

**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.4197/2019**

Muhammad Nadeem Khan

*versus*

Federation of Pakistan, etc.

Petitioner by: Mr. Khurram Mahmood Qureshi and Mr. Usama Bin Salam, Advocates.

Respondents by: Syeda Rashda Zainab, Advocate for Respondent No.4  
Barrister Muhammad Mumtaz Ali, AAG.  
Saqib Shahab, Director (Admin) FDE, S.M. Rehan,  
A.D. (Legal), FDE and Masood-ul-Hameed Malik,  
Deputy Director (Legal), M/o FE & PT.

**Date of Decision: 11.03.2020.**

**MOHSIN AKHTAR KAYANI, J:** Through the instant writ petition, the petitioner has called in question transfer order of Respondent No.4 from Pakistan Institute of Parliamentary Services, Islamabad to Federal Directorate of Education followed by allotment of Government accommodation in his favour, which has been allotted to the petitioner.

2. Brief facts referred in the instant writ petition are that Muhammad Nadeem Khan/petitioner being a Government servant serving in the Islamabad High Court since 27.05.2008 has been allotted Quarter No.480, Type-B, Sector G-6/1, Islamabad on 02.11.2017 as per the General Waiting List, which was previously allotted to Mrs. Mehfooz Bibi/Respondent No.3 while working as Ex-Technician (BPS-12) in Federal Government Polyclinic Hospital, Islamabad vide allotment letter dated 21.07.1987, though the said Respondent No.3 despite being retired from service on 02.02.2019 is still occupying the subject accommodation. Consequently, the petitioner submitted an application to the Estate Office on 17.07.2019 for delivering the possession of the subject accommodation, but of no avail. However, the subject accommodation has been allotted in favour of Respondent No.3's son i.e. Imran Khalid/Respondent No.4 after his transfer on deputation basis in the Federal Directorate of Education, Islamabad from Pakistan Institute of Parliamentary Services, Islamabad for

the period of three (03) years, which is in violation of Rule 6(6) of the Accommodation Allocation Rules, 2002. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that Respondent No.4 is not eligible for allotment of Government accommodation of Category-B as he is serving in BPS-04, and as such, he is not a Federal Government Servant under Rule 2(g) of the Accommodation Allocation Rules, 2002; that the subject accommodation has already been allotted to petitioner as per General Waiting List vide allotment letter dated 02.11.2017 under the Accommodation Allocation Rules, 2002, in which Respondents No.3 & 4 are unlawfully residing w.e.f. 02.08.2019, therefore, such occupation/possession of Respondents No.3 & 4 may be declared illegal, unlawful and unauthorized as well as the transfer order of Respondent No.4 in Federal Directorate of Education on deputation basis may also be declared *void ab initio*.

4. Conversely, learned AAG as well as learned counsel for respondent No.4 contended that Respondent No.4 is serving as Telephone Operator BPS-05 in the Federal Directorate of Education on regular basis, who has rightly been allotted the subject quarter after retirement of his mother (Respondent No.3) from Federal Government Polyclinic Hospital, Islamabad on 01.08.2019; that respondent No.4 had also filed a suit for declaration and permanent injunction regarding the subject accommodation against Ministry of Housing & Works and the Estate Office, which was decreed vide judgment and decree dated 17.02.2020 and presently application U/S 12(2) CPC filed by the petitioner is pending adjudication; that the petitioner has no locus standi, therefore, instant writ petition is liable to be dismissed.

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

6. First of all I would like to settle the question of maintainability of instant writ petition as during the arguments learned counsel for respondent No.4 has raised objection on the maintainability of instant writ petition that the petitioner has no locus standi to challenge deputation order of respondent No.4. This question has to be seen in the light of grievance of the petitioner, who claims that he is allottee of the suit quarter, which has been retained by respondent No.4 on the basis of order of deputation from PIPS to FDE and in this eventuality the petitioner has gained eligibility under Accommodation

Allocation Rules, 2002 indirectly and such phenomenon extends locus standi to the petitioner to challenge deputation of respondent No.4, hence, instant writ petition is maintainable.

7. Perusal of the record reveals that the petitioner is aggrieved with the order issued by Federal Directorate of Education/FDE/respondent No.6, whereby services of Imran Khalid/respondent No.4 have been requisitioned from Pakistan Institute of Parliamentary Services (PIPS)/respondent No.5 on deputation basis for three years. Respondent No.4 is permanent employee of respondent No.5, who was initially appointed as driver in respondent No.5 but after his transfer on deputation basis vide office order dated 08.01.2019, he is working as Telephone Operator BPS-5 w.e.f. 13.12.2018 for three years on standard terms and conditions.

