

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

Before:-

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

Mr. Justice Javed Iqbal, Judge.

C. Misc. No. 100/2015

in

CPLA. No. 16/2012.

1. Chairman Pakistan Agriculture Research Council (PARC),
Sector G-5/1 P.O Box No 1031, Islamabad.
2. Director, Mountain Agriculture Research Center (MARC)
Juglote, District Gilgit. **Petitioners.**

Versus

1. Ejabat Shah Son of Aziz Jan R/O Chupursan Gujal Hunza
District Hunza/Nagar. **Respondent.**

**PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF
GILGIT-BALTISTAN (EMPOWERMENT & SELF
GOVERNANCE) ORDER, 2009 AGAINST THE JUDGMENT/
ORDER DATED 07.05.2012 PASSED BY THE GILGIT-
BALTISTAN CHIEF COURT.**

PRESENT:-

1. Mr. Ehsan Ali Advocate alongwith Mr. Rehmat Ali
Advocate-on-Record for the petitioner.
2. Mr. Ali Dad Khan Advocate on behalf of the respondent.

DATE OF HEARING: - 23.06.2016.

JUDGEMENT.

Dr. Rana Muhammad Shamim, CJ.....This petition has been arisen out of the Impugned Judgment dated 07.05.2012 in Writ Petition No. 34/2011 passed by the learned Gilgit-Baltistan Chief Court wherein the Writ petition of the petitioner was allowed and the impugned termination order of the respondent was declared ab-initio, void and illegal. The petitioners being aggrieved by and dissatisfied with filed this petition for leave to appeal.

2. The brief facts of the case are that the respondent was initially appointed as Clerk in “Olive Project” for a period of 05 years on contract basis at the fixed salary of Rs. 4000/- per month in Mountain Agriculture Research Center (MARC) vide Office Order dated 7th March, 2008. Consequently, the contract period was completed on 30.06.2010. Meanwhile, keeping in view the qualification of the respondent i.e. M.Sc. in Economics, the respondent was appointed on regular basis as Assistant Admin. Officer/Security (BPS-06) in the MARC vide Office Order dated 29.10.2010. In pursuance of the said Office Order the respondent joined his duties on 01.11.2010 subsequently, the respondent was transferred to District Diamer Chilas from the Liaison office Gilgit vide Officer Order 14.01.2011. Later on due to posting/transfer of the petitioner No.02 i.e. Director General, MARC, the petitioner No.02 illegally and without any cogent reason stopped the respondent to continue his services and the salary of the respondent has also been stopped without any justification. The respondent being aggrieved by and dissatisfied with his termination Order dated 07.02.2011 filed Writ Petition No. 34/2011, which upon hearing was allowed vide Impugned Judgment dated 07.05.2012 by the Gilgit-Baltistan Chief Court, hence, this petition for leave to appeal.

3. The learned counsel for the petitioners submits that Writ Petition filed by the respondent was not maintainable for the reason that the respondent will have to exhaust remedies at the

departmental forum against discontinuation/termination of his services and the learned Gilgit-Baltistan Chief Court has wrongly not only entertained the same writ petition but also allowed the same contrary to the law and facts. He further submits that the said Writ Petition was also filed in violation of the Section 30 of the Pakistan Agriculture Research Council (PARC) Ordinance, 1981 and the statement of the respondent at Para No. 03 & 04 in the Writ Petition is self contradictory. He further submits that the appointment order dated 29.10.2010 of the respondent issued by the petitioner No. 02 was factitious and bogus as a post of Assistant Admin. Officer/Assistant Security Officer (SPS-6) was not vacated/available in the strength of Mountain Agriculture Research Council (MARC). He contended that the case as set out by the respondent was of factual controversies and in such cases the Writ Petition does not lie.

4. He further submits that the appointment of petitioner/respondent No. 02 i.e. Mr. Rush Khan as Director General himself was illegal because the Chairman PARC was not competent authority to appoint a person as Director General in (BPS-20/21), as such appointment of respondent by petitioner No. 02 is ab-initio void and illegal. He finally submits that the appointment order of the respondent has already been cancelled/withdrawn vide Office Order dated 07.02.2011 which was already been communicated to the respondent. He lastly submits that the Impugned Judgment dated 07.05.2012 passed by the

learned Gilgit-Baltistan Chief Court may kindly be set aside being not sustainable.

5. On the other hand, the learned counsel for the respondent submits that his client was performing his duties with professional enthusiasm from the inception of his appointment uninterrupted. However, when the Director General was replaced, the intervention started i.e. firstly, the respondent was directed to discontinue his job, secondly, his salary was also withheld with malafidly. The same act of the petitioners was illegal, void and without lawful authority. Consequently, the respondent filed Writ Petition No. 34/2011, which upon hearing was accepted. The petitioners were directed to release the salary of the respondent from the date of his joining as the impugned Termination Letter dated 07.02.2011 was declared ab-initio, void and illegal. He finally submits that the Impugned Judgment dated 07.05.2012 in Writ Petition No. 34/2011 passed by the learned Chief Court may pleased be maintained being well reasoned and well founded as no intervention is warranted into it.

6. We have heard both the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 07.05.2012 in Writ Petition No. 34/2011 passed by the learned Gilgit-Baltistan Chief Court as well as other materials available on record. Admittedly, the respondent has not exhausted departmental appeal against his termination letter. Further, the factual controversies are involved in

this case as on one hand the respondent claims that he had been appointed as Assistant Admin. Officer/Assistant Security Officer (SPS-6) vide appointment order dated 29.10.2010 (BPS-06) by the competent authority i.e. the petitioner No. 02, on the other hand, the petitioners contend that the said appointment order was factitious and bogus as the same post against which the respondent was appointed was neither created nor vacated/available in the strength of MARC. In case where alternate remedy is available and/or in the case factual controversies are involved the Writ does not lie in circumstances.

7. In view of the above discussions, we convert this petition into an appeal and the same is allowed. Consequently, the impugned judgment dated 07.05.2012 in Writ Petition No. 34/2011 passed by the learned Gilgit-Baltistan Chief Court is set aside. The respondent may seek other remedies available to him in proper forum in accordance with law.

8. The appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?