

Form No: HCJD/C-121.
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

ICA No. 401 of 2020

Ms. Sajida Islam
Vs
Federation of Pakistan through Secretary M/o Education, Professional
Training, 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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04-01-2021. Mr. Muhammad Asif Gujjar, Advocate for the
appellant.

Babar Sattar, J: Through this appeal,
the appellant has impugned order dated
22.12.2020, passed by the learned Judge in
Chambers in W.P. No. 3962/2020, wherein an
office order dated 04.12.2020, issued by the
Federal Directorate of Education ("F.D.E.")
repatriating the appellant to her parent
department i.e. Education Department, Azad
Government of the State of Jammu and
Kashmir was challenged.

2. Learned counsel for the appellant
submits that the appellant qualifies for
absorption as deputationist within F.D.E on the
basis of criteria laid down on 23.01.2000,
which was approved by the Secretary, Ministry
of Education on 24.01.2000; that the
repatriation order dated 04.12.2020 is a back-

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dated order which was actually issued on 21.12.2020 after issuance of judgment in W.P No. 194/2020 titled "Mrs. Nusrat Rasheed and another vs. Federation of Pakistan and others". The learned counsel further submits that the learned Judge in Chambers has failed to appreciate that the appellant had legitimate expectation to be absorbed as a deputationist and that the respondents were estopped from issuing the impugned repatriation order after having initiated the process for considering the appellant for absorption within F.D.E.

3. We have heard the contentions of the learned counsel and perused the impugned judgment as well as the appended record.

4. The learned Judge in Chambers has noted in the judgment that the office order impugned in the writ petition is a public document and the assertion that it has been back dated is tantamount to raising a factual controversy that cannot be resolved by the Court in its constitutional jurisdiction.

5. The record appended with the appeal establishes that the criteria for selection as a deputationist issued by F.D.E vide letter dated 25.02.2004 included, *inter alia*, academic qualification with a minimum grade of second

division. The appellant was issued letter for appointment on deputation by F.D.E on 12.04.2004 and one of the additional conditions specially included within the terms and conditions of deputation stated that "*she will not claim permanent absorption being third division*". Given this explicit condition subject to which the appellant's services were acquired by F.D.E., the arguments of the appellant's counsel that the appellant (i) possesses the requisite academic and professional qualification required for absorption as a deputationist and (ii) had legitimate expectation to be permanently absorbed within F.D.E., is devoid of force.

6. Learned counsel for the appellant has further submitted that the impugned office order repatriating the appellant to her parent department has been issued in breach of the judgment of this Court passed in W.P No. 194/2020 titled "*Mrs. Nusrat Rasheed and another vs. Federation of Pakistan and others*". This argument carries no weight either as the said judgment, after summarizing the jurisprudence of the Hon'ble Supreme Court and High Courts in relation to rights of deputationists, elucidates the following principles:

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(i). The deputation is a contract between the borrowing and lending departments and in the event that the borrowing department does not need the services of a deputationist, he/she can be repatriated to the parent department without notice.

(ii). A deputationist is neither to be retained against the wishes of the borrowing department nor to be thrust upon the borrowing department against its need and desire.

(iii). A deputationist cannot be treated as an aggrieved person as he/she has no vested right to remain on a deputation post forever and his/her repatriation can be ordered at any time.

(iv). Given that a deputationist has no vested right to stay on deputation or seek absorption by the borrowing department, neither the grant of NOC by a parent department permitting absorption of the deputationist nor the initiation of process to consider the absorption of the deputationist by the borrowing department creates a vested right in favour of the deputationist to be absorbed by the borrowing department.

(v). A deputationist retains lien against his/her permanent post within the lending department till such time that he/she is appointed to a permanent post within and outside cadre.

(vi) A deputationist cannot claim to have acquired a vested right to be absorbed within a borrowing department on the basis of the wedlock policy of the Federal Government.

7. The doctrine of legitimate expectation was expounded by Bingham LJ in *R v. IRC ex p IMK* [(1990) 1 WLR 1545] wherein it was held that *"if a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. If in private law a body would be in breach of contract in so acting or estopped from so acting a public authority should generally be in no better position. The doctrine of legitimate expectation is rooted in fairness."*

8. In the instant matter, the deputation order itself clearly states that the appellant will not be eligible for absorption in view of her

academic credentials. Consequently the question of the respondents' conduct generating a legitimate expectation of absorption within F.D.E. in favour of the appellant does not arise.

9. In *M.P Sugar Mills vs. State of U.P* [AIR 1979 S.C 621] Justice Bhagwati opined that the principle of promissory estoppel ".....seems to be that where on party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not"

10. In the instant matter, the appellant has identified no conduct of the respondents making a clear and unequivocally promise intended to create legal relation or a vested

right in favour of the appellant, which now bars the respondents, on the basis of the doctrine of promissory estoppel, from repatriating the appellant to her parent department.

11. In "*Pakistan vs. Salah ud Din*" [PLD 1991 SC 546] the limits that attach to promissory estoppel were expounded which included, *inter alia*, the condition that "*promissory estoppel cannot be invoked for directing doing the thing which was against the law when the presentation was made and the promise held out*" and that "*no agency or authority can be held bound by promissory and a representation cannot be lawfully extended or given.*"

12. As has been held above, in the instant case the respondent has made no representation or promise that attracts the principle of promissory estoppel or legitimate expectancy. Further, as elucidated in the impugned judgment, it has been held by the Hon'ble Supreme Court in numerable cases going back to "*Pakistan vs. Fazal Rehman Kundkar*" [1959 PLD SC 82] that deputationists have no vested right to seek absorption in a borrowing department.

13. The appellant has failed to point any legal infirmity in the impugned judgment and thus no case is made out. In view of the above, the instant appeal is not maintainable and therefore dismissed in limine.

(AAMER FAROOQ)
JUDGE

(BABAR SATTAR)
JUDGE

Saeed.

Approved for reporting.