

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

Before:-

Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.

Mr. Justice Raja Jalal-ud-Din, Judge.

Mr. Justice Muzaffar Ali, Judge.

**Civil Appeal No.32/2015 in
CPLA NO. 03/2014**

1. Ali Khan S/o Mirza Khan S/o Nomal Tehsil & District Gilgit.
PETITIONER/APPELLANT/PLAINTIFF
VERSUS

1. The Director Civil Supply & Transport Gilgit.
2. The Secretary finance Gilgit-Baltistan.
3. Provincial Govt. through Chief Secretary Gilgit-Baltistan.
Respondent/Defendant

PETITION FOR LEAVE TO APPEAL UNDER SECTION 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER, 2009 AGAINST THE CONSOLIDATED JUDGMENT/DECREE DATED 09/10/2013 PASSED BY SINGLE BENCH CHIEF COURT GILGIT-BALTISTAN IN CIVIL SECOND APPEAL NO.01/2011 AND CIVIL REVISION NO. 36/2010 WHEREBY THE LEARNED CHIEF COURT DISMISSING THE CIVIL SECOND APPEAL OF PETITIONER/APPELLANT AND ACCEPTING THE REVISION PETITION FILED BY RESPONDENTS SET ASIDE THE PARTIAL JUDGMENT DECREE DATED 30/10/2010 PASSED BY ADDITIONAL DISTRICT JUDGE GILGIT AND JUDGMENT/DECREE DATED PASSED BY ADDITIONAL DISTRICT JUDGE GILGIT AND JUDGMENT/DECREE DATED PASSED BY CIVIL JUDGE GILGIT IN CIVIL SUIT NO. 09/03/2010 AND UPHELD THE IMPUGNED OFFICE ORDER NO ADMIN-1(41) DCS&T/91 DATED 16/11/2001.

FOR SETTING ASIDE THE IMPUGNED JUDGMENT/DECREE BY CONVERTING THIS PETITION FOR LEAVE TO APPEAL INTO APPEAL AND ACCEPTING THE APPEAL THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE IMPUGNED JUDGMENT DATED 09/10/2013 PASSED BY LEARNED CHIEF COURT IN CSA NO.1/2011 AND PARTIAL JUDGMENT/DECREE OF LEARNED ADDITIONAL DISTRICT JUDGE GILGIT AND JUDGMENT PASSED BY CIVIL JUDGE GILGIT TO THE EXTENT OF PAYMENT OF ALLEGED DISPUTED OUTSTANDING AMOUNT OF RS.10, 69,082/- AS STOCK SHORTAGE AND LANDED COST /SUBSIDY IN GOVT TREASURY.

PRESENT:-

1. Mr. Amjad Husain advocate along with Mr. Ali Nazar Khan AOR for the petitioner.

2. The Advocate General Gilgit-Baltistan, Gilgit.

DATE of HEARING: - 19-10-2015.

DATE OF ANNOUNCEMENT OF JUDGMENT:- 02.11.2015.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... The petitioner filed above petition calling in question the impugned judgment dated 09-10-2013, passed by the learned Chief Court Gilgit-Baltistan in Civil Second Appeal No. 01/2011. The upshot of the case in hand is that the petitioner/appellant was an employee of the Department of Civil Supply, Gilgit-Baltistan. The respondents vide Office Order No. Admn-1-(41)/DCST/91 dated 16-11-2011 had terminated the services of the petitioner in addition to recovery of Rs 10, 69,082/- as arrears of land revenue on the charge of found shortage of commodities of Civil Supply Department and for not depositing sale price of commodities with the Government treasury during his posting as Assistant Civil Supply Sub-Inspector (ACSI). The petitioner had deposited partial amount of Rs 87,888/- and remaining due amount of Rs. 11,32,091/- has not been deposited in line with the said Office Order referred above. Thereafter, the petitioner filed a suit before the learned Trial Court while making impugned his termination order dated 16.11.2001 passed by the respondents. The learned trial Court partially decreed the suit in his favour to the extent that he be reinstated in the service with all back benefits subject to his depositing the outstanding amount of Rs. 10, 69,082.15/- in the treasury.

