

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 2306 of 2021

Shabnam Muhammad Ali
Vs
Federation of Pakistan, 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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13-07-2021. Mr Ali Nawaz Kharal, Advocate for the petitioner.

ATHAR MINALLAH, CJ.- The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assailing notification, dated 05.04.2021, whereby she has been repatriated to her parent department i.e. Deputy Director Education, Astore, Government of Gilgit-Baltistan (hereinafter referred to as the **"Parent Department"**). The reason stated in the impugned notification is to the effect that the deputation period of the petitioner had expired on 25.12.2020.

2. The facts, in brief, are that the services of the petitioner were transferred to the Federal Directorate of Education, Islamabad (hereinafter referred to as the **"Borrowing Department"**) on deputation basis. The deputation was under the wedlock policy because, as asserted in the memorandum of the petition, the petitioner's husband was employed in a private sector

company based in Islamabad. Initially the period of deputation was for one year with effect from 26.12.2017. It was extended for another two years with effect from 26.12.2018 to 25.12.2020. The Parent Department had issued no objection certificate vide notification, dated 22.06.2021. The validity of the no objection certificate is till 14.11.2021. The petitioner was repatriated vide the impugned notification, dated 05.04.2021.

3. The learned counsel for the petitioner has contended that; the latter was posted on deputation basis under the wedlock policy; the petitioner's husband is working and employed in Islamabad and, therefore, she could not have been repatriated; repatriation order is in violation of guidelines prescribed by the Establishment Division vide Office Memorandum, dated 13th May, 1998 read with Office Memorandum, dated 21st April, 2006; other similarly placed deputationists had earlier approached this Court and their petitions were disposed of vide order, dated 16.03.2021; pursuant to the direction given by this Court respondent no.2 has constituted a committee; a representation has been filed by the petitioner and it is not being considered by the respondents.

4. The learned counsel has been heard and the record perused with his able assistance.

5. The petitioner was transferred from the Parent Department to the Borrowing Department for a specified

period. The petitioner's transfer on deputation basis was under the wedlock policy formulated by the Federal Government. The no objection certificate is also valid till 04.11.2021. However, the Borrowing Department has repatriated the petitioner to the Parent Department vide the impugned notification. It is noted that the petitioner has already been repatriated and, therefore, her case is covered under paragraph 5 of the order, dated 16.03.2021, passed in W.P.No.186 of 2021. Moreover, the case in hand is also distinguishable because the repatriation of the petitioner was not on the basis of the judgment rendered by this Court.

6. The guidelines regarding the wedlock policy contained in Office Memorandum, dated 13th May, 1998 read with Office Memorandum, dated 21st April, 2006 are not of a binding nature and they do not create an enforceable right for the purpose of seeking a writ of mandamus. The guidelines contained in the Office Memorandum, dated 13th May, 1998 are subject to fulfillment of certain conditions i.e. the concurrence of borrowing as well as the lending department and availability of a post in the same BPS. Moreover, the representation filed by the petitioner seeking her transfer to Islamabad on deputation basis under the wedlock policy can be processed even after her repatriation and joining the Parent Department. The wedlock policy is subject to express consent and concurrence given by the borrowing as well as the parent department. This Court

cannot compel the Borrowing nor the Parent Department to give its concurrence under the wedlock policy. It is noted that neither the borrowing nor the parent department can be influenced because such a decision is within their exclusive domain and dependent on taking into consideration several factors. The wedlock policy contained in Office Memorandum, dated 13th May, 1998 is subject to fulfillment of certain conditions. The most important conditions are the consent/concurrence of the borrowing as well as the parent department and availability of a post in the same BPS. The procedure regarding dealing with representations relating to extending the benefit has been prescribed in the wedlock policy. It is settled principle that when law has prescribed a thing to be done in a particular manner then it ought to be done in that manner alone. Reliance is placed on 'Muhammad Anwar etc vs. Mst. Ilyas Begum, etc, **[PLD 2013 S.C. 255]**.

7. The petitioner has already been repatriated and, therefore, this Court is bereft of jurisdiction nor would it be appropriate to compel the Parent Department to retain the petitioner or influence its decision. Nonetheless, this Court expects that the representation, stated to have been filed by the petitioner, would be processed in accordance with law and having regard to the guidelines prescribed by the Federal Government under the Office Memorandum, dated 13th May, 1998 read with the other relevant office memorandums. As already noted, the

representation can be considered and processed despite the repatriation having taken effect.

8. For the above reasons, this Court is not inclined to interfere with the repatriation order/notification and, therefore, the petition is accordingly disposed of,

CHIEF JUSTICE

Asif Mughal/*