

**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 of 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. The respondent No. 01 to 06 did not challenged the impugned Chief Court judgment. The petitioners/effectees were not impleaded as respondents in Writ petition No. 127/2014 in the Chief Court Gilgit-Baltistan. As soon as it came in the knowledge to the petitioners feeling aggrieved by and dissatisfied with the said impugned judgment filed Petition for Leave to Appeal before this Court with a prayer for setting aside the impugned judgment in question. This Court vide order dated 15.01.2016 heard the petition for leave to appeal in preliminary and consequent upon, the leave to appeal is granted. Consequent thereto, the operation of the impugned judgment was suspended. The case was fixed today for final arguments.

The learned counsel for the petitioners submits that the petitioners were necessary party/affectees and being all senior 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 and a Judgment was obtained on their back. He further submits that after announcement of the impugned judgment which was delivered in the absence and on the back of the petitioners, the petitioners came

to know that the respondent No.07 is trying to join his duty as Superintendent of Police or demanding higher rank of SSP in Gilgit-Baltistan Police department in pursuance of the said Chief Court impugned Judgment dated 11.03.2015. He again reiterated that the Gilgit-Baltistan Government has not filed appeal against the said impugned Judgment for the reasons best known to them or the respondent No. 07 has not challenged and managed nor challenging the impugned judgment for ulterior motives. The petitioners on gaining knowledge and being necessary party /affectees filed this petition for leave to appeal before this Court with a prayer that the same may please be heard and decided on merits. Since the petitioners were not impleaded as respondents in the learned Chief Court, Gilgit-Baltistan and prays that the Civil Misc No. 01/2016 for urgent hearing, Civil Misc. No. 02/2016 for condonation of delay be allowed in the interest of justice and fair play. Admittedly, the petitioners being necessary party/effectees and being senior to the respondent No.07 have not been impleaded by the respondent No.07, before the learned Chief Court, Gilgit-Baltistan in Writ Petition No. 127/2014 and the Gilgit-Baltistan Government has not challenged /filed appeal against the impugned Judgment in this Court as well, hence, the Civil Misc No. 01 & 02 were allowed vide order dated 15.01.2016 as prayed in the interest of justice.

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  
\*\*\*\*\*

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.

--sd--

(MUHAMMAD IKRAM)  
Deputy Secretary to the  
Government of Pakistan

**The Manager  
Printing Corporation of  
Pakistan Press  
Karachi.**

Copy to:-

1. The Chief Secretary, Northern Areas, Gilgit.
2. The Secretary, Home, Services GAD, Revenues & Information Deptt. NAs, Gilgit.
3. Inspector General of Police, Northern Areas.
4. Dy. AGPR, Gilgit.
5. Ministry of Defense (Mr. Amjad Fayyaz Qasim S.O (CAA) Rawalpindi.
6. P.S. to Minister for KA&NA/Chairman Northern Areas.
7. P.S. to Secretary M/o KA&NA.
8. Officer concerned.

--sd--

(SAJID MIAN)  
Section Officer (NA III/CS)”

He further submits that after 38 (thirty eight) 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.

**DISTRIBUTION.**

1. The Chief Secretary, NAs, Gilgit.
2. The Secretary, Home. NAs, Gilgit.
3. The Dy. AGPR, Gilgit.
4. P.S. to Minister for KA&NA/Chairman Northern Areas.
5. P.S. to Secretary M/o KA&NA.
6. The SP ARP Gilgit.
7. The Budget officer CPO Gilgit.
8. Officer concerned.”

He also contends that according to Estacode and Service Rules a deputationist cannot be absorbed during deputation period. He further submits that the services of the respondent NO. 07 were illegally again placed on deputation from the Gilgit-Baltistan Police as Deputy Superintendent of Police (BPS-17) 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

\*\*\*\*\*

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)

**The Manager**  
**Printing Corporation of Pakistan Press**  
**Karachi.**

Copy to:-

1. The AGPR, Islamabad.
2. The Director General FIA HQs, Islamabad.
3. The Chief Secretary, Northern Areas, Gilgit Baltistan w.r. to their NOC/letter No. SOS-1-2(5)/2011.
4. PS to Minister for Interior.
5. The Additional Director (Estt) FIA HQs, Islamabad.
6. Officer concerned C/o Additional Director (Estt).

