

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

Before:-

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

Mr. Justice Javed Iqbal, Judge.

Mr. Justice Shahbaz Khan, Judge.

C. Appeal. No. 18/2015 in

C.PLA. No. 96/2014

Ministry of Defense through Secretary Defence (D4) Rawalpindi
cantt. & others

Petitioners.

Versus

Major Muhammad Farooq s/o Nabi Khan r/o Wahdat Colony Jutial
Gilgit.

Respondent.

**CIVIL PETITION FOR LEAVE TO APPEAL (CPLA) BEFORE
HON'BLE SUPREME APPELLATE COURT GILGIT-
BALTISTAN UNDER ARTICLE 60 OF GILGIT-BALTISTAN
(EMPOWERMENT & SELF GOVERNANCE) ORDER 2009
AGAINST IMPUGNED JUDGMENT DATED 23 JUNE 2014
PASSED BY THE CHIEF COURT GILGIT-BALTISTAN
WHEREBY OFFICE TERMINATION DATED 18 DEC 2011
AND 14 DEC 2011 OF SERVICE/EMPLOYMENT OF
RESPONDENT HAVE BEEN SET ASIDE AND RESPONDENT
REINSTATED IN THE POST WITH BACK BENEFITS AND TO
CONTINUE HIS SERVICE.**

PRESENT:-

1. The Deputy Attorney General for Pakistan at Gilgit-Baltistan alongwith Mr. Ali Nazar Khan Advocate-on-Record on behalf of the respondent.
2. Mr. Amjad Hussain Advocate alongwith Johar Ali Khan Advocate-on-Record for the respondent.

DATE OF HEARING: - 05.04.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition is directed against the impugned judgment dated 23.06.2014 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 28/2012. Whereby, the Writ Petition of the petitioner was accepted and the petitioner has been declared entitled to continue his service in accordance with law with all back benefits. The respondents are

directed to reinstate the services of the petitioner and the termination order dated 04.12.2012 issued by the respondents was set aside. The respondents feeling aggrieved by and dissatisfied with filed this petition before this apex court for setting aside the said impugned judgment while maintaining the termination order No. 0151/PASB-2 dated 14.12.2011. Notice was issued to the respondents vide order dated 18.05.2015.

Briefly the facts of the case are that the respondent is a resident of Gilgit-Baltistan who after retirement from Pakistan Army was appointed as Secretary District Armed Services Board (DASB) Gilgit on 03.12.2009 by petitioner No. 1 on permanent basis. According to the appointment order, the respondent was placed on probation, initially for a period of one (01) year from the date of his appointment extendable for further period of one (01) year but the probation period was not extended further. The respondent successfully completed one year probation on 03.12.2010 and subsequently, the respondent became permanent employee of Pakistan Armed Services Board. The petitioner No. 01 through an order dated 14.12.2011 terminated the respondent from his service without assigning any reason or issuing any show cause notice and by this the petitioner violated the terms and conditions provided in the appointment order, hence this petition for leave to appeal was filed before this apex court and prayed therein setting aside the said impugned judgment while maintaining the termination order No. 0151/PASB-2 dated 14.12.2011.

The learned Deputy Attorney General for Pakistan at Gilgit-Baltistan submits that the respondent was employed as Secretary District Armed Board on 03.12.2009 vide order No. 0151/PASB-2 dated 14.12.2011 with probation period of one (01) extendable to further period of one year which is reproduced as under:-

Registered
 Ministry of Defense PASB
 Secretariat
 H/No. 75 Lance3, St-3
 Chaklala Scheme
 Rawalpindi
 Tele: 9281252
 No. 0151/4/PASB-2

To: Maj Muhammad Farooq (Retd)
 House No. 2, Street No. 1
 Wahadat Colony, Jutial Gilgit

Copy to: Gilgit-Baltistan ASB Dte
 Gilgit

DASB Gilgit
 Ministry of Defense
 (D-24) Rawalpindi Cantt
 CMP (ISOs)
 Rawalpindi.

Subject: **EMPLOYMENT OF SECRETARY DASB GILGIT (BPS-17)**

1. The competent authority has approved your appointment as Secretary DASB Gilgit (BPS-17) on permanent basis with effect from the date of assumption of the said appointment in BPS-17 (9850-710-24650). The pension if any will be deducted from your pay.
2. You will be on probation for a period of one year from the date of your appointment extendable by order either before or after its expiry by a further period not exceeding one year provided that no order has been made by the day following the termination of either of the aforesaid probationary period, the appointment shall be deemed to be held until further orders. During the period of your services are liable to be terminated at any time without and without any reasons being assigned thereof. You are liable to be posted anywhere in Pakistan.

