

Stereo. H C J D A 38.

**JUDGMENT SHEET**

**THE LAHORE HIGH COURT, LAHORE**

**JUDICIAL DEPARTMENT**

**Writ Petition No.42703/2023**

Muzammil Hayat vs. Provincial Police Officer etc.

**J U D G M E N T**

<b>Date of Hearing:</b>	26.09.2023
<b>Petitioner by:</b>	Mr. Salman Riaz Chaudhry, Advocate.
<b>Respondents by:</b>	Mr. Muhammad Anwar Khan, Assistant Attorney General. Mr. Imran Khan, Assistant Advocate General. Ayesha Agha, Additional Director, FIA. Ijaz Khalil, Assistant Director Law, FIA. A.D. Dhakku, Inspector Legal. Mubashar Chaudhry, S.I.

**Anwaar Hussain, J.** Brief facts of the case are that services of the petitioner Muzammil Hayat, Sub-Inspector of Punjab Police, was lent to the Federal Investigation Agency (“**the FIA**”), on deputation for three years, through office order dated 10.01.2023. He joined the borrowing agency and was posted in the Directorate General, FIA, Islamabad. During his deputation with the FIA, a FIR bearing No.258/23 dated 15.04.2023 was registered against him with Police Station Qadir Pur, District Jhang, under Sections 302, 324, 109, 148, 149, Pakistan Penal Code, 1860. The petitioner obtained pre-arrest bail in the said case, which has been confirmed in his favour by the Additional Sessions Judge, Jhang. On account of registration of case referred above, the District Police Officer, Jhang *vide* Memorandum dated 11.05.2023 (“**the Memorandum**”) addressed to the Regional Police Officer, Faisalabad requested the latter to initiate repatriation of the petitioner, from the FIA, enabling the Police Department to

initiate departmental proceedings. In furtherance thereof, Provincial Police Officer, Punjab, Lahore *vide* office order dated 16.06.2023 (“the **Office Order**”) requested the FIA to repatriate the petitioner to the Punjab Police, being the lending department, enabling it to commence and carry out the disciplinary proceedings against him. The petitioner has impugned the Memorandum and the Office Order through the present petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”). Prayer has also been made to allow the petitioner to continue with the deputation with the FIA. During the pendency of this petition, the FIA repatriated the petitioner to his parent/lending department i.e., Punjab Police, *vide* office order No. 792/2023 dated 19.07.2023 (“**Order dated 19.07.2023**”), which was also assailed by the petitioner by filing civil miscellaneous application bearing No.3/2023.

2. Report and parawise comments have been filed by the Punjab Police as well as the FIA. Stance has been taken by the Punjab Police that since a criminal case has been registered against the petitioner, therefore, the Punjab Police was justified in seeking repatriation of the petitioner to probe in the matter in order to initiate disciplinary proceedings, if required. Whereas the FIA has averred that there is no legal embargo upon the FIA for acceding to the request of the Punjab Police to repatriate the petitioner, who was merely a deputationist, with the FIA.

3. Mr. Salman Riaz Chaudhry, Advocate, learned counsel for the petitioner, contends that the petitioner was transferred from the Punjab Police to the FIA, Islamabad, on deputation basis, *vide* order dated 10.01.2023 for a period of three years, however, he has been repatriated, *vide* Order dated 19.07.2023 before lapse of the deputation period, without any lawful justification. Adds that in

terms of Rule 11 of the Punjab Police (E&D) Rules, 1975 (“**the Rules, 1975**”), whenever services of an officer of Punjab Police are lent to any other department, it is the borrowing agency which has to initiate and complete the disciplinary proceedings and, if found guilty of misconduct, can impose minor penalty upon the deputationist and has to refer the matter to lending agency only if major penalty is to be imposed. Places reliance on the law laid down in case reported as “Habib Bank Limited v. Ghulam Mustafa Khairati” (2008 SCMR 1516) to contend that mere registration of the case does not bring the case of an employee within the mischief of the term misconduct.

4. Conversely, Mr. Muhammad Anwar Khan, learned Assistant Attorney General submits that the FIA has repatriated the petitioner to his parent department in accordance with law. Further avers that it is trite law that a deputationist has no vested right to claim to serve in the borrowing agency for the entire period of the deputation for which he was borrowed.

