

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3503/2019

Mst. Saman Naz

Versus

Federation of Pakistan and others

Date of Hearing: 23.10.2019
Petitioner by: M/s Kashif Ali Malik and Muhammad Asif
Gujjar, Advocates
Respondents by: Mr. Arshid Mehmood Kiani, learned Deputy
Attorney-General
Mr. S.M. Rehan Naqvi, Assistant Director
(Legal) F.D.E.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.3503/2019, 1700/2019 and 3143/2018 since they entail common questions of law and fact.

2. Through writ petition No.3503/2019, the petitioner, Mst. Saman Naz, impugns the notification dated 26.09.2019 issued by the Federal Directorate of Education, Islamabad ("F.D.E."), whereby she was repatriated to her parent department, i.e. Workers Welfare Board, Government of Khyber Pakhtunkhwa ("K.P.K").

3. Through writ petition No.3143/2018, the petitioner, Ms. Faheem Begum, impugns the order dated 27.07.2018 issued by the F.D.E., whereby she was repatriated to her parent department, i.e. Elementary and Secondary Education Department, Government of K.P.K.

4. Through writ petition No.1700/2019, the petitioner, Ms. Naveeda Ejaz, seeks a direction to the F.D.E. to issue her absorption order with effect from March 2013 on the basis of the decision taken by the Prime Minister to absorb deputationists serving in the F.D.E. under the wedlock policy. Furthermore, the petitioner seeks the benefit of upgradation to BS-16 with effect from 01.07.2016.

5. Messrs Muhammad Asif Gujjar and Kashif Ali Malik, Advocates, learned counsel for the petitioners, submitted that the petitioners' husbands were gainfully employed in Islamabad; that the petitioners have a right to serve as a deputationists in the F.D.E. until their husbands are serving in Islamabad; that the petitioners' repatriation to their parent departments would be most inconvenient for them and

their families; that presently there are 44 deputationists in BS-16 serving in the F.D.E.; that the respondents have adopted a policy of pick and choose based on favouritism in issuing repatriation orders; and that under the Establishment Division's Office Memorandum dated 13.05.1998, the petitioners should be permitted to continue working on deputation basis at the F.D.E.

6. Learned counsel for the petitioners further submitted that the petitioners should be given the benefit of permanent absorption in the borrowing department/F.D.E. under the wedlock policy; that letter dated 11.11.2014 from the Capital Administration and Development Division ("C.A.&D.D.") shows that the Prime Minister had approved the absorption of 11 female teachers (including the petitioners in writ petitions No.1700/2019 and 3143/2018) serving as deputationists in the said Division; that on 24.03.2012, the Prime Minister had approved amendment in Rule 20A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 ("the 1973 Rules") so that the serving husbands and wives are posted at the same station; that thereafter a *proviso* was inserted to Rule 20A of the said Rules; and that after the insertion of the said *proviso*, the maximum deputation period of five years does not apply to a husband and wife posted at the same station. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

7. On the other hand, the learned Deputy Attorney-General submitted that the petitioners had served as deputationists in the F.D.E. for more than five years; that the petitioners' parent departments has not issued No Objection Certificate ("N.O.C.") for a further extension in the petitioners' deputation period; that a deputationist has no vested right to be absorbed in the borrowing department without the concurrence of the parent department; and that at no material stage has the petitioners' parent departments issued N.O.C. for the petitioners' permanent absorption in F.D.E. Learned Deputy Attorney-General prayed for the writ petitions to be dismissed.

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

WRIT PETITION NO.3503/2019 (MST. SAMAN NAZ VS. FEDERATION OF PAKISTAN, ETC.):

9. The record shows that the petitioner was appointed on contract basis as a Teacher in Folks Grammar Higher Secondary School, Hattar (Female), District Haripur, K.P.K. under the Workers Welfare Board, Government of K.P.K. Vide notification dated 08.02.2011, the K.P.K. Workers Welfare Board regularized her services. Vide office order dated 19.09.2013, the petitioner was promoted from BS-14 to BS-16.

10. Since the petitioner's father was serving as an Assistant Incharge (BS-15) in the C.A.&D.D. and her husband was working for Wi-tribe Pakistan Limited at Islamabad, the petitioner, on 30.05.2012, applied to be sent on deputation to the F.D.E. On 30.04.2014, the petitioner was released from duties at the Folks Grammar Higher Secondary School so that she could join her duties as a deputationist at the F.D.E.

