

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.980 of 2020

Umara Umar

Versus

Director General, Federal Directorate of Education and others

Dates of Hearing: 16.09.2020, 18.09.2020, 21.09.2020,
24.09.2020, 25.09.2020, 02.10.2020,
05.10.2020 and 06.10.2020

Petitioners by: M/s Muhammad Abdul Wali Irfan and Sheikh
Azeem Shams, Advocates for the petitioner in
W.P.No.980/2020
M/s Muhammad Asif Gujjar, Amna Ali and
Muhammad Masroof Khan, Advocates for the
petitioners in W.P.s.No.1383/2020,
1800/2020 and 1317/2020
Raja Saif-ur-Rehman and Sardar Haseeb
Iftikhar Ahmad, Advocates for the petitioners
in W.P.No.2241/2020 and 1427/2020
Mr. Ali Murad Baloch, Advocate for the
petitioner in W.P.No.1123/2020
Ms. Saira Khalid Rajput, Advocate for the
petitioner in W.P.No.1865/2020
Mr. Sher Aman, Advocate for the petitioner in
W.P. No.1958/2020.
Mr. Sheraz Ahmad Ranjha, Advocate for the
petitioner in W.P.No.2253/2020.
Mr. Sohail Akbar Chaudhry, Advocate for the
petitioner in W.P.No.2264/2020.
M/s Mazhar-ul-Haq Hashmi and Umar Farooq
Malna, Advocates for the petitioner in
W.P.No.2504/2020.

Respondents by: Mr. Muhammad Nadeem Khakwani, learned
Assistant Attorney-General
M/s Zafar Ismail Deputy Secretary, Nadeem
Arshad Section Officer and Mansoor Ahmed,
Superintendent, Establishment Division
Mr. Masood ul Hameed Malik, Deputy
Director, Ministry of F.E.&P.T.
M/s Saqib Shahab, Director (P&D) and S.M.
Rehan Naqvi, Assistant Director (Legal),
F.D.E.
Dr. Khawaja Sabir, J.D. and Mr. Tahir Taj
Deputy Director A.E.P.M.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I
propose to decide writ petitions No.980, 1123, 1317, 1383, 1427,
1865, 1958, 2241, 2253, 2264, 2504 of 2020 and writ petition

No.1800/2020 to the extent of petitioners No.1, 2, 4 and 5 since they entail certain common features.

2. All the petitioners have been serving in the Federal Directorate of Education ("F.D.E.") on deputation basis. They have assailed notifications issued by the F.D.E., whereby they were repatriated to their respective parent departments.

Writ petition No.980/2020 (Umara Umar Vs. Director General, Federal Directorate of Education, etc.)

3. The petitioner's parent department is the School Education Department, Government of Punjab. Vide notification dated 11.05.2016 issued by the F.D.E, the petitioner was posted as Secondary School Teacher at Islamabad Model School for Girls (I-X), Rawal Town (FA) Islamabad on deputation basis for a period of three years under the wedlock policy. In the said notification, it was mentioned that on the expiry of three-year deputation period, she shall automatically stand repatriated to her parent department. Prior to the issuance of the said notification, the petitioner was serving as Secondary School Teacher (Computer Science) (BS-16) in Government Deccan Girls School, Samanabad, Faisalabad.

4. Vide letter dated 29.01.2019, the F.D.E. sought an N.O.C. from the petitioner's parent department for an extension in her deputation period. Vide letter dated 04.07.2019, the petitioner's parent department requested the F.D.E. to repatriate the petitioner with the direction to report to the Chief Executive Officer (DEA), Faisalabad. There is nothing on the record to show that either her deputation period was extended or that any process for the petitioner's permanent absorption in F.D.E. was initiated.

5. The petitioner has been serving on deputation basis in the F.D.E. since the past **04 years**. Vide impugned notification dated 03.02.2020 issued by the F.D.E., the said petitioner was repatriated to her parent department due to the completion of her deputation period.

Writ petition No.1123/2020 (Mst. Kalsoom Rahuja Vs. Federation of Pakistan, etc.)

6. The petitioner's parent department is the Education Department, Government of Sindh. Vide office order dated 11.12.2010 issued by the F.D.E, the petitioner was posted as

Trained Graduate Teacher (“T.G.T.”) at Federal Government Girls Model Medal School, NHC (F.A), Islamabad on deputation basis. In the said office order, it was mentioned that on the expiry of the deputation period, she will stand repatriated to her parent department. Prior to the issuance of the said office order, the petitioner was serving as H.S.T.in Government Girls Secondary School, Ibrahim Ali Bhai, Karachi.

