

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

BEFORE:

*Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge*

CPLA Under Objection No. 13/2019

*(Against the Judgment dated 31.10.2018, passed by the learned Gilgit-Baltistan
Service Tribunal in Service Appeals No. 635, 636, 637, 662/2016)*

1. Syed Hamid Hussain Ex Foot Constable District Police, Gilgit, Police Department Gilgit-Baltistan
2. Muhammad Shah Ex Foot Constable District Police Gilgit
3. Ali Shah Ex Foot Constable District Police Gilgit
4. Kifayat Hussain Ex Foot Constable District Police Gilgit

.....**Petitioner(s)**

Versus

1. Govt. of Gilgit-Baltistan through Chief Secretary Gilgit-Baltistan
2. Inspector General of Police (IGP) Gilgit-Baltistan
3. Deputy Inspector General (DIG) Police Headquarter Gilgit-Baltistan
4. Senior Superintendent of Police Gilgit
5. Secretary Service Gilgit-Baltistan at Gilgit

.....**Respondent(s)**

PRESENT:

For the Petitioner (s) : Amjad Hussain Sr. Advocate
Muhammad Saleem Khan Advocate

For the respondent (s): The Advocate General GB

Date of Hearing : **12.11.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:-The instant Civil Petition for Leave to Appeal arises out of a consolidated judgment dated 31.10.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeals No. 635, 636, 637, 662/2016, whereby the Service appeals filed by the

present petitioners were dismissed by the learned Gilgit-Baltistan Service Tribunal holding them to be meritless.

2. Brief facts giving rise to institution to the instant Civil Petition for leave to Appeal are that the present petitioners were appointed as Foot Constables (B-2) in GB Police Department on different dates. The precise history of the petitioners is:

(i). The petitioner No. 1 Syed Hamid Hussain was appointed as Foot Constable on 11.06.1988 His services were terminated on 09.08.1990 under Rule 12.21 of Police Rules. Upon submission of representation/appeal, he was reinstated into service on 10.03.2005. Subsequently, the reinstatement order was cancelled/recalled on 24.06.2016.

(ii). The Petitioner No. 2, Muhammad Shah was appointed as Foot Constable on 01.09.1988. His services were terminated on 09.08.1990 under Rule 12.21 of Police Rules. Upon submission of representation/appeal, he was reinstated in service on 14.03.2012. Subsequently, the reinstatement order was cancelled/ recalled on 24.06.2016.

(iii). The Petitioner No. 3, Ali Shah was appointed as Foot Constable on 11.06.1988. His services were terminated on 01.05.1991 under Rule 12.21 of Police Rules. Upon submission of representation/appeal, he was reinstated in service on 06.08.2015. Subsequently, the reinstatement order was cancelled/ recalled on 24.06.2016.

(iv). The Petitioner No. 4, Kifayat Hussain was appointed as Foot Constable on 16.05.1990 (This date is mentioned in memo of appeal and judgment of Gilgit-Baltistan Service Tribunal, however no office order is available on record). His services were terminated on 11.11.1992 under Rule 12.21 of

Police Rules. Upon submission of representation/appeal, he was reinstated in service on 26.6.2013. Subsequently, the reinstatement order was cancelled/ recalled on 24.06.2016.

3. Against withdrawal of reinstatement orders, the petitioners filed departmental appeals which remained unattended. Having been dissatisfied by the departmental authorities, the petitioners resorted to legal remedy through the Courts of law by way of institution of Service Appeals before the learned Gilgit-Baltistan Service Tribunal. The learned Service Tribunal GBST dismissed their service appeals holding them to be meritless. Having felt aggrieved and dissatisfied with the decision of the learned GB Service Tribunal, the petitioners has now assailed the consolidated judgment of learned GBST before this Court through the CPLA in hand.

4. The learned counsel for the petitioners argued that when a Govt. employee is alleged to have committed misconduct, there is settled law/principal of going through the due process of law before resorting to take any action detrimental to the interest of concerned employees. He maintained that before imposing penalty upon any employee, under the law, government is bound to issue show cause notice, initiation of inquiry against the employees against whom action is proposed to be taken followed by providing a chance of defense. The counsel for the petitioners next argued that the respondents instead of following the due process of law and procedure prescribed for dealing with such cases, simply terminated services of the petitioners for no fault on their part which amounted to gross violation of law and natural justice. He next contended that the respondents in the second round of termination of services of

petitioners too resorted to misuse their authority and again without issuing any show cause notice, conducting any inquiry and affording an opportunity of defense withdrew the orders of reinstatement which was a commission of violation of settled laws/principles of natural justice. The learned counsel for the petitioners next argued that it was against the principle of natural justice and violation of legal right of the petitioners that merely on the basis of recommendations of an Inquiry Committee, services of the petitioners spreading 5 to 10 years have been terminated straightaway. At the conclusion of his arguments, the learned counsel for the petitioners prayed that the impugned consolidated judgment of learned GBST, being against the facts, grounds and law may be set aside.