8. The real bone of contention between the petitioner and respondent No.4 is quarter No.480, Type-B, Sector G-6/1-2, Islamabad, which was allotted to respondent No.3/mother of respondent No.4, who got retired from Federal Government Poly Clinic Hospital, Islamabad on 02.02.2019. In this regard, respondent No.4 has filed separate suit for declaration, mandatory and permanent injunction titled *Imran Khalid vs. Federation of Pakistan etc.* which was initially decreed vide judgment & decree dated 17.02.2020, whereby he has been declared to be entitled for allotment of suit accommodation under Rule 15(2)b of Accommodation Allocation Rules, 2002, however, the said judgment & decree have been suspended by learned Trial Court vide order dated 09.03.2020 on application U/S 12(2) CPC filed by the petitioner.

9. While dealing with entire proposition, it is necessary to consider the question of deputation of respondent no.4 at first instance. Number of opportunities were granted to FDE/respondent No.6 to file para-wise comments but they failed, therefore, vide order dated 09.03.2020 concerned Director of FDE was directed to appear in person to explain the reasons for non-compliance of Court's order and as result whereof today Saqib Shahab Director (Admn), S.M. Rehan AD (Legal) FDE and Maqsood-ul-Hameed Malik DD(Legal) M/o Federal Education and Professional Training have put appearance and took the stance that para-wise comments are in the process of vetting with law division,

however, they have been confronted as to whether any government servant, who is not a civil servant can be posted on deputation basis in FDE and under what circumstances FDE or the Ministry have accepted the transfer and posting of respondent No.4, whereupon they have failed to answer the query.

10. While dealing with the proposition, I have gone through status of PIPS, who has also not filed his para-wise comments in order to extend benefit to respondent No.4, therefore, this Court has no other option but to decide the question on the basis of available record and the law on the subject.

11. The status of PIPS has to be considered in the light of Pakistan Institute for Parliamentary Services Act, 2008, whereby the Institute has been established in terms of section 3 of the Act, which is body corporate having perpetual succession and a common seal, which has been established in order to promote research, provide training and to provide facility of information to the parliamentarians in performance of their duties and the matters connected therewith. The functions of the Institute have been defined in section 4 Chapter II of the said Act, whereby the Institute shall provide technical assistance to the parliamentarians by way of training, workshops, conferences and seminars in order to take measures of law making. The Institute shall also arrange legislative drafting courses with special emphasis on parliamentary practices. The Institute shall be governed through Board of Governors comprising of nine members in terms of section 6 of the Act, whereas Chairman Senate or Speaker of the National Assembly will be president of Board of Governors by rotation for three years. All the powers and functions have to be regulated through Board of Governors, whereas funds of the Institute shall be provided by Federal Government through Senate or National Assembly alongwith national or international agencies and organizations. The status of the employees has been defined in section 15 of the Act, whereby the Board shall make rules for recruitment of the employees of the Institute and the Executive Director shall act in accordance with the rules. Similarly in terms of section 15(2) of the Act the employees may be recruited on permanent or contract basis, whereas terms and conditions of

service, promotion, reduction, removal, suspension and other service matters shall be regulated by the service rules of the Institute made by the Board. This analogy drawn from Pakistan Institute for Parliamentary Services Act, 2008 principally defines that employees of the Institute are not civil servant under the law. They are employees of statutory body with non-statutory rules although no such rules are available at this stage to verify status of the employees.

12. While considering the position on record as to whether an employee, who is not civil servant can be allowed to work on deputation basis in the FDE against post of civil servant, the answer to the said proposition has to be considered in the light of **2013 SCMR 1752 (Contempt Proceedings Against Chief Secretary, Government of Sindh)** as well as ESTA Code, wherein necessary requirements of deputation and absorption have been highlighted. The term “*deputation*” referred in Chapter-3, Part-II, Serial No.26 of the ESTA Code, Vol.1 is reproduced as under:-

*“An officer is said to be on deputation when is detached on special temporary duty for the performance of which there is no permanently or temporarily sanctioned appointment.”*

13. In view of above, government servant begins to be regarded as a deputationist when he is appointed or transferred through the process of selection to a post in a department or service altogether different from the one to which he permanently belongs. He continues to be placed in this category as long as he holds the new post in an officiating or a temporary capacity but ceases to be regarded as such either on confirmation in the new post or on reversion to his substantive post. Reliance is placed upon PLD 1981 SC 531 **(Islamic Republic of Pakistan vs. Israrul Haq)**.

14. The other pre-conditions of deputation referred in Chapter-III (Transfer, Posting and Deputation) of the ESTA Code, are as under:-

- (i) *Where a post proposed to be filled is reserved under the rules for departmental promotion, appointment on deputation may be made only if the department certifies that no eligible person is available for promotion or the eligible person is found unfit for promotion by the appropriate DPC/Selection Board. In such cases,*

- deputation may be approved till such time a suitable person becomes available for promotion.
- (ii) In case of posts reserved for initial recruitment, appointment on deputation may be made only as temporary arrangement, pending joining of the nominee of the FPSC, and subject to the condition that such appointment shall be made only after a requisition has been placed with the FPSC.
- (iii) In cases where a post is tenable through appointment by deputation, the normal period of deputation should be three years and no extension beyond three years may be allowed without prior approval of the Establishment Division.
- (iv) No officer should be sent on deputation unless he has completed three years' service in his parent department after return from an earlier deputation."  
(the underlining & emphasizing is mine)

15. The appointment on deputation basis has also been explained in Rule 20-A of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, which is reproduced as under:-

**"20A: Appointment on deputation:** (1) A person in the service of a Provincial Government or an autonomous, semi-autonomous body or corporation or any other organization set-up, established owned, managed or controlled by the Federal Government who possesses the minimum educational qualifications, experience or comparable length of service prescribed for a post shall be eligible for appointment to the said post on deputation for a period of two years on such terms and conditions as may be sanctioned by Federal Government in consultation with the lending Organization.