7. Vide letter dated 27.09.2010, the F.D.E. sought an N.O.C. for an extension in the petitioner’s deputation period. There is nothing on the record to show that either her deputation period was extended or that any process for the petitioner’s permanent absorption in F.D.E. was initiated.

8. The petitioner has been serving in the F.D.E. on deputation basis since the past 10 years. Vide impugned notification dated 19.03.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.1317/2020 (Farhat Bibi Vs. Federation of Pakistan, etc.)

9. The petitioner’s parent department is Elementary and Secondary School Education Department, Government of Khyber Pakhtunkhwa. Vide office order dated 04.12.2008 issued by the F.D.E, the petitioner was posted at Federal Government Junior Model School I-8/1, Islamabad on deputation basis. In the said order, it was mentioned that on the expiry of the deputation period, the petitioner will stand repatriated to her parent department. Prior to the issuance of the said office order, the petitioner was serving as P.T.C. Teacher in Government Girls Primary School, Romati District Abbotabad, Government of the N.W.F.P.

10. Vide letter dated 17.08.2016, the petitioner’s parent department had placed her services at the disposal of the F.D.E. on *“permanent basis on the condition that no right of lien will be retained by her in E&SE Department Khyber Pakhtunkhwa”*. There is nothing on the record to show that a process for the petitioner’s permanent absorption had been initiated by the F.D.E.

11. The petitioner has been serving on deputation basis since the past 12 years. Vide impugned office order dated 28.04.2020

issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.1383/2020 (Mst. Tabassum Begum Vs. Federation of Pakistan, etc.)

12. The petitioner's parent department is the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa. Vide office order dated 18.05.2012 issued by the F.D.E, the petitioner was posted as Trained Under Graduate Teacher at Islamabad Model School for Girls (I-X), Mohra Noor (FA), Islamabad on deputation basis for a period of one year with effect from 05.03.2012 to 04.03.2013. Prior to the issuance of the said office order dated 18.05.2012, the petitioner was serving as Certified Teacher (CT) in Government Girls High School Dosehra, District Charsada, Government of Khyber Pakhtunkhwa.

13. Vide office order dated 23.08.2013 issued by the F.D.E., the deputation period of the petitioner was extended from 03.02.2013 to 02.02.2014. Vide letter dated 07.07.2014 issued by the Capital Administration and Development Division, the deputation period of the petitioner was further extended for a period of one year with effect from 03.02.2014 to 02.02.2015. Vide office order dated 24.07.2014 issued by the F.D.E., the deputation period of the petitioner was further extended for a period of two years with effect from 03.02.2015 to 02.02.2017.

14. Vide order dated 12.11.2019, the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa agreed to the extension in the petitioner's deputation period for three years with effect from 03.02.2017 to 02.02.2020. Vide letter dated 23.01.2020, the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa informed the F.D.E. that the deputation period of the petitioner has already been extended up to 02.02.2020 and that there is no provision to further extend her deputation period. In the said letter, the F.D.E. was requested to accept the petitioner's services on permanent basis in the F.D.E. There is nothing on the record to show that a process for the petitioner's permanent absorption had been initiated by the F.D.E.

15. The petitioner has been serving on deputation basis since the last 08 years. Vide impugned office order dated 12.05.2020 issued

by the F.D.E., the said petitioner was repatriated to her parent department.

Writ petition No.1427/2020 (Shahida Jabeen Vs. Federation of Pakistan, etc.)

16. The petitioner's parent department is the Education Department, Government of Gilgit Baltistan. Vide office order dated 16.05.2011 issued by the F.D.E, the petitioner was posted at Federal Government Girls Primary School, Bheka Syedan (FA), Islamabad on deputation basis. Prior to the issuance of the said office order, the petitioner was serving as M.T. Teacher in the Girls Middle School, Sarayote Gahkuch, District Ghizer, Gilgit Baltistan. Vide letter dated 27.01.2014, the Education Department, Gilgit Baltistan informed the F.D.E. that it had no objection for an extension in the petitioner's deputation period by two years i.e. up to 04.04.2016.

17. Vide letter dated 23.11.2017, the petitioner's parent department, on her request, informed the F.D.E. that it had no objection for the petitioner's permanent absorption in the F.D.E. Since the petitioner had served as a deputationist in the F.D.E. beyond the permissible period of five years, the F.D.E. vide letter dated 16.07.2019 requested the petitioner's parent department to issue an N.O.C. for the regularization of the petitioner's deputation beyond 04.04.2016 and for a further extension in her deputation period for two years i.e. up to 15.07.2021.