3. Your whole time would be at the disposal of the Government unless it is distinctly provided otherwise. You may be employed in any manner required by appropriate authority without claim for additional termination. You shall devote your whole time obey the rules prescribed for the time being for the regulations of the service of each to which the post in which leave been re-employed belongs.
4. You are directed to report for the above mentioned appointment as early as possible but not later than 02 weeks from the date of receipt of this letter. In case your do not report within the stipulated time your appointment will be considered as cancelled.
5. Your appointment is provisional subject to medical fitness and satisfactory verification of your character and antecedents.

Air Cadre
(Assistant Director General)
(Raja Muhammad Aslam)
(Retd).

The learned Deputy Attorney General for Pakistan at Gilgit-Baltistan further submits that on account of shortage of regular Director, the performance of the respondent during his initial first year probation period could not be evaluated, as such, the said probation period extended to further period of one year as extendable under relevant service rules which is also mentioned in the Para -2 of the appointment letter of the respondent. He also submits that during second probationary period while evaluating the performance of the respondent it revealed that the performance of the respondent was poor and below the minimum desired standards as he was taking least interest in the affairs of the Department due to which his department suffered a lot. After this observation show cause notices and warning had been served upon the respondent. The respondent was given opportunities to improve his performance but he could not do so. He was also given right of

representation but again the respondent in vain to satisfy the competent authorities. Consequently, the service of the respondent was terminated being the respondent not fit and suitable for his job. He also submits that the respondent feeling aggrieved by and dissatisfied with the termination order filed Writ Petition No. 28/2012 before the learned Gilgit-Baltistan Chief Court. Wherein, the learned Chief Court accepted the Writ Petition of the respondent without considering the legal points raised by the petitioner. Hence, the impugned judgment is not tenable and liable to be set aside being the said is the result of misconception of law and misreading of the facts of the case. He finally submits that the impugned judgment dated 23.06.2011 in Writ Petition No. 28/2012 may pleased be set aside to meet the ends of justice.

On the other hand, Mr. Amjad Hussain learned counsel for the respondent contends that the appointment of the respondent against the post of Secretary DASB was on permanent basis from his initial appointment and the respondent accordingly served his department with effect from 03.12.2009 to 14.12.2011 with enthusiasm. He also contends that the respondent was kept on probation for a period of one year extendable for further period of one year which was expired on 03.12.2011 and the respondent had successfully completed his mandatory period of two years probation and he had become permanent employee of Pakistan Armed Service Board (PASB). He contends that on 14.12.2011 the petitioner No. 02 surreptitiously passed impugned termination order dated

14.12.2011 in contrary to the mandatory provision of service law i.e. Efficiency And Discipline Rule 1975. The respondent was entitled to be heard by the inquiry officer and also entitled to defend the allegation/charges, if any, before issuance of termination order by the petitioners. The learned counsel for the respondent also contends that no opportunity had been given to the respondent and his services were terminated on the basis of liking and disliking without issuing any show cause notice and assigning any reason thereto. The petitioners violated the mandatory provisions of law while issuing the said termination order. The said termination order was issued illegally and without lawful authority. He finally contends that the learned Chief Court has rightly set aside the said termination order in accordance with law and facts on record. The impugned judgment dated 23.06.2014 in Writ Petition 28/2012 passed by the learned Chief Court based on facts and law therefore, the same is tenable and no interference is warranted. He contends that this Hon'ble court may pleased be dismiss the appeal of the petitioners with cost and the impugned judgment may kindly be maintained.

We have heard both the learned counsels for the respective parties at length, perused the record and gone through the impugned Judgment dated 23.06.2014, in Writ Petition NO. 28/2012, passed by the learned Chief Court Gilgit-Baltistan as well as the impugned termination order No. 0151/4/PASB-2 dated 14.12.2014. The learned Deputy Attorney General for the

petitioners could not point out any illegality and infirmity in the impugned judgment and interference in the impugned judgment is not warranted. Consequently, we convert the petition into an appeal and the same is dismissed. The impugned judgment dated 23.06.2014 in Writ Petition No. 28/2012, passed by the learned Chief Court is maintained. These are the reasons of our short order dated 05.04.2016.

The appeal is dismissed.

Chief Judge.

Judge.

Judge.

Whether the case is fit to be reported or not?