

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

**Before:-**

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

**Civil Misc. No. 03/2016 &  
Civil Misc. No. 02/2016 in  
Civil appeal No. 01/2016 in  
CPLA. No. 01/2016.**

Tahira Yasub DSP & 18 others

**Petitioners.**

**Versus**

Government of GB & 06 others

**Respondents.**

**PETITION FOR LEAVE TO APPEAL AGAINST THE  
IMPUGNED JUDGMENT DATED MARCH 11, 2015 PASSED  
BY THE GILGIT-BALTISTAN CHIEF COURT IN WRIT  
JURISDICTION TO THE EFFECT THAT  
PETITIONERS/APPELLANTS BEING THE NECESSARY  
PARTY HAVE NOT BEEN IMPLEADED IN THE  
PROCEEDINGS AND TO THE EFFECT THAT THE  
HONOURABLE GILGIT-BALTISTAN CHIEF COURT HAS  
PASSED THE IMPUGNED JUDGMENT EXERCISING A  
JURISDICTION WHICH WAS NOT VESTED IN IT, HENCE  
THE IMPUGNED JUDGMENT CANNOT BE GIVEN EFFECT  
AS BEING A VOID JUDGMENT HENCE MAY BE SET ASIDE  
TO MEET THE ENDS OF JUSTICE, EQUITY AND FAIR  
PLAY.**

**PRESENT:-**

1. Mr. Asad Ullah Khan advocate for the petitioners.
2. Mr. Amjad Hussain Advocate for the respondent No. 07.

**DATED OF HEARING: - 31.03.2016.**

**JUDGMENT.**

**Dr. Rana Muhammad Shamim, CJ.....** This appeal has been arisen out of the Impugned Judgment dated 11.03.2015 in Writ Petition No. 127/2014, passed by the learned Chief Court, Gilgit-Baltistan. Who upon hearing accepted the Writ Petition of the respondent No.07 namely Mr. Babar Khan while setting aside the impugned Notification No. SO(S)-1-2(39)/2013 dated 25.4.2014

issued by respondent-1 by declaring the said illegal. The respondent No.7 directed to continue his service as DSP under Notification No. C.M.Sectt.1 (04)/2012 dated 31.05.2014 issued the then Chief Minister, Gilgit-Baltistan passed in appeal filed by the respondent. The petitioners have been directed to treat the respondent as a permanent employee of Police Department Gilgit-Baltistan and the respondent has also been declared entitle for his all back benefits including his seniority with effect from 25.04.2014. the petitioners were impleaded as respondents being necessary party in the Writ Petition hence they feeling aggrieved by and dissatisfied with the said impugned judgment filed petition for leave to appeal before this court vide order dated 15.01.2016 granted leave to appeal and consequent there, suspended the operation of the impugned judgment. The case was heard today.

2. The learned counsel for the petitioners submits that the petitioners were necessary party/affectees and being senior in police service were not impleaded by the respondent No. 07 in Writ Petition No. 127/2014, before the learned Chief Court , Gilgit-Baltistan, as such the petitioners were condemned unheard. He further submits that the Gilgit-Baltistan Government has not filed appeal against the said impugned judgment for the reasons best known to them. The petitioners on gaining knowledge and being necessary party/affectees filed this petition for leave to appeal

before this court and they prayed that the same may pleased be heard and decided on merits.

3. The learned counsel for the petitioners further submits that respondent NO. 07 was serving as Inspector (BPS-16) in Airport Security Force (ASF) wherefrom his services were placed at the disposal of the Gilgit-Baltistan Police as Deputy Superintendent of Police on deputation basis vide Notification dated 24.02.2009 for a period of three years on standard terms and conditions. Which is reproduced as under:-

**“TO BE PUBLISHED IN THE GAZETTE  
OF PAKISTAN PART-I.**

Government of Pakistan  
Ministry of Kashmir affairs  
& Northern Areas  
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Islamabad, 24<sup>th</sup> February, 2009.

**NOTIFICATION**

No. Dy.243/NA-III/CS/2007:- In exercise of powers conferred on him by Rule-5 (i) (d) of the Northern Areas Rules of Business, 1994 as amended and in pursuance of the No Objection Certificate (NOC) given by both the lending department and the borrowing department the Minister of Kashmir Affairs & Northern Areas in his capacity as Chairman Northern Areas has been pleased to approve the deputation of Mr. Babar Khan presently working as Protocol Officer (BS-16) in the Aviation Wing Ministry of Defense, in the Northern Areas Police Department as Deputy Superintendent of Police (DSP) for a period of 3 years on standard terms and conditions with immediate effect.

