

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

BEFORE:-

*Mr. Justice Sardar Muhammad Shamim Khan, Chief Judge.
(In Chamber)*

CPLA No. 51 of 2024

Ijlal Hussain Mir & others

Petitioners

Versus

Rehmat Shah & others

Respondents

Present:-

1. Mr. Aurangzeb Khan Advocate for the petitioners
2. Mr. Amjad Hussain Sr. Advocate for the respondents.

Date of hearing: 27.06.2024.

Date of announcement 10.07.2024

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge :Through instant Civil Petition filed under Article 75 of the Gilgit-Baltistan Order, 2018, the petitioners seek Leave to Appeal against the impugned judgment dated 20.12.2023 passed by learned Division Bench of G.B Subordinate Judicial Service Tribunal, whereby, Departmental Appeals filed by the petitioners were dismissed and the impugned seniority list issued by the Establishment of G.B Chief Court was maintained.

2. The relevant facts of the case are that petitioners and the respondents are performing their duties as Civil Judges-cum-Judicial Magistrates in G.B District Judiciary. Vide case No.F-9/2/11-CJ-PPE dated 11.12.2011, five posts of Civil Judges-cum-Judicial Magistrates (BPS-18) were advertised by Federal Public Service Commission (FPSC) Islamabad for G.B. Judiciary. The petitioners applied for the said posts and participated in the written examination. Thereafter, during scrutiny of credentials of petitioners, FPSC raised objections pertaining to their (petitioners) upper age limit fixed by Establishment of Chief Court. Feeling aggrieved by act of the FPSC, the petitioners filed Writ Petition No. 03 of 2012

before the learned Chief Court seeking relaxation in upper age limit of 32 years which was allowed by learned Chief Court vide Order dated 10.09.2012. Thereafter, some advocates filed an application under section 12(2) CPC and vide Order dated 19.04.2013, learned Chief Court set-aside the aforesaid earlier Order dated 10.09.2012. Being aggrieved by the said order, the petitioners and some advocates filed CPLA No. 08 of 2013 and this Court vide Order dated 06.06.2014 granted injunctive order. Thereafter this Court vide Order dated 14.09.2015 finally disposed of the aforesaid CPLA with the direction to complete the recruitment process expeditiously. During pendency of CPLA No. 08 of 2013 before this Court, FPSC advertized seven other posts of Civil Judges-cum-Judicial Magistrates vide advertisement dated 02.03.2015. In response to the said advertisement, the respondents appeared in written examination and after completion of all codal formalities, FPSC recommended the respondents for their appointments against the posts of Civil Judges-cum-Judicial Magistrates (BPS-18) vide notification dated 11.12.2015. Subsequently, in the year 2017, FPSC announced the results of earlier advertisement dated 11.12.2011 and recommended the petitioners for their appointments on the five posts of Civil Judges-cum-Judicial Magistrates (BPS-18).

3. After appointments of the petitioners and respondents as Civil Judges/Judicial Magistrates in G.B District Judiciary on the aforesaid dates, the Establishment of Chief Court issued a Seniority List wherein the petitioners were shown as junior to the respondents. Feeling aggrieved by the said Seniority List, the petitioners filed separate departmental appeals against the respondents contending therein that they may be declared senior to the respondents in the impugned seniority list. The learned Division Bench of G.B Subordinate Judicial Service Tribunal vide impugned consolidated judgment dated 20.12.2023 dismissed the departmental appeals of the petitioners and maintained the impugned Seniority List issued by Establishment of G.B Chief Court. Being aggrieved by the said judgment, the petitioners approached this Court by filing instant CPLA.

4. After hearing some arguments of learned counsel for the petitioners, on 22.03.2024, pre-admission notice was issued to the respondents.

