

## **IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

### **PRESENT:**

MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE MAQBOOL BAQAR  
MR. JUSTICE IJAZ UL AHSAN

### **CIVIL APPEAL NO. 709 OF 2017 IN CIVIL PETITION NO. 1332 of 2017.**

(On appeal against the judgment dt. 14.03.2017 passed by the High Court of Balochistan Quetta in C. P. No. 1155 of 2016).

Muhammad Sharif Tareen, Chief of Section *Appellant*  
(Acting)(BPS-19), Planning and Development  
Department, Government of Balochistan, Civil  
Secretariat

### **VERSUS**

Govt. of Balochistan thr. its Chief Secretary, and *Respondent*  
another.

For the Appellant(s) : Muhammad Shoaib Shaheen, ASC  
Ahmed Nawaz Chaudhry, AOR (absent)

For the Respondent(s) : Mr. Amanullah Kanrani, AG Balochistan  
Mr. Ayaz Khan Swati, Addl. AG Balochistan

Date of Hearing : 26.05.2017 (Judgment Reserved).

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

**EJAZ AFZAL KHAN, J.-** This appeal with the leave of the court has arisen out of the judgment dated 8.3.2017 of a Division Bench of the High Court of Balochistan whereby it dismissed the writ petition filed by the appellant by holding that his remedy in view of the dicta rendered in the cases i.e. **Contempt proceedings against the Chief Secretary Sindh and others (2013 SCMR 1752)**, **Ali Azhar Khan Baloch. Vs. Province of Sindh (2015 SCMR 456)** and **Muzaffar Hussain Vs. Federation of Pakistan (Crl.O.P. No.31 of 2016)****decided on 10.05.2016** lay in review before the Supreme Court of Pakistan.

2. The learned Sr. ASC appearing on behalf of the appellant contended that where the appellant was appointed as Agricultural Officer (BPS-17) by initial recruitment on the recommendations of Balochistan Public Service Commission in the Balochistan Agricultural and Cooperative Department vide Notification No. PSC(Rectt: )2006/93, dated 29.07.2006 and then absorbed against the post of Research Officer (BPS-17) in the Planning and Development Department vide notification dated 10.09.2007 without affecting the seniority of the Research Officers already working in the department, his case is not covered by the dicta rendered in the cases of **Contempt proceedings against the Chief Secretary Sindh and others, Ali Azhar Khan Baloch. Vs. Province of Sindh** and **Muzaffar Hussain Vs. Federation of Pakistan (supra)**, therefore, the notification repatriating him to his parent department cannot hold the field. He next contended that the case of the appellant shall be fully protected by the dicta rendered in the case of **Ch. Muhammad Akram. Vs. Registrar, Islamabad High Court and others (PLD 2016 SC 961)** and **Suo Motu Case No. 13 of 2016, decided on 31.03.2017** when he possessed the qualification required for appointment of Research Officer in the Planning and Development Department.

3. The learned Addl. A. G. appearing on behalf of the Government of Balochistan contended that where codal formalities in absorbing the appellant were not complied with, the case of the appellant is fully covered by the dicta rendered in the cases of **Contempt proceedings against the Chief Secretary Sindh and others, Ali Azhar Khan Baloch. Vs. Province of Sindh** and **Muzaffar**

**Hussain Vs. Federation of Pakistan (supra)**, therefore, the High Court rightly declined to exercise jurisdiction.

4. We have gone through the record carefully and considered the submissions of the learned Sr. ASC for the appellant as well as the learned Addl. A. G. for the Govt. of Balochistan.

5. Appellant who holds Master degrees in Economics and Business Administration was appointed as Agricultural Officer (BPS-17) by initial recruitment on the recommendations of the Balochistan Public Service Commission in the Balochistan Agricultural and Cooperative Department vide Notification No. PSC(Rectt:)2006/93, dated 29.07.2006. A year later, he was appointed by transfer as Research Officer (BPS-17) in Planning & Development Department and was placed at the bottom of the seniority list of the Research Officers already working in the department vide notification No. P&D-SOA.1(41)/2007, dated 10.09.2007. He has been working as such till the date the notification repatriating him to the parent department pursuant to the judgments rendered in the cases of **Contempt proceedings against the Chief Secretary Sindh and others, Ali Azhar Khan Baloch. Vs. Province of Sindh** and **Muzaffar Hussain Vs. Federation of Pakistan (supra)** was issued. His stance before us is that his case is not hit by the above said judgments when he possesses the requisite qualification. The questions thus emerging for the consideration of this Court are:-

- i) What is the nature of his appointment?
- ii) Whether the appellant possessed the requisite qualification?
- iii) Whether he was appointed by transfer as Research Officer in the Planning & Development Department without complying with the codal formalities, in case the answer is in the affirmative what would be the effect of that?