2. His services shall be utilized as Public Relation Officer (PRO) to the Minister for Kashmir Affairs & Northern Areas/Chairman Northern Areas.

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(MUHAMMAD IKRAM)  
Deputy Secretary to the  
Government of Pakistan

4. He further submits that after thirty nine (39) days i.e. on 04.04.2009, the respondent No. 7 was illegally by violating of laws of land, he was absorbed in Gilgit-Baltistan Police by the respondents NO. 01 to 06 vide Notification dated 04.04.2009. Which is also reproduced as under:-

“NO. IGP-1(50)/3175-82

/2009 DATED THE 4<sup>TH</sup> APRIL, 2009.

GOVERNMENT OF PAKISTAN  
OFFICE OF THE INSPECTOR GENERAL OF POLICE  
NORTHERN AREAS, GILGIT.

**OFFICE ORDER.**

Consequent his posting on deputation from ASF to NA Police as DSP vide Ministry of KA&NA Notification No. Dy.243/NA-III/CS/2007 dated 24<sup>th</sup> February, 2009, Mr. Babar Khan is hereby adjusted against the clear vacancy of DSP in ARP for the purpose of drawal of pay w.e.f. 01.04.2009.

The officer named above will remain posted as Protocol Officer to the Minister KA&NA Islamabad.

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INSPECTOR GENERAL OF POLICE  
NORTHERN AREAS, GILGIT.

5. He also contends that according to Estacode and Service Rules a deputationist cannot be absorbed during deputation period. He further submits that after three (03) years of his illegal absorption in police as DSP the services of the respondent No. 07 maneuvered and placed his services on deputation at the disposal of the Federal Investigating Agency (FIA) vide Notification No. 3/133/2012- Estt (FIA) dated 10.09.2012, which is reproduced as under:-

**“TO BE PUBLISHED IN THE GAZETTE  
OF PAKISTAN (PART-II).**

GOVERNMENT OF PAKISTAN  
MINISTRY OF INTERIOR

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Islamabad, the 10<sup>th</sup> September, 2012.

**NOTIFICATION**

No. 3/133/2012-Estt (FIA). Consequent upon approval of the Competent Authority, i.e. Secretary Interior, the services of Mr. Babar Khan, Deputy Superintendent of Police (BS-17), Gilgit-Baltistan Police Department, are hereby placed at the disposal of FIA on deputation basis, on standard terms and conditions, for his further posting as Assistant Director (BS-17) FIA, in Gilgit-Baltistan.

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(Khizar Saleem Khokhar)  
Section Officer FIA (Estt)

6. The learned counsel for the petitioners referred Estacode rules i.e. Chapter V of Transfer and Deputation i.e. SI No. 26,

Explanation of term “Deputation” SI No. 27 of Government Servants-period of deputation, SI No. 27-A delegation of power in regard to deputation of Government Servants, SI No. 27 B deputation of Government Servant, SI No. 28 absorption of appointment. Which are reproduced as under:-

**SI. 26. Explanation of the Term “Deputationist”.**

**Deputation in Pakistan:- C.R.R. 77:** An officer is said to be in on deputation when he is detached on special temporary duty for the performance of which there is no permanently or temporary sanctioned appointment.

According to the practice in vogue, a government servant begins to be regarded as a “deputationist” when he is appointed or transferred, through the process of selection, to a post in a department or service altogether different from the one to which he permanently belongs, he continues to be placed in this category so long as he holds the new post in an officiating or a temporary capacity but cease to be regarded as such either on confirmation in the new post or on reversion to his substantive post.

