which culminated in the impugned judgment. Under this article, it has been explicitly provided that the learned Chief Court could exercise its constitutional jurisdiction subject to “an application” by any aggrieved party. Invocation of writ jurisdiction by filing of an application by any aggrieved party connotes a writ petition hence; it is must that the application in the form of writ petition contains grievances of aggrieved party and the relief sought. Nowhere under provisions of the above Article, it has been provided that the Chief Court could entertain unwritten/verbal submissions of an aggrieved party and pass directives for extending any relief on the basis of that submissions. Here in the case in hand, the present respondent, being an aggrieved party, instituted the writ petition which contained the only grievance relating to non-implementation of the Order and issuance of notification of respondent as Chairman Service Tribunal, which was declined. The learned Chief Court after declining the relief sought in the writ petition, went on to grant reliefs in the shape of grant of judicial allowance from the date of appointment of Chairman/Members of the Tribunal as well as orders for making amendments in Gilgit-Baltistan Service Tribunal Act, 2010 (amended in 2014) which was never sought by the respondent from the learned Chief Court. While granting these two reliefs, the learned Chief Court observed that it had ample powers to mould a relief even if the same was not prayed by any of the party. During the course of arguments, this observation was relied upon and seconded by the learned counsel for the respondent. However, when confronted with the question as to under what law the Chief Court could mould a relief which was not sought in writ petition, the learned counsel could not point out any law which could justify the observations of the learned Chief Court to do

so. Needless to say that the relief originated from the grievance of the respondent before the learned Chief Court was declined in the following words:

“The contention of present petitioner in the prayer clause is that the notification bearing No. G.Sec.PS-4(6)/2015 dated 14th May, 2019 be implemented in true letter and spirit, is not tenable as discussed supra the office of the Governor has requested to the Chief Minister for appointment of Chairman of Gilgit-Baltistan Service Tribunal twice even after issuance of the said notification, realizing that the same was not issued under the mandate of law. Moreover, the proper summary of the petitioner has not been routed through proper channel”.

14. As a result of refusal to grant the relief sought by the present respondent, as observed in the above reproduced para, there remained no grievance for adjudicating by the learned Chief Court and to grant any sort of relief thereof. We observe that while granting unclaimed relief in the shape of grant of judicial allowance with retrospective effect as well as issuance of orders for making amendments in Gilgit-Baltistan Service Tribunal Act, 2010 (amended in 2014) the learned Chief Court has drawn inference from judgments reported as PLD 2000 Karachi 74 and 1998 P Cr.LJ 1935. It would be appropriate to clarify that these judgments, having persuasive effect, are not binding upon the learned Chief Court which could be made a base for extending any relief which was not claimed by aggrieved party. The judgments of the learned High Courts, being of no ultimate value, are open to review by the Supreme Court of Pakistan which sometimes could be distinguished by the Hon’ble Supreme Court. With regard to determination of the legal question as to whether High Courts could traverse beyond its constitutional jurisdiction to grant any relief which was not claimed by any party in writ petition, the Hon’ble Supreme Court of Pakistan has been pleased to hold in clear words that the relief must be confined to the prayers made in writ petition. To this effect, the Hon’ble Supreme Court of Pakistan in a case reported as 1991 SCMR 320 Muhammad Usman Vs. Punjab University, has been pleased to hold as under: -

“Now, it is established law that a writ can be granted only in terms in which it has been applied for and the relief must be confined to the prayer made in the writ petition”

15. In another case reported as DOSSANI Travels (Pvt.) Ltd. Vs. Travels Shop (Pvt.) Ltd. PLD 2014 SC 1, the Hon’ble Supreme Court of Pakistan unequivocally set out the powers of the Supreme Court of Pakistan under Article 187 and High Courts under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, particularly with reference to exercising powers by the High Courts beyond the prayers made in the writ petitions to do the complete justice. Relevant paras from the above judgment reproduced herein below:

“The constitution makers conferred powers “to issue such directions, orders, or decree as may be necessary for doing complete justice” (Article 187) only to the Supreme Court and not to the High Courts. This constitutional intent is significant and has to be kept in view by the High Courts. Power to render “complete justice” vests with the Supreme Court along, whereas the High Court is a creature of the Constitution and can only exercise that power which is conferred in it under the law”

“While seized of petitions under Article 199 of the Constitution, the High Courts at times are faced with prayers to pass order and provide relief for “doing complete justice”. But such powers in constitutional, jurisdiction are vested in the Supreme Court of Pakistan under Article 187 of the Constitution. These powers are distinct both in scope and the manner of their exercise. The apex Courts in most of the democratic countries enjoy such powers. The powers of the Supreme Court to pass an order or give any direction “for doing complete justice” are similar to those, which is the Supreme Court of India enjoys under 142 of the Constitution of India and such powers cannot be exercised by the High Courts in India

16. In addition to the above, the Hon’ble Supreme Court of Pakistan, in a number of judgments has disapproved the practice of taking of Suo Motu by the High Court(s). In the case of "Tariq Transport

Company, Lahore v. Sargodha Bhera Bus Service and others" (PLD 1958 SC (Pak) 437), the Hon'ble Supreme Court of Pakistan held as under

“a High Court was not competent merely on an information or on its own knowledge to commence certiorari proceedings or other proceedings of a similar nature under Article 170 of the Constitution of Islamic Republic of Pakistan, 1956.”