18. Vide letter dated 06.01.2020, the petitioner's parent department declined to issue an N.O.C. for further extension in her deputation period. Furthermore, the petitioner's parent department requested the F.D.E. to immediately repatriate the petitioner. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

19. The petitioner has been serving on deputation basis in the F.D.E. since the past 09 years. Vide office order dated 06.05.2020, issued by the F.D.E., the petitioner was repatriated to her parent department i.e. Education Department, Government of Gilgit Baltistan.

Writ petition No.1800/2020 (Ms. Najmul Sadain, etc. Vs. Federation of Pakistan, etc.)

Petitioner No.1 (Najmul Sadain)

20. The petitioner's parent department is Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa. Vide office order dated 11.12.2008 issued by the F.D.E, the petitioner was posted at the Federal Government Junior Model School No.40, I-10/1, Islamabad on deputation basis for a period of three years. Prior to the issuance of the said office order, the petitioner was serving as P.S.T. Teacher, GPS Bhurra Shah, D.I.K., N.W.F.P.

21. Vide letter dated 17.08.2016, the petitioner's parent department placed her services at the disposal of the F.D.E. *"on permanent basis on the condition that no right of lien will be retained by her in E&SE Department, Khyber Pakhtunkhwa"*.

22. It appears that vide letter dated 19.07.2019, the F.D.E. sought an N.O.C. from the petitioner's parent department for an extension in her deputation period. Vide letter dated 30.09.2019, the petitioner's parent department informed the F.D.E. that the petitioner's services were placed at the disposal of F.D.E. on permanent basis without retaining her lien in the parent department. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

23. The said petitioner has been serving on deputation basis in the F.D.E. since the past 12 years. Vide impugned office order dated 30.06.2020 issued by the F.D.E., the petitioner was repatriated to her parent department upon its refusal to grant N.O.C. for further extension in her deputation period beyond 13.11.2013.

Petitioner No.2 (Shumaila)

24. The petitioner's parent department is Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa. Vide order dated 25.06.2011, the petitioner's parent department placed the services of the petitioner at the disposal of F.D.E. on deputation basis for a period of three years. Prior to the issuance of the said order, the petitioner was serving as Primary School Teacher, Government Girls Primary School, Mandoori, District Kohat, Khyber Pakhtunkhwa.

25. Vide letter dated 28.01.2020, the petitioner's parent department issued an N.O.C. for her permanent absorption in the F.D.E. on the request of the petitioner. In the said letter, it was requested to the F.D.E. to accept the petitioner's services on permanent basis in the F.D.E. as per policy/rules of the Federal Government. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

26. The petitioner has been serving on deputation basis in the F.D.E. since the past 09 years. Vide impugned office order dated 30.06.2020 issued by F.D.E., the petitioner was repatriated to her parent department upon her parent department's request to repatriate the petitioner and upon the refusal to grant an N.O.C. for further extension in her deputation period.

Petitioner No.4 (Nusrat Shaheen)

27. The petitioner's parent department is Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa. Vide office order dated 29.12.2008 issued by the F.D.E, the said petitioner was posted at Federal Government Girls School, Mandala (F.A), Islamabad on deputation basis for a period of three years against a vacant post of M.T.T. Prior to the issuance of the said office order, the said petitioner was serving as M.T.T. in the Education Department, Government of N.W.F.P.

28. It appears that vide letter dated 19.07.2019, the F.D.E. sought an N.O.C. for an extension in the said petitioner's deputation period. Vide letter dated 20.09.2019, the said petitioner's parent department informed the F.D.E. that the deputation period of the petitioner has already been completed and there is no provision to further extend her deputation period. In the said letter, the F.D.E. was requested to accept the said petitioner's services on permanent basis in the F.D.E. There is nothing on the record to show that either her deputation period was further extended or that any process for the petitioner's permanent absorption in F.D.E. was initiated.

29. The said petitioner has been serving on deputation basis in the F.D.E. since the past 12 years. Vide impugned office order dated 30.06.2020 issued by the F.D.E., the said petitioner was repatriated to her parent department.

Petitioner No.5 (Shaher Bano)

30. The petitioner's parent department is Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar. Vide order dated 24.09.2013, the petitioner's parent department placed the services of the petitioner at the disposal of F.D.E. on deputation basis for a period of one year. Prior to the issuance of the said order, the petitioner was serving as Primary School Teacher in Government Girls Primary School Deh Bahader No.2, Peshawar, Khyber Pakhtunkhwa.

31. Vide letter dated 04.09.2018, the petitioner's parent department granted an N.O.C. for an extension in her deputation period for two years i.e. with effect from 30.09.2016 to 29.09.2018. In the said letter, it was mentioned that after expiry of the extended period of deputation, the petitioner shall stand repatriated to her parent department.