5. Conversely, the learned Advocate General Gilgit-Baltistan defended the impugned judgment by opposing the contentions raised by the learned counsel for the petitioners and argued that the petitioners after their initial appointments, failed to prove themselves efficient, which resulted in their removal from service under 12.21 Police Rule. He next contended that petitioners were removed in the year 1990 and got reinstatement orders in the years 2005, 2012 & 2015 respectively after span of a long period which was got fraudulently/illegally as there was no record to show that the reinstatement orders were issued by the competent authority or even with approval of the competent authority. He averred that the learned GB Service Tribunal thoroughly thrashed out all legal and factual aspects of service appeals before it and rightly and in accordance with law dismissed service appeals of the petitioners which is not warranted for interference by this Court and prayed for upholding the same.

6. We have given our due consideration to the arguments advanced from both the sides and have also gone through the record of the case as well as the impugned judgment.

7. There is no dispute with regard to termination of services of the petitioners during probationary period under rule 12.21 of Gilgit-Baltistan Police Rules holding them to be inefficient. However, there is no record in black and white on file neither before the learned Service Tribunal nor before this Court which could show the determining factors of inefficiency of the petitioners. If the police rules do not provide any written instrument which could gauge the performance of a police probationer and bring it to the notice of the higher authorities in writing for record, then, unfortunately rule 12.21 of the Police Rule would be a dead weapon in the hands of concerned Superintendent of Police to prey any probationer police personnel on the basis of his liking or disliking.

8. It is astonishing to note that the reasons given for withdrawal of reinstatement orders of the present petitioner in the para-wise comments submitted by the present respondents as well as the arguments of the learned Law Officer before the learned Gilgit-Baltistan Service Tribunal were that, first the reinstatement orders were got by the present petitioners fraudulently/misrepresentation; secondly, the reinstatement orders were withdrawn/cancelled merely because other sacked police personnel had also started approaching the police department for reinstatement of their services, particularly with reference to the reinstatement orders of present respondents; and thirdly the reinstatement orders were issued by the incompetent authorities. As far as

obtaining the reinstatement orders by the present petitioners fraudulently/misrepresentation is concerned, being a disciplined force, the police department is expected by government as well as public at large to be vigilant not only with regard to the affairs of general public but also with regard to the internal affairs of police department itself. In order to deal with matters of police personnel/staff, a vast establishment department exists within police department which is aided by the special branches of police department. It is ironic to observe that how a vast establishment branch having vigilance support of police special branches, failed to notice that some terminated police personnel succeeded to obtain reinstatement orders fraudulently. Hence this plea is neither logical nor tenable; rather it shows inefficiency of higher police authorities that such a purported blatant commission of fraud/misrepresentation escaped from their eyes. The second contention for cancellation/withdrawal of reinstatement orders of the present petitioners on the ground of presenting the reinstatement orders by the other sacked police personnel as precedents for their reinstatement is also not acceptable because the act of approaching of other sacked police personnel for reinstatement could not be made base for simple withdrawal/cancellation of reinstatement orders, whereas cases for reinstatement brought by other sacked police personnel could have been dealt with in accordance with the law/rules. As far as the contention/plea of police department Gilgit-Baltistan regarding issuance of reinstatement orders by incompetent authorities is concerned, it is made clear that if it was known that the reinstatement orders were issued by authorities who were not competent to do so or the said orders were issued without obtaining approval from the competent authority, then

officers who were involved in such practice were required to be dealt with strictly in accordance with law and would have punished them instead of punishing the present petitioners. However, there is nothing on the record to show that any inquiry/action followed by any penalty under the law was ever conducted against those officers who were involved in issuance of reinstatement orders without authority. Non-initiation of action against the responsible officers could be termed that in order to save the necks of those officers; authorities of police department straightaway punished the present petitioners without adherence to the principle of natural justice and due process of law.

