

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT

BEFORE:-

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

Reference No. 01 of 2023

**REFERENCE BY GOVERNOR GILGIT-BALTISTAN UNDER ARTICLE
92 OF THE GOVT. OF G.B, ORDER, 2018**

Present:-

1. Mr. Muhammad Nazir, Advocate-General, G.B.

Date of hearing: **03.05.2024**

JUDGMENT

Sardar Muhammad Shamim Khan, Chief Judge : The Governor G.B has transmitted the instant Reference to this Court through Secretary Law & Prosecution under Article 92 of Government of Gilgit-Baltistan Order, 2018, whereby Opinion of this Court has been sought pertaining to the following questions of law:-

- (i) Whether the Government of Gilgit-Baltistan, in view of the existing laws of the Gilgit-Baltistan and the multiple instructions issued by the Federal Government, including the summary approved by the Prime Minister of Islamic Republic of Pakistan, is empowered to create and upgrade any post without prior concurrence of the Finance Division or not?
- (ii) If the Hon'ble Supreme Appellate Court opines that the Government of G.B is unable to create/upgrade the positions then what will be the legal standing of the judgments passed by Hon'ble Chief Court and subordinate courts on the matters related to creation/upgradation of posts without concurrence of Federal Finance Division for which a clear direction of the Honorable Court is also required to enable the G.B Government to submit the same before the G.B Chief Court.

2. Brief facts forming background for filing of instant Reference are that a 33rd G.B Cabinet meeting was held on 13.06.2023 wherein after due deliberation and

discussion on agenda No. 18 pertaining to Creation/Up-gradation of posts in compliance with Court Orders/judgments, the Finance Department G.B was authorized to approach Governor G.B under Article-92 of the Govt. of Gilgit-Baltistan Order, 2018 seeking opinion of this Court in this regard. The Secretary Law & Prosecution, after approval from Governor, G.B transmitted the instant Reference before this Court seeking opinion of this Court on the questions of law as mentioned in preceding paras.

3. On 10.10.2023 office was directed to fix instant reference for hearing before the Court. On 06.11.2023 notice was issued to learned Advocate-General G.B to assist this Court on the questions of law raised in para No.01 of instant Reference. On 12. 03.2024, learned Law Officer representing the Government of G.B sought time in order to file written arguments in the instant reference and the case was adjourned for 27.03.2024. On said date the learned Law Officer filed written arguments in the instant reference.

4. In the said written arguments, learned Law Officer, has contended that learned Chief Court has allowed number of writ petitions directing the concerned Departments for creation/ up-gradation of posts of various cadres in different Departments; that in implementation proceedings of such cases, learned G.B Chief Court has issued contempt of Court notices to various Secretaries especially Secretary Finance G.B despite of the fact that such cases involve long term financial implications and that the G.B Govt. is totally dependent upon Grant-in-Aid of Federal Government. It was further submitted by learned Law Officer that Rule 3(3)-Schedule-II at Serial No. 4(7) of G.B Rules of Business, 2007 and Rule 11(a)-Annex-I(entry No. 1) of Gilgit-Baltistan System of Financial Control and Budgeting Rules, 2009, empowers the Finance Department G.B and S &GAD to create posts or to up-grade and re-designate the posts with the concurrence of Finance Department G.B. Learned Law Officer further contended that in the light of summary approved by Prime Minister of Pakistan vide letter dated 23.01.2013, Finance Division Islamabad has conveyed the G.B Government that no post shall be created and upgraded by Finance Department G.B without prior concurrence of Federal Finance Division Islamabad. It has further been contended by learned Law Officer that in the light of aforesaid summary approved by Prime Minister of Pakistan, Federal Finance Division Islamabad has issued several letters/instructions

from time to time whereby G.B Government has been restrained from creating and up-grading the posts. It was further submitted by Learned Law Officer that as per spirit of Article 118 of the G.B Order, 2018 when a conflict arises between the Laws of Pakistan and the Laws framed under G.B Order 2018, the Laws of Pakistan being superior law shall prevail; It has further been contended by learned Law Officer that the expression "Laws" have further been elaborated under Article 99(1) (a) of G.B Order, 2018 which includes Ordinance, Orders, Rules, Bye Laws, Regulations and any notification and other instrument having force of law. That in the given circumstances the Secretary Law and Prosecution after getting necessary endorsement of Governor G.B transmitted the instant Reference to this Court for consideration and seeking opinion as per Article 92 of G.B Order ,2018.

