

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.880 of 2020

Mrs. Asifa Bashir

Versus

Ministry of Finance and Economic Affairs through its Secretary and
another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	16.03.2020	Mr. Abdul Hafeez Amjad, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Mrs. Asifa Bashir, impugns the notification dated 29.01.2020 issued by the Federal Directorate of Education ("F.D.E."), whereby she was repatriated to her parent department, i.e. Ministry of Finance, Revenue and Economic Affairs, Islamabad.

2. The record shows that vide office order dated 02.09.2009 issued by the F.D.E., the petitioner was taken on deputation as Trained Undergraduate Teacher (BS-14) for a period of three years. Subsequently, the F.D.E. started preparing a case for the petitioner's permanent absorption, and in this regard, the F.D.E. vide letter dated 02.07.2015 requested the petitioner's parent department to issue a *"No Objection Certificate"* regarding her permanent absorption in the F.D.E. In the said letter, it was explicitly provided that the petitioner would be *"considered for permanent absorption subject to fulfillment of recruitment Rules and completion of 05-years deputation period."* It was also provided that the said letter would not confer any right or claim for permanent absorption. Vide letter dated 07.07.2015, the petitioner's parent department conveyed its no objection for her permanent absorption in the F.D.E. Vide letter dated 20.04.2018 from the Capital Administration

and Development Division, the petitioner's appointment on deputation in the F.D.E. was converted to a transfer under Section 10 of the Civil Servants Act, 1973 ("the 1973 Act"). Vide letter dated 25.04.2018, the F.D.E. conveyed its intention to the petitioner's parent department to retain her services under Section 10 of the 1973 Act. The petitioner's parent department was requested to convey its consent to place her services under Section 10 of the 1973 Act. Vide notification dated 11.06.2018 issued by the F.D.E., the petitioner's services were converted from deputation to transfer under Section 10 of the 1973 Act. Suddenly, vide impugned notification dated 29.01.2020, the petitioner was repatriated to her parent department.

3. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that after the petitioner's services were converted from deputation to transfer under Section 10 of the 1973 Act, she has acquired a legitimate expectation to be permanently absorbed in the F.D.E.; that since the petitioner had been serving in the F.D.E. since the past 11 years, she had a vested right to be absorbed in the F.D.E.; that since after the issuance of the notification dated 11.06.2018 by the F.D.E., the petitioner was not a "*deputationist*", she could not have been "*repatriated*" to her parent department; and that similarly placed employees in the F.D.E. had been absorbed. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as 2014 SCMR 522 and PLD 1985 Karachi 619.

4. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraph 2 above and need not be recapitulated.

5. The petitioner had been serving as a deputationist in the F.D.E. from 25.08.2009 (when she joined her duties as a Trained Undergraduate Teacher in the F.D.E.) to 11.06.2018 (when her services were converted from deputation to transfer under Section 10 of the 1973 Act). Admittedly, the petitioner is a civil servant. At no material stage was any formal order passed regarding the petitioner's permanent absorption in the F.D.E. The conversion of her deputation into a transfer under Section 10 of the 1973 Act would not be treated as equivalent to the petitioner's permanent absorption in the F.D.E.

6. Section 10 of the 1973 Act provides *inter alia* that every civil servant shall be liable to serve anywhere within or outside Pakistan, in any equivalent or higher post under the Federal Government, or any Provincial Government, or local authority, or a corporation or body set up or establish by any such government. The said Section has two *provisos* which are not relevant for the purposes of the instant case.

7. If the petitioner is not to be treated as a deputationist but as a civil servant transferred from the Ministry of Finance, Revenue and Economic Affairs (Economic Affairs Division) to the F.D.E., she would not have any legal right to continue serving against the post for which she was transferred. If the impugned notification dated 29.01.2020 is to be treated as an order for the petitioner's transfer back to the Ministry of Finance, Revenue and

Economic Affairs (Economic Affairs Division), she on account of being a civil servant, cannot challenge the same in the Constitutional jurisdiction of this Court.