17. In the case of "Fazl-e-Haq, Accountant General, West Pakistan v. The State" (PLD 1960 SC (Pak) 295), this Court reiterated the view by holding as under: -

“the extraordinary jurisdiction relating to a writ could only be exercised by the High Court when moved by a party whose legal rights have been denied.”

18. In the case of "Shehnaz Bequm v. The Hon'ble Judges of the High Courts of Sindh and Baluchistan" (PLD 1971 SC 677), this Court while dealing with a similar question held as under:--

"Under this Constitution, a High Court has been given the power of judicial review of executive actions by Article 98 in certain specified circumstances but even in such a case, the High Court cannot move suo motu for, it is specifically provided in each of the sub-clauses (a), (b) and (c) of clause (2) of Article 98 that only on the application of an "aggrieved party" or of any person, the High Court may make the orders or issue the directions therein specified. It is clear, therefore, that under Article 98 there is no scope for any suo motu action by the High Court".

19. In the case of "Dr. Imran Khattak and another v. Ms. Sofia Waqar Khattak, PSO To Chief Justice and others" reported as 2014 SCMR 122, it is held as under: -

“It thus follows that the framers of the Constitution of 1962 and those of 1973, inasmuch as it can be gathered from the words used in Article 98 of the former and Article 199 of the latter, never intended to confer Suo Motu jurisdiction on a High Court. We have, therefore, no hesitation to hold that the High Court could not exercise Suo Motu jurisdiction under Article 199 of the Constitution of Pakistan.”

20. In the case of “Raja Muhammad Nadeem v. The State” reported as PLD 2020 SC 282, it is held as under: -

“High Court had no jurisdiction under the Constitution to take up the issue suo motu---Article 199 of the Constitution envisaged an aggrieved person; but in the present case there was none before the Court.”

21. In line with the powers of the Hon’ble Supreme Court of Pakistan conferred on it under Article 187 of the Constitution of Islamic Republic of Pakistan, 1973, the Supreme Appellate Court, GB also enjoys the same powers under the corresponding Articles of the Gilgit-Baltistan Order, 2018 for doing complete justice. The relevant articles relating to the Supreme Appellate Court are produced below:-

75. Gilgit-Baltistan Supreme Appellate Court.- (1) *There shall be constituted a Gilgit-Baltistan Supreme Appellate Court, referred to as the Supreme Appellate Court to be the highest Court of Appeal.*

(13) *Subject to the succeeding provision of this section, the Supreme Appellate Court of Gilgit-Baltistan shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences of the High Court of Gilgit-Baltistan.*

(14) *An appeal shall lie to the Supreme Appellate Court of the Gilgit-Baltistan from any judgment, decree, final order or sentence of the High Court of Gilgit-Baltistan,-*

(a) *if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced to death or*

to imprisonment for life; or, on revision, has enhanced a sentence to a sentence as aforesaid; or.

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted the accused person and sentenced him as aforesaid; or

(c) if the High Court has imposed any punishment on any person for contempt of the High Court; or

(d) if the amount or value of the subject matter of the dispute in the court of first instance was, and also in dispute in appeal is, not less than fifty thousand rupees or such other sum as may be specified in that behalf by law and judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or

(e) if the judgment, decree or final order involved directly or indirectly some claim or question respecting property or the like amount or value and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or

(f) if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Order.

(15) An appeal to the Supreme Appellate Court of Gilgit-Baltistan from a judgment, decree, final order or sentence of the High Court in a case to which sub-section(13) does not apply shall lie only if the Supreme Appellate Court grants leave to appeal.

76. Original Jurisdiction. (1) Without prejudice to the provisions of section 86, the Supreme Appellate Court, on an application of any aggrieved party, shall if it considers that a question of general public importance with reference to the enforcement of any of the fundamental right conferred by Chapter 1 of Part II of this Order is involved, have the power to make declaratory order of the nature mentioned in the said section.

(2) An application made under sub-section (1) shall be heard by a Bench comprising not less than two Judges to be constituted by the Chief Judge.

(3) Any party aggrieved from an order passed under sub-section (1) may prefer an appeal to the Supreme Appellate

Court within thirty days of the order. The aforesaid appeal shall be heard and decided by the Full Court.

77. Issue and execution of processes of Supreme Appellate Court.- (1) The Supreme Appellate Court shall have powers to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

22. Needless to say that no any aggrieved party approached the Chief Court for issuance of writ against the provincial government either for declaring the provisions of Gilgit-Baltistan Service Tribunal Act *ultra vires* to Gilgit-Baltistan Order 2018 or any other law or making amendments in the *ibid* Act. As such, in view of the factual and legal clarifications made herein above, it can safely be held that while issuing orders for grant of judicial allowance with retrospective effect and making amendments in the Gilgit-Baltistan Service Tribunal Act, that too when these two reliefs were not sought by the respondent in his writ petition, the learned GB Chief Court leaned to exceed its vested powers under Gilgit-Baltistan Order, 2018 and tried to assume the powers of this Court conferred on it under article 77 of the Gilgit-Baltistan Order, 2018.