- iv) Whether the appellant is hit by the judgment rendered in the cases i.e. **Contempt proceedings against the Chief Secretary Sindh and others (2013 SCMR 1752)**, **Ali Azhar Khan Baloch. Vs. Province of Sindh (2015 SCMR 456)** and **Muzaffar Hussain Vs. Federation of Pakistan (Crl.O.P. No. 31 of 2016)****decided on 10.05.2016**, if not where does his remedy lie?
- v) What is a cadre post and what is a non-cadre post?
- vi) What is the method of appointment for a cadre post, what is the mode of appointment against a non-cadre post?

6. Before we answer the questions it is worthwhile to see what is the ratio of the judgment rendered in the case of **Contempt proceedings against the Chief Secretary Sindh and others (supra)** and what has been summed up therein is well illustrated in paragraph 126 thereof which read as under :-

*"126. From the above discussion, the aforesaid legislative instruments on the issue of absorption are liable to be struck down being violative of Constitutional provisions referred to hereinabove, therefore, we hold as under:--*

*(i) That the Sindh Government can only appoint a person by absorption by resorting to Rule 9A of the Rules of 1974.*

*(ii) Sindh Government cannot order absorption of an employee who is a non-civil servant, however, an employee of an autonomous body can be absorbed in Sindh Government subject to conditions laid down under Rule 9-A of the Rules of 1974.*

*(iii) Sindh Government cannot absorb a civil servant of non-cadre post to any cadre which is meant for the officers who are recruited through competitive process.*

*(iv) Any backdated seniority cannot be granted to any absorbee and his inter-se seniority, on absorption in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority.*

*(v) No civil servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process. A civil servant can be transferred out of cadre to any other department of the government subject to the restrictions contained under Rule 9(1) of the Rules of 1974.*

*(vi) The legislature cannot enlarge the definition of "civil servant" by appointing a non-civil servant through transfer on the basis of absorption conferring him status of civil servant pursuant to the impugned legislation which is violative of the scheme of civil service law as provided under Articles 240 and 242 of the Constitution."*

7. Similarly what is the ratio of the judgment rendered in the case of **Ali Azhar Khan Baloch. Vs. Province of Sindh** (supra) has been summed up in its paragraphs No. 117, 118, 119, 120, 121 and 139 which are reproduced as under:-

*“117. We have heard the learned Counsel representing beneficiaries on the scope of Rule 9-A of the Rules. Under Rule 9-A, a person who has been rendered surplus on account of abolition of his post, in any Office or Department of the Government or autonomous body and/or on account of permanently taking over of the administration of such autonomous body wholly or partially by the Government, can be appointed by transfer to any post in a Department or Office in the Government subject to his eligibility and qualifications as laid down under Rule 3(2) for appointment to such Office. It is further provided under Rule 9-A of the Rules that such person shall be appointed to a post of equivalent or comparable basic scale and, in case such post is not available, then to a post of lower Basic Scale. Rule 9-A of the Rules provides further restriction to the seniority of such person to the post by reckoning his seniority at the bottom of the seniority list from the date of such appointment, with a further rider that his previous service, if not pensionable, shall not be counted towards pension and gratuity. We have dealt with the aforesaid issue in para 116 of the judgment under review and have set parameters of Rule 9-A of the Rules in para 126 of the judgment under review.*

*118. After hearing the arguments of the learned counsel for the petitioners, we need to further clarify the scope of Rule 9-A of the Rules. Rule 9-A of the Rules has been introduced with the object to accommodate the persons who are rendered surplus by abolition of their posts or the organization in which they were working has been taken over by the Sindh Government. This Rule, as has been noticed, cannot be used as a tool to accommodate a person by abolishing his post with an object to appoint him by transfer to a cadre or service or post in deviation of Rule 3(2), which is a condition precedent for appointment to such post. In order to exercise powers under Rule 9-A of the Rules, there has to be some justification for abolition of the post against which such person was working. This justification should come from the Department and or organization which shall be in consultation with the S&GAD and approved by the Competent Authority. Rule 9-A of the Rules does not permit appointment by transfer of a non-Civil Servant to any other Department and/or organization controlled by the Government to a post which restricts the transfer under Rule 3(2) of the Rules. A person can only be appointed by transfer under Rule 9-A, if he has the eligibility, matching qualifications, expertise coupled with the conditions laid down under Rule 3(2) for appointment to such post. The Competent Authority under Rule 9-A of the Rules while ordering appointment by transfer cannot lose sight of the conditions prescribed under Rules 4, 6(A) and 7. Therefore, any appointment by transfer under Rule 9-A of the Rules in violation of the*

aforesaid conditions is a nullity, and the conclusion reached by us in para 126 of the judgment under review has to be read in addition to the findings recorded herein above.

