

2018 P L C (C.S.) Note 137**[Gilgit-Baltistan Chief Court]****Before Sahib Khan, C.J. and Malik Haq Nawaz, J****RASHID AHMED****Versus****PROVINCIAL GOVERNMENT through Chief Secretary and 4 others**

Writ Petition No.22 of 2017, decided on 24th May, 2017.

Civil service---

----Promotion---Scope---Petitioner-employee had been exonerated from all the inquiries---Cases were being re-opened on some false pretext---Mala fide of department was on record---Petitioner-employee remained suspended for two years---No Annual Confidential Report was required during the period of suspension---Question of promotion rested within the power of competent authority---When authorities competent to award promotion acted in violation of law, in excess of jurisdiction, without jurisdiction and in colourable exercise of powers, Chief Court could exercise writ jurisdiction to redress the wrong---Department had deprived the employee from his legitimate right of promotion in violation of rules and regulations---Some inquiries had been illegally ordered from which petitioner had been exonerated even after issuance of restraining order from the Chief Court---Executive authorities were bound to follow the orders/judgments of Chief Court in letter and spirit---Orders for holding inquiries in circumstances were struck down---Authorities were directed to promote the employee from the date of holding post with all back benefits and seniority admissible under law---Writ petition was allowed in circumstances. [Paras. 8, 9, 10, 12 & 13 of the judgment]

2011 PLC (C.S) 334; 2010 SCMR 501; 1990 SCMR 1524 and 2002 PLC (C.S) 614 ref.

2007 SCMR 682 and 2007 PLC (C.S.) 1315 rel.

Asad Ullah Khan and Raja Shakeel Ahmed for Petitioner.

A.A.G. for Respondents assisted by Jaffar Ali, Legal Advisor for P.W.D.

Muhammad Amin, Special Prosecutor NAB in person.

Date of hearing: 24th May, 2017.

JUDGMENT

MALIK HAQ NAWAZ, J.--- The instant writ petition has been filed by the petitioner under Article 71(2) of Empowerment and Self Governance Order 2009, with the prayer that despite of the fact that the petitioner is holding the post of Chief Engineer since 22-09-2015 against the clear vacancy, the respondents due to

some unknown reasons are not considering his case for proper promotion. A Civil Miscellaneous bearing No.53/2017 was also filed along with this Writ Petition bearing No.22/2017, with the request that the respondents be restrained to initiate any adverse action against the petitioner till disposal of above captioned writ petition.

Initially the case was entrusted to the bench consisting of Honourable Justice Muhammad Alam and me (author of judgment). The case was posted on 06-03-2017.

After retirement of the Honourable Justice Muhammad Alam the case was placed before the D.B consisting of Honourable Chief Judge and me. On 03-05-2017, we observed that despite of a number of adjournments the comments were not filed by the respondents by using delaying tactics and they requested to allow them another opportunity to file their comments. On the said date the following order was passed.

"The learned A.A.G and rep of the department seek time for filing of parawise comments. Time allowed. But they are strictly directed to file the same on 17/05/2017.

Petitioner through Civil Miscellaneous bearing No. 53/2017 annexed with this writ petition have prayed for restraining the respondents from conducting inquiry or any action during the pendency of writ petition. It is evident from the record that the respondents have issued different sort of orders in favour and against the inquiry. If the same were not be suspended the purpose of the petition will be infructuous. Hence, we deem it proper to restrain the respondents from taking any adverse action against the petitioner till the disposal of this writ petition.

This order be placed in Civil Miscellaneous bearing No.53/2017 and same is disposed of accordingly".

Today the main writ petition came for hearing before this court. The learned counsel for the petitioner contented with vehemence that the petitioner is holding the post of Chief Engineer since 22-09-2015, but the respondents due to some extraneous consideration are not conducting his DPC for unknown reasons. The learned counsel further contended that the petitioner has been exonerated from all the inquiries which were made base for his suspension by the NAB, but he has not been able to wriggle out from the situation due to some unholy unearth tactics being used by the respondents to stop him to reap the benefit of his legitimate right of promotion.

The learned counsel further contended that from time to time the inquiries which have been closed or re-opened on one or the other pretext. The learned counsel in this context referred to a notification No.Sec.W.S0-1(19)/2015/22/85 issued by Works Department Gilgit-Baltistan dated 22-09-2015, wherein the petitioner was given acting charge of Chief Engineer and it was directed that the petitioner will be given task to revive certain sick projects, within a period of three months. The petitioner accomplished the task within stipulated period. The list of targets

assigned to petitioner is available at page 27 of the paper book, which in short contains about 15 tasks, which were to be revived/re-constructed within a stipulated period of three months.