23. When the relevant Article of Constitution of Islamic Republic of Pakistan and the Gilgit-Baltistan Order, 2018 are put in juxtaposition, it becomes clear that the powers of doing complete justice in a matter is only conferred on the Hon'ble Supreme Court of Pakistan under Article 187 of the Constitution and on the Supreme Appellate Court Gilgit-Baltistan under Article 77 of Gilgit-Baltistan Order, 2018. For the sake of convenience, the above articles of the Constitution of Islamic Republic of Pakistan and Gilgit-Baltistan Order 2018 are highlighted as under:

Constitution of Islamic Republic of Pakistan, 1973:

187 (1) Subject to clause (2) of Article 175, the Supreme Court shall have power to issue such direction, orders or decrees as may be necessary for doing complete justice in any case or matter pending before the it, including an

order for the purpose of securing the attendance of any person or the discovery or production of any document.

Gilgit-Baltistan Order, 2018

77. Issue and execution of processes of Supreme Appellate Court.- (1) The Supreme Appellate Court shall have powers to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

24. The second legal question hovering round the CPLA in hand is whether the Constitution of Islamic Republic of Pakistan, 1973 read with enabling articles of the Gilgit-Baltistan Order, 2018 empowered the learned Chief Court to direct the Legislature for making amendments in the Gilgit-Baltistan Service Tribunal Act by incorporating certain items to bring it at par with any other Acts for the time being in force in other provinces? It is to be clarified beyond any shadow of doubt that our Constitution is founded on the theory of trichotomy of power between the three limbs/organs of the State namely, the Legislature, the Executive and the Judiciary. It outlines the functions of each of the organs. It envisages that each organ of the State shall function within limits specified in the Constitution. The role assigned to judiciary by the Constitution is very important and delicate namely, to ensure that none of the organs of the State or the Government functionaries acts in violation of any provision of the Constitution or of any other law. Out of the three organs, the judiciary has been entrusted with protection and interpretation of the laws enacted by the legislatures, however subject to strictly exercising the powers assigned to each Court under the Constitution or the relevant laws. Interference with or encroaching upon powers of another organ, herein the legislature, is not warranted under the Constitution. This well established principle has come in discussion before the Hon'ble Supreme Court of Pakistan in a number of cases. Observations of the Hon'ble Supreme Court of Pakistan in one of such cases reported as Executive District Officer (Revenue) Khoshab & Others Vs. Ijaz Hussain & others 2012 PLC (CS) SC 917 are reproduced as under: -

“14. We may observe with respect that the principle of trichotomy of powers escaped the notice of the learned Judge. The Recruitment policy was framed by the Government of Punjab as part of the delegated legislation and its provisions could not have been struck down on vogue considerations of the being “unreasonable

15. The framing of the recruitment policy and the rules there-under, admittedly, fall in the executive domain. The Constitution of Islamic Republic of Pakistan is based on the well known principle of trichotomy of powers where legislature is vested with the functions of law making, the executive with its enforcement and judiciary of interpreting the law. The Court can neither the role of a policy maker or that of law maker”

25. This principle has repeatedly been expressed by the Hon’ble Supreme Court of Pakistan in following judgments: -

- i. Province of East Pakistan v. Sirajul Haq Patwari; PLD 1966 SC 854 at 954
- ii. Mehreen Zaibun Nisa v. Land Commissioner; PLD 1975 SC 397 at 433
- iii. Kaneez Fatima v. Wali Muhammad; PLD 1993 SC 901 at 915 J
- iv. Multiline Associates v. Ardeshir Cowasjee; 1995 SCMR 362 at 381
- v. Ellahi Cotton Mills Limited v. Federation of Pakistan; PLD 1997 SC 582 at 676
- vi. Dr. Tariq Nawaz v. Govt. of Pakistan; 2000 SCMR 1956 at 1959-1960
- vii. Mian Asif Aslam v. Mian Muhammad Asif; PLD 2001 SC 499 at 511

- viii. Pakistan Muslim League (Q) v. Chief Executive of Pakistan;
PLD 2002 SC 994 at 1010, 1031, 1032
- ix. Pakistan Lawyers Forum v. Federation of Pakistan; PLD 2005
SC 719 at 767 V, 773 CC & DD, 774 EE
- x. Messrs Master Foam (Pvt.) Ltd. v. Government of Pakistan;
2005 PTD 1537 at 1556 F
- xi. Watan Party v. Federation of Pakistan; PLD 2006 SC 697 at
para. 40, p. 727
- xii. Federation of Pakistan v. Haji Muhammad Sadiq; PLD 2007
SC 133 at 160 L, 168 V
- xiii. Dr. Mobashir Hassan and others v. Federation of Pakistan and
others; PLD 2010 SC 265 at 349 G & H
- xiv. Iqbal Zafar Jhagra v. Federation of Pakistan; 2013 SCMR
1337 at 1379 J