### **ABSORPTION**

119. The learned Additional Advocate-General, as well as the counsel representing the petitioners had argued that the Competent Authority had the powers under Rule 9(1) of the Rules to absorb any person from within and/or outside the Province through appointment by transfer. We have already dealt with the scope of Rule 9(1) of the Rules, which permits appointment by transfer subject to the conditions prescribed therein. It does not permit absorption from one cadre to another cadre. The Competent Authority in the cases of the petitioners has ordered absorption by relaxing the rules, which is in deviation of the scheme of the Act framed pursuant to the dictates of Article 240, read with the qualifications incorporated in the Rules of 1974. We may observe that section 5 of the Act does not give any discretion to the Selection Authority to bypass the restriction by relaxing the Rules. If such discretion is allowed to prevail, it would destroy the fabric of Civil Service, which is protected by the mandates of Articles 240 and 242 of the Constitution. It is also a misconception that Rule 9-A permits transfer of a non-Civil Servant to a Cadre, Service or Post meant for a Civil Servant, recruited in the Cadre or Service or Post after competitive process. Such an appointment by transfer in the nature of absorption would only be permissible, if the pre-conditions laid under Rule 9-A of the Rules are met.

120. At the time of hearing of Petitions No.71 of 2011 and others the learned Additional Advocate-General, as well as the petitioners appearing in these Petitions, attempted to justify absorption on the basis of legislative instruments, which were declared unconstitutional. In these review proceedings, the petitioners have changed their stance claiming their absorption on the basis of Rule 9(1) of the Rules. We have separately dealt with the scope of Rule 9(1) of the Rules. Under Rule 9(1), appointment by transfer would only mean an ordinary transfer from one post to another post, subject to the restrictions contained in the Rules of 1974. Neither a person can be absorbed under these Rules nor a Civil Servant or non-Civil Servant or a deputationist could be allowed to travel horizontally outside his cadre to penetrate into a different cadre, service or post through an appointment by transfer. Rule 9(1) cannot override the provisions of section 8 of the Act, which have been introduced by the Legislature for proper administration of Service law. For the aforesaid reasons, in addition to our findings recorded in the judgment under review, we are of the considered view that the petitioners have failed to make out any justifiable ground to seek review of the judgment.

### **ABSORPTION IN UNIFIED GROUP**

C.R.P. 409 of 2013 Mr. AqailAwan for the petitioner 1 - 3 Criminal R.P.81 of 2013 and C.R.P. 412 of 2013

121. It was contended by MessrsAqilAwan, ShoaibShaheen,

Muhammad Munir Peracha and Tariq Mehmood, learned ASCs, that the impugned judgment is only applicable to Civil Servants and does not cover non-civil servants. We, with respect, disagree with the contentions of the learned Counsel. The impugned judgment would be equally applicable to the Government Servants, employees of any statutory or non-statutory organization controlled by the Sindh Government, who were wrongly absorbed in different Cadres, Services, Posts of the Government Departments, Statutory Organizations against their service Rules. The contention of the learned counsel was that the petitioners were non-Civil Servants and were absorbed from different organizations to Sindh Councils Unified Grades Service under Rule 9(1) of the Rules of 1974, read with Rule 12(5) of the Unified Grades Service Rules 1982. We have already held that the power to appoint by transfer under Rule 9(1) would only extend to a Civil Servant. The Sindh Councils Unified Grades Service Rules 1982 regulate the terms and conditions of the employees appointed therein. Rule 3(1) provides composition of Service, whereas Sub-Rule (2) of Rule 3 spells out its Sub-Branches. Rule 3(4) places a restriction on the members for transfer from one Branch or Sub-Branch to another Branch or Sub-Branch within the service group. Rule 12 of the (Unified Group) Service Rules deals with the seniority of the members. Rule 12(5)(a) confers powers of transfer by Appointment on the competent authority. The petitioners, who were not members of the Unified Services and were wrongly absorbed in the Service of Unified Group, in deviation of the Service Rules of 1982 cannot be allowed to continue in the Unified Services Group. The Chief Minister or the Board cannot induct any stranger in the service of Unified Group either by exercising powers under Rule 9(1) of the Rules of 1974 or by Rule 12(5) of the Rules of 1982. Any such induction is against the recognized norms of Service law and, therefore, the petitioners were liable to be repatriated to their parent departments forthwith in terms of the judgment under review. 'Absorption' of the petitioners under the garb of 'Appointment by Transfer' in the Unified Services Group has directly affected the rights of the employees in the service, guaranteed under Articles 4 and 9 of the Constitution. Such act on the part of the Chief Minister or the Board had circumvented the very framework of the Service Rules of 1982 by introducing a parallel system based on discrimination and favouritism, which the law does not recognize.