5. Learned counsel for the petitioners contended that in response to advertisement dated 11.12.2011 the petitioners applied for the posts of Civil Judges-cum-Judicial Magistrates and appeared in the written examination; that after appearing in written examination, the recruitment process could not be finalized on account of pendency of CPLA before this Court; that vide order dated 14.09.2015 this Court disposed of CPLA with the direction to learned Chief Court to complete the recruitment process of the posts of civil judges-cum-Judicial Magistrate expeditiously and thereafter FPSC recommended the petitioners for their appointments against the posts of Civil Judges/Judicial Magistrates in the year 2017. It has further been contended by learned counsel for the petitioners that during the pendency of aforesaid CPLA, FPSC advertized seven more posts of Civil Judges/Judicial Magistrates for District Judiciary G.B in the year 2015 and after completion of requisite recruitment process, FPSC recommended the respondents for their appointment against the posts of Civil Judges/Judicial Magistrates on 11.12.2015. It has further been contended by the learned counsel for the petitioners that appointment of the petitioners was made in the light of earlier advertisement dated 11.12.2011 whereas appointment of the respondents was made on the basis of a subsequent advertisement published in the year 2015, therefore, the petitioners are senior to the respondents but the Establishment of Chief Court did not consider this aspect of the matter and issued impugned seniority list by declaring the petitioners junior to the respondents which is not sustainable in the eyes of law. It has further been contended by the learned counsel for the petitioners that Rule 9(a) of G.B. Judicial Service Rules 2010 is silent qua the seniority of Judicial Officers on initial appointment whereas Rule 2(1) of the Civil Servants (Seniority) Rules, 1993 being Federal Law clearly provides that persons initially appointed on the recommendations of the selection authority through an earlier open advertisement shall rank senior to those appointed through a subsequent open advertisement; that there is a conflict between the laws of G.B. and Federal Laws; that as per spirit of Article 118 of G.B Order 2018 when a conflict arises between Federal Laws and Provincial Laws, the Federal Law being superior law shall prevail; that as per spirit of Rule 2(i) of Civil Servants Seniority Rules 1993 the petitioners were appointed through an earlier open advertisement therefore, they are senior from the respondents who were appointed through subsequent advertisement but learned Division Bench of G.B Subordinate Judicial

Service Tribunal overlooked this legal aspect of the case and passed the impugned judgment without taking into consideration the law and facts on record. Lastly while placing reliance on the judgment passed by learned Federal Service Tribunal reported as Habibullah etc vs Government of Pakistan, Department of Archaeology and Museum, Culture, Sports and Youth Affairs Division, Islamabad and 7-others (1995 PLC (C.S.) 950) as well as judgment passed by Hon'ble Supreme Court of Pakistan reported as Badshah Zamin and others vs Siraj Khan and others (2022 SCMR 1471) contended that officers recruited through an earlier advertisement, would rank senior to those recruited through a subsequent advertisement. Thus, it is submitted that by accepting instant CPLA, impugned judgment dated 20.12.2023 passed by learned Division Bench of G.B Subordinate Judicial Service Tribunal is liable to be set aside and direction may be issued to Registrar Chief Court to re-frame/revise the Seniority List by declaring the petitioners senior to the respondents.

6. In response to pre-admission notice, learned counsel for the respondents entered appearance before this Court at pre-admission stage and vehemently controverted the arguments advanced by learned counsel for the petitioners by contending that section 9(a) of G.B Judicial Service Rules, 2010 deals with the seniority of Judicial Officers on initial appointment which clearly provides that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection; that the terms and conditions of Service of the petitioners and respondents are governed by G.B Judicial Service Rules, 2010, therefore, aforesaid Rule 9(a) of G.B Judicial Service Rules 2010 is duly applicable to the members of the G.B Judicial Service ; that Rule 2(1) of Civil Servants Seniority Rules, 1993 also determines the inter se seniority of officers from the date of their initial appointment ; that there is no conflict between the aforesaid two Rules; that the respondents were selected in the year 2015 whereas the petitioners were selected in the year 2017, therefore the respondents are senior to the petitioners and Establishment of Chief Court has rightly maintained the seniority list of the parties ; It has further been contended by learned counsel for the respondents that respondents are not responsible for causing delay in completion of recruitment process of the petitioners, rather the delay occurred due to the litigation initiated by the petitioners themselves before the Court of law;

that for promotion from the post of civil judges to the post of Senior civil judges and similarly from the post of Additional District & Sessions Judges to the post of District & Sessions Judges, length of service is an essential prerequisite, thus, the respondents being appointees of earlier selection; fulfill the said requisite length of service for the promotion whereas the petitioners being appointees of subsequent selection; do not fulfill the requisite length of service. Learned counsel while relying on the cases reported as Muhammad Aslam Aawan Advocate vs Federation of Pakistan and others (2014 SCMR 1289), Chairman FBR through Member Administration vs Muhammad Asfandyar Janjua and others (2019 SCMR 349) and Muhammad Arshad Saeed vs Pakistan and others (1986 SCMR 1953) contended that inter se seniority of officers shall be reckoned from the order and date of their appointment. Thus, it is submitted that the instant CPLA is liable to be dismissed.