9. The record shows that after reinstatement into service, the petitioner Syed Hamid Hussain served the police department for 10 years; Muhammad Shah served for 4 years 3 months; Ali Shah served around for 1 and half years; and Kifayat Hussain served for 4 years 3 months. Even if it is admitted that it was the dire necessity of police department to withdraw/cancel the reinstatement orders of the present petitioners, then in view of their long services rendered by the present petitioners after reinstatement, before taking such drastic action of straightaway cancellation of reinstatement orders thereby leaving the petitioners and their families to face starvation, due process of law should have been adopted by the department by providing opportunity of personal hearing for defending their position. However, the department for the reasons best known to it, failed to do so. An inquiry appears to have been conducted on receipt of applications by other sacked police personnel behind the back of the present petitioners and on the basis of findings/recommendations of that committee, reinstatement orders of the present petitioners were withdrawn. If it was the purpose of the

inquiry to withdraw the reinstatement orders of the present petitioners, the petitioners should have been invited to participate in the inquiry proceedings. Thereafter, the police department was also bound under the law and principles of natural justice and *audi alteram partem* to issue show cause notice and affording an opportunity of personal hearing. With a view to strengthen our views, we would like to lend support from a judgment title Hazara (Hill Tract) Improvement Trust Vs Mst. Qaisra Elahi 2005 SCMR 678, wherein the Hon'ble Supreme Court of Pakistan has held as under:

“The principle of natural justice enshrined in the maxim audi alteram partem is one of the most important principles and its violation is always considered enough to vitiate even most solemn proceedings”

In another judgment titled Pakistan International Airline Corporation Vs. Shahzad Farooq Malik 2004 SCMR 158, the Hon'ble Supreme Court of Pakistan has been pleased to hold as under:

“No adverse action could be taken against employee without observing principles of natural justice”

10. In view of circumstances prevailing with the case in hand as well as taking into consideration the observations of the Hon'ble Supreme Court cited herein above, it is held that the police department, Gilgit-Baltistan has failed to adhere to the due process of law before cancellation/withdrawal of reinstatement orders of the present petitioners. This act and omission on the part of police department has led to vitiate inquiry proceedings and the recommendations thereof which culminated into cancellation/withdrawal of reinstatement orders is also held

to be against the principle of natural justice and the principles of *audi alteram partem*.

11. It has been argued by the learned Law Officer and also averred in the parawise comments submitted by the present respondents before the learned Gilgit-Baltistan Service Tribunal that authority who has power of passing an order is also empowered under Section 21 of the General Clauses Act to withdraw, rescind, amend or vary the same order. This assertion has also been endorsed by the learned Gilgit-Baltistan Service Tribunal in its impugned judgment. There is no cavil to legal proposition under section 21 of the General Clauses Act, however, action under the ibid section can be taken subject to certain limitations. The learned Gilgit-Baltistan Service Tribunal, while dilating upon the matter before it, has also misinterpreted/misconstrued section 21 of the General Clauses Act. By interpreting section 21, the Hon'ble Supreme Court of Pakistan in a case reported as PLD 1969 SC 407 has held as under:

“The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights.

12. The result of the above discussions/observations is that the learned Gilgit-Baltistan Service Tribunal has failed to thrash out/take into consideration the factual and legal position of service appeals before it. Consequently, the above CPLA Under Objection No. 13/2019 is converted into an appeal and the same is allowed. The impugned

consolidated judgment dated 31.10.2018 passed by the learned Gilgit-Baltistan Service Tribunal in Service Appeals No. 635, 636, 637, 662/2016 is set aside. The present respondents are directed to reinstate services of the present petitioners from the date of last termination of their service i.e. 24.06.2016 (date of withdrawal of reinstatement orders). However, the period from 24.06.2016 till the date of announcement of judgment by this Court i.e. 12.11.2020 shall be treated as leave without pay. These were the reasons of our short order dated 12.11.2020, which is reproduced herein below:

“Case heard and record perused. We have also gone through the impugned judgment. For the reasons to be recorded later, we convert this CPLA into an appeal and the same is allowed. Consequently, the impugned judgment dated 31.10.2018 passed by the learned Gilgit-Baltistan Service Tribunal, Gilgit in Service Appeals No. 635, 636, 637 & 662/2016 is set aside”.

Chief Judge

Judge

Whether fit for reporting **(Yes / No)**