**SI No. 27. Deputation of Government Servants-period of Deputation.**

Maximum period of deputation: in continuation of Establishment Divisions Circular D.O. letter No. 4/I/84-R-I (A) /20-11-1986 (Annex), conveying the directives of the Prime Minister requiring the period of appointment to be clearly specified in each case of contract, secondment or deputation, the following policy is laid down for deputation of Government Servants:-

- i. The normal period of deputation for all categories of Government Servants would be three years. This would be extendable by two years with the prior approval of the competent authority.
- ii. All cases of initial deputation of Government Servants holding posts in BPS-17 and above would be referred to the Establishment Division for approval of the competent authority. The initial deputation in the case of Government Servants holding posts in BPS-16 and below would be approved by the Secretary of the administrative concerned/head of the department not below BPS-21.
- iii. The competent authority to grant extension in deputation beyond the initial period of three years, would be as below:-

- a. Government Servants in BPS-1 & 2. Head of the Department.
- b. Government Servants in BPS 3 to 16 Secretary of the Admin. Ministry/Head of the Department not below BPS-21.
- c. Government Servants in BPS 17 to 19 Secretary of the Admin. Ministry concerned.
- d. Cases of Government Servants in BPS-20 & above would be referred to Establishment Division.
- iv. On the completion of the maximum period of five years, both the borrowing and the lending organizations should ensure immediate repatriation of the deputationist.
- v. In case it is not possible to repatriate a person to his parent organization for compelling reasons, the case should be referred to the Establishment Division before the expiry of the maximum period of five years fully explaining the circumstances due to which immediate repatriation is not possible and measures taken to obtain or groom a replacement as early as possible. The above policy would also be applicable to transfer on Foreign Service in terms of FR 9(7) and rules contained in Chapter XII of the fundamental Rules. Ministers/Division are requested to bring these instructions to the notices of their attached departments/subordinate offices/corporations and autonomous bodies etc. The existing instruction on this subject issued vide Estt. Divisions O.M No. 1/28/75-D.II (CV), dated 04.11.1980 (SI No. 28) and O.M. No 22/47/82-R-3, dated 12.04.1983 stand modified to the above extent.

**SI No. 27-A**

**Delegation of power in regard to deputation of Government Servants.**

In order to ensure expeditious proceeding of cases of deputation, the Chief Executive has been pleased to delegate to the Secretaries of administrative Ministers/Divisions and heads of attached departments and subordinate officers not below BPS-21. Powers to approve initial deputation of officers up to BPS-19 belonging to cadres and posts under their administrative control for a period of three years. The above powers are subject to observance of the following guidelines:-

- i. Where a post proposed to be filled in reserved under the rules departmental promotion appointment on deputation may be made only if the department certifies that no eligible person is available for promotion or the eligible person is found unfit for promotion by the appropriate DPC/Selection Board. In such cases deputation may be approved till such time a suitable person becomes available for promotion.

- ii. In case of posts reserved for initial recruitment, appointment on deputation may be made only as temporary arrangement, pending joining of the nominee of the FPSC, and subject to the condition that such appointment shall be made only after a requisition has been placed with the FPSC.
- iii. In cases where a post is tenable through appointment by Deputation the normal period of deputation should be three years and no extension beyond three years may be allowed without prior approval of the Establishment Division.
- iv. No officer should be sent on deputation unless he has completed three years service in his parent department after return from an earlier deputation.

**SI No. 27-B**

**Deputation of Government Servants.**

Reference Establishment Division O.M. No. 1/28/75-D.II/R-3/R.I, dated 18.2.1987 (SI No. 27) as amended vide OM of same No. dated 11.04.2000 (SI No. 27-A) on the above subject. The term "Deputation as defined by the Supreme Court of Pakistan vide PLD 1981 SC 531 means that a Government Servant begins to be regarded as "deputationist" when he is appointed or transferred through the process of selection to a post in a department or service altogether different the one to which he permanently belongs, he continues to be placed in this category so long as he holds the new post in an officiating or a temporary capacity but ceased to be regarded as such either on confirmation in the new post or on reversion to his substantive post.

According to the judgment of Federal Service Tribunal in appeals No. 39 & 40 ( R ) (CS)/2003 (M/s) Liaqat Ali Choudhry and others versus Federation of Pakistan, upheld by the Supreme Court of Pakistan, as interpreted by the law, justice and Human Rights Division, all the incumbents who are deputed to work in an agency foreign to the service to which they belong, are entitled to draw Deputation Allowances.

In view of the position stated above, the Finance Division have issued orders/instructions vide their O.M. No. F.5 (8) R-2/2007 stating that deputation allowance may be granted to all officers/officials of ministries/divisions/departments who have been transferred and posted on deputation basis or under section 10 of Civil Servants Act 1973, to a post in a department or service altogether different from the one to which they permanently belong.