5. Mr. Imran Khan, learned Assistant Advocate General, raises preliminary objection to the maintainability of the present petition on the ground that the petitioner is a civil servant and mere fact that he was posted on deputation to a Federal Agency neither denudes him of his status of civil servant nor he falls within the exclusion envisaged under Section 2(1)(b) of the Punjab Civil Servants Act, 1974 (“**the Act, 1974**”) and therefore, the present petition is hit by bar contained in Article 212 of the Constitution. Adds that reliance on Rule 11 of the Rules, 1975 is also misconceived inasmuch as the said Rule only extends powers of the Police Department to proceed in disciplinary matters to the borrowing agency, which does not serve as an embargo on the lending agency to proceed against its employee in accordance with law. Elaborating his arguments, learned Law

Officer contends that if the misconduct is committed by a Police Officer while serving in the borrowing agency that relates to the duties assigned to him as a deputationist, the power vests with the borrowing agency to proceed against the deputationist but this does not include all types of misconduct, particularly, on account of involvement in a criminal matter.

6. Arguments heard. Record perused.

7. This Court intends to address the question of maintainability in the first instance. The question is whether or not the petitioner, who is an employee of the Punjab Police, is excluded from the definition of the term ‘civil servant’ on account of his deputation to an instrumentality of the Federal Government i.e., the FIA. The definition of ‘civil servant’ is given in Section 2(1)(b) of the Act, 1974, which is reproduced below:

“(b) “civil servant” means a person who is a member of a civil service of the Province or who holds a civil post in connection with the affairs of the Province, **but does not include—**

- (i) **a person who is on deputation to the province from the Federation or any other Province or Authority;**
- (ii) a person who is employed on contract, or on work-charged basis, or who is paid from contingencies; or
- (iii) a person who is a ‘worker’ or ‘workman’ as defined in the Factories Act, 1934 (XXV of 1934) or the Workmen’s Compensation Act, 1923 (VIII of 1923);”

*(Emphasis supplied)*

Perusal of above definition unambiguously reveals that under the Act, 1974, a deputationist to the Province of Punjab, from the Federation or other Province, does not fall under the purview of a

civil servant for the purposes of applicability of the Act *ibid* to the said deputationist but a civil servant of the Punjab, like the petitioner, posted on deputation to the other Province(s) or the Federation or its instrumentality, like the FIA, remains a civil servant and the Act, 1974 is fully applicable to the said person. When confronted with, learned counsel for the petitioner has relied upon the definition of the term ‘civil servant’ envisaged in Section 2(1)(b) of the Civil Servants Act, 1973 (“**the Act, 1973**”), applicable to the employees of the Federation and submits that the case of the petitioner falls under the Act, 1973 and not under the Provincial statute. Section 2(1)(b) of the Act, 1973 reads as under:

“(b) “civil servant” means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, **but does not include-**

- (i) **a person who is on deputation to the Federation from any Province or other authority;**
- (ii) a person who is employed on contract, or on work-charged basis, or who is paid from contingencies; or
- (iii) a person who is a “worker” or “workman” as defined in the Factories Act, (XXV of 1934), or the Workman’s Compensation Act, 1923(VIII of 1923);”

*(Emphasis supplied)*

When the facts of the present case are carefully analysed, keeping in view the import of Section 2(1)(b)(i) of the Act, 1973, it transpires that the petitioner does not fall within the exclusion envisaged under the said provision of the Act, 1973, merely, on the ground that he is on deputation, from the Province of Punjab, with the instrumentality

of the Federation i.e., FIA. Had any adverse action being initiated by the borrowing agency (i.e., FIA), under the Act, 1973, the contention of the petitioner would have carried some weight and the case of the petitioner would have fallen under Section 2(1)(b)(i) thereof. However, it is not the situation in the present case. In-fact, it is the repatriation sought by the Punjab Police through the Memorandum followed by the Office Order issued by the said department that has conferred the cause of action on the petitioner. The borrowing agency (i.e., the FIA) has merely actualized the repatriation, sought by the lending agency, through its Order dated 19.07.2023 and has not acted to the prejudice of the petitioner in any manner whatsoever under the Act, 1973 or any other Federal Statute. In the instant case, the petitioner seems to be cognizant and well aware of this legal as well as factual position, which is evident from the fact that Order dated 19.07.2023 issued by the borrowing agency repatriating the petitioner has been assailed after filing of the present petition through C.M. No.3/2023.