32. Vide letter dated 24.01.2020, the petitioner's parent department issued an N.O.C. for her permanent absorption in the F.D.E. on the request of the petitioner. In the said letter, it was requested to the F.D.E. to accept the petitioner's services on permanent basis in the F.D.E. as per policy/rules of the Federal Government. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

33. The petitioner has been serving on deputation basis in the F.D.E. since the past 07 years. Vide impugned office order dated 19.03.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.1865/2020 (Syeda Shakila Khatoon Vs. Federation of Pakistan, etc.)

34. The petitioner's parent department is School Education Department, Government of the Punjab. Vide notification dated 02.09.2016 issued by the Establishment Division, the petitioner was transferred and her services were placed at the disposal of the Ministry of Federal Education and Professional Training ("Ministry of F.E.&P.T.") for further posting as Director (BS-20) in Academy of Educational Planning and Management (AEPAM) on deputation basis. Prior to the issuance of the said notification, the petitioner

was serving as Principal (BS-20) in Government MC Girls High School, Gujar Khan, District Rawalpindi, Government of the Punjab. There is nothing on the record to show that either her deputation period was extended or that any process for the petitioner's permanent absorption in Ministry of F.E.&P.T. was initiated.

35. The petitioner has been serving on deputation basis in the Ministry of F.E.&P.T. since the past 04 years. Vide impugned notification dated 07.07.2020 issued by Ministry of F.E.&P.T., the petitioner was repatriated to her parent department.

Writ petition No.1958/2020 (Mrs. Hasanat Vs. D.G. (Education) FDE, Islamabad, etc.)

36. The petitioner's parent department is Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa. The record shows that in the year 2014, the petitioner was posted at Islamabad Model College for Girls, Mohra Nagial (F.A), Islamabad on deputation basis. Prior to that the petitioner was serving in Government Girls Higher Secondary School Matta, District Swat, Khyber Pakhtunkhwa.

37. Vide letter dated 25.02.2020, the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa, informed the F.D.E. that the deputation period of the petitioner has already been completed and there is no provision to further extend her deputation period. In the said letter, the F.D.E. was requested to accept the petitioner's services on permanent basis in the F.D.E. There is nothing on the record to show that either her deputation period was further extended or that any process for the petitioner's permanent absorption in F.D.E. was initiated. There is nothing on the record to show that F.D.E. had requested the petitioner's parent department to issue an N.O.C. for her absorption in F.D.E.

38. The petitioner has been serving on deputation basis in the F.D.E. since the past 06 years. Vide impugned office order dated 14.07.2020 issued by the F.D.E., the said petitioner was repatriated to her parent department.

Writ petition No.2241/2020 (Uzma Naz, etc.Vs. Federation of Pakistan, etc.)

Petitioner No.1 (Uzma Naz)

39. The petitioner's parent department is School and Literacy Department, Government of Baluchistan. Vide notification dated 27.10.2010 issued by the F.D.E, the petitioner was posted as Assistant Professor (BPS-18) at Islamabad Model College for Girls, I-10/4, Islamabad on deputation basis for a period of one year or till the coming of F.P.S.C. nominee whichever is earlier. Prior to the issuance of the said notification, the said petitioner was serving as Assistant Professor in Botany (BS-18) in Government Girls Degree College Sibi.

40. There is nothing on the record to show that either her deputation period was extended or that any process for the petitioner's permanent absorption in F.D.E. was initiated.

41. The petitioner has been serving on deputation basis in the F.D.E. since the past 10 years. Vide impugned notification dated 11.08.2020 issued by the F.D.E., the said petitioner was repatriated to her parent department. Against the said repatriation order, the said petitioner, vide application dated 13.08.2020 addressed to the Secretary, Ministry of Federal Education and Professional Training, seeks the withdrawal of the said repatriation order dated 11.08.2020 and sought her permanent absorption in the F.D.E. under the wedlock policy, which has not been responded to as yet.

Petitioner No.2 (Abida Rafiq)

42. The petitioner's parent department is School and Literacy Department, Government of Baluchistan. Vide notification dated 07.10.2010 issued by the F.D.E, the petitioner was posted as Assistant Professor (BPS-18) at Islamabad Model College for Girls, F-8/1, Islamabad on deputation basis for a period of one year or till the coming of F.P.S.C. nominee whichever is earlier. Prior to the issuance of the said notification, the said petitioner was serving as Assistant Professor in Mathematics (BS-18) in Government Girls Degree College Quarry Road, Quetta.

