

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP. 1977 2011.

Saifeer Hussain and six others

Titled

Vs

Federation of Pakistan

- (a) Judgment approved for reporting Yes/ No
- (b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made. Yes No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

FORM NO.HCJD/C

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

(1) WRIT PETITION NO.1977 OF 2011

SAFEER HUSSAIN AND SIX OTHERS

VERSUS

**FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY
OF INTERIOR, SECRETARY OF ESTABLISHMENT DIVISION
AND 5 OTHERS.**

(2) WRIT PETITION NO.2094 OF 2011

MOHAMMAD BASHIR AND 9 OTHERS

VERSUS

**FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY
OF INTERIOR, SECRETARY OF ESTABLISHMENT DIVISION
AND 8 OTHERS.**

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DATE OF HEARING: 03.05.2012.

PETITIONERS BY: Syed Muhammad Tayyab, Advocate.

**RESPONDENTS BY: Mr. Tariq Mahmood Jahangir, Deputy
Attorney General.
Mr. Shaukat Rehman advocate for
respondent No.4
Mr. Umar Hanif Khichi, Advocate for
respondent No.5
Sardar Abdul Sami, Advocate for
respondent No.6.
Mr. Muhammad Shoaib Shaheen, Advocate
for respondents No.5,8,9**

NOOR-UL-HAQ N. QURESHI J.- By this single

judgment, both the above mentioned writ petitions are
disposed of in view of similar facts and law point involved.

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2 Generally, the petitioners have submitted their respective prayers in both the writ petitions, which are as under:-

"In the circumstances, mentioned above, it is most respectfully prayed that an appropriate writ may kindly be issued declaring that appointments and posting on deputation in Islamabad Police Department against the settled rules, regulations, law and principles are absolutely illegal, unlawful, against the rules, void ab-initio and of no legal effect, in the interest of justice and the such officials be repatriated to their parent department.

It is further prayed that the respondents No.1 to 3 be directed to refrain from affecting any posting on deputation or absorbing the respondent No. 4 to 6 (WP No.1977) and respondents No.4 to 9 (Writ petition No.2094) in Islamabad Police Department against the law, rules, regulations and the policy, in the interest of justice.

It is further prayed that the respondents No.1 to 3 be directed to refrain from inducting/posting any official in Islamabad police Department on deputation, in the interest of justice."

3. Brief facts as contended through these writ petitions, which have be elaborated as under:-

 4 The petitioners are serving as Inspectors and Sub Inspectors on regular strength of Islamabad Capital Territory Police under the control of Interior Division. There

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are so many eligible, permanent and regular officers in Police Department of Islamabad, who are waiting for their posting and promotion, but continuous process of deploying on deputation is going on by respondents No.1 to 3 in Islamabad Police Department from other provinces. Such process going to be adopted contrary to the rules and regulation, which has badly affected not only the seniority of regular employees but their future promotion. It is observed that mostly the officers called on deputation in Islamabad Capital Territory Police and subsequently after their absorption, they used to deprive the legitimate rights of the petitioners, which create hurt burning affects good governance in the affairs is also going to be revengious.

5. The respondents in the respective petitions submitted their comments particularly, respondents No.1 to 3 have by their comments not opposed the grant of prayer directly and submitted if the repatriation order is made, the same will be complied with in its true letter and spirit. The relevant portion of the comments submitted by respondents No.1 to 3 is reproduced herein below:-

"It is correct that the respondents No.4,5 & 6 are not posted against any regular/specific. Post but they are performing routine duties as DSsP. It is true that there are many eligible, efficient and experienced Police Officers within ICT Police, who are waiting for their regular promotion/postings to the rank of DSsP since long. It is also true that in the Past, when the Islamabad Police was established

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in 1981, number of Police Officer/Officials were invited to join the Islamabad Police, who were later on absorbed in the ICT Police on permanent basis. In the recent past, the department has decided not to take officers/officials from other Provinces and repatriated the officers on deputation to their parent departments due to the reason that ICT Police has itself number of educated, qualified and professional Police Officers on its pay role."

6. Respondent No.4 has opposed the grant of prayer in support whereof tried to create justification that the deputation as a result of consent between borrowing and lending officers from other department is lawful that is why number of officers from other department are working their business in borrowing department including Islamabad Police.

7. The other respondents also agitated their retention on deputation on the ground that following the legal procedure as envisaged by Rule 20-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, the deputation is in accordance with law and individually the case of the respondents in both the petitions is fully covered by law. They have taken the stance that some of the respondents are on deputation in view of the policy introduced by the Government, whereby on the basis of spouses, the respondents have been accommodated as well as they are enjoying the deputation under the valid cover of law. It was consented between lending and borrowing

agencies, as a consequence whereof, they are performing their duties without any objection by the concerned authorities nor any adverse view drawn against them. Therefore, there is no reason of their repatriation.