In view of the above Ministries/Divisions are advised that henceforth notifications/orders issued by them regarding the deputation of their officers/officials to a department/office altogether different from the one which they actually belong must invariably states that:

- i. The incumbent will be entitled to deputation allowance.
- ii. The period of deputation shall be three years extendable by two years, with the approval of the competent authority.

**SI. No. 28.**

**Deputation period-absorption of deputationists.**

In constitution of Establishment Division O.M. of even No. dated 10.1979 (Annex), it is stated that:

- i. The normal deputation period, for all categories/grades of Government Servants shall be three years extendable for another two years with prior permission of the Establishment Division. A Government Servant shall not, however, remain on deputation to another Government organization or an autonomous body/corporations etc for more than five years.

- ii. If a person is on deputation to a government organization, and has complete the maximum tenure of five years, he must revert or be reverted by the borrowing office to his parent/lending organization of the expiry of that period, otherwise, the audit office concerned shall not make payment of salary and allowances to him beyond the date of expiry of five years, unless specifically authorized by the Establishment Division.
- iii. If a person is on deputation to an autonomous organization/corporation etc, and has completed the maximum tenure of five years, it will obligatory for that person to report back to his parent/lending organization on the expiry that period irrespective of his being relieved by the borrowing corporation/body etc, failure to report back unless specifically authorized otherwise by the Establishment Division will be construed as "misconduct" and make him liable to disciplinary action under the Government Servant (Efficiency and Discipline) Rules, 1973.
- iv. In case a deputationist is proposed to be absorbed permanently in the borrowing office (either a Government Organization or a Corporation Etc), such a proposal shall be initiated by the borrowing office atleast six months before the expiry of the deputation period of the deputationist concerned. Such a proposal, with the written consent of the deputationist, shall be made by the borrowing office to the lending office (or Parent office of the deputationist) which shall convey its decisions (if necessary, in consultation with the Establishment Division) to the borrowing office as well as the deputationist, by the expiry of the terms of his deputation. In the event of non acceptance of the proposal, the individual shall revert back to his parent office as indicated at (2) and (3) above.

### **SI NO. 29**

#### **Deputation Not a Method Appointment.**

Reference Establishment Division O.M. No. 1/28/75-D.II/R-3/R.I, dated 18.2.1987 (SI No. 27), wherein the normal period of the deputation for all categories of Government Servants had been fixed as three years, extendable by another two years with the prior approval of the competent authority. Under the said instruction Secretaries of the Ministries/Divisions concerned were authorized to grant extension in deputation period beyond the initial period of three years in respect of Government Servants holding posts BPS-17 to BPS-19.

It has been observed, however, that there is growing tendency to resolve to postings through deputationist despite the fact that deputation is not a normal prescribed method of appoint as under the Civil Servants (appointment, Promotion and Transfer) Rule 1973, three methods of appointments are required to



be made either by promotion or by initial appointment or by transfer. The Method of appointment to post is also described in the Recruitment Rules. Filling up the posts through deputation, if not provided so in the recruitment Rules, leads to following adverse implications:-

- (i). in case of promotion posts, the promotions of departmental personnel are delayed/stopped.
- (ii). In case the post is required to be filled through initial appointment, quota of a particular province is affected.

In order to bring the deputation policy in conformity with the present policy of postings and transfers circulated vide Establishment Division's O.M. No. 10/10/94-R-2, dated 22.03.1994, (SI No. 3) and also to discourage the increasing tendency of posting through deputation, it has been decided that, in future, the deputation period will be limited to three years only. A maximum two years extension in the deputation period will be considered only in exceptional cases, in the public interest, and with the prior approval of the Establishment Division in all cases Government Servants in BPS- 17 and above. The extension cases shall be forwarded to the Establishment Division atleast six months before the expiry of the three-year deputation period and with proper justification for the proposal. However, no deputation proposals will be entertained which will adversely affect the method of appointment to the post as laid down in the recruitment rules. Accordingly all such proposals must invariably be accompanied by a formal assurance signed by atleast the joint Secretary (Admin) to that effect.

