

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN, GILGIT

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge

Mr. Justice Wazir Shakeel Ahmed, Judge

CPLA U/O No.152/2019

(Against the judgment dated 17.06.2019 passed by the learned Gilgit-Baltistan Chief Court, Gilgit in Writ Petition No. 65/2019)

1. Govt. of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan
2. Secretary Education Gilgit-Baltistan, Gilgit
3. Director Colleges, Gilgit-Baltistan, Department of Education, Gilgit
4. Deputy Director Department of Education Gilgit
5. Principal Fatima Jinnah Degree College Gilgit.....

Petitioners

Versus

Miss Nafeesa Kiran D/o Muhammad Ilyas
R/o Muhallah Nagara
Tehsil & District Gilgit.....

Respondent

PRESENT:

For the Petitioners: The Advocate General Gilgit-Baltistan

Date of Hearing: **09.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:-Through this judgment, we propose to decide the above Civil Petition for Leave to Appeal No. 152/2019 directed against the judgment dated 17.06.2019 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 65/2019, whereby the writ petition filed by the present respondent was accepted and the

petitioners were directed to issue regularization order of the respondent as a Grade-1 employee w.e.f 28.03.2019 alongwith all back benefits.

2. Necessary facts giving rise to the *lis* in hand are that the respondent in above CPLA was initially appointed as Lab Attendant on a fixed pay Rs. 3000/- per month in Degree College for Women Gilgit (now Fatima Jinnah Women Degree College Gilgit) vide Office Order No.DE-13(74)/21/2012 dated 3rd September 2012. The respondent claimed that after appointment, she discharged her duties in the said college without any break. When the petitioner No. 5 advertised some posts of Grade-1 employees, the respondent approached the petitioners for regularization of her services on the ground of her being in contingent services in the department for many years in the same manner as her counterparts were treated for regularization against vacant posts of BPS-1 without any advertisement. The petitioners, instead of considering the request of the respondent, advertised the posts of BPS-1 on 02.03.2019 and invited applications from fresh candidates. When her request was not entertained, she filed a writ petition before the learned Gilgit-Baltistan Chief Court, for issuing directives to the departmental authorities for regularization of her services, which was accepted. Being aggrieved and dissatisfied with the directives so passed by the learned Chief Court, the petitioners have now assailed the judgment before this Court by way of the above Civil Petition for Leave to Appeal.

3. The learned Advocate General, Gilgit-Baltistan argued that the learned Gilgit-Baltistan Chief Court failed to apply its judicious mind to the legal position that as per law,

every appointment to new posts is required to be made through proper procedure/ method prescribed under the law/ rules i.e. advertising the posts, conducting test/ interview and convening a Departmental Selection Committee meeting (DSC) followed by appointments orders in favour of the successful candidates. He next argued that the respondent could not claim regularization on the ground that the posts of BPS-1s employees are required to be filled up by the candidates from within concerned District i.e. Gilgit alone and was not meant for other Districts. He maintained that after getting married to a person from District Hunza, she was no more a resident of Gilgit, however, with a view to secure appointment against the post of BPS-1 from District Gilgit, she fraudulently submitted her ID card and Domicile made with the names of her parents who are residents of District Gilgit. The learned Advocate General went on to argue that the contingent employment does not give a legal right to any contingent employee to claim regularization against the vacant posts.

4. We have considered the arguments advanced by the learned Advocate General Gilgit-Baltistan. We have also gone through the record as well as the impugned judgment passed by the learned Gilgit-Baltistan Chief Court minutely. We are of the considered view that there are no hard and fast rules governing appointments to the Class-IV posts. We are fortified by a government policy/ mechanism based on a very lenient consideration which governed conditions for recruitment to the Class-IV posts. For sake of brevity, the said policy is reproduced herein below:

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

No. SO(S)-I-1(49)/2018 16th
January, 2018.

OFFICE MEMORANDUM

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

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

(i)

.....

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

5. The contentions of the learned Advocate General, Gilgit-Baltistan regarding the fact that the respondent was not a resident of Gilgit to claim appointment against the post meant only for the residents of Gilgit, it is clarified that she was appointed to the said post on contingent basis prior to her marriage with a resident of Hunza, even otherwise, after her marriage with the person concerned, it is her choice to retain the domicile issued from District Gilgit. Reliance in this

regard can be placed on a case reported titled Mehmood ul Hassan Khan Vs. Dow University of Health Sciences PLD 2008 Karachi 49 wherein it has been held that

“(iii) Rules 23 of Pakistan Citizenship Rules only contemplates cancellation of domicile certificate if it has been obtained through misrepresentation and a person is entitled to retain his certificate of domicile issued by one District Magistrate even if he chooses to permanently settle down in another District”.

In this view of the legal position, the contention of the learned Advocate General is not tenable. With regard to contentions of the learned Advocate General, GB that no contingent paid staff can claim regularization against a permanent post, it can be said that this contention is also not sustainable on the ground government of Gilgit-Baltistan has been regularizing contingent paid staff from time to time, thus it would be a case of injustice and unfair play to remove respondent from her service. With a view to fortify our observations, we would like to borrow support from a judgment reported as titled “Muhammad Akhtar Shirani & Others versus Punjab Text Book Board and others” reported as 2004 SCMR 1077. The relevant para is reproduced below for ready reference:

“8. It may be observed that for such reason beneficiary cannot be blamed alone because primarily the authority who had actually misexercised his powers, for the reasons known to it, it is bound to be held responsible for the same, instead of penalizing the petty employees like Chowkidar, Naib Qasid, Junior Clerks etc. who have to earn livelihood to support their families and if after having served for a long period they are removed from service discriminatory, such action would not

promote the cause of action and it would give rise to a number of problems to them.

6. In sequel to above factual and legal position, we are of the considered view that the impugned judgment passed by the learned Gilgit-Baltistan Chief Court is based on sound reasons, therefore, the same does not warrant for interference from this Court. Consequently, leave in the above Civil Petition for Leave to Appeal is refused. The judgment dated 17.06.2019 so passed by the learned Gilgit-Baltistan Chief Court, Gilgit in Writ Petition No. 65/2019 is maintained. The petitioners are directed to comply with the said judgment and submit compliance report to the Registrar of this Court. The above were the reasons for our short order dated 09.09.2020 which is reproduced as under:

“The learned Advocate General, GB has been heard at some length. For the reasons to be recorded later on, the instant CPLA under objection No. 152/2019 alongwith the Civil Misc. Application No. 177/2019 is dismissed”.

Chief Judge

Judge

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