8. They contended that since they are not regular employees, therefore, there is no apprehension of their promotion being competitors with the regular employees nor they are claiming any seniority, therefore, petitioners have no right to agitate their deputation.

9. Arguments heard. Record perused minutely and gone through the case laws produced by both the parties.

9. On the below mentioned queries raised by the Court, the respondents could not submit their satisfactory reply:-

- (a) ***As to what are their expertises in the relevant field.***
- (b) ***Whether no person of like expertise is available in Islamabad Police.***
- (c) ***Upto this time, how may other employees on deputation have been absorbed? As a result the rights of the officers of Islamabad Police were assassinated.***
- (d) ***On completion of the deputation period, how they will continue to perform as deputationist even on the ground of spouse basis.***

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(e) Whether any of their right as deputationists are enshrined by any statute or it is a right accrued for ever.

10. The queries raised above, learned counsel for the respondents ridiculously replied that after completion of the period of deputation, there may be some extension, which otherwise not possible when head of Islamabad Police is not going to continue till further. To the fact of right, no plausible explanation could be furnished. On the contrary, they admitted the fact that deputationist has no right. Also, it is admitted fact that the deputationist can be repatriated even before the period of deputation and no doctrine of estoppel will come in the way for reversal of the deputation to his parent department on repatriation.

11. Deputation in the government department have a very significance feature, which requiring to be hired under some special circumstances when there is no any expert person is available in such department in the relevant subject or field. Under the circumstances, the procedure laid down under Rule-20-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 is to be adopted. But again it may be taken into consideration that it shall not require continuity for indefinite period, or the period specified for the deputation.

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12. Mostly, the deputationist after joining used to get them absorbed then by claiming seniority with continuity of their old service, claimed prevailing over actually employed

in the parent department. Since deputationist is mostly be using their influence used to occupy the seats in other department that is why it create hurt burning heavily affects good governance in the department and the officer originally appointed in the parent department, who appears to be unwilling workers, which ultimately create multiple problems in the department itself. The stack-holder instead of providing favour to such extent their favourites hired on deputation. They are desist themselves not to indulge in such practice, which ultimately ruin the working capability of the officers in the parent department. Such practice now should be stopped and it should be strictly viewed as the Hon'ble Supreme Court many times exhibited repugnance for such type of favouritism

13. It is a well settled principle of law as envisaged by section 20-A of the Civil Servant (A. P. & T) Rules, 1973, which provides the period of deputation not exceeding three years, which may be extended for another period of two years on such terms and conditions as may be sanctioned by Federal Government in consultation with the lending Organization.

14. Similar view is also given in SI. No.28 of ESTACODE, Civil Establishment Code (Edition-2007), which is reproduced hereunder:-

"The normal deputation period, for all categories/grades of government servants, shall be three years, extendable for another two years with prior permission of the Establishment

Division. A government servant shall not, however, remain on deputation to another government organization or an autonomous body/corporation etc. for more than five years."

15. From the above referred provisions of law as well as Sl. No.28 of ESTAQCODE, it becomes crystal clear that though the period of three years with extension of further two years is provided, but there is no bar upon the authorities concern to repatriate the concerned officer on deputation before completion of the period. Since no legal bar is provided by law or any instruction time to time issued nor there is any scope available to consider such request of the petitioners on humanitarian ground as the next contended. Otherwise, on completion of three years, if period is not extended, they will have to join again their parents department, therefore, no any right of the petitioners is violated.

16. I have, therefore, under the guideline of the following case laws formed my opinion as under:-

1. **Const. Petition No.D-1491 of 2010 (Syed Imtiaz Ali Shah and 4 others Vs. Govt. of Sindh through Chief Secretary and 6 others).**
2. **2010 SCMR 378 (Dr. Shafi-ur-Rehman Afridi Vs. CDA Islamabad through chairman and others).**

17. Under the circumstances, it should be highly repugnant to encourage the deputationist, which is otherwise poison for the department and ultimately highly

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affects the working capability of the willful workers of the parent department.

18. During the arguments, one respondent namely Imtiaz Ali Lashari has also preferred petition, which is pending before another learned Bench of this Court, therefore, except the said respondent namely Imtiaz Ali Lashari, both the **writ petitions are allowed**. Consequently, respondents No.1 to 3 are directed to repatriate immediately all the deputationists from the department, whereby save its dignity. However, the decision of the said petitioner namely Imtiaz Ali Lashari will be subsequently decided in view of outcome of the writ petition No.1332/11, pending before his Lordship Mr. Justice Muhammad Anwar Khan Kasi.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

*AR.ANSARI/

Blue Sh. P. added

Announced in the open Court on :

30.05.2012

Approved for reporting

JUDGE

Uploaded By: "Zulqarnain Shah"