

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P No.3629/2019.

Sultana Gul

Versus

Ministry of National Health Services Regulations and Coordination, Government of Pakistan,
Islamabad through its Secretary etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01.	22.10.2019	Mr. Matloob Hussain Malik, Advocate for the petitioner.
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Through the instant writ petition, the petitioner has prayed
for following relief:-

"It is, therefore, most respectfully prayed that the writ petition may graciously be allowed and an appropriate writ, in the circumstances of the case, may very kindly be issued directing the respondents not to repatriate the Petitioner to her parent department i.e. Health Department, Government of KPK, Peshawar and issue formal order of payment absorption of the Petitioner in the Federal Government Polyclinic, Islamabad allowing her to join her duty as a permanent employee, to meet the ends of justice. The respondents may further be directed not to act in any manner whatsoever against the interest of the Petitioner.

It is further prayed that any other relief which this Honourable Court may deems fit and proper be also granted accordingly."

2. Learned counsel for the petitioner inter-alia contends that the petitioner was initially appointed in the Civil Hospital Panyala, District D. I. Khan, Government of Khyber Pakhtunkhwa as Charge Nurse (BPS-16), who was posted to the Federal Government Polyclinic, Islamabad on deputation basis vide notification dated 15.03.2013; that the petitioner was taken to her duty in Federal Government Polyclinic, Islamabad w.e.f. 22.02.2013 for an initial period of three years; that period of deputation was extended through subsequent notifications and even the petitioner produced NOC from Government of KPK,

Health Department, Peshawar for permanent absorption of the petitioner in Federal Government Polyclinic, Islamabad; that Executive Director, Federal Government Polyclinic has also no objection on permanent absorption of the petitioner in Polyclinic but surprisingly on 09.04.2019 a letter was issued, whereby she was repatriated to her parent department and even she was relieved vide notification dated 16.04.2019; that request of the petitioner for extension in deputation period was not answered by the respondents; that parent department of the petitioner has refused to accept repatriation of the petitioner.

3. I have heard the arguments and perused the record.

4. Perusal of the record reveals that the petitioner is mainly aggrieved by her repatriation order dated 09.04.2019, whereby she has been repatriated to her parent department i.e. Health Department Government of KPK, whereas the petitioner was posted to Federal Government Polyclinic, Islamabad on deputation basis initially for three years, which was extended, even she obtained NOC from Government of KPK, Health Department, Peshawar but notification for her repatriation was issued vide letter dated 09.04.2019 and subsequently she was also relieved from her duty as Charge Nurse BPS-16 by competent authority and was directed to report her parent department for duty vide letter dated 16.04.2019, however, the petitioner filed application that she may be absorbed permanently with Federal Government Polyclinic, Islamabad.

5. The entire background of the case as well as the documents appended with the petition reflect that the petitioner was provincial employee and she was on deputation with Federal Government Polyclinic, Islamabad and by way of granting such relief of permanent absorption, the petitioner will become civil servant and as such the concept of absorption with Federal

Government Polyclinic, Islamabad being civil servant falls within the concept of terms and conditions of service and the writ petition is not competent against such orders, which directly relate to terms and conditions of service in view of bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. The concept of absorption has been defined in section 11-A of the Civil Servant Act, 1973, whereby any civil servant can be absorbed, who has been rendered surplus as a result of reorganization, abolition of a division, department, office or abolition of a post in pursuance of any government decision, whereas the petitioner has not been declared surplus due to any reorganization rather she was on deputation, which is only meant for specific period and she has to go back to her parent department after completion of deputation period by all means.

6. The concept of absorption has been discussed at length in judgments reported as 2013 SCMR 1752 (Contempt Proceedings Against Chief Secretary Sindh), 2015 SCMR 456 (Ali Azhar Khan Baloch vs. Province of Sindh) and 2016 SCMR 961(Ch. Muhammad Akram vs. Registrar, Islamabad High Court and others), therefore, no right exists in favour of the petitioner for her permanent absorption in Federal Government Polyclinic, Islamabad, however, other request of the petitioner is within four corners of law as she was not allowed to join her parent department, therefore, taking view from “Ali Azhar Khan Baloch and Ch. Muhammad Akram cases *Supra*” the petitioner shall be allowed to join parent department and her lien of service is available, as such she shall not be deprived of her right of service in parent department as her deputation period has been expired and her absorption has not been accepted. The relevant extracts of Ali Azhar Khan Baloch case *Supra* are reproduced as under:-

“162. By the judgment under review, we had directed the Sindh Government to repatriate the officers beneficiaries of the legislation, which was struck down by the judgment under review. We are informed that many Departments of the Federal Government have declined to accept the officers repatriated by Sindh Government in compliance with the judgment under review. The Additional Advocate General, who appeared in the Review Petition has brought to our notice the grievances of the officers, which belong to the Federal Government or to the institution run under the patronage of Federal Government inter alia, on the ground that their period of lien with the parent Department has expired and or there was no vacancy to accommodate them.

163. This Court has already held in the judgment under review that initial order of their transfer from the parent departments to the Sindh Government was not backed by the mandate given by the civil servant law, which is promulgated pursuant to Articles 240 and 242 of the Constitution. Therefore, such orders by the parent Departments are without lawful authority. Consequently, the expiry of the period of the lien will have no bearing.”

7. Keeping in view above mandate of law, instant writ petition is disposed of with direction to respondent No.3 to allow the petitioner to join her services.

(MOHSIN AKHTAR KAKANI)
JUDGE