26. In view of the above legal position, it can safely be held that orders passed by the learned GB Chief Court for making amendments in the Gilgit-Baltistan Service Tribunal Act, 2010 (amended in 2014) by inserting therein the provision of consultation of Chief Judge Chief Court in making appointment of Chairman/Members of GB Service Tribunal is against the law and theory of trichotomy of powers as well. No directions could be given to the legislature to amend the *ibid* Act that too when neither such a matter was subjudice before the learned Chief Court nor any such relief was sought by the aggrieved party. Except holding an enactment of legislature to the extent of declaring it *ultra vires* to the constitution or any other law, no further direction is warranted from the learned Chief Court in exercise of jurisdiction under Article 86 of the Gilgit-Baltistan Order, 2018 corresponding to Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

27. Now we would like to advert to directions passed by the learned Gilgit-Baltistan Chief Court regarding insertion of provision of consultation of Chief Judge, GB Chief Court in Gilgit-Baltistan Service Tribunal Act, 2010 in respect of appointment of Chairman/Members of the learned GB Service Tribunal in line with the provisions contained in the Punjab Service Tribunal Acts, 1973. In compliance of the judgment of the Hon'ble Supreme Court of Pakistan, provision of consultation of Chief Justices of the learned High Courts of other provinces of Pakistan has been inserted in their respective Acts. It seems that in order to bring appointment method of Chairman/Members of GB Service Tribunal at par with the method provided under the relevant laws for Provincial Service Tribunals of provinces of Pakistan, the impugned orders were passed by the learned GB Chief Court. It might be well within knowledge of the learned Chief Court that Gilgit-Baltistan has not been accorded status of a full province recognized by the Constitution of Islamic Republic of Pakistan, 1973, rather its administrative and judicial affairs are being governed under Executive Orders. First in the form of Gilgit-Baltistan (Empowerment & Self Governance) Order, 2009 and now under an Order called "the Gilgit-Baltistan Order, 2018" which are vulnerable to amendments by executive organ of the country without discussion and seal of the parliament of Pakistan. It is to be noted that as and when felt expedient, executive authority of Pakistan used to amend the above Orders. Besides this factual position, legislative powers of GB Assembly are shared by GB Council having an apparent status of upper house. The territory of GB having a status totally different from other provinces of Pakistan, appointment method of Chairman/Members of GB Service Tribunal could not be brought at par with the method of appointment of Chairman/Members of Provincial Service Tribunals. It may not be out of context to mention here that administrative and judicial affairs in respect of judicial hierarchy of Gilgit-Baltistan which has not expressly been provided under the Gilgit-Baltistan Order 2018, are being exercised by Federal Government either itself or by delegating special powers to the provincial government of Gilgit-Baltistan like appointment of Judges of

Special Courts established in Gilgit-Baltistan. Appointments of Judges of Custom & Banking Court and NAB Court are made by the Prime Minister of Pakistan being Chairman of Gilgit-Baltistan Council, appointment of Judges of Anti Terrorism Courts are being made by the Provincial Government with consultation of Chief Judge Chief Court so is the position regarding appointment of Accountant General Gilgit-Baltistan.

Gilgit-Baltistan Council: The GB Council works for policymaking and acts as a bridge between GB and the Government of Pakistan. The GB Council is headed by the Prime Minister of Pakistan called the Chairman of the Council. The Governor of GB serves as the Vice-Chairman while the Chief Minister GB is a member of the council. Six members are appointed by the Legislative Assembly through voting and six members are “nominated” by the Prime Minister of Pakistan from amongst the Federal Ministers and members of the parliament. Gilgit-Baltistan Council has the power to address and to make laws regarding about 55 subjects.

28. In the above background, Gilgit-Baltistan is not a province having independent administrative and judicial powers and structure similar to other Provinces of Pakistan. The Provinces of Pakistan enjoy independent judicial and administrative powers provided under the Constitution without having any authority above the provincial assembly in respect of administrative and judicial powers within provinces. In contrast, Gilgit-Baltistan is divided into two houses i.e., the Gilgit-Baltistan Assembly and the Gilgit-Baltistan Council with Prime Minister of Pakistan as its Chairman. In this backdrop, the status of Gilgit-Baltistan is totally different and could not be equated with other Provinces of Pakistan.

29. The capital of Pakistan, Islamabad also retains a different position like Gilgit-Baltistan which is not a constitutional province. Having a bird eye view on the historical development in this regard, Section 290-A was inserted in the Government of India Act 1935 by Governor General Order No. 14 of 1948 issued on 22.07.1948, which provided, inter alia, *“For the establishment of Capital of Federation by the order of Governor-General who was authorized to demarcate for the*

purpose of Capital any territory of a province.” On the strength of section 290-A, “The Pakistan Establishment of Federal Capital Order, 1948” was promulgated on 23.07.1948 by declaring Karachi as capital of Pakistan. The area was demarcated and Karachi was to be run as Chief Commissioner’s Province. Article 9 declared the Chief Court of Sindh to be the High Court of Karachi. Section 2 of the Establishment of West Pakistan Act 1955 integrated three Governors’ provinces of Punjab, Sindh & N-W.F.P, Chief Commissioner’s Provinces of Baluchistan and Capital of Federation along with other states and tribal areas into one Province. But despite this, sub-section 2, reserved the governance of Capital in accordance with 290-A of Govt of India Act under the provisions of “The Capital of Federation Order, 1955” whereby Chief Commissioner/Commissioner could be delegated powers of subjects falling in provincial legislative list. Section 10 provided continuity to local laws. Under the President’s Order No 20 of 1960, Rawalpindi was declared as the principal seat of Government of Pakistan until further Order. Territory of Federal Capital in Karachi was converted to Federal Territory of Karachi and continued to be administered by President.