#### **ABOLITION OF POSTS**

139. During the hearing of the Review Petitions, we have noticed that the Sindh Government has abolished some posts in individual cases with the object to accommodate civil Servant or Government Servant to appoint him by transfer to a post, service or cadre contrary to the restrictions contained in Rule of 1974 against his eligibility. The term 'abolition' has not been defined in the Sindh Civil Servants Act, 1973. However, this expression has been used in Rule 9-A of the Rules of 1974. A department can only abolish a post with the concurrence of the S&GAD. Abolition of a post is permissible in case, if the department requires restructuring, reform or to meet exigency of service in public interest. The department can abolish a post for justifiable reason. Therefore, in future if

*a post has to be abolished within the Department and/or within the statutory body or organization controlled by the Sindh Government, the Department shall seek concurrence from the S&GAD coupled with the reasons justifying abolition."*

8. The quintessence of the paragraphs reproduced above is that the appointments made on deputation, by absorption or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance and that perpetuation of this phenomenon, even for a day more would further deteriorate the state of efficiency and good governance. Appointees thus appointed pursuant to the judgments mentioned above were brought to square one. The case of the appellant is that he has not affected the seniority of any of the Research Officers already working in the Department when he was placed at the bottom of the seniority list. But the question arises whether he could be absorbed as Research Officer in the Planning and Development Department under the relevant rules. The answer to the question would call for a look at the relevant rule which reads as under:-

**"Appointment by promotion or transfer.** 7. (1) Promotion and transfers to the posts in basic pay scales 2 to 16 and equivalent shall be made on the recommendations of the appropriate Departmental Promotion Committee; and to the post in basic pay scales 17 and above or equivalent, shall be made on the recommendations of the Provincial Selection Board.

(2) Persons possessing "such" qualifications and fulfilling the conditions as laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

(3) Appointments by transfer shall be made from amongst the persons holding appointment on regular basis in the same basic pay scale or equivalent or identical with the post to be filled in."

The rules reproduced above provide for appointment by promotions and transfers. In the latter case the appointment cannot become permanent nor could it lead to absorption because such



appointment being a stop-gap-arrangement holds the field till the time a suitable person is appointed against the post. Absorption of a person thus appointed not only damages the fabric of civil service but also barricades the channels of promotion for those who sweat therefor but have no political links and connections to achieve the desired goal. The question whether the appellant was eligible to be appointed as a Research Officer can well be answered after looking at the appendix amended vide notification dated 17.10.2005 which reads as under :-

"Government of Balochistan  
 Services and General Administration Department  
 (Regulation Section-II)  
 Dated Quetta, the 17<sup>th</sup>October, 2005.

**Notification**

No. SOR-II(18)1/S&GAD/1438-1537. In exercise of the powers confirmed by Section 25 of the Balochistan Civil Servants Act, 1974 (IX of 1974), the Government of Balochistan is pleased to amend the Balochistan Planning and Development Department (BPS-16) and above) Service Rules, 1984 namely:-

For the existing Appendix the following shall be substituted:-

S.#	Nomenclature of the post	Minimum qualification prescribed for initial recruitment	Method of recruitment
1.	2.	3.	4.
1.	Chief Economist (BPS-20)		By promotion from the post of Joint Chief Economist.
2.	Joint Chief Economist (BPS-20)		By promotion from amongst the members of the service holding the post of Chief of Section with at-least 17 years service in B-17 and above on the basis of seniority-cum-fitness.
3.	Chief of Section (BPS-18).		(i) 80% by promotion from amongst the members of the service holding the post of Assistant Chief with at-least 12 years service in B-17 and above (ii) 20% by transfer from other services of equivalent grade.
4.	Assistant Chief (BPS-18)		By promotion from amongst the members of the service holding the post of Research Officer with at-least five years service.
5.	Research Officer (BPS-17).	2 <sup>nd</sup> Class Master's Degree in Economics. Agricultural Economics, Statistics, Business Administration, Public Administration / Management and Commerce from a recognized University.	By initial recruitment.

By Order of  
 Governor Balochistan  
  
 Chief Secretary  
 Government of Balochistan"

A look at the appendix reproduced above would reveal that vacancy of Research Officer is to be filled by initial recruitment. There is no scope for filling this vacancy by promotion, transfer, absorption or by any other method which is not provided by the relevant law and rules. Such appointment being hit by the judgment rendered in the cases of **Ali Azhar Khan Baloch. Vs. Province of Sindh** and **Muzaffar Hussain Vs. Federation of Pakistan (supra)** cannot be maintained. The appellant has thus rightly been repatriated to his parent department. We by treating this appeal as a petition for review do not find any error much less patent on the face of the record to change or modify the view taken earlier.

JUDGE

JUDGE

JUDGE

Announced in open Court at Islamabad on 25.09.2017.

JUDGE

*'Not Approved for Reporting'*  
*M. Azhar Malik*