The learned counsel further drew our attention to a certificate of appreciation awarded to the petitioner by the Chief Minister Gilgit-Baltistan for accomplishment of the task assigned to the petitioner for the calendar years 2015 and 2016. The learned counsel further stated that on 27-05-2015, Secretary S&GAD issued an order exonerating the petitioner from the charges and he was re-instated on 04-06-2015. On 22-11-2016 again Secretary S&GAD issued an order No. SO(A&E) 9-15-2016 Services whereby Rai Hasnain was appointed inquiry officer to carry out the inquiry regarding changing of site of bridge from KIU to Zulfiqarabad. The instant order as reflected in order were issued on behalf of Chief Minister Gilgit Baltistan, but Chief Minister Secretariat denied to have ordered for any such inquiry. Lastly the learned counsel for the petition submitted that NAB Authorities have already exonerated the petitioner form the inquiries vide their letter No.2(279)/IW-1/NAB(R)/2012/4401 dated 2nd November, 2012 and even number dated 10-09-2013 and further that NAB authorities have issued a policy letter that pendency of an inquiry before NAB, should not be considered a hurdle in promotion of a Government employee. The learned counsel prayers that the petitioner is being vexed due to his honest and firm stand against the corrupt official. The promotion is a legitimate right of the petitioner and necessary orders be passed to the respondents to promote the petitioner in pay scale admissible to the post, since his holding the acting charge i.e. 22-09-2015.

On the other hand the learned Assistant Advocate General submitted at bar that the petitioner has no cause of action to approach this Court as promotion to next grade is sweet discretion of the respondents. The petitioner is debarred to seek any remedy from this Court and can avail the remedy if any from Services Tribunal under section 5(h) of Services Tribunal Act. The learned Assistant Advocate General submitted that as per the comments submitted by the respondents, many departmental inquiries are pending against the petitioner and till finalization of these inquiries he cannot be promoted. Per learned Advocate General if the petitioner's proposal is formulated on the basis of certain documents, these are lacking in case of the petitioner and the comments submitted on behalf of Secretary Works reflect that ACRs of the petitioner are missing for some period, which is a prerequisite for promotion. The learned Assistant Advocate General relied on 2011 PLC (C.S) 334, 2010 SCMR 501, 1990 SCMR 1524 and 2002 PLC (C.S) 614, in support of his contention. The learned Assistant Advocate General lastly prayed that the writ petition be dismissed being not maintainable.

We heard the parties at a considerable length and perused whole of the record of the case with their valuable assistance. The case of the petitioner has a chequered history which is so stringent and intermingled that it needs a thread bar scrutiny. The inosculating of series of events could not be reconciled. As the material made available before us we can safely smell that some underground unearthed forces are behind whole of this episode, otherwise whole of this litigation could have been easily avoided, if the persons sitting in the helm of affaires would have acted fairly,

honestly and justly. We are unable to understand that the petitioner when was exonerated from all the inquires including the change of site of KIU Bridge to Zulfiqarabad, clean drinking water etc., then why these cases were being re-opened on some false pretext. The mala fides of the respondents are apparent from the letter issued by secretary S&GAD dated 22-11-2016 and appointing of Yahya Akhonzada to inquire into the inefficiency and corruption in the scheme titled, changing of site of Bridge from KIU to Zulfiqarabad, which letter was issued on the authority of Chief Minister Gilgit Baltistan. The Chief Minister Secretariat has disowned any such approval. The letter issued Chief Secretariat dated 29-12-2016 is re-produced for the purpose of convenience.

No.SO(G)-Misc-4(1)/2016

GOVERNMENT OF GILGIT-BALTISTAN Chief Minister Secretariat

Gilgit dated 29th December, 2016.

To,

The Secretary,
Services, GAD, Information
and Cabinet Department,
Gilgit-Baltistan

Subject:- ORDER

I am directed to refer to the Services, General Administration, information and Cabinet Department GB Order No.SO(A&E)-9-1(5)/2016 - Services dated 22nd November, 2016 on the subject and to say that the Chief Minister Gilgit-Baltistan has desired to know on whose approval the instant inquiry is being initiated as the Chief Minister Secretariat is unaware of any such approval being the competent authority in case of officers (BS-19). An early reply is solicited.

This issues with the approval of the Chief Minister Gilgit-Baltistan.

(SHUJA ALAM)
DEPUTY SECRETARY
(ADMIN)

CC:-

1. The AS (Staff) to the Chief Secretary GB.
2. The Secretary Works Department GB.
3. PS to the Secretary to Chief Minister GB.