8. A writ petition cannot be filed by a civil servant against transfer orders. The consistent view of the Superior Courts has been that a petition under Article 199 of the Constitution cannot be filed by a civil servant with respect to a matter connected with the terms and conditions of the service. The jurisdiction of the High Court in such matters is barred in view of the provisions contained in Article 212(2) of the Constitution. It is well settled that transfers and postings relate to the terms and conditions of service, and fall within the domain of the competent authority. Reference in this regard may be made to the following case law:-

- (i) In the case of Mazar Hussain Bukhari Vs. Secretary, Government of Punjab (1998 SCMR 1948), it was held that even if the transfer orders from one place of posting to another were challenged on the ground of *malafide*, the same were to be challenged before the Service Tribunal, and Article 212 of the Constitution was a bar against the filing of a Constitutional petition before the High Court under Article 199 of the Constitution.
- (ii) In the case of Ayyaz Anjum Vs. Government of Punjab, Housing and Physical Planning Department through Secretary and others (1997 SCMR 169), it has been held as follows:-

“Clearly, the matters relating to the posting and transfer of a civil servant relate to the terms and conditions of his service. Disputes about these matters fall within the exclusive jurisdiction of the appropriate Service Tribunal. The jurisdiction of High Court is barred in these matters by the express provisions of Article 212(2) of the Constitution.”

- (iii) In the case of Rai Ahmad Ali Vs. Province of Punjab and others (1999 SCMR 1832), it was held as follows:-

“Article 212 of the Constitution is a bar against filing of a Constitutional petition in relation to the terms and conditions of civil servants. It has been repeatedly held by this Court that a Constitutional petition under Article 199 of the Constitution is not maintainable in relation to any matter connected with the terms and conditions of service in respect whereof the appropriate Service Tribunal is possessed of the requisite jurisdiction, in view of the provisions contained in Article 212 of the Constitution. This Court has also held that even in cases where the order is alleged to be mala fide, the bar of Article 212 is attracted.”

- (iv) In the case of Peer Muhammad Vs. Government of Balochistan through Chief Secretary and others (2007 SCMR 54), it has been held as follows:-

“It is well-settled by now that the question of posting of a Government servant squarely falls within the jurisdictional domain of the Competent Authority subject to law and rules made thereunder. The question of posting/transfer relates to terms and conditions of a Government servant and Service Tribunal would have exclusive jurisdiction to dilate upon and decide such matters and Constitutional jurisdiction cannot be invoked to get such controversies resolved. We have also adverted to the question of mala fides which according to the learned Advocate Supreme Court could have been dilated upon in Constitutional jurisdiction which is not correct because the provisions as contained in Article 212 of the Constitution of Islamic Republic of Pakistan ousts jurisdiction of all other Courts and orders of the departmental authority even though without jurisdiction or mala fide can be challenged only before the Service Tribunal and jurisdiction of Civil Court including High Court is specifically ousted. The plea of mala fide does not confer upon High Court jurisdiction to act in the matter in view of the Constitutional ouster as contained in Article 212 of the Constitution of Islamic Republic of Pakistan and learned Service

Tribunal has full jurisdiction to interfere in such-like matters."

9. Even otherwise it is well settled that a transfer order made in the exigency of service cannot be interfered with in the Constitutional jurisdiction of this Court.

10. If the impugned notification dated 29.01.2020 is an order for the petitioner's repatriation to her parent department, it is well settled that a deputationist may not necessarily complete the tenure for which he/she was sent on deputation and the power vested with the competent authority to repatriate a deputationist without assigning any reason. In case of transfer on deputation, no vested right accrued to a deputationist to continue for the period of deputation. The competent authority was empowered to repatriate a deputationist as and when the exigencies of service required. Law to the said effect has been laid down in the cases of Pakistan Vs. Fazal Rehman Khundkar (PLD 1959 Supreme Court (Pak.) 82), Dr. Shafi-ur-Rehman Afridi Vs. CDA, Islamabad (2010 SCMR 378), Mst. Robia Ayub Vs. Federation of Pakistan (2013 PLC (C.S.) 915), Abdul Majeed Vs. Chief Secretary, Punjab (2015 PLC (C.S.) 1381), and Lal Khan Vs. Employees Old Age Benefit Institution (2010 PLC (C.S.) 1377).

11. In view of the above, the instant petition is dismissed in limine as not maintainable.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*