5. Arguments heard. Record perused.

6. It has been noticed that under Rule 3(3)-schedule-II at serial No. 4(7) of G.B Rules of Business, 2007 and Rule 11(a)-Annex-I(entry No. 1) of Gilgit-Baltistan System of Financial Control and Budgeting Rules, 2009, the G.B Government was empowered to create new posts after approval by Finance Department G.B. Perusal of record reveals that a meeting pertaining to Package/distribution of funds for G.B was held on 13.12.2012 under the Chairmanship of Federal Finance Secretary Islamabad wherein Sr. Minister G.B, Chief Secretary GB and Finance Secretary G.B duly participated. In the said meeting it was unanimously agreed that Government of G.B shall not create/upgrade any post without prior concurrence of Federal Finance Division Islamabad. The decision taken in the aforesaid meeting is reproduced as under for the sake of ready reference.

"Since the Federal Government has to finance the budget of Gilgit-Baltistan. Government of Gilgit-Baltistan shall not create any vacancy without prior concurrence of the Finance Division. Otherwise, Finance Division will not provide any funding for the vacancy created by Finance Department, Gilgit-Baltistan at its own. Finance Department will convey department-wise existing sanctioned posts to Finance Division by 31.12.2012".

It is evident from the record that Federal Government through various letters dated 24.04.2015 , 19.09.2019, 22.06.2020 and 17.12.2021 (Annex-E/1 to E/5) issued instructions from time to time restraining G.B Government from creation and

upgradation of any post without concurrence of Federal Finance Division Islamabad. It has further been noticed that the said instructions/letters are being complied with/ implemented by G.B government by transmitting the cases of creation and upgradation of posts to Federal Finance Division Islamabad for their requisite concurrence. In addition to above, it has also been noticed that Article 118 of the Government of Gilgit-Baltistan Order, 2018 provides that in case of conflict between the Laws of Pakistan and the Laws framed under G.B Order, 2018, Laws of Pakistan shall prevail. Furthermore the Word "Laws" is defined in Article, 99 (1)(a) of aforesaid Order which is reproduced as under:-

99(1)(a) the expression "Laws" includes ordinance, orders, rules, bye-laws, regulations and any notification and other legal instruments having the force of law"

From the above said provisions of law prima facie it is clear that the instructions/orders/ policy/Notification issued by Federal Govt. from time to time qua restraining the G.B Government from creation and up-gradation of any post without prior concurrence from Federal Finance Division comes within the ambit of Article 99(1)(a) of G.B Order, 2018. In view of the matter, the opinion sought through instant Reference under Article 92 of the Government of G.B Order 2018 with regard to the questions of law mentioned in para No.01 of instant Reference, this Court is of the considered opinion that in the light of the summary approved by the Prime Minister of Pakistan (Annex E-1) and letters/ instructions/Policy issued by Federal Govt. and the Laws laid down by Federal Government, the Govt. of G.B while creating and up-grading the posts in different Departments is under obligation to get prior concurrence of the requisite posts from Federal Finance Division Islamabad and G.B government/ G.B Finance Division is not competent and empowered to create/upgrade any post at its own level because G.B Government/Finance Division G.B is legally bound to follow the laws made/issued by the Federal Government.

7. Even otherwise, keeping in view the decision taken in the meeting referred above, it was clarified that G.B government shall not create or up-grade any post without prior concurrence of the Federal Finance Division Islamabad, otherwise the Finance Division Islamabad shall not provide any funding for the requisite

created/upgraded posts. Thus, creation and up-gradation of any post by the G.B Government/Finance Division G.B would be totally useless for the purpose of implementation of the judgment passed by any court in this regard.

8. So-far-as the query raised in question No.(ii) of instant reference with regard to the legal position of the judgments passed by the Hon'ble Chief Court and subordinate Courts on the matters relating to creation/upgradation of posts is concerned this Court is of the considered opinion that as G.B. government is not competent/empowered to create/upgrade any post without prior concurrence of the Federal Finance Division Islamabad, therefore, G.B Government is bound to transmit the cases pertaining to creation and upgradation of posts to Federal Government/ Federal Finance Division, Islamabad for their concurrence and thereafter in the light of requisite concurrence sought from Federal Government, G.B government will be in a position to comply with the judgments/orders of G.B Courts in true letter and spirit. However, the Hon'be Court, which has issued the direction for creation or up-gradation of any post in the judgment, should not adopt coercive measures or issue contempt of court notice to concerned Secretary while dealing with implementation petitions till the requisite concurrence is received.

9. It has further been noticed that this Court while dealing with so many CPLAs, pending before this Court, issued directions to learned chief Court not to press hard the authorities of the concerned Departments in the cases wherein the concurrence has been sought from Federal Finance Division Islamabad, by the G.B Government, rather this Court issued directions from time to time to learned Chief Court for granting sufficient time to the authorities of concerned Departments in implementation of the judgments in question till the receipt of requisite concurrence.

10. With the aforementioned opinions, instant Reference stands disposed of.

11. Office is directed to transmit the copy of this verdict to Governor G.B through Secretary Law and Prosecution Department G.B. for perusal and compliance .

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Justice Sardar Muhammad Shamim Khan
Chief Judge