8. Having observed as above, this Court is of the opinion that the petitioner is a civil servant and the Act, 1974 is applicable to him. He does not fall within the exclusion contained in Section 2(1)(b)(i) of the Act, 1973. It hardly needs any judicial reiteration that Article 212 of the Constitution places absolute and inflexible bar on jurisdiction of this Court in matters relating to terms and conditions of the service of civil servants, which include appointment, posting, transfer, etc., and therefore, this Court has no jurisdiction to entertain a constitutional petition. In this regard, this Court is fortified by the judgment of the Supreme Court of Pakistan in case reported as Peer Muhammad v. Government of Balochistan through Chief Secretary and others (2007 SCMR 54) wherein it has been held that the ouster clause embodied in Article 212 is a constitutional command, which ousts the jurisdiction of the High Court as well as the Civil Court.

While relying on case of *Peer Muhammad supra*, this Court in case reported as *Dr. Ghazanffarullah, Medical Superintendent, Tehsil Headquarter Hospital, Bhalwal and 2 others. v. Secretary Health, Government of the Punjab, Civil Secretariat, Lahore and 6 others etc.* (PLJ 2011 LAHORE 392) held that Article 212 is a *non-obstante* clause and hence, prevails over Article 199 of the Constitution. In addition to the pronouncement in case of *Peer Muhammad supra*, the Supreme Court of Pakistan in case reported as *Ali Azhar Khan Baloch and others v. Province of Sindh and others* (2015 SCMR 456) has exhaustively defined the jurisdictional delineations of the High Court pertaining to the matters of terms and conditions of service of the civil servants. In the said judgment, the Supreme Court of Pakistan deprecated the exercise of constitutional jurisdiction in the matters pertaining to terms and conditions of service of civil servants and held that the said exercise is not only in defiance of constitutional contours of Article 212 of the Constitution but also confronts and defies Article 189 thereof. Case reported as *National Assembly Secretariat through Secretary v. Manzoor Ahmed and others* (2015 SCMR 253) is also referred.

9. Having above legal position *qua* a civil servant belonging to Punjab on deputation with a Federal Agency in sight, this Court is of the view that there is nothing in the Civil Service Laws to indicate that any civil servant, more particularly a Police Officer, working under the administrative control of the Government of the Punjab, once transferred to Federation or its instrumentality such as the FIA, on deputation, will cease to be a civil servant for the purpose of initiation of disciplinary proceedings by the Province. Moreover, it is also pertinent to mention that Order dated 19.07.2023 issued by the FIA is not adverse in any manner whatsoever in relation to the rights of the petitioner. At this juncture, it is imperative to note that the petitioner being a deputationist has no vested right to claim

continuity for the total period of his deputation for which he was borrowed by the FIA. Case reported as Dr. Shafi-ur-Rehman Afridi v. C.D.A. Islamabad through Chairman and other (2010 SCMR 378) is referred in this regard, wherein it has been held that no deputationist, by any stretch of imagination and in absence of any specific provision of law, can ask to serve the total period of deputation in the borrowing agency. Therefore, the prayer made in the petition seeking direction to the FIA to allow the petitioner to serve for the period of deputation is not tenable.

10. Similarly, the vehement reliance of the petitioner on Rule 11 of the Rules, 1975 is also utterly misconceived to contend that it is the borrowing agency (i.e., the FIA) only, which is vested with the power to initiate disciplinary proceedings. For facility of reference, Rule 11 *ibid* is reproduced as under:

“11. Procedure of Inquiry against Officer lent to other Government or Authority.-- (1) Where the services of a Police Officer to whom these rules apply are lent to any other Government or to a local or other authority, in this rule referred to as the borrowing authority, **the borrowing Authority shall have the powers of the authority for the purpose of placing him under suspension or requiring him to proceed on leave and of initiating proceedings against him under these rules.**

(2) **Provided that the borrowing authority shall forthwith inform the authority which has lent his services, hereinafter in this rule referred to as the lending authority, of the circumstances leading to the order of his suspension or the commencement of the proceedings, as the case may be.**

(3) If, in the light of the findings of the proceedings taken against the police officer in terms of sub-rule (1), the borrowing authority is of opinion that any minor punishment should be imposed on him it shall have the powers to impose minor punishment. For major punishment it shall transmit to the lending authority the



record of the proceedings and thereupon the lending authority shall take action as prescribed in these rules.”