43. Vide letter dated 08.01.2013, the Secretary, Ministry of Capital Administration and Development approved the extension in the said petitioner's deputation for a period of two years with effect from 20.09.2011 to 19.09.2013. It appears that vide letter dated 20.02.2014, the F.D.E. sought an N.O.C. for an extension in the said petitioner's deputation period for further three years. Subsequently,

the Services and General Administration Department, Government of Balochistan, vide letter dated 02.05.2014, conveyed its approval/N.O.C. regarding the said petitioner's extension in deputation for a further period of two years with effect from 19.09.2013 to 20.09.2015. There is nothing on the record to show that either her deputation period was further extended or that any process for the petitioner's permanent absorption in F.D.E. was initiated.

44. The petitioner has been serving on deputation basis in the F.D.E. since the past 10 years. Vide impugned notification dated 11.08.2020 issued by the F.D.E., the said petitioner was repatriated to her parent department. Against the said repatriation order, the said petitioner, vide application dated 13.08.2020 addressed to the Secretary, Ministry of Federal Education and Professional Training, seeks the withdrawal of the said repatriation order dated 11.08.2020 and sought her permanent absorption in the F.D.E. under the wedlock policy, which has not been responded to as yet.

Petitioner No.3 (Roqiya Parveen)

45. The petitioner's parent department is Education Department, Government of Baluchistan. Vide notification dated 07.10.2010 issued by the F.D.E, the said petitioner was posted as Assistant Professor (BPS-18) at Islamabad Model College for Girls, F-10/2, Islamabad on deputation basis for a period of one year or till the coming of F.P.S.C. nominee whichever is earlier. Prior to the issuance of the said notification, the said petitioner was serving as Assistant Professor in Pakistan Studies (BS-18) in Government Girls Degree College, Quetta Cantt.

46. There is nothing on the record to show that either her deputation period was further extended or that any process for the petitioner's permanent absorption in F.D.E. was initiated.

47. The petitioner has been serving on deputation basis in the F.D.E. since the past 10 years. Vide impugned notification dated 11.08.2020 issued by the F.D.E., the said petitioner was repatriated to her parent department. Against the said repatriation order, the said petitioner, vide application dated 13.08.2020 addressed to the Secretary, Ministry of Federal Education and Professional Training, seeks the withdrawal of the said repatriation order dated 11.08.2020

and sought her permanent absorption in the F.D.E. under the wedlock policy, which has not been responded to as yet.

Writ petition No.2253/2020 (Mst. Rafia Nazir Vs. The Secretary, Ministry of Federal Education and Professional Training, etc.)

48. The petitioner's parent department is Education Department, Government of Balochistan. Vide notification dated 25.07.2009 issued by the F.D.E., the petitioner was posted as Assistant Professor (BPS-18) at Islamabad Model College for Girls, I-8/4, Islamabad on deputation basis for a period of one year. Prior to the issuance of the said notification, the petitioner was serving as Assistant Professor of Chemistry (BS-18) in Government Girls Inter College Kechi Baig, Quetta.

49. There is nothing on the record to show that either her deputation period was further extended or that any process for the petitioner's permanent absorption in F.D.E. was initiated.

50. The petitioner has been serving on deputation basis in the F.D.E. since the past 11 years. Vide impugned notification dated 11.08.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.2264/2020 (Mrs. Naghma Shireen Vs. The Secretary, Federation of Pakistan through Establishment Division, etc.)

51. The petitioner's parent department is Schools and Literacy Department, Government of KPK. Vide office order dated 04.11.2003 issued by the F.D.E, the petitioner was posted at Islamabad College for Girls, F-6/2, Islamabad on deputation basis for a period of two years against the vacant post of Senior Teacher (BPS-17). Prior to the issuance of the said office order, the petitioner was serving as SET (BS-17) in Government Girls High School Mullazai (Tank), Government of Khyber Pakhtunkhwa. Vide letter dated 05.10.2020, the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa informed the F.D.E. that the deputation period of the petitioner has already been completed and there is no provision to further extend her deputation period. In the said letter, F.D.E. was requested to accept the petitioner's services on permanent basis in F.D.E.

52. There is nothing on the record to show that either her deputation period was further extended or that any process for the petitioner's permanent absorption in F.D.E. was initiated.

53. The petitioner has been serving on deputation basis since the past 17 years. Vide impugned notification dated 11.08.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.2504/2020 (Amiran Tabassum Vs. Director General, Federal Directorate of Education, etc.)