Ministries/Divisions are requested to also bring these instructions to the notice of their Attached Department, Subordinate Offices, Corporations, Autonomous Bodies, etc, under their administrative control, for guidance/strict compliance. It may pleased be noted that arrangements have been made in consultation with the Auditor General's Office whereby payment of emoluments etc, to those on deputation will be stopped forthwith, immediately following the completion of the three years deputation period, unless the Establishment Division's prior approval has been obtained and conveyed to the concerned Audit Circle.

The existing instructions on this subject issued vide Establishment Division O.M. No. 1/28/75-D.II/R-3/R.I, dated 18.2.1987 (SI No. 27), stand modified to the above extent.

7. The learned counsel for the petitioners also contends that the placement of the services of the respondent No. 07 at the disposal of FIA was also illegal and against the law and service Rules as he was on deputation at Gilgit-Baltistan Police on standard terms and conditions and before the expiry of the said period his services again placed at the disposal of another department was illegal and without lawful authority. A deputationist cannot be given another deputation before expiry of the first deputation period. The same illegality was also pointed out by the respondents NO. 01 to 06 and they consequently issued an order recalling his deputation. Consequently, he was repatriated as Inspector (BPS-16) to his parent department on 25.04.2014, which is also reproduced as below:-

“GOVERNMENT OF GILGIT-BALTISTAN  
THE DEPARTMENT OF SERVICES AND GENERAL ADMINISTRATION  
GILGIT-BALTISTAN SECRETARIAT,  
GILGIT.

Dated the 25<sup>th</sup> April, 2014..

**NOTIFICATION**

No. SO(S)-I-2(39)/2013. Whereas, Mr. Babar Khan, Inspector (BPS-16) of Aviation Wing, Ministry of Defense was posted to Police Department Gilgit-Baltistan on deputation basis without following rules/regulations vide KA&NA Division, Islamabad Notification No. Dy.243/NA-III/CS/2007 dated 24-02-2009.

2. Whereas, on 20<sup>th</sup> November, 2009 the said Inspector (BS-16) was adjusted in Police Department, Gilgit-Baltistan without following all codal formalities and rules in vogue and against the judgment of the Hon’ble Supreme Court of Pakistan.

3. Whereas, under the Hon’ble Islamabad High Court judgment dated 30-05-2012 Mr. Babar Khan Inspector BS-16 was repatriated back to his parent Department vide Ministry of Interior, Islamabad Notification No. 14/26/2011-ICT dated 01-06-2012.

4. Whereas, Mr. Babar Khan Inspector BS-d16 has illegally been sent on deputation to FIA and retained the seniority in Police Department GB.

5. Whereas, the Police Department has conveyed the following irregularities:

- i).- In the Aviation Wing Ministry of Defense Mr. Babar Khan was in BPS-16.
- ii)- His posting on deputation to GB Police against the post of DSP (BPS-17) was illegal.

iii)-The officer has been allowed BPS-17 without proper promotion through DPC which is against the Appointment, Promotion and Transfer Rules, 1973. Rule 8-A of the said Rules provides that

“No Promotion on regular basis shall be made to posts in BPS-17 and above, unless the officer has completed such length of service, attended such training and passed departmental examinations.”

iv)-The following training Courses are mandatory in the police department GB for promotion to higher posts as prescribed in Chapter-13 of Police Rules 1934

a)- Inter Class Course/Probation Course of Six months duration.

b)- Upper Class Course of Six Months duration.

c)- Advance Course.

6. Whereas, the Police Department GB has never given any NOC for Deputation or absorption of Mr. Babar Khan BS16.

7. And whereas, after thorough examination the absorption, deputation and adjustment of an officer of BS 16 against a post of BS 17 has been found to be irregular.

8. Now, therefore, on the recommendation of Inspector General of Police, Gilgit-Baltistan vide No. IGP-(50)/324/2013 dated 13<sup>th</sup> May 2013 the competent authority has been pleased to cancel the absorption of Mr. Babar Khan Inspector, BS 16 of Aviation Wing Islamabad in Police Department, Gilgit-Baltistan in BS-17, as well as deputation in FIA is also withdrawn as both orders are null and void ab-initio.

9. Mr. Babar Khan, BS-16 is hereby repatriated as Inspector (BS-16) in Aviation Wing of Ministry of Defense, Rawalpindi, with immediate effect.