30. Thereafter, Article 211 of Constitution of 1962 declared Islamabad, situated in the district of Rawalpindi, in the Province of West Pakistan, as Capital of Pakistan. The same Article declared Dacca as second Capital of Pakistan. Later-on, Ordinance VI of 1963 determined the area of Capital of Republic. Islamabad continued to be on the pattern of Chief Commissioner’s Province. PO No I of 1970 dissolved West Pakistan Province and four new provinces were constituted. Section 14 established three High courts, for Sindh & Baluchistan one High Court till 1976. Islamabad Capital Territory was given within the jurisdiction of the High Court of Punjab. In 2010, vide “The Islamabad High Court Act 2010” (Act No. XVII of 2010) an independent High Court for Capital Territory was established having original, appellate and other jurisdiction as provided under the Constitution and laws enforced. Constitution of Islamic Republic of Pakistan, 1973 declared status of Islamabad Capital Territory as of a distinct territory not forming part of any province. Section

4 & 5 of the Act *ibid* give the High Court and judges, same jurisdiction and powers as were available to Lahore High Court and its benches. High Court was given original Jurisdiction up to certain pecuniary limits. Section 6 provides for Islamabad District Judiciary. Section 8 provides for applicability of procedural rules of Sindh High Court and subordinate courts of Sindh to the Islamabad High Court. But the ICT is still run on the pattern of Chief Commissioner Province.

31. In consequence whereof, all Civil, Criminal, Revenue, Special Courts & all Tribunals which were exercising jurisdiction and functions in the ICT immediately before the commencement of the Act under the superintendence and control of the Lahore High Court, Lahore were brought under the supervision and control of the Islamabad High Court, except Federal Shariat Court, Federal Service Tribunal and Election Tribunal. Therefore, consultation of the Chief Justice of Pakistan was made mandatory for appointment of Chairman/Members of the Federal Service Tribunal. On the same principle, consultation of Chief Judge Supreme Appellate Court is mandatory for appointment of Chairman/Members of Gilgit-Baltistan Service Tribunal.

32. It is pertinent to mention here that the Federal Shariat Court, Service Tribunal and Election Tribunal being the creatures of Constitution are performing their judicial functions and appeal against judgment/order of the Service Tribunal lies to the Supreme Court of Pakistan under Article 212(3) of the Constitution; judgments/orders passed by Federal Shariat Court are appealable before Supreme Court under Article 203-F of the Constitution; and similarly, from the order/judgment of the Election Tribunal an appeal is provided to the Supreme Court under section 67(3) of Representation of the People Act, 1976.

33. We are of the considered opinion that Service Tribunals is creature of the Constitution under Article 212 of the constitution and is not amongst the Courts created by law under Article 175 of the Constitution. It is also not subordinate to High Court under Article 203 of the Constitution, therefore, the requirements of said provision should not be adhered to while making appointment of Chairman/Members of the Provincial Service

Tribunals as is being done in case of other Courts created by law under Article 175 of the Constitution of Islamic Republic of Pakistan. The relevant provisions of the Constitution of Pakistan, 1973 and the Government of Gilgit-Baltistan Order, 2018 are reproduced hereunder: -

“Article 175 of the Constitution of Islamic Republic of Pakistan

175. Establishment and jurisdiction of courts: (1) There shall be a Supreme Court of Pakistan, a High Court for each Province and such other Courts as may be established by law.
(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.
(3) The Judiciary shall be separated progressively Establishment and Jurisdiction of Courts from the Executive within [fourteen] years from the commencing day.

Article 203 of the Constitution of Islamic Republic of Pakistan

203. High Court to superintend subordinate Courts: Each High Court shall supervise and control all courts subordinate to it.

Article 212 of the Constitution of Islamic Republic of Pakistan

212. Administrative Courts and Tribunals: (1) Notwithstanding anything hereinbefore contained the appropriate Legislature may by Act 1[provide for the establishment of] one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of—
(a) matters relating to the terms and conditions of persons 2[who are or have been] in the service of Pakistan, including disciplinary matters ;

Article 91 of the Government of Gilgit-Baltistan Order, 2018

91. Chief Court to superintend and control all courts subordinate to it, etc.- (1) The High Court shall superintend and control all other courts that are subordinate to it.

Article 93 of the Government of Gilgit-Baltistan Order, 2018

93. Administrative Courts and Tribunals. (1) Notwithstanding anything herein before contained, the Prime Minister in respect of matters to which its executive authority extends, and the Assembly in respect of matters to which the executive authority of the Government extends may by law provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of, -

(a) matters relating to the terms and conditions of persons who are or have been in the service of Gilgit-Baltistan including disciplinary matters;”

34. If a court is not subordinate to High Court, rather having parallel judicial status to High Court, how can we uphold that for appointment of Chairman/Member of Provincial Service Tribunal consultation of Chief Judge Chief Court is required, rather, the Gilgit-Baltistan service tribunal having been created under Article 93 of the Government of Gilgit-Baltistan Order, 2018, Article 91 would not operate as such.