54. The petitioner's parent department is School Education Department, Government of Punjab. Vide office order dated 06.09.2010 issued by the F.D.E, the petitioner was posted at Federal Government Junior Model School, G-6/1-2, Islamabad on deputation basis with effect from 30.08.2010 up to 11.04.2011 against the leave vacancy of T.U.G.T. In the said office order, it was mentioned that on the expiry of the deputation period, she will stand repatriated to her parent department. Prior to the issuance of the said office order, the petitioner was serving as P.S.T. in Government Girls Primary School, Chak No.249/JB, Tehsil Bhowana, District Chiniot.

55. Vide letter dated 03.10.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for an extension in her deputation period. Vide letter dated 06.11.2013, the petitioner's parent department issued an N.O.C. for an extension in her deputation period for further period of two years with effect from 30.08.2013 to 29.08.2015. Vide application dated 20.08.2015 addressed to the Director Schools (F), F.D.E., the petitioner sought her permanent absorption in the F.D.E. Having not received any response vide application dated 18.01.2018 addressed to the Director Schools (F), F.D.E., the petitioner again sought her permanent absorption in the F.D.E. The said applications have not been responded to as yet. There is nothing on the record to show that either her deputation period was further extended or that any process for the petitioner's permanent absorption in F.D.E. was initiated.

56. The petitioner has been serving on deputation basis in the F.D.E. since the past 10 years. Vide impugned office order dated 26.08.2020 issued by the F.D.E., the said petitioner was repatriated

to her parent department upon non-receipt of N.O.C. from her parent department for grant of extension in her deputation period beyond 29.08.2015.

57. I have heard the contentions of the learned counsel for the petitioners as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

58. The facts leading to the filing of the instant petitions have been set out in sufficient detail in paragraphs 2 to 38 above and need not be recapitulated.

WHETHER A DEPUTATIONIST HAS A VESTED RIGHT TO COMPLETE THE DEPUTATION PERIOD:-

59. It is settled law that a deputationist may not necessarily complete the tenure for which he/she was sent on deputation and that power vests with the competent authority to repatriate a deputationist without assigning any reason. In case of transfer on deputation, no vested right accrues to a deputationist to continue for the period of deputation. The competent authority is empowered to repatriate a deputationist as and when the exigencies of service require. Some of the cases in which this view has been taken are mentioned herein below:-

- (i) In the case of Pakistan Vs. Fazal Rehman Khundkar (PLD 1959 Supreme Court (Pak.) 82), it has been held by the Hon'ble Supreme Court of Pakistan that it is a matter of practice and common experience, that officers of the Provincial cadres deputed for service at the Centre are frequently recalled by their Province, by the Provincial Government, in the exigencies of the public service. Against such a recall, they have no right of any kind to object being substantively officers of the Provincial Government and only on deputation to the Centre. The mere fact that they may be holding at the Centre a post higher in rank than that to which their place in the Provincial cadre entitles them in the Provincial service does not constitute the least bar to the making of an order by the Central Government at the request of the Provincial Government, re-placing the services of such an officer at the disposal of his parent Government.

- (ii) In the case of Dr. Shafi-ur-Rehman Afridi Vs. CDA, Islamabad (2010 SCMR 378), it has been held by the Hon'ble Supreme Court of Pakistan that the provisions of the 1973 Rules and rules made thereunder as well as Esta Code were silent about the fact that a deputationist must serve his entire period of deputation and such omission seemed deliberate enabling the competent authority to utilize services of an employee in the manner as it might deem fit and proper. Period of deputation could at the best be equated to that of an expression of maximum period which could be curtailed or extended by competent authority and no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department.
- (iii) In the case of Mst. Robia Ayub Vs. Federation of Pakistan (2013 PLC (C.S.) 915), it has been held by this Court that a deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his/her own whims and wishes. Civil servant has no vested right to complete the deputation period as it is a matter relating to the terms and conditions of service. The competent authority of borrowing department, having the sole discretion to decide the fate of a deputationist, could repatriate him/her at any time to parent department.
- (iv) In case of Abdul Majeed Vs. Chief Secretary, Punjab (2015 PLC (C.S.) 1381), it has been held by the Hon'ble Lahore High Court that a deputationist did not have any vested right to remain on the post as deputationist forever or for a stipulated period. A deputationist could be ordered to be repatriated to his parent department at any time without assigning any reason. Parent department of appellant-employee was not bound to assign reason for his repatriation.
- (v) In case of Lal Khan Vs. Employees Old Age Benefit Institution (2010PLC (C.S.)1377), it has been held by the Hon'ble High Court of Sindh that a deputationist had no vested right to remain on post forever or for a stipulated period. A deputationist could not challenge order of his repatriation as he could be repatriated to parent department at any time.