7. Arguments heard. Record perused.

8. Perusal of record reveals that Federal Public Service Commission advertised five posts of Civil Judges-com-Judicial Magistrates for Gilgit Baltistan Judiciary vide case No.F.09/02/11 CJ-PPE dated 11.12.2011. In response to the said advertisement, the petitioners applied for the said posts but the FPSC raised objections on the applications of the petitioners and other candidates who had exceeded the required age limit. The petitioners alongwith other candidates filed writ petition No.03 of 2012 seeking relaxation in their upper age limit which was allowed by learned Chief Court vide order dated 10.09.2012 but later on said order was set aside by learned Chief Court vide order dated 19.04.2013 on the basis of application under section 12(2) CPC filed by some advocates. Being aggrieved by the said order, the petitioners and some advocates approached this Court by filing CPLA No.08 of 2013 and due to pendency of said CPLA the whole process of recruitment on the advertised posts was kept in abeyance. The aforesaid CPLA was disposed of by this Court vide order dated 14.09.2015 by resolving the issue of upper age limit and directed the learned Chief Court to complete the process of examination and test/interview expeditiously. Thereafter on the recommendations of the FPSC the Establishment of Chief Court appointed the petitioners against the five posts of Civil Judges-cum- Judicial Magistrates vide Notification dated 14.02.2017.

9. During the pendency of aforesaid CPLA before this Court, the FPSC advertised seven more posts of civil judges-cum-Judicial Magistrates vide case No.F.9/15/2014-P&PE(GB) dated 08.03.2015 and consequently the respondents were appointed as Civil Judges-cum- Judicial Magistrates (BPS-18) in G.B District Judiciary vide Notification No.11.12.2015.

10. The main thrust of arguments of learned counsel for the petitioners was that the petitioners had applied for the posts of civil Judges-cum-Judicial Magistrates in response to an advertisement dated 11.12.2011 whereas the recruitment process was finalized in the year 2017 and there is no fault on the part of the petitioners in causing delay in the completion of recruitment process rather the appointments of the petitioners were delayed by FPSC on account of pendency of case in the Court therefore, the petitioners cannot be held liable for the act of the Court. The petitioners were appointed against the five posts of Civil Judges-cum-Judicial Magistrates through an earlier open advertisement dated 11.12.2011 whereas the respondents were appointed through a subsequent advertisement dated 08.03.2015 and seniority of the petitioners is protected under Rule 2(1) of the Civil Servants (Seniority) Rules 1993 and the General principle of Seniority Rules (ESTA-Code) which provide that persons initially appointed on the recommendation of the selection authority through an earlier open advertisement shall rank senior to those appointed through a subsequent open advertisement, therefore, the petitioners are entitled to be treated as senior and their names be placed as senior to the respondents in the Seniority List and in this regard the seniority list may be re-framed/revised by accepting the instant CPLA.

11. Perusal of record further reveals that the petitioners were appointed as Civil Judges-cum- Judicial Magistrates in the year 2017 whereas the respondents were appointed in the year 2015. The petitioners and respondents are Judicial Officers and they are the members of the G.B Judicial Service . The terms and conditions of their service are governed by the Gilgit Baltistan Judicial Service Rules 2010. Rule 9 (a) of the Judicial Service Rules 2010 deals with the seniority of Judicial Officers which is reproduced as under:-

9. Seniority.----- The inter se seniority of the members of the Service in the various pay scale thereof shall be determined by the Chief Court subject to the following conditions:-

(a) In the case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Selection Authority: Provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection.

The aforesaid Rule clearly indicates that officers appointed earlier shall rank senior to the officers selected/appointed in a later selection as per merit assigned by the Selection Authority. According to the admitted facts the respondents were inducted into service in the year 2015 whereas the petitioners were subsequently appointed against the posts of Civil Judges-cum- Judicial Magistrates in the year 2017, therefore, inter se seniority of Judicial Officers shall be determined from the date of their regular appointment . It is settled law that seniority inter se of persons shall be reckoned from the order and date of their appointment. Admittedly the respondents were inducted into service in the year 2015 and at that time recruitment process of the petitioners was not finalized rather they were appointed in the year 2017 after elapse of about two years therefore, petitioners are not entitled to claim seniority from a date when they were not inducted into the service .