The respondents feeling aggrieved by and dissatisfied with Judgment/Decree dated 09-03-2010 filed cross appeal cited above. The First Appellate Court, after having heard the parties

observed that **“I found no force in both appeals filed by the parties, thereof; both the appeals are hereby dismissed. Consequently the impugned judgment/decreed dated 03-03-2010 passed by the learned trial court is maintained.”**

The petitioner, however, made impugned in Civil Second Appeal No.01/2011, the judgments of the two Courts below before the learned Chief Court, Gilgit-Baltistan, who upon hearing not only reversed both the impugned judgments of the Courts below but also maintained the Office Order No admin-1(41) DCS&T/91 dated 16/11/2001, passed by the present respondents, hence this petition. After preliminary hearing, this Court issued notice to the respondents to hear both the parties in detail in the interest of justice.

The learned counsel for the petitioner submits that the petitioner was posted at Gupis Civil Supply Depot in the year 1984 as Assistant Civil Supply Inspector. The petitioner rendered his services punctually with diligence, honesty and dedication. In the year 1984 during a stock checking by the competent authority of the Department a shortage of stock amounting to Rs. 10, 69,082/- was detected and the said amount has already been deposited by the petitioner in the Treasury with National Bank of Pakistan Gupis Branch vide Treasury Challans Nos. 07.01.1984 to 11.03.1985, Whereas the case was initiated vide FIR No. 09/84 dated 01.12.1984 after deposit of the said amount in the National Bank of Pakistan Gupis Branch. However after seventeen years the respondents on mala fide grounds was shown shortage of Stock against the petitioner on the basis of a biased inquiry report by the then Director Civil Supply Gilgit-Baltistan, Whereafter the services

of the petitioner were terminated illegally and without any cogent reason. He further submits that the said amount was not shown through any separate report. Whatever shown through the said biased report was presumptive, fabricated and manipulative by the then authorities of the department in question. He submits that the learned Chief Court, Gilgit-Baltistan despite of the above facts dismissed the second appeal of the petitioner and allowed the revision petition of the respondents, which is contrary to the law and justice and based on misreading and non-reading of the record of case in hand, hence the same is liable to set aside. That the impugned judgment/decree passed by the learned Chief Court and partial decrees passed by the learned subordinate Courts are incorrect and against the law. He further contended that the learned Chief Court Gilgit-Baltistan as well as the learned Trial Court and 1st Appellate Court failed to properly and completely conceive the facts of the case, specially the exaggerated report compiled by director civil Supply on the basis of which the fake case was initiated against the petitioner.

He also submits that the sale price of Rs. 4,81,076/- was duly deposited from January 1984 to October 1984 with National Bank Gupis Branch on the strict advice of the then director, Ch. Zafar Ullah. The impugned judgment is misconceived, misunderstood or being meritless and is not sustainable. That the learned Chief Court Gilgit-Baltistan failed to apply its judicial mind to dilate the question of "landed cost/subsidy" being born by federal Government which is recoverable from the public whether any such recovery was initiated against other petitioner in Gilgit-

Baltistan except the petitioner. That the report/case against the petitioner was biased, discriminatory and malafide as the facts have gone un-noticed by the learned subordinate Courts. He submits that the learned Chief Court supported the said biased discrimination and malafide of the department of Civil Supply authorities in letter and spirit, hence the impugned judgment of learned chief Court based on misconception of the facts. That the learned Chief Court Gilgit-Baltistan and subordinate Courts have exercised their jurisdiction illegally and with material irregularity not so not vested with them. That the impugned judgment is passed in utter violation of the relevant law, rules and procedure hence, has lost its legal credibility.