60. On account of the above referred trite law, the petitioners could not have any grievance against their repatriation by the borrowing department to their respective parent departments. At no material stage, had the petitioners been absorbed in the borrowing department. The petitioners could not have invoked the Constitutional jurisdiction of this Court to prevent their repatriation to their parent departments. The law in this regard is also well settled. In the case of Dr. Shafi-ur-Rehman Afridi Vs. CDA, Islamabad (2010 SCMR 378), it has been held by the Hon'ble Supreme Court of Pakistan that a deputationist cannot be treated as an 'aggrieved person' because he/she has no vested right to remain on a post as deputationist forever or to complete his/her deputation period and can be repatriated at any time.

WHETHER A DEPUTATIONIST HAS A VESTED RIGHT TO CONTINUE SERVING AS SUCH UNTIL HIS/HER SPOUSE IS EMPLOYED AT THE STATION WHERE THE BORROWING DEPARTMENT IS LOCATED:-

61. Another question that needs to be determined is whether a person posted on deputation at a particular station can claim to remain so posted for all the period during which his or her spouse remains employed at such a station. It is indeed not pleasant for a husband and wife to be working at different stations but the law cannot be circumvented to bring them to the same station. To hold in favour of such a deputationist would be tantamount to disregarding the innumerable authorities from the Superior Courts holding that no legal or vested rights were available to a deputationist to serve as in the borrowing department for an indefinite period. In the case of Mst. Robia Ayub Vs. Federation of Pakistan, (2013 PLC (CS) 915), the petitioner had challenged the repatriation to the parent department on the ground that it was contrary to *inter alia* the wedlock policy. The petitioner in that case had also prayed for a direction to the borrowing department to absorb her. This Court dismissed the writ petition by *inter alia* holding that the petitioner's claim on the basis of the wedlock policy was not justifiable. Furthermore, it was held as follows:-

"10. The law on the subject is very much clear. The petitioner is a civil servant and remained on deputation for a fixed term and was returned to her parent department in consequence of terms and conditions of her deputation. A deputationist cannot remain on deputation for an indefinite period or stipulated period in

accordance with his/her own whims and wishes. While taking this view, I am fortified by a judgment rendered by the Hon'ble Apex Court in the case of Dr. Shafi-ur-Rehman Afridi v. CDA Islamabad through Chairman and others (2010 SCMR 378)."

62. Additionally, in the case of Asma Shaheen Vs. Federation of Pakistan (2013 PLC (C.S.) 391, this Court spurned the plea that a deputationist cannot be repatriated due to the wedlock policy. At paragraph 13 of the said judgment, it has been held as follows:-

"13. From the plain reading of above said wedlock policy, it is obvious that the word "may" has been used in the said letters and not "shall". It has never been stressed that all the deputationists whose spouses are working at Islamabad shall must be absorbed or will continue to serve at Islamabad. As regards the contention that some of deputationists have been absorbed, the same cannot be taken into consideration, for the simple reason that it was the discretion of the competent authority to absorb some of deputationists according to requirement of department, capabilities, know how, performance, qualification, general reputation and on the basis of annual confidential reports. The others cannot claim the same treatment as of right. The deputation is a contract and if borrowing department does not need the services of a deputationist, he or she must go back to parent department and thus no fundamental rights of the petitioners have been infringed and no provisions of Constitution have been violated. Learned counsel for the petitioners have failed to rebut the contention of learned Deputy Attorney-General that at present no deputationist is being absorbed. There appears no political element with regard to repatriation of the petitioners to their parent departments."

63. As regards the contention of the learned counsel for the petitioners that by virtue of the proviso to Rule 20A of the 1973 Rules, the petitioners is entitled to continue serving as a deputationists until their husbands are gainfully employed in Islamabad, it may be noted that the said proviso exempts the application of Rule 20A of the said Rules to posting of (i) serving husband and wife at the same station, (ii) unmarried female government servants at the place of residence of their parents/family, and (iii) married female government servants at the place of residence/posting of their husbands who are not in government employment. Rule 20A of the said Rules sets out the eligibility for appointment on deputation and the maximum period for which an appointment on deputation can be made. Therefore, by virtue of the said proviso, the maximum period for appointment on deputation may not apply to the three categories of persons referred to in the proviso to Rule 20A of the 1973 Rules. The said proviso

cannot be interpreted such as to provide for an indefinite period for an appointment on deputation or to give a deputationist a right to remain on deputation until retirement. The said proviso cannot come to the aid of a deputationist where N.O.C. for an extension in the deputation period is not given by the parent department or where the borrowing department is unwilling to extend the deputation period. By issuing repatriation orders, the F.D.E. (borrowing department) has expressed its unwillingness to extend the petitioners' deputation period.