35. In order to have better understanding of the matter, it is of great import to understand the constitutional significance of the Federal Service Tribunal. The Hon’ble Supreme Court of Pakistan has rendered a number of judgments on the subject, however, a land mark judgment, covering all aspects of the matter and the legal background of the questions involved herein, has been reported as Mehram Ali & others Vs. Federation of Pakistan & others PLD 1998 SC 1445, wherein a full Bench of the Hon’ble Supreme Court of Pakistan was pleased to hold as under:

“(i) That Articles 175, 202 and 203 of the Constitution provide framework of Judiciary i.e. the Supreme Court, a High Court for each Province and such other Courts as may be established by law;

(ii) That the words ‘such other Courts as may be established by law employed in clause (1) of Article 175 of the Constitution are relatable to the subordinate Courts referred to in Article 203 thereof;

(a) That our constitution recognizes only such specific Tribunal to share judicial powers with the above Court, which have been specifically provided by the Constitution itself Federal Shariat Court (Chapter 3-A of the Constitution), Tribunals under Article 212, Election Tribunals (Article 255). It must follow a corollary that any Court or Tribunal which is not founded on any of the Articles of the Constitution cannot lawfully share judicial power with the Courts referred to in Article 175 and 203 of the Constitution;

- (b) *That in view of Article 203 of the Constitution read with Article 175 thereof the supervision and control over the subordinate Judiciary vests in High Courts, which is exclusive in nature, comprehensive in extent and effective in operation;*
- (c) *That the hallmark of our Constitution is that it envisages separation of Judiciary from the Executive (which is founded on the Islamic Judicial System) in order to ensure independence of Judiciary and, therefore, any Court or Tribunal which is not subject to judicial review and administrative control of the High Court and/or the Supreme Court does not fit in within the judicial framework of the Constitution;*
- (d) *That the right of ‘access to justice to all’ is a fundamental right, which right cannot be exercised in the absence of an independent Judiciary providing impartial, fair and just adjudicatory framework i.e. judicial hierarchy. The Courts/Tribunals which are manned and run by Executive Authorities without being under the control supervision of the High Courts in terms of Article 203 of the Constitution can hardly meet the mandatory requirement of the Constitution’*
- (e) *That the independence of judiciary is inextricably linked and concerned with the process of appointment of Judges and the security of their tenure and other terms and condition.”*

36. Therefore, the Federal Service Tribunal being creation of Article 212 of the Constitution is not a Court subordinate to High court created by law under Article 175 of the Constitution. The Service Tribunals are also constitutional creatures and specifically provided in the Constitution, thus share judicial power with High Court and in the case of Gilgit-Baltistan, the Gilgit-Baltistan Chief Court.

37. While following observations contained in the above judgment, in another a case reported as Sh. Liaqat Hussain & others Vs. Federation of Pakistan & others PLD 1999 SC 504 a Bench comprising 09 Hon’ble Judges of the Supreme Court of Pakistan, has further been pleased to hold as under:

“15. The above-quoted extract from the above judgment in the case of Mehram Ali and others Vs. Federation of

Pakistan and others (PLD 1998 SC 1445), indicates that it has been inter alia held that our Constitution recognizes only such specific Tribunals to share judicial power with the Courts referred to in Articles 175 and 203, which have been specifically provided by the Constitution itself, like Federal Shariat Court (Chapter 3-A of the Constitution), Tribunals under Article 212, Election Tribunals (Article 255) and that any other Court or Tribunals which is not founded on any of the Articles of the Constitution cannot lawfully share judicial power with the Courts referred to in Articles 175 and 203 of the Constitution”.

38. In another place in the above judgment, it has been categorically mentioned that the Service Tribunals and other such courts which are as such created by the constitution, being creature of Constitution are not subject to the jurisdiction of the High Court rather their judgments/orders are appealable before the Supreme Court of Pakistan only. The relevant portion of the judgment *ibid* is reproduced as under: -

“Federal Shariat Court, Service Tribunals and Election Tribunals are firstly, the creature of the Constitution and not established under a sub-Constitutional legislation. Secondly, from the judgments of each one of these Courts, the matter can be brought before the superior Judiciary in one form or the other. For instance from the order of Service Tribunal an appeal lies to the Supreme Court of Pakistan under Article 212(3) of the Constitution. The judgments and orders passed by Federal Shariat Court are appealable before Supreme Court under Article 203-F of the Constitution. Similarly, from the order/judgment of the Election Tribunal an appeal is provided to the Supreme Court under section 67(3) of Representation of the People Act, 1976.”

39. We are in agreement with the views of the Hon’ble Supreme Court of Pakistan in a judgment titled Sheikh Riaz-ul-Haq and another v.

Federation of Pakistan and others reported as (PLD 2013 SC 501 to the extent of background, powers, jurisdiction and authority of Service Tribunal in service matters, wherein the Hon'ble Court has held that it is as a judicial forum akin to High Courts which performs judicial functions and exercises judicial powers and enjoys the status of a Court in terms of Art.175 of the Constitution. The relevant portion is reproduced as under:-

“they (Chairman and the Members) should act independently following the principle of independence of judiciary, especially since their role is in substitution of the highest constitutional body i.e. High Court.”

