

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

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Civil Misc No. 60/2017

in

CPLA No. 09/2017.

Provincial Government & others

Petitioners.

Versus

Nadir Shah son of Durdana Shah R/o Gahkuch

Respondent.

PRESENT:-

1. The Advocate General alongwith Mr. Saeed Iqbal, Deputy Advocate General Gilgit-Baltistan and Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Amjad Hussain Advocate on behalf of respondent.

DATE OF HEARING & SHORT ORDER: - 18.09.2017.

DATE OF DETAILED JUDGMENT:- 26.06.2018.

JUDGMENT

Dr. Rana Muhammad Shamim, CJ..... This Civil petition has arisen out of the impugned judgment dated 27.10.2016 in Service Appeal No. 609/2016 passed by the learned Gilgit-Baltistan Service Tribunal whereby Appeal of the respondent was accepted by setting aside the dismissal order of the respondent dated 02.03.2015. Accordingly the respondent was re-instated in his service with all back benefits. The petitioners being aggrieved by and dissatisfied with the said impugned judgment filed this petition for leave to appeal. This court vide order dated 05.04.2017 issued notice to the respondent and the case was heard on 18.09.2017.

2. Briefly, the facts of the case are that the respondent joined Pakistan Army on 04.06.1957 as soldier and retired on

03.06.1973 after serving 16 years. As per record maintained by Pakistan Army his date of birth was 2nd March, 1938. He is getting pension from Pakistan Army. On 18.12.1989 the respondent succeeded in obtaining a Government service as Chowkidar BPS-01 in the office of the then Deputy Commissioner Ghizer by concealing his service in Pakistan Army. After his appointment in 1989 as Chowkidar as per Service Rules, he was referred to Government Hospital for his medical Checkup etc. The doctor while examining him has mentioned his age as 28 years. At the time of his induction in Government Service he was 51 years of age whereas he shown himself of 28 years of age. On the basis of this illegal and forged documents, the respondent completed 25 years services in the office of the then Deputy Commissioner Ghizer. Later on, upon knowing about his concealment of service in Pakistan Army & his age he was terminated from service vide order dated 02.03.2015. The respondent being aggrieved filed Service Appeal No. 609/2016 which upon hearing was allowed on technical grounds vide impugned judgment dated 27.10.2016, hence, this petition for leave to appeal.

3. The learned Advocate General submits that since the appointment order was obtained by the respondent through fraud, misrepresentation and concealment of fact, hence, the same was void, illegal and unlawful which was rightly been set aside by the then Deputy Commissioner Ghizer upon knowing the facts, so concealed by the respondent. He also submits that the respondent

joined Pakistan Army on 04.06.1957 as soldier and retired on 03.06.1973 after serving sixteen (16) years. As per record maintained by Pakistan Army his date of birth was 2nd March, 1938. Per learned Advocate General he is also getting pension from Pakistan Army. Later on the respondent got a medical Certificate in his favour with connivance of the Doctors and got declared his age as 28 years at the time of his appointment as Chowkidar BPS-01. In fact, he was 51 years old at the time of his entry into Civil Service. He further submits that on the basis of these illegal and forged documents, the respondent completed 25 years services in the office of the Deputy Commissioner Ghizer. When the fact of his concealment of service in Pakistan Army and his age came on surface, he was terminated from service vide order dated 02.03.2015. The respondent being aggrieved filed Service Appeal No. 609/2016 which upon hearing was allowed on technical grounds vide impugned judgment dated 27.10.2016. He finally submits that the petitioner at the time of his termination was 77 years old. The learned Service Tribunal fell in error while passing the said Impugned Judgment, therefore the same is not sustainable and liable to set aside.

4. Conversely, Mr. Amjad Hussain learned counsel appearing on behalf of the respondent supports the Impugned Judgment passed by the learned Gilgit-Baltistan Service Tribunal. He contends that the termination order of the respondent is illegal void ab-anitio and has been issued without lawful authority. The

appointing authority as well as Medical Officer were bound to determine the age of the respondent when he appeared before the then Deputy Commissioner District Ghizer for an interview. After the appointment of the respondent he appeared before the Medical Officer Civil Hospital Gahkuch for Medical Fitness Certificate. The age of the respondent was determined and he declared as 28 years old & the same was entered in his Service Book. The respondent did not conceal any fact with regard to his age and Service Book etc rather it was determine by the board of Doctors. He further contends that no complained in respect of performing his duties as Chowkidar as such no adverse entries have been made in his Service book till his termination from service. He also contends that the termination order dated 03.03.2015 passed by the then Deputy Commissioner District Ghizer was illegal as no show cause notice was issued to the respondent. No charge Sheet and statement of allegations prepared and no departmental inquiry was ever held against the respondent prior to his termination order. Per learned counsel the respondent rendered 25 years 02 months & 12 days as Chowkidar in the office of the then Deputy Commissioner District Ghizer. He finally prays that the Impugned Judgment dated 06.06.2016 passed by the learned Chief Court is well reasoned and well founded, hence, no interference into it is warranted.

5. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the Impugned Judgment dated 27.10.2016 passed by the

learned Gilgit-Baltistan Service Tribunal. Admittedly, the respondent has concealed his Army service and his age as entered in his service book maintained by Pak-Army. He subsequently succeeded in obtaining Civil Service, hence, the appointment order was obtained through fraud, misrepresentation and concealment of fact which was rightly been set aside by the petitioner No. 02, the then Deputy Commissioner District Ghizer. We agree with the contentions raised by the learned Advocate General Gilgit-Baltistan. In our consider view the impugned judgment is not well reasoned and well-founded, hence, the same is not tenable in law.

6. In view of the above discussions, we converted this petition into an appeal and the same was allowed vide our short order dated 18.09.2017. Consequently, the Impugned Judgment dated 27.10.2017 passed by the learned Gilgit-Baltistan Service Tribunal was set aside. These were the reasons of our said short order.

7. The appeal is allowed in above terms.

Chief Judge.

Judge.