WHETHER THE PETITIONERS HAVE A VESTED RIGHT TO BE ABSORBED IN THE F.D.E. (BORROWING DEPARTMENT):-

64. As regards the contention of the learned counsel for the petitioners that the petitioners have a right to be absorbed in the F.D.E. on the basis of the Prime Minister's decision reflected in the C.A.&D.D.'s letter dated 11.11.2014, suffice it to say that for the absorption or confirmation of any deputationist in the borrowing department, the ESTA CODE prescribes a procedure. Till date formal orders for the petitioners' absorption have not been passed. The Establishment Division's Office Memorandum No.1(28)/75-D.II, dated 06.03.1975, provides that where there is an intention to permanently absorb a deputationist in the cadre or department where he is serving on deputation and the recruitment rules for the post provide for such a course, in such cases the consent of the deputationist to the suspension or termination of lien on his permanent post in the parent department as well as the agreement of the parent department should be obtained. With the completion of these formalities, the deputationist will be treated as a regular member of the establishment of the borrowing department. As early as 1952, it was stated in the Ministry of Finance's letter No.600-RIII/52, dated 06.03.1952 that permanent officers belonging to a Department or Government, while on deputation to another Department or Government, should not be confirmed in the latter without the prior formal concurrence of the former and the consent of the officer concerned. This instruction has been formally recognized in the Establishment Division's Office Memorandum No.8/7/64- F.I, dated 19.10.1964. The absorption of a deputationist made in derogation of the said policy would be shorn of legality.

65. At no material stage has the petitioners' borrowing department sought the formal concurrence of the parent departments for their absorption during the permissible deputation period. Since the very process for the petitioners' absorption has not been initiated in accordance with the applicable law, the petitioners' desire for absorption in the borrowing department is not a valid ground for assailing the repatriation orders. In case of Senate Secretariat Vs. Faiqa Abdul Hayee (2014 SCMR 522), it has been held by the Hon'ble Supreme Court of Pakistan that absorption was not a vested right of an employee and the employer had the right and authority to terminate the deputation period or repatriate the employee back to his/her parent department. In case of Mst. Robia Ayub Vs. Federation of Pakistan (supra), it has been held by this Court that a deputation being a contract, a deputationist would have no vested right to remain/continue on deputation or his permanent absorption.

66. A deputation is an administrative agreement between borrowing and lending authorities for utilizing the services of an employee in the public interest and exigency of services against a particular post against which the deputationists cannot claim any right of permanent absorption. In case of Rasheed Tareen Vs. Chairman Works Welfare Board (2012 PLC (C.S.) 54), it has been held by the Hon'ble Balochistan High Court that a deputationist through Constitutional petition could not claim permanent absorption in borrowing department as it was the prerogative of borrowing department to determine tenure of deputation to revert/return a deputationist or to absorb a deputationist permanently. It was also held that due to the borrowing department's refusal for the petitioner's permanent absorption, the petitioner could not be termed as an aggrieved person.

67. The petitioners in writ petitions No.1317, 1383, 1427, 1958 and 2264 of 2020 and petitioners No.2, 4 and 5 in writ petition No.1800/2020 have brought on record the letters dated 17.08.2016, 23.01.2020, 23.11.2017, 25.02.2020, 05.10.2020, 28.01.2020, 20.09.2019 and 24.01.2020 from their respective parent departments according to which the borrowing department (F.D.E.) has been requested to accept / absorb their services on permanent

basis. These letters do not come to the said petitioners' aid since the borrowing department (F.D.E.) had not initiated any process for the petitioners' absorption. The said letters were sent by the petitioners' parent departments gratuitously and not on the request of the borrowing department (F.D.E.).

68. As regards petitioner No.1 (Ms. Najmul Sadain) in writ petition No.1800/2020, reliance was placed on the notification dated 17.08.2016 and letter dated 30.09.2019 issued by her parent department according to which petitioner No.1's services had been placed at the disposal of the borrowing department (F.D.E.) on "permanent basis" with no right of lien to be retained in the parent department. At no material stage was any process for the absorption of the said petitioners in the borrowing department (F.D.E.) being initiated by the F.D.E. The said notification and letter on which reliance had been placed do not take petitioner No.1 out of the meaning of a "deputationist". A deputationist retains a right of lien in his/her parent department unless and until he/she is permanently absorbed in the borrowing departments by following the procedure prescribed by law.

69. In view of the above, I find writ petitions No.980, 1123, 1317, 1383, 1427, 1865, 1958, 2241, 2253, 2264, 2504 of 2020 and writ petition No.1800/2020 to the extent of petitioners No.1, 2, 4 and 5, to be without merit and the same are accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

Qamar Khan