The petitioner was re-instated on 04-06-2015 and soon after his re-instatement a long list of left over sick projects were assigned to him and that too he was directed to complete the same within a short span of three months. The petitioner completed all the assigned tasks and in recognition of his services, Chief Minister Gilgit-

Baltistan awarded outstanding performance award to him for the two calendar years 2015-16. We cannot digest it easily that on one hand he was so competent to be nominated for the excellence award and at the same time he was not being considered for promotion due to inefficiency and corruption charges, which shows that how much our moral values have gone to decay. The contention of the learned Assistant Advocate General that ACRs of the petitioner are short is devoid of any legal force, as the learned counsel for the petitioner placed before us the ACRs of the petitioner upto 2013. In 2013 the petitioner was suspended and remained under suspension for two years. No ACRs will be required during the period of suspension and now the Secretary Works statedly being junior to the petitioner is ineligible to initiate his ACRs. The lame excuses and dotty reasons in this regard cannot be protected. The other contention of the learned Assistant Advocate General that eligibility of an employee for promotion could not be a subject matter in writ jurisdiction before Chief Court as the seniority/ promotion was a question of terms and conditions of service, which falls within the exclusive domain of the Services Tribunal and writ under Article 71(2) of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 was not maintainable, also has no footing.

We are fully cognizant of the fact and law that though question of promotion rested within the competence of competent authority, which ordinarily cannot be interfered with but at the same time when the authorities, who are competent to award promotion acted in violation of law, in excess of jurisdiction, without jurisdiction or in colorable exercise of powers conferred upon them, the Chief Court in terms of Article 71(2) of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009, could exercise its jurisdiction to redress the wrong. The wisdom is drawn from a judgment reported in 2007 SCMR 682, wherein it has been held as under:-

"(c) Punjab Civil Servant Act (XIII of 1974)---

----S. 9-Punjab Revenue Department (Revenue Administration Posts) Rules, 1990---Constitution of Pakistan (1973), Arts.185(3), 199 and 212---promotion---constitutional jurisdiction of High Court, exercise of---Civil Servants being aggrieved of the decision of authorities filed constitutional petitions, which were allowed by High Court and case was remanded to authorities with certain directions---Judgment passed by Single Judge of High Court was maintained by division bench of High Court---Plea raise by petitioner was that in view of bar contained in Art. 212 of the Constitution, High Court did not have any jurisdiction over the matter---validity---though question of promotion rested within the jurisdiction of competent authority, which could not be ordinarily interfered with by a Court of law but where the authority competent to award promotion or to appoint to a particular post acted in violation of law, in excess of jurisdiction, without jurisdiction or in colorable exercise of powers conferred on it extraordinary jurisdiction of High Court in terms of Art.199 of the Constitution, could always be invoked for redressing the wrong---Supreme Court declined to agree with the petitioner that it was not a fit case for interference by High Court in exercise of constitutional jurisdiction---High Court had not substituted its own

decision for the Act authorities, therefore, such plea was preposterous and not relevant---leave to appeal was refused. [p. 687] C"

The contention of the learned Assistant Advocate General is misconceived in the light of an other judgment reported in 2007 PLC (C.S.) 1315, wherein it was held by the honorable Judges of the Karachi High Court that:-

"Civil Servant Act (LXXI of 1973)---

----S. 9---Constitution of Pakistan (1973), Art.199---Constitutional Petition--- Promotion, eligibility for---authorities that High Court did not have jurisdiction to entertain the matter regarding promotion as same fell within the preview of Service Tribunal in terms of Art.212 of the Constitution--- Validity---contention, ex facie was misconceived inasmuch as question raised related to the fitness and not eligibility of the petitioner to be promoted to a higher position and such position was clearly outside the jurisdiction of the Service Tribunal---constitutional petition was allowed to the extent that petitioners could be considered for promotion in the forthcoming meeting of Central Selection Board, notwithstanding any remarks recorded by the authorities. [p. 1316] A"

The authorities have deprived the petitioner from his legitimate right of promotion in clear violation of rules and regulations. Some inquiries have been illegally ordered, from which the petitioner has already been exonerated just to hoodwink and create an unfavorable atmosphere against the petitioner and that too after issuance of restraining order from this Court, which amounts to gravest kind of contempt of Court. It is made clear that all the executive authorities of Gilgit-Baltistan are bound to follow the orders/judgments of this Court in letter and spirit. We strike down the orders of inquiries issued by the respondents and respondents are directed to promote the petitioner from the date of his holding the post of Chief Engineer (BPS-20) with effect from 26-09-2015, with all the back benefits and seniority admissible to him under law.

The writ petition is accepted and disposed of in the above terms. The connected Civil Miscellaneous No.53/2017 is also disposed of accordingly. File.

ZC/200/GB Petition allowed.

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