*(Emphasis supplied)*

Plain reading of Rule 11 brings forth that the borrowing agency has been only delegated and vested with the power of suspension or requiring the Police Officer on deputation to proceed on leave and initiating proceedings against him under the Rules, 1975, and sub-Rule (2) thereof obligates the borrowing authority to inform the lending authority of any such suspension or proceedings. However, this conferment and/or delegation of power by the Rules, 1975, by the Police Department to the borrowing agency does not denude the former to initiate the disciplinary proceedings against its Officers on deputation, if it deems appropriate.

11. Even otherwise, argument of learned Assistant Advocate General, Punjab, has force that such powers have been delegated to the borrowing agency with respect to any misconduct committed in the performance of duties by a Police Officer during the deputation period in the borrowing authority and not his conduct outside the scope of the duties being performed with the borrowing agency. For instance, it covers proceedings on account of absence from the duty or failure to obey the orders during the period of deputation etc. There might be a situation with the Punjab Police that it discovers some misconduct on part of its Officer, while he was working for Province of Punjab, after the said officer was deputed to serve the Federation and it belies logic that the Punjab Police is not empowered, on the basis of Rule 11 of the Rules, 1975, to request the repatriation of its Officer in such an eventuality, merely, on account of currency of his deputation period with the Federation etc.

12. The matter can be examined from another angle and it would be also advantageous to reproduce clause 5.17 of the Standing Order No. 13 of 2021 dated 28.08.2021 issued under Article 10(3) of the Police Order, 2002 by the Provincial Police Officer, Punjab that relates to the period of deputation. Clause 5.17 reads as under:

**“Period of Deputation:** The period of deputation shall not exceed three years. **However, Provincial Police Officer reserves the right to withdraw /transfer the deputationist at any time without assigning any reason.** If the request of the borrowing department for retention of the deputationist is not acceded to, by the competent authority, deputation shall automatically get terminated on receipt of refusal by the borrowing department and the deputationist shall stand relieved to the police department.”

*(Emphasis supplied)*

It is evident that the right to withdraw/transfer the deputationist is always retained by the Provincial Police Officer and even the borrowing authority cannot refuse repatriation once it receives the request of repatriation of Police Officer. Therefore, even if the present petition is not hit by bar contained under Article 212 of the Constitution, the petitioner as a member of the Punjab Police is expected rather obligated to maintain discipline and therefore, cannot be allowed to wriggle out of his duty to obey and concede to the order of the competent authority seeking his repatriation. If such a concession is allowed to the member of the disciplined force like the Punjab Police, it will wreak havoc with the discipline, which the Police Force is required to maintain, in larger public interest. Suffice to observe that in the present case, the borrowing agency has itself repatriated the petitioner which is not an adverse order as observed earlier, and therefore, the petitioner is left with no choice but to report to his parent department.

13. Insofar as the reliance placed by learned counsel for the petitioner on the case of Habib Bank Limited *supra* is concerned, the same is found to be misconceived. In the said case, the employee was terminated from service on account of registration of FIR while treating said registration as misconduct. In the instant case, it is not an issue at the moment whether the petitioner has been held guilty of misconduct or not on account of mere registration of FIR, rather the issue involved is to determine as to who has the authority to initiate the disciplinary proceedings against the petitioner, which are so far not carried out by the Police Department and this Court cannot determine factual aspects of an enquiry, which is yet to commence.

14. In view of the above, the petition at hand is devoid of any force and hence, **dismissed**. No order as to cost.

(ANWAAR HUSSAIN)  
Judge

*Approved for reporting.*

*Judge*

*Akram*