The learned counsel for the petitioner also contends that the services of the respondent No. 07 were illegally merged after 38 days in Gilgit-Baltistan Police as DSP (BPS-17) & this illegality perpetuated by sending him on deputation and placing his service at the disposal of FIA without lawful authority and contrary to the relevant service rules and law. A deputationist cannot be given another deputation at the disposal of other department is violation of service rules. The same illegality was also pointed out by the respondents NO. 01 to 06 and they 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.

--sd--

DEPUTY SECRETARY (SERVICES)  
05811-920220

Distribution:

1. The PS to DG FIA (with the request to relieve the officer).
2. The PS to DG, Aviation Wing, Ministry of Defense, Rawalpindi (with the request to accept his repatriation).
3. The Inspector General of Police, Gilgit-Baltistan with the request to strike off his name from seniority list).
4. The Deputy Secretary (I&C) to the Chief Secretary, Gilgit-Baltistan, Gilgit.
5. The AG, Office, Gilgit-Baltistan, Gilgit.
6. The PA to the Secretary Services, Gilgit-Baltistan, Gilgit.
7. Office File.
8. Officer Concerned.”

He continuous his arguments that as per respondent No. 07 the Airport Security Force (ASF) authorities have not accepted him as his post was abolished. Consequently, the respondent No. 07 challenged his Repatriation Order by filing Writ petition NO. 127/2014 in the learned Chief Court, Gilgit-Baltistan upon hearing the said Writ petition was accepted, the impugned Notification No. SO (S)-1-2(39)/2013 dated 25.04.2014 issued by respondent No.01 was declared illegal. The respondent No. 01 to 06 were directed to continue his service as Deputy Superintendent of Police under Notification No. C.M Sectt.1 (04)/2012 dated 31.05.2014 and also entitled for his all back benefits if have not been allowed by the respondents including his seniority as on 25.04.2014. He further submits that the deputationist cannot be adjusted and merged into regular service. While saying so he relied upon a reported judgment of the Hon'ble Supreme Court of Pakistan in contempt proceedings against the Chief Secretary Sindh & others in a matter of Criminal Original Petition NO. 89/2011 (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-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”.

The learned counsel for the petitioners finally submits that the impugned judgment is the result of misconception of law and the same is based on misreading of the facts and law. Hence, the said judgment is not tenable and liable to be set aside.

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 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 ASF and he was performing his duties efficiently. Later on his services were transferred to Gilgit-Baltistan Police on deputation

basis 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. He supports the impugned judgment, which has been passed rightly and no interference is warranted into it to meet the ends of justice and equity.

We have heard both the learned counsels for the respective parties at length, perused the record and gone through the impugned Judgment dated 11.03.2015, passed in Writ Petition NO. 127/2014, 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 said case law is applicable. Admittedly, the deputation given to the respondent No. 07 is illegal and without lawful authority. The same is ultra vires to the service law and rules. The matter of deputation/absorption of the respondent No. 07 has created unrest and disturbances amongst the officers/officials of Gilgit-Baltistan Police, due to the deputation and absorption of the respondent No. 07 the entitled officers/officials have been deprived from their promotion, who are waiting their promotions and all of sudden an out comer cannot be promoted against a post of their line of promotion. Furthermore, a deputationist does not have any vested right to remain on the post as deputationist for a period of his desire or to be absorbed on permanent basis. He can be repatriated to his parent department at

any time by the competent authority. The deputation be given keeping in view the exigency of the borrowed department and the same may be given in the interest of the state not to accommodate the individuals.

In view of the above, we accept the appeal and set aside the impugned Judgment dated 11.03.2015, passed in Writ Petition No. 127/2014, by the learned Chief Court Gilgit-Baltistan. Consequently, the impugned Notification No. SO(S)-I-2(39)/2013, dated 25.04.2014 issued by the respondent No. 01 is maintained. The respondent No. 07 i.e. Mr. Babar Khan is directed to report to his parent Department. 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?**