(2) Subject to any rule or orders on the subject issued by the Federal Government, a civil servant who fulfills the conditions and is considered suitable may be sent on deputation to an autonomous, semi-autonomous body or corporation established by law or to the Provincial Government on such terms and conditions as may be decided by the lending and borrowing organizations.

(3) In case of appointment under sub-rule (1) or sub-rule (2) pension contribution shall invariably be made by the borrowing organizations".

(underlining and emphasizing is mine)

16. All the above referred provisions of law clearly demonstrate that only a civil servant can be sent on deputation but in order to justify deputation, the borrowing department has to prove that there is no other suitable candidate with such matching qualifications and the appointment of person so desired has been required at the touch stone of term “*exigency of services*” and if such nominated person has not been transferred on deputation, the normal day-to-day working of the department of Government of Pakistan will be affected and the appointment is indispensable and even the Government of Pakistan and the relevant department will be benefited from the services of such transferee/deputationist.

17. It is settled proposition of law that Civil Servant Act, 1973 provides different categories, service cadres or posts as prescribed by the recruitment rules of the department and the very concept of cadre provides a safeguard within the service hierarchy so that one kind of officer could not cross the cadre, disturb the seniority, other rights of the officers in different cadres. The borrowing as well as the lending department should have been owned by provincial or federal government, even then such kinds of practices were not allowed. Reliance is placed upon 2015 SCMR 456 (Ali Azhar Khan Baloch vs. Province of Sindh), whereby it was held that:-

*“112. Appointment by promotion as used in Rule 6(A) is the consequence of initial appointment. Likewise, appointment by transfer is also the consequence of initial appointment. The appointment by promotion is made within the cadre or service or post and, therefore, it does not require any interpretation. The appointment by transfer can only be ordered if the Civil Servant is eligible and qualifies for his transfer under Rule 3(2) of the Rules of the department to which he is to be transferred, read with Rules 4, 7 and 8 of the Rules, which prescribe conditions laid down for such appointments by transfer to such posts. A Civil Servant who is to be appointed by transfer has to appear before the Departmental Promotion Committee or the Provincial Selection Board which will consider his eligibility, qualification and such other conditions applicable to the post as laid down in the recruitment rules of the department to which his transfer is to be ordered.”*

(underlining and emphasizing is mine)

18. In view of above authoritative judgment, inference can safely be drawn that transfer and posting of non-cadre to a cadre post is not permissible, even though, the eligibility, qualification and such other conditions for appointment against the said post as provided in rules of the department shall also be considered. Whereas, in this case the petitioner was employee of PIPS, which is body corporate established under "The Pakistan Institute for Parliamentary Services Act, 2008" and as such its status is statutory although terms and conditions of service of the employees will not be considered statutory at this stage especially due to the reason that no rules have been promulgated as per stance of learned counsel for the parties. However, core question emerges on record is as to whether the employees of PIPS can be transferred or posted 20-A of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, the answer is affirmative but in such eventuality there are certain other pre-conditions, which are required to be settled by the borrowing department, in this case M/o Federal Education and Professional Training. The other pre-conditions have to be seen in terms of Rule 9-A of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, which is reproduced as under:-

*"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."*

*(underlining and emphasizing is mine)*

19. While considering the above background, FDE/respondent No.6 has failed to explain his position in any manner as to under what circumstances a driver of PIPS/respondent No.5 has been appointed as Telephone Operator on deputation basis for three years.



20. The second question raised in the instant writ petition is qua allotment of quarter No.480, Type-B, Sector G-6/1-2, Islamabad, which cannot be settled by this Court as civil suit filed by respondent No.4 was decreed by Court of competent jurisdiction, however, the said judgment and decree was assailed by the petitioner by filing application U/S 12(2) CPC, which is pending adjudication before learned Trial Court.

21. In view of above discussion, the instant writ petition stands **disposed of** with direction to the Federal Directorate of Education as well as Ministry of Federal Education and Professional Training to reconsider the eligibility, matching qualifications and expertise of respondent No.4 coupled with other conditions laid down in Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and if respondent No.4 fulfills the required criteria, specific order shall be passed with reasons within period of 30 days from the date of receipt of copy of this judgment. Learned Trial Court seized with the matter is directed to decide the pending application U/S 12(2) CPC within a period of two months from the date of receipt of copy of this judgment under intimation to this Court.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

R.Anjam.