He also contended that the impugned judgment/decreed is nothing but reproduction of the fake, fabricated and malafide record prepared and composed by the department in question which has caused great miscarriage of justice, hence the impugned judgment is not maintainable. He finally concluded his arguments with the contentions that initially three Civil Supply Inspectors of the department in question were charged on the same facts & grounds but two of them have been reinstated subject to deposit of the land revenue arrears in the Government treasury. The petitioner has been twice prosecuted and his services were terminated and treated discriminately. He urges that under the "Doctrine of the Double Jeopardy", especially when he is acquitted from the Court of Law on the same charges, he cannot be vexed twice for the same charges. In support of his contentions, he made

reliance in a case of Inspector General of Police Versus Shafqat Mehmood, reported as 2003 SCMR, 207

On the other hand, the learned Advocate General Gilgit-Baltistan supports the Impugned Judgment dated 09.10.2013 being well reasoned and well founded. He contended that the petitioner has misappropriated the Government and Public property being custodian of the said property and caused huge loss to the Government exchequer. This was the reason that the petitioner has not only been terminated from the services but an FIR No. 09/04 was also been registered against him. Initially there were three accused charged on the separate misappropriation in stocks. Two of them in line of the order of the department, deposited the alleged amount in initial stage in the Government treasury before the initiation of departmental inquiry against them. The petitioner, however, has not deposited the misappropriated sales proceeds despite of the orders of the authorities of his department and tried to take benefits from the prolonged litigations. There are three concurrent findings of the Courts below with regards to the deposit of the misappropriated sale proceeds/ amount. The learned Chief Court Gilgit-Baltistan vide impugned Judgment dated 09-10-2013, in Civil Second Appeal No. 01/2011 has very rightly accepted the Revision filed by the Provincial Government and took serious notice against the corruption and misappropriation of Public Property by the petitioner. After committing such a huge misappropriation how the respondents could allow the petitioner to continue in services. He further submits that the impugned Judgment dated 09.10.2013 passed by

the learned Chief Court Gilgit-Baltistan on the basis of report of one Member Expert Commission i.e. The Deputy Accountant General, nominated by the learned Chief Court Gilgit-Baltistan. The said commission submitted his report on 06.06.2012 and gave his findings against the petitioner being responsible and ascertained that a sum of Rs. 4,81,076/- only has been deposited in the said Bank by him from the period dated 07.01.1984 to 11.03.1984. The learned Advocate General submits that the impugned judgment dated 09.10.2013 passed by the learned Chief Court may be maintained & misappropriated amount ordered to be recovered from the petitioner to secure the ends of justice. The learned Advocate General also submits that petitioner's case is totally on different footings as of three others employees who deposited the sale proceeds/ amounts as soon as it was detected. It is not a case of double jeopardy and department has rightly proceeded against him in accordance with law. He while saying so relied upon the judgment in case Nazir Ahmed versus Capital City Police Officer, Lahore, 2011 SCMR, 484, wherein the Honorable apex Court of Pakistan has held that disciplinary action could have been taken against the petitioner after his acquittal for the simple reason that criminal proceedings would have no substantial bearing on merits of the case. The criminal proceedings and disciplinary proceedings are not synonymous or interchangeable having distinct features and characteristics. He also made reliance on a judgment of apex Court of Pakistan in case of Muhammad Ayub versus the Chairman Electricity Board (WAPDA), (1987 PLD, SC, 195). In this case the learned apex Court of Pakistan was pleased to hold that any

penalty imposed on a civil servant as a consequence of departmental proceedings under Efficiency and Discipline Rules, after accused officer has been acquitted of criminal charge is not barred. Fresh trial and punishment for same offence is barred and not infliction of a penalty as a result of departmental proceedings.

We have heard the learned counsel for both the respective parties at length, perused the record of the case file and gone through the Judgment of all three Courts below as well as the above referred case laws cited by both the learned counsels. The case laws cited by the learned Advocate General Gilgit-Baltistan are applicable and the cases relied upon by the learned counsel for the petitioner are distinguishable.

In view of the above, in our considered view the impugned judgment dated 09.10.2013, passed by the learned Chief Court Gilgit-Baltistan is well reasoned as no illegality and infirmity has been pointed out by the learned Counsel for the petitioner. Consequently, we dismiss the appeal. The impugned Judgment dated 09.10.2013, passed by the learned Chief Court Gilgit-Baltistan in CSA No. 01/2011 is upheld whereas the judgment dated 09.03.2010, passed by the learned Civil Judge Gilgit to the extent of outstanding amount recoverable from the petitioner is maintained.

The appeal is dismissed.

Chief Judge.

Judge.

Judge.

Whether the case is FIT to be reported or NOT?