10. The Competent Authority has further been pleased to order an Inquiry against the illegal absorption and deputation as well as ordered the recovery of excess pay drawn while the officer was in Bs-16.

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DEPUTY SECRETARY (SERVICES)  
05811-920220

8. He continuous his arguments and submitted that the Airport Security Force (ASF) authorities have not accepted the services of the respondent no. 07 and the said respondent feeling aggrieved by and dissatisfied with the said Repatriation Order filed Writ Petition No. 127/2014 in learned Chief Court, Gilgit-Baltistan which was accepted. The impugned Notification No. SO (S)-1-2(39)/2013 dated 25.04.2014 issued by respondent No.01 was declared illegal. He was entitled to continue his service as Deputy Superintendent of Police under Notification No. C.M. Sectt. 1 (04)/2012 dated 31.05.2014 and also declared for his all back

benefits if have not been allowed by the respondents including his seniority as on 25.04.2014.

9. He further submits that the deputationist cannot be adjusted and merged into regular service within two months against any vacant post depriving the incumbents/officers of police department waiting for their promotion thereto. While saying so he relied upon various reported judgment of the Hon'ble Supreme Court of Pakistan which have already been mentioned in criminal petition No. 89/2011, contempt proceedings against the Chief Secretary Sindh & others (alongwith others dozen of clubbed petitions) reported as 2013 SCMR 1752. He particularly referred para-77,79 & para-175 of the said reported Judgment which are reproduced as under:-

**Para-77.**

**Shahid Hussain Mahessar, who came on deputation from I.B in 2009. In 2011 though he was repatriated under the orders of the Court to I.B in his case the Sindh Government has furnished comments stating therein that in the year 2009 his services were placed at the disposal of Sindh Government and he was posted as ADIGP/Special Branch Sindh, Karachi. He was recommended for absorption by Addle. AID/Special Branch Sindh. In the year 2011 vide Notification dated 4.1.2011 his deputation was cancelled/withdrawn. He filed a Constitutional Petition in the High Court of Sindh and obtained status-quo order. Thereafter the said officer was appointed and transferred as SP (BPS-19) in Sindh Police on 11.10.2011. There is no mention as to how he was granted BPS-18.**

**Para-79.**

**“Shiraz Asghar Shaikh came from PEMRA in Sindh Police on deputation in the year 2008 on the desire of the Chief Minister Sindh. He was appointed as DSP. However, in the year 2011 he was recommended for absorption in Police Department. IN his case, the Sindh Government in its comments has stated that at the desire of Chief Minister Sindh his services were placed at the disposal of Sindh Government in 2008 for a period of three years. Thereafter he was posted in Sindh Police. His case was placed before a Committee for absorption in Sindh Police. His Notification of absorption was cancelled/withdrawn. However, he filed Constitutional petition before Sindh High Court wherein his order of repatriation was suspended and he was allowed to continue in Sindh Police till further orders. The Sindh High Court ordered for issuance of his formal Notification of absorption. The Home Department has absorbed him on 11.06.2012 in pursuance of the Court's order extending him the benefit of the impugned legislation without**

examining the effect of orders of this Court for his repatriation to the parent department.”

**Para-175.**

“For the aforesaid reasons we allow Constitution Petitions No. 71/2011, 23-K/2012, 21/2013 and 24 of 2013, and dispose of all the misc. Applications and hold that the impugned legislations mentioned in para-115 are violative of the provisions of the Constitution discussed hereinabove. We further hold and declare that benefit of “absorption” extended by the Sindh Government since 1994, with or without backdated seniority, are declared ultra vires of the Constitution, as the learned Additional Advocate General had made a statement during hearing that the impugned validation instruments have granted legal cover to the employees/civil servants, who were absorbed since 1994. Likewise, we further hold and declare that all out of turn promotions made under section 9-A of the Sindh Civil Servants Act, 1973, by the Sindh Government to an employee or civil servant with or without backdated seniority since 22.01.2002 where section 9-A was inserted through Ordinance IV of 2002, are ultra vires of the Constitution. All Misc applications made by the absorbees in which interim order were passed by this Court dated 20.05.2012 stand vacated. We also hold that all the re-employment/re-hiring of the retired civil Government Servants under the impugned instrument being violative of the constitution are declared nullity. We further direct that the nominations made by the Chief Minister in exercise of the quota given by Rule 5(4)(b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964, are without lawful authority and all the 15 nominees (Assistant Commissioners) are reverted to their original positions”.

