

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

Before:-

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

Civil Appeal No. 30/2017

In

CPLA No. 29/2017.

Muhammad Din

Petitioner.

Versus

Mir Baz & others

Respondents.

PRESENT:-

1. Malik Shafqat Wali Senior Advocate alongwith Mr. Rehmat Ali Advocate-on-Record for the petitioners.
2. Mr. Johar Ali Khan Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record on behalf of the respondents.

DATE OF HEARING: - 01.08.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Petition for leave to appeal has been directed against the impugned judgment dated 19.11.2013 passed in Writ Petition No. 76/2012 by the learned Chief Court whereby the said Writ Petition filed by the respondent was accepted and the respondents No. 02 to 05 were directed to promote the respondent No. 01 with back benefits as prayed for. The petitioner being aggrieved by and dissatisfied with, filed this petition for leave to appeal. This court vide order dated 07.03.2017 issued notices to the respondents and the case is heard today.

2. Briefly the facts of the case are that the respondent No. 01 namely Mir Baz was appointed as driver/mechanic BPS-01 on

03.07.1978. Whereafter he was promoted in BPS-04 and he was again promoted as Dozer Operator BPS-07 on 16.08.1989 whereas the petitioner was appointed as Helper BPS-01 in the year 1980. Later on he was promoted as Dozer Operator BPS-05 on 06.08.1986. Whereafter the post of Dozer operator was up-graded from BPS-05 to BPS-07. On 29.04.2010, the post of the petitioner was re-designated as Foreman BPS-07 vide office order No. E-1-100/Admin/6/2010. Later on, the petitioner was promoted as Supervisor BPS-09 from Foreman BPS-07 whereas the respondent No. 01 being senior remained in BPS-07 since 1989. The respondent No. 01 being aggrieved filed Writ Petition No. 76/2012 in the learned Chief Court which upon hearing was allowed vide impugned judgment dated 19.11.2013. The petitioner being aggrieved filed this petition for leave to appeal.

3. The learned counsel for the petitioner submits that the work charge employees are not governed under Civil Servants Act and Rules 1973. He also submits that the promotion of petitioner to the post of Supervisor BPS-09 from the post of Foreman BPS-07 was in accordance with law. Per learned counsel the post of Foreman BPS-07 and Supervisor BPS-09 falls in the same cadre and yard stick. He further submits that the respondent was holding the post of Dozer Operator BPS-07 but the post of Dozer Operator does not fall under the same cadre and yard stick with the post of Supervisor BPS-09. He submits that the findings of the learned Chief Court have no sanction/nexus with any provision of law. Per

learned counsel the petitioner is very hard worker, honest, duty full and loyal to his duties and quite competent in his filed as compare to the respondent No. 01. The promotion of petitioner was made on the principle of his eligibility i.e. seniority-cum-fitness. He submits that the learned Chief Court fell in error by holding that re-designation and further promotion of the petitioner was unjust based on malafidy and void ab-initio, while passing the impugned judgment which is not sustainable.

4. On the other hand, the learned counsel for the respondent No. 01 supports the impugned judgment dated 19.11.2013 in Writ Petition No. 76/2012 passed by the learned Chief Court. He contends that the respondent was senior to the petitioner as he was appointed as Helper BPS-01 in the year 1978 whereas the petitioner was appointed in the year 1980 as Helper BPS-01. He also contends that the official respondents have not considered the respondent for further promotion and he was discriminated. The respondent No. 01 was constrained to file the Writ Petition which was accepted by the learned Chief Court. Per learned counsel the re-designation of the post of the petitioner from Foreman to Supervisor BPS-07 was malafidy on part of the authorities of the PWD. He contends that since the respondent was discriminated, therefore, the learned Chief Court has rightly accepted the Writ Petition of the respondent. He prays that the impugned judgment be affirmed being well reasoned and well founded.

5. We have heard the learned counsel for the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 19.11.2013 in Writ Petition No. 76/2012 passed by the learned Chief Court. Admittedly, the respondent was senior to the petitioner having unblemished record who has been discriminated and deprived from his fundamental right of promotion. The learned Chief Court has rightly accepted the Writ Petition filed by the respondent No. 01. The learned counsel for the petitioner also could not point out any illegality and infirmity in the said impugned judgment.

6. In view of the above discussions, we convert this petition into an appeal and the same is dismissed. Consequently, the impugned judgment dated 19.11.2013 passed in Writ Petition No. 76/2012 by the learned Chief Court is affirmed.

7. The appeal is dismissed in above terms.

Chief Judge.

Judge.