40. A plethora of judgments provide similar view on the matter of consultation of Hon'ble Chief Justice of Pakistan for appointment of Chairman Federal Service Tribunal. This view is not only based on law but the same has been recorded by numerous judgments by Hon'ble Supreme Court of Pakistan. In the case of Mehram Ali & others Vs. Federation of Pakistan & others PLD 1998 SC 1445, a bench comprising 05 Hon'ble members is of the same view as is laid down in the judgment delivered by a Bench comprising 09 Hon'ble members in the case of Sh. Liaquat Hussain & others Vs. Federation of Pakistan & others PLD 1999 SC 504. The view iterated by a Bench comprising 03 Hon'ble Judges of the Hon'ble Supreme Court of Pakistan expressed in the case of Sh. Riaz-ul-Haq Vs. Federation of Pakistan PLD 2013 SC 501, with utmost respect, is differed only to the extent of appointment of Chairman/Members of Provincial Service Tribunals with the consultation of Chief Justices of High Courts of Provinces and would be followed to the extent of appointment of Chairman of the Federal Service Tribunal on the consultation of the Hon'ble Chief Justice of Pakistan.

41. It was on the basis of observations and directives passed by the Hon'ble Supreme Court of Pakistan in the above-quoted judgment as well as special status of Gilgit-Baltistan as explained above, this Court, in a case titled HRC No. 05/2020 (Application submitted by Soniya d/o Ghulam Abbass & 18 Others), ordered that appointment of Chairman/Members of Gilgit-Baltistan Service Tribunal be made in

consultation with Chief Judge, Supreme Appellate Court, Gilgit-Baltistan instead of Chief Judge, Chief Court Gilgit-Baltistan. The said order is reproduced below:

“ORDER DATED 21.05.2021

.....
4. In view of above, the highest judicial Forum is the Supreme Appellate Court, therefore, in line with the case of appointment of Chairman/Members of Federal Service Tribunal, appointment of Chairman/Members of Gilgit-Baltistan Service Tribunal is also required to be made in consultation with the Chief Judge Supreme Appellate Court, Gilgit-Baltistan.
.....”

42. Having gone through above legal discussion, it is crystal clear that the consultation of the Chief Justice of Pakistan in the case of appointment of Chairman of the Federal Service Tribunal is spirit of the Constitution and mandated by law as well as a benchmark set by the apex Court of Pakistan in successive judgments. The same would ipso facto be applicable to the case in hand visualizing the true spirit and wisdom of law on the subject on touchstone of the Constitution read with the Government of Gilgit-Baltistan Order, 2018. Therefore, the learned Chief Court has not only transgressed the established principles laid by the Constitution, the Government of Gilgit-Baltistan Order, 2018 and settled case law on the subject but has also failed to apply its judicious mind resulting in miscarriage of justice has erred in law. Therefore, in presence of Supreme Appellate Court, order passed by the learned Chief Court for inserting provision of consultation of Chief Judge, Chief Court Gilgit-Baltistan in respect of appointment of Chairman/Members of GBST in the Gilgit-Baltistan Service Tribunal Act, 2010 (amended in 2014) is not sustainable, unwarranted, unjustified, per incuriam and coram non iudice. Instead consultation of Chief Judge Supreme Appellate Court is mandatory as is in the case of consultation of Hon’ble Chief Justice of Pakistan is necessary in case of appointment of Chairman/Members of Federal Service Tribunal.

43. Now coming to submissions of the learned counsel for the respondent regarding grant of judicial allowance, it is made clear that judicial allowance to Chairman/Members of the learned Gilgit-Baltistan

Service Tribunal was allowed/granted under due approval of the provincial Cabinet. It was on the basis of this approval that the notification as to grant of judicial allowance to Chairman/Members of Gilgit-Baltistan Service Tribunal was issued. The D.S. Law & Prosecution GB while referring to the said notification submitted that approval of judicial allowance was made applicable from a clear cut date i.e. from 1st April, 2020, which is reproduced below:

*“GOVERNMENT OF GILGIT-BALTISTAN
GILGIT-BALTISTAN SECRETARIAT
FINANCE DEPARTMENT
Gilgit dated the 18th May, 2020/3279*

NOTIFICATION

No. Fin.Reg-3(1)/2019. In pursuance of the decision of Gilgit-Baltistan Cabinet taken in its meeting held on 11th April, 2020 and as approved by the Chief Minister, Gilgit-Baltistan vide summary bearing No. Fin/Reg-3(1)/2019 dated 8th May, 2020, Judicial Allowance is hereby sanctioned in favour of the Chairman and Members of GB Service Tribunal w.e.f. 11th April, 2020 as per following rates:

<i>S. No</i>	<i>Designation</i>	<i>Rate of Judicial Allowance per month</i>
<i>01</i>	<i>Chairman</i>	<i>300,000/-</i>
<i>02</i>	<i>Member</i>	<i>250,000/-</i>

2. The above allowance will be admissible subject to the following terms and conditions:

i. It will not be admissible during extraordinary leave/deputation

ii. It shall not be counted towards pension and gratuity.

3. The expenditure involved will be met out from within the sanctioned budget granted of Gilgit-Baltistan for the financial year 2019-20.