12. During the course of arguments the learned counsel for the petitioners referred to Rule 2(1) of Civil Servants (Seniority) Rules 1993 framed under the Act of 1973 which clearly provides that persons initially appointed on the recommendations of the selection authority through an earlier open advertisement shall rank senior to those appointed through a subsequent open advertisement and that this Civil Servants (Seniority) Rules 1993 being Federal law clearly prescribes the inter se seniority of persons and has overriding effect over G.B Judicial Service Rules 2010 being provincial law and Rule 9(a) of G.B Service Rules 2010 is silent qua the inter se seniority of Judicial Officers. As per spirit of Article 118 of the G.B Order, 2018 when a conflict arises between Federal Laws and Provincial Laws, the Federal Laws being superior law shall prevail. If aforesaid law referred to by learned counsel for the petitioners is taken into consideration, the respondents would be considered senior to the petitioners because the petitioners were not appointed against the posts of Civil Judge-cum- Judicial Magistrate till the year 2017 and that at that time the recruitment process of petitioners was under process which was completed in the year 2017, therefore,

the arguments of learned counsel for the petitioners that petitioners were appointed in an earlier advertisement than the respondents is totally misconceived. The petitioners were well aware about the publication of subsequent advertisement on the basis of which the respondents were appointed in the year 2015 but the petitioners did not challenge the said subsequent advertisement. Even after induction into service in the year 2017, the petitioners kept mum and did not challenge the impugned seniority list of civil judges-cum-judicial magistrates qua the respondents at any relevant forum immediately rather they filed the Departmental Appeals against the impugned seniority list before the Competent Authority in the year 2019-20 after lapse of about 2/3-years which speaks volumes. The seniority list of the respondents is being maintained by the Department since 2015 (from the date of their entry into service) and at that time the petitioners were no more in field. Rule 2(1) of Civil Servants (Seniority) Rules 1993 referred to by petitioners in support of their contention clearly prescribes the reckoning of seniority, in case of initial appointment, from the date of joining the post. The provision of subsection (3) of section 8 of the Act 1973 if read in conjunction with rule 2(3) of the Seniority Rules, 1993 leaves no doubt in my mind that the seniority of a civil servant on initial appointment to a service, cadre or post has to be reckoned from the date of his joining the post after being recommended by the Selection Authority and not from a date prior thereto. It is settled law that the seniority demands the date of appointment and not the date of recruitment process or written test or date of publication of advertisement for recruitment of posts. No rule/law permits the authority/Government, in cases of initial appointment, to fix the seniority of civil servant from a date prior to his induction into service.

13. Admittedly the petitioners and respondents are Judicial Officers and their service is governed by statutory rules i.e G.B Judicial Service Rules 2010. Rule 9 (a) of G.B Judicial Service Rules, 2010 deals with the seniority of Judicial Officers which clearly provides that officers appointed earlier shall rank senior in seniority list and subsequent appointees shall follow the first appointees as per merit assigned by the Selection Authority. In these circumstances the plea of learned counsel of the petitioners that aforesaid Rule 9 (a) of Judicial Service Rules 2010 is silent qua the seniority of Judicial Officers on initial appointment does not carry any weight. During the course of arguments learned counsel for the

petitioners while referring the judgment of Federal Service Tribunal reported as Habibullah etc vs Government of Pakistan, Department of Archaeology and Museum, Culture, Sports and Youth Affairs Division, Islamabad and 7-others (1995 PLC(C.S 950) contended that officers recruited through an earlier advertisement, would rank senior to those recruited through a subsequent advertisement. This judgment does not lend support to the version of the petitioners because in the said judgment learned Federal Service Tribunal has determined the seniority of the respondents over the appellants on the advice of the FPSC whereas in the instant case when the respondents were appointed on the recommendations of FPSC neither the petitioners were inducted into the service nor their recruitment process was finalized by the FPSC. Similarly learned counsel for the petitioners also placed reliance on the judgment of August Supreme Court of Pakistan reported as Badshah Zamin and others vs Siraj Khan and others(2022 SCMR 1471). I have gone through the aforesaid judgment which is not applicable to the facts and circumstances of instant case rather said judgment deals with the seniority of the candidates whose recommendations were already made by the Commission. Keeping in view the facts and circumstances of the case, this Court has reason to believe that the learned Division Bench of G.B Subordinate Judicial Service Tribunal while deciding the Departmental Appeals of the petitioners has rationally decided the matter in accordance with law after taking into consideration all the material available on record. The findings of learned Division Bench of G.B Subordinate Judicial Service Tribunal in this regard are based on sound footings and do not call for interference by this Court.

14. No illegality, infirmity or jurisdictional errors as a result of misreading/non-reading of available record has been pointed out by learned counsel for the petitioners warranting interference of this Court in the exercise of its jurisdiction under article 75 of the Gilgit-Baltistan Order, 2018 . In these circumstances, I am not inclined to grant leave to appeal, which is declined and consequently this petition stands dismissed in *limine*.

Justice Sardar Muḥammad Shamim Khan
Chief Judge