10. The learned counsel for the petitioners further submits that the respondent No. 07 in collusion with the administration of Gilgit-Baltistan Government high ups and due to political influence successfully maneuvered illegally absorbing himself in police department in the next grade BPS-17 as DSP in regular police department. He further submits that after disposing Writ Petition No. 42/2009 and Writ petition No. 127/2014 by the learned Chief Court, he has managed and maneuvered not to file the appeal against the said impugned judgments. The petitioners were not impleaded deliberately so that he may achieve his goal in designed manners. He prays that both the impugned judgments be set aside as the same are not sustainable. He also repeated that in past Writ Petition No. 42/2009 was filed by police Inspectors namely Mr. Fida Ali, Mr. Muhammad Ibrahim, Mr. Muhammad Ejaz Haider and Mr.

Rajab Ali. Wherein, Mr. Babar Khan was shown as respondent No. 07. The petitioners being most senior Inspectors entitled for promotion to next higher grades and prayed that the respondent No. 07 while joint on deputation who was holding post of Inspector BPS-16 in Airport security Force which is a clear disregard to the approved rules circulated on 09.8.2014 depriving the petitioners from their promotion. He further submits that it was arrayed in the light of established rule that the respondent No. 07 was not eligible for transfer to GB police who was serving as inspector in BPS-16 in Airport Security Force. He also submits that the notification of the respondent No. 07 was also unlawful being contrary to the provisions of Federal Government Deputation Rules 1993. It is also contended that in the said petition by the petitioners/Inspectors of Police department that the functioning and the set up of the police department Northern Areas are Governed by Punjab Police Rules 1934 which have formally been extended to Northern Areas vide Notification dated 30.07.1978 and as provided in appendix -12.1 of the said Rules wherein not more than 20% of vacancies will be filled in by direct recruitment and remaining 80% posts will be filled through promotion from amongst the inspectors. However, the learned Chief Court upon hearing vide judgment dated 12.04.2012, the petition of the police Inspectors was dismissed holding that since the respondent No. 07 has already been adjusted against the said post under 50% direct quota as such no service rights of the police Inspectors/petitioners have been jeopardized.

11. The learned counsel for the petitioners reiterated that it was provided under the Estacode that a person, who is transferred and appointed on deputation must be a government servant, and such transfer should be made through the process of selection. The borrowing government has to establish the exigency in the first place and then the person who is being transferred/placed on deputation in Government must have matching qualifications and expertise in the field with required experience. In absence of these conditions, the Government cannot appoint anyone by transfer or deputation. He also contends that Locus poenitentiae is the power of receding till a decisive step is taken, but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction. If the order is illegal, then perpetual rights cannot be gained on the basis of an illegal order. He further submits that the respondent No. 07 maneuvered himself adjusted in BPS-17 on the clear post of DSP without application of the criteria laid down in law by way of underhand means or by any mode other than merit, cannot get protection of such benefit on the principle of locus poenitentiae, unless he could show that the benefit avail by him was in accordance with law, in good faith and without any ulterior motives of mala fide. While submitting so he relied upon case of Farhat Abbas versus I-G and others (2009 SCMR 245) relates to the out of tern promotion in the Police Department. The order was recalled by the authority assigning valid reasons to differentiate and to follow the parameters of reward on

account of bravery and gallantry as well as appreciation for performance of duty diligently but with due regard to the extent of such appreciation to commensurate with the degree of merit involved. Undoubtedly performance of duty with due diligence and efficiently deserves due appreciation but it cannot be over appreciated out of proportion so as to make out case a grievance to the other employees in service of the department. If a case of glaring favouritism is made out resulting in a malafide action as in the instant matter, it has to be rectified in accordance with law to avoid any injustice. Such a valid order cannot be set aside merely on conjectures or surmises as such practice would encourage a person to obtain any order using underhand means or otherwise and then claims immunity for such acts which would, therefore, result in rewarding the person using such means by allowing him to continue to enjoy fruits of such ill-gotten gains thus, perpetuate injustice. He also submits that the deputationists were not qualified to hold the posts against which they were working. He continues his argument while stating that the Government shall refrain from issuing posting orders of any non-cadre officer to a cadre post by transfer under Section 10 of the Civil Servants Act, 1973 nor shall it depute by transfer any officer from occupational group of the Federal Government or from autonomous body in the Government except in exigency unless the deputationist meets the criteria of matching qualifications, eligibility and experience to the proposed post. He further submits that the absorption of respondent No. 07