*MUHAMMAD SALEEM RAJPUT (PAS)
SECRETARY TO GOVERNMENT OF
GILGIT-BALTISTAN”*

44. In rebuttal of submissions of D.S. Law & Prosecution, Gilgit-Baltistan regarding retrospective applicability or otherwise of the judicial allowance to Chairman/Members of Service Tribunal, particularly with reference to the above notification, the learned counsel for the respondent argued that all employees of the judiciary were granted the special judicial allowance hence, in line with that analogy, Chairman/Members of the

Service Tribunal were also entitled to alike treatment. These submissions of the learned counsel for the respondent are not tenable. If the Chairman/Members of the GB Service Tribunal were aggrieved or dissatisfied with the notification, they should have received the said allowance by recording a protest and put a demand to the Provincial Government for giving effect to the said notification from the date of their appointments. However, the learned counsel for the respondent could not place on record any material to substantiate this fact. It would be pertinent to mention here that even the respondent did not agitate this grievance before the learned Chief Court while the only grievance before the learned Chief Court was related to implementation of the disputed Office Order. It is to be clarified that grant of judicial allowance to Chairman/Members of Service Tribunal being a policy decision of the provincial cabinet GB could not be open to rectification in exercise of constitutional powers by Courts unless the policy decision of provincial cabinet is found to be *ultra vires* to Constitution (in Gilgit-Baltistan, Order 2018) or found to be infringement of any of the fundamental rights of the respondent. In addition to above, a question was put to the learned counsel for the respondent that when the plea of grant of judicial allowance was not before the learned Chief Court, then how the learned Chief Court could adjudicate upon it and pass orders for granting it retrospectively, he conceded that when the judicial allowance was granted to the respondent by the provincial cabinet, writ petition regarding implementation of the disputed Office Order was already subjudice before the learned Chief Court which did not contain any relief regarding grant of judicial allowance from a back date in the prayer clause of the writ petition. The learned counsel argued that such relief which is not sought in the prayer clause can be granted as “any other relief”, which assertion of the learned counsel being an assumption is not tenable. The observations of the Hon’ble Supreme Court of Pakistan from the judgment quoted hereinabove, the Court can neither assume the role of policy maker nor the law maker.

45. So far as entitlement of the respondent for grant of perks and privileges of Chairman, GB Service Tribunal from the date when he took

that Chairman, GB Service Tribunal after demise of the then Chairman is concerned we, after perusal of the GB Service Act, 2010, do not hesitate to hold him entitled to grant of perks and privileges of Chairman. The Gilgit-Baltistan Service Tribunal Act, 2010 provided that in absence of Chairman, the senior Member shall act as Chairman. It is an admitted position that after demise of the then Chairman GB Service Tribunal, the respondent acted as Chairman till his retirement in October, 2020. Therefore, the respondent is held entitled for the perks and privileges of Chairman as provided in the Gilgit-Baltistan Service Tribunal Act from the date when took the Charge of Chairman till the date of his retirement as such.

46. Foregoing in view, the instant civil petition for leave to appeal is converted into an appeal and the same is allowed partially in the following terms. The impugned judgment dated 02.06.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 42/2020 to the extent of orders for making amendments in the Gilgit-Baltistan Service Tribunal Act, 2010 (amended in 2014) by inserting:

- (i) Consultation of Chief Judge, Chief Court in appointment of Chairman/Members of the Gilgit-Baltistan Service Tribunal; and
- (ii) Grant of judicial allowance with retrospective effect;

are set aside being unlawful.

However, we hold that:

- (i) The consultation of Chief Judge, Supreme Appellate Court, Gilgit-Baltistan is mandatory for appointment of Chairman/Members of the Gilgit-Baltistan Service Tribunal;
- (ii) The respondent is entitled for perks and privileges of Chairman from the date when he assumed the charge of Chairman Gilgit-Baltistan Service Tribunal after demise of the then Chairman till the date of his retirement.
- (iii) Chief Court cannot take suo motu notice and cannot go outside its powers provided under Article 86 of the Government of Gilgit-Baltistan Order, 2018.

Civil Misc. Application No. 61/2020 titled Mir Waheed Akhlaque & others Vs. Provincial Government & others is dismissed.

ANNOUNCED
13/08/2021

Chief Judge

I totally concur with the findings of his Lordship the Chief Judge with the following additional note; -

I have had the privilege of going through the judgment of his Lordship the Chief Judge and am in full agreement with the judgment. However, it would be in the fitness of things to explain my observation in another case as Chief Judge of Chief Court dated 09-05-2019 entitled “Judicial Officers of Gilgit-Baltistan vs Government of Gilgit-Baltistan” referred to in paragraph 14 of the impugned judgment of learned Chief Court dated 02-06-2020. As in that judgment all the judgments of August Supreme Court of Pakistan including “*Mehram Ali*” and “*Liaqat Hussain*” relied upon in the present judgment were neither cited nor considered hence that observation referred to above being *sub-silentio* and *per incuriam* to the extent of service tribunal has no weight in the eyes of law. I am therefore, in total agreement with the judgment authored by his Lordship the Chief Judge in this case and do not stick to the ratio being *per incuriam* laid down in the judgment of Chief Court of which I was the part.

Justice Wazir Shakeel Judge

Whether fit for reporting (Yes / No)