

**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. 587 OF 2017 AND CMA. NO. 3198 OF 2017.**

*(On appeal against the judgment dt. 14.03.2017 passed by the High Court of Balochistan, Turbat Bench at Quetta in CP. No. (T)94/2016).*

Rafiq Ahmed and others

*Appellant(s)*

**VERSUS**

Govt. of Balochistan thr. its Chief Secretary, Quetta and another. *Respondent(s)*

For the Appellant(s) : Mr. Wasim Sajjad, Sr. ASC  
Mr. Mehr Khan Malik, AOR.  
(in CA 587/17)

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.-**These appeals with the leave of the Court have arisen out of the judgement dated 14.03.2017 of a Division Bench of the High Court of Balochistan whereby it dismissed the petitions by the appellants as being not maintainable.

2. The learned Sr. ASC appearing on behalf of the appellants contended that when the appellants after having been appointed on deputation in Gwadar Development Authority (**GDA**) were absorbed, they ceased to be civil servants, therefore, the High Court was competent to entertain, hear and decide their petitions. The learned Sr. ASC next contended that the judgements rendered in the cases of **Contempt Proceedings Against Chief Secretary Sindh**

**and Others (2013 SCMR 1752)** and **Ali Azhar Khan Baloch. Vs. Province of Sindh (2015 SCMR 456)** were distinguishable on legal and factual plane, therefore, the Division Bench of the High Court could not dismiss such petitions as being not maintainable.

3. The learned Advocate General appearing on behalf of the respondent did not dispute the arguments addressed at the bar by the learned Sr. ASC for the appellants and thus suggested that the cases be sent back to the High Court for decision on merits.

4. Raja Muhammad Ibrahim Satti, learned Sr.ASC appearing on behalf of the applicant asking for being impleaded as a party contended that where the appellants were appointed on deputation and then absorbed without having recourse to transparent process, they would not cease to be civil servants, therefore, their petitions were rightly dismissed as their remedy, in view of the verdict, rendered in the case of **Muzaffar Hussain Vs. Federation of Pakistan (Crl. O. P. No. 31 of 2016)** would lie through a review petition and not through a petition under Article 199 of the Constitution or an appeal to an Administrative Tribunal functioning under Article 212 of the Constitution. Such disputes, the learned ASC added, could better be resolved by this Court, therefore, the impugned judgment being in line with the judgment of this Court is not open to any exception.

5. We have gone through the record carefully and considered the submissions of the learned Sr. ASCs for the appellants, applicant as well as the learned Advocate General appearing on behalf of the respondent.

6. The record reveals that the appellants were appointed on the recommendations of the Balochistan Public Service

Commission vide notification dated 21.10.2002. They served their respective departments till their appointment in the Gwadar Development Authority. The only question requiring consideration is whether the appellants were appointed in Gwadar Development Authority on deputation and then by absorption in accordance with law. We, therefore, have to see what is the method of appointment against the vacancies the appellants were appointed against. Reference to paragraph 4.6 of The Gwadar Development Authority Employees (Service) Regulation 2006 would help us answer the question which is reproduced as under:

**"4.6 Initial appointment to posts in basic pay scale 17 and above.**

- 1) *Initial appointment to the posts in basic pay scale 20 shall be made by the appointing authority on the recommendation of the Selection Board. The Selection Board shall consider and recommend from amongst the panel of which appeared in the interview.*
- 2) *Initial appointment to the posts in the basic pay scale 18 and 19 shall be made by the appointing authority on the recommendations of the Departmental Selection Committee – I. The Departmental Selection Committee shall, as far as possible, recommend from a panel of 3 names for each vacancy.*
- 3) *Initial appointment to posts in basic pay scale 11 to 17 shall be made by the appointing authority on the recommendations of the Departmental Selection Committee- II. The Departmental Selection Committee shall, as far as possible, recommend from a panel of at least 3 names for each vacancy.*
- 4) *Initial appointment to posts in basic pay scale 10 and below shall be made by the appointing authority on the recommendations of the Departmental Selection Committee-III. The Departmental Selection Committee shall, as far as possible, recommend from a panel of 3 names for each vacancy."*

How observance of merit has been guaranteed is evident from paragraph 4.12, which also deserves a look and thus runs as under:

**"4.12 Observance of merit and regional quotas.**

- (1) *Vacancies in all posts carrying basic pay scale 5 and below will preferably be filled in from amongst the residents of Gwadar District.*
- (2) *In all other posts except as mentioned in sub-regulation (1) vacancies will be filled from all*

*Balochistan basis in accordance with the merit and regional quotas prescribed by the Government of Balochistan for civil posts from time to time*

*Provided that where in the case of a professional or technical post the quota cannot be observed previous sanction of the Governing Body shall be obtained before making appointment to such a post.*

- (3) Posts in each basic pay scale shall be considered separately for the purposes of allocation to the prescribed merit and regional quotas.*
- (4) The merit and regional quotas in respect of the vacancies to be filled on the basis of the same advertisement should be worked out up to three decimal points. A vacancy or vacancies which cannot be filled by candidates belonging to the region to which the vacancy is allocated shall be filled by another suitable candidate not belonging to that region with the approval of Governing Body.*
- (5) The domicile/ local of an employee as declared by him at the time of his first entry in the service of the Authority and accepted by the Authority shall be treated as final throughout his service career and no subsequent change shall be recognized for the purposes of terms and conditions of his service."*

How appointments by deputation are made has been fully described in paragraphs 4.24 and 4.25 which read as under:

**"4.24 Procedure.** Appointment by deputation to post may be made in the interest of the authority.

**"4.25 Conditions of deputation.**

- (1) The appointing authority may in the interest of authority appoint a Federal or provincial Government servant or an employee of an organization set up, managed or controlled by these Governments, who hold appointment on regular basis, on deputation to equivalent posts or higher as decided by the appointing authority. Such appointment shall be made with the consent of the Federal Government, Provincial Government or organization concerned, hereinafter called the lending authority, for such period and on such terms and condition as may be determined by the appointing authority in consultation with the lending authority.*
- (2) Unless in any case it is otherwise provided the whole time of the person on deputation shall be at the disposal of the Authority. He shall devote his whole time to his duties, abide by the rules and regulations and other orders and instructions of the Authority and at all times obey the orders given by the competent authority.*

*(3) A person on deputation to the Authority may be allowed, with the approval of appointing authority and with the consent of the lending authority, a deputation allowance as applicable to the employees of Govt. of Balochistan as per revise pay and scale and allowance of 2005."*

The paragraphs of the Regulations reproduced above enumerate the methods of appointment by initial recruitment, promotion and deputation. To trump it all, they also guarantee observance of merit and regional quota. Appointment by deputation from the Federal or Provincial Government has been provided by paragraph 4.25 but appointment by absorption figures nowhere in the Regulations. Appointment by transfer has been provided by paragraphs 4.22 and 4.23 of the Regulations but that cannot be stretched to Civil Servants of the Federal or Provincial Government. Having completed their normal and even extended tenure of deputation, the appellants were to go back to their parent department. Absorption of the appellants in the Gwadar Development Authority being against the law and rules was to be set at naught. The notification repatriating the appellants to their parent departments is therefore unexceptional.

7. For the reasons discussed above, we having treated this appeal as a review petition and heard it as such, dismiss it.

JUDGE

JUDGE

JUDGE

Announced in open Court at Islamabad on 25.09.2017.

JUDGE

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