in higher grade in police department reflects political consideration as he cannot be absorbed within thirty nine (39) days against the rules, law and merit. He also contends that the constitution of Pakistan provides protection to every citizen to life and liberty. The term "life and liberty" used in this Article is very significant as it covers all the facets of human existence. The term life has not been defined in the Constitution, but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. The inhabitation against its deprivation extends to all those limbs and faculties by which life is enjoyed. The term "life" includes 'reputation' 'status' and all other ancillary privileges which the law confers on the citizen. He submits that a civil servant is fully protected under Article 9 of the Constitution who cannot be deprived of his right of reputation, status and opportunity of the promotions in next grade. He lastly submits that the absorption of the respondent No. 07 who was serving as Inspector BPS-16 in Airport Security Force cannot be absorbed in a higher grade on deputation depriving other Police Officers/petitioners in line under Section 10 of Civil Servants Act, 1973 but he can be posted in a higher grade for a period of three years on temporary basis. Such absorption within thirty nine (39) days after assuming charge on deputation would not only be unconstitutional without undertaking competitive and transparent process but would also deprive the seniority and progression of career of the meritorious Police Inspectors/petitioners. He submits

that the illegal absorption passed by Gilgit-Baltistan Government not a perpetual right of the respondent No. 07 gained on the basis of an illegal order. He prays that both the judgments in Writ Petition No. 42/2009 and 127/2014 passed by Chief Court Gilgit-Baltistan be set aside being not sustainable.

13. On the other hand, the learned counsel for the respondent No. 07 submits that the impugned judgment dated 11.03.2015 in Writ Petition No. 127/2014, passed by the learned Chief Court is well founded and in accordance with the service rules and law, which has rightly been passed by the learned Chief Court, Gilgit-Baltistan. He further submits that the petitioner was a permanent employee in the Airport Security Force in BPS-16 and he was performing his duties efficiently. Later on his services were transferred to Gilgit-Baltistan Police on deputation basis for three years and subsequently, he has been absorbed in Gilgit-Baltistan Police on permanent footing correctly in line with the service/deputation rules and there is no embargo to absorb a deputationist on permanent basis against a clear vacant post of Deputy Superintendent of Police. He supports the impugned judgment, which according to him has been passed rightly and no interference is warranted into it to meet the ends of justice. He also referred the judgment passed in Writ Petition No. 42/2009 filed by the five Inspectors of Police wherein the absorption of the respondent No. 07 was challenged. The learned Chief Court was

pleased to dismiss the same being meritless and absorption of the respondent No. 07 was held in accordance with law which holds the field.

13. We have heard both the learned counsels for the respective parties at length, perused the record and gone through the impugned Judgment in Writ Petition No. 42/2009 and Writ Petition No. 127/2014, passed by the learned Chief Court Gilgit-Baltistan and the impugned Notification dated 25.04.2014 issued by the respondent No. 01 as well as the case law relied upon by the learned counsel for the petitioners. The case laws referred by the learned counsel for the petitioners support his contentions. In our considered view the absorption of respondent No. 07 was illegal, without lawful authority and ultra vires to the service laws and rules which is not tenable. Consequently, we accepted the appeal vide our short order dated 31.03.2016 and set aside both the impugned judgment dated 12.04.2011 in Writ Petition No. 42/2009 and judgment dated 11.03.2015 in Writ Petition No. 127/2014, passed by the learned Chief Court Gilgit-Baltistan. Consequent thereto, the impugned Notification No. SO(S) -I-2(39)/2013, dated 25.04.2014 issued by the respondent No. 01 was maintained. The respondent no. 07 Mr. Babar Khan was directed to report to his parent Department i.e. Airport Security Force forthwith. Consequently, the connected petition i.e. CPLA No. 18/2016, titled Babar Khan versus Tahira Yasub & others was dismissed and the

leave to appeal was refused. These were the reasons for our short order dated 31.03.2016.

The appeal is accepted.

**Chief Judge.**

**Judge.**

**Whether the case is fit to be reported or not?**