

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

BEFORE:-

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

CPLA No.171 of 2023

Provincial Govt. Through Chief Secretary etc (Petitioners)

Versus

Mst. Shazia Batool (Respondents)

Present:-

Mr. Aman Ali Shah , Deputy Advocate-General, for the petitioners

Date of hearing: 10.08.2023

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge :Through instant Civil Petition filed under Article 75 of the Gilgit-Baltistan Order, 2018, the petitioners/Department seek Leave to Appeal against the impugned judgment dated 29.03.2023 passed by the learned Chief Court, whereby, the writ petition filed by the respondent was accepted and a direction was issued to petitioners/Department to conduct skill test for the post of Lady Health Worker, if required, in the light of Office Memorandum dated 16.01.2018 and appoint the respondent on the vacant post of Lady Health Worker (BPS-5) at Town Area Meherban Pura Gilgit, keeping in view her lengthy services in the Health Department forthwith.

2. Brief facts necessary for disposal of instant Civil Petition are that the respondent namely Shaiza Batool was initially appointed as Lady Health Worker by the petitioners/Department vide Office order dated 15.09.2010. Later on the

Department/petitioners advertised various posts of Lady Health Workers (BPS-5) including a post of Lady Health Worker (BPS-5) for Town Area Meherban Pura where the respondent is performing her duty since 2010. On 16.01.2018 the Government of Gilgit Baltistan issued a Office memorandum wherein it was concluded by the Department/petitioners that no screening test for the appointment on the posts from BPS-01 to BPS-05 would be conducted, rather all the administrative Departments shall give preference to the contingent employees for appointments against the vacant positions. Vide Office corrigendum, the petitioners/Department announced the schedule for conducting screening test/interview for the posts from BPS-1 to BPS-5 by violating the policy introduced in the Office Memorandum dated 16.01.2018. Being aggrieved by the act of the petitioners/Department, the respondent approached the learned Chief Court through writ petition which was accepted by said Court vide judgment dated 29.03.2023 and a direction was issued to the petitioners/Department to conduct skill test for the post of Lady Health Worker, if required, in the light of Office Memorandum dated 16.01.2018 and appoint the respondent on the vacant post of Lady Health Worker (BPS-5) at Town Area Meherban Pura Gilgit keeping in view her lengthy services in the Health Department forthwith. The validity and authenticity of abovementioned judgment dated 29.03.2023 passed by Hon'ble Chief Court G.B has been called in question through instant civil petition.

3. Learned Law Officer representing the petitioners contended that, neither the respondent filed the departmental appeal before the competent authority nor she approached the learned Service Tribunal for redressal of her grievance, therefore, the writ petition of the respondent was not maintainable before the learned Chief Court; that vide Office Corrigendum, the petitioners/Department announced the schedule for conducting screening test/interview for the posts from BPS-1 to BPS-5 for the purpose of selecting the most eligible candidates by observing the merit policy; that the learned Chief Court erred in law while passing the impugned judgment and did not consider the facts and law on record and as such the impugned judgment is the result of misapplication and misinterpretation of law, hence the same is not sustainable in the eyes of law. Thus, it is submitted that by accepting instant civil petition impugned judgment is liable to be set aside.

4. Arguments heard. Record perused.
5. Initial appointment of the respondent namely Mst. Shazia Batool by petitioners/Department as "Lady Health Worker" on contract basis, has not been denied. The main stance of the petitioners/Department is that vide Office Corrigenum, the petitioners/Department announced the schedule for conducting screening test/interview for the posts from BPS-1 to BPS-5 for the purpose of selecting the most eligible candidates by observing the merit policy. It is evident from the record that on 16.01.2018 the Government of Gilgit Baltistan issued Office Memorandum wherein a mechanism to ensure the merit based recruitments in the various departments of the Government of Gilgit-Baltistan, has been settled. Clause 1 & 2 of the said Office Memorandum dated 16.01.2018 is reproduced as under for the sake of ready reference:-

(1). All the administrative departments shall give preference to the contingent employees for appointments against the vacant positions, accordance with the establishment Division, Islamabad OM No.F.53/1/2008/SP dated 11th May,2017 titled "amendment in the Recruitment Policy/Mechanism to ensure merit based recruitment in the Ministries/Divisions/Subordinate Offices/Autonomous/Semi-Autonomous Bodies/Corporation/Companies/Authorities" and decision of the cabinet, held on its meeting on 11th December,2017.

2. For appointment to BS-01 to BS-05 posts, there shall 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/Corporation/Companies /Authorities".

From the aforesaid Office Memorandum dated 16.01.2018, it is clear that all the Administrative Departments of the Government of G.B shall give preference to the Contingent employees for their appointments against the vacant posts and no screening test for appointment on posts from BPS-01 to BPS-05 would be conducted. Admittedly the respondent is a contract employee and she is performing her duties to the satisfaction of the competent authority and there was no complaint against her. In the given circumstances the case of the respondent falls within the ambit of the Office Memorandum dated 16.01.2018 and the

petitioners/Department are legally bound to implement the policy introduced in the Office Memorandum dated 16.01.2018. In the light of said policy introduced in the said office Memorandum, the Department/petitioners are legally bound to conduct only skill test of the respondent, if required for the said post. Prima facie, the subsequent Office corrigendum, whereby the petitioners/Department announced the schedule for conducting screening test/interview for the posts from BPS-1 to BPS-5 is in violation of Office Memorandum dated 16.01.2018 wherein a mechanism to ensure merit based recruitments in various Departments of G.B has been introduced. Keeping in view the facts and circumstances of the case, I am of the view that the act of the petitioners/Department is in violation of the principle of natural justice and against the policy of Office Memorandum whereby the services of low paid, poor employees belonging to downtrodden areas were not regularized without disclosing any cogent reason. Keeping in view the facts and circumstances of the case, this Court has reason to believe that the learned Chief Court while deciding the fate of the writ petition has rightly issued direction to petitioners/Department to conduct skill test of the respondent for the post of Lady Health Worker if required, in the light of Office Memorandum dated 16.01.2018 and appoint the respondent on the vacant post of Lady Health Worker (BPS-05) keeping in view her lengthy services in the Health Department. The findings of learned Chief Court in this regard are based on sound footings and do not call for interference by this Court.

6. 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.

Justice Sardar Muhammad Shamim Khan
Chief Judge