11. Vide office order dated 05.05.2014 issued by the F.D.E., the petitioner was taken on deputation for a period of one year (i.e. 30.04.2014 to 29.04.2015) and posted in the Islamabad Model School, F-7/2, Islamabad. Vide letter dated 15.05.2015, an extension for a period of two years (i.e. from 30.04.2015 to 29.04.2017) in the petitioner's deputation period was approved by the Sectary, C.A.&D.D. Vide notification dated 21.05.2015 issued by the F.D.E., the petitioner's deputation period was further extended for a period of two years (i.e. 30.04.2015 to 29.04.2017). Vide notification dated 19.04.2017 issued by the C.A.&D.D., the petitioner's deputation period was extended under the wedlock policy from 30.04.2017 to 29.04.2019.

12. Vide letter dated 14.05.2019, the F.D.E. requested the Workers Welfare Board, Government of K.P.K. for the issuance of N.O.C. so that the petitioner's deputation period is extended to 29.04.2020. There is nothing on the record to show that the Workers Welfare Board, Government of K.P.K. had issued N.O.C. for an extension in the petitioner's deputation period beyond five years. Vide impugned notification dated 26.09.2019 issued by the F.D.E., the petitioner has been repatriated to her parent department.

WRIT PETITION NO. 3143/2018 (FAHEEM BEGUM VS. FEDERATION OF PAKISTAN, ETC.):

13. The record shows that in 2008, the petitioner was serving as a teacher in Government Girls Primary School, Ghareeb Abad, Takht Bhai, District Mardan. The petitioner's husband is serving as a Trained Graduate Teacher at the Islamabad Model College for Boys, I-10/1, Islamabad. The petitioner had applied to be sent on deputation to the F.D.E. Vide letter dated 19.11.2008, the F.D.E. requested the School and Literacy Department, Government of K.P.K. to send the petitioner on deputation to the F.D.E. for the period of three years. Vide letter dated 14.02.2009, the Elementary and Secondary Education Department, Government of K.P.K. placed the petitioner's services at the disposal of the F.D.E. on deputation basis for an initial period of three years. Vide office order dated 14.03.2009, the petitioner was posted/transferred to the Federal Government Junior Model School No.40, I-10/1, Islamabad. There is nothing on the record to show that the petitioner's deputation period was extended.

14. On 03.04.2018, the F.D.E. requested the Elementary and Secondary Education Department, Government of K.P.K. for an extension in the petitioner's deputation period with effect from 17.02.2014. Vide letter dated 06.07.2018, the Elementary and Secondary Education Department, Government of K.P.K. regretted F.D.E.'s request for an extension in the petitioner's deputation period. In the said letter dated 06.07.2018, the petitioner's parent department had noted that if the petitioner fails to join her duty in the parent department, she shall be proceeded against on account of unauthorized stay/misused of deputation period beyond 15.02.2012. Furthermore, the petitioner's parent department requested the F.D.E. to relieve her immediately so that she could report back to her parent department. Consequently, vide office order dated 27.07.2018, the petitioner was repatriated to her parent department. The said office order has been assailed by the petitioner in the instant writ petition. The petitioner also asserts that the Prime Minister had approved the petitioner's absorption in F.D.E. as reflected in letter dated 11.11.2014 issued by the C.A.&D.D.

WRIT PETITION NO.1700/2019 (NAVEEDA EJAZ VS. FEDERATION OF PAKISTAN, ETC.):

15. The record shows that in 2008, the petitioner was serving in the Government Girls High School, Rustom, Mardan, K.P.K. On 13.11.2008, the petitioner was sent on deputation to the F.D.E. for a period of three years, i.e. up to 12.11.2011. Office order dated 01.12.2008 issued by the F.D.E. clearly provides that on the expiry of the petitioner's deputation period, *"she will automatically stand repatriated to her parent department."* The petitioner's husband is living in Islamabad and is presently serving as Upper Division Clerk at Islamabad Model College for Girls, G-7/2, Islamabad.

16. Written comments filed on behalf of the F.D.E. shows that the petitioner's deputation period was extended up to 11.11.2013. She completed her five-year deputation period on 12.09.2013. It has also been pleaded that the petitioner's parent department regretted the issuance of N.O.C. for further extension in the petitioner's deputation period, and had requested for her to be repatriated. The said written comments also show that the petitioner has been repatriated with effect from 03.05.2019.

17. On 29.04.2019, the petitioner filed the instant writ petition. Along with the said petition, the petitioner filed an application for interim injunction praying for the respondents to be restrained from passing an adverse order against her. Vide interim order dated 30.04.2019, this Court restrained the respondents from repatriating the petitioner.

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

18. It is settled law that a deputationist may not necessarily complete the tenure for which he 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. 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 service 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. Competent authority of borrowing department having sole discretion to decide fate of deputationist could repatriate him 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 (2010 PLC (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.

19. On account of the above referred trite law, the petitioner could not have any grievance against her repatriation by the borrowing department to her parent department. Another vital question that needs to be answered is whether the petitioners could have invoked the Constitutional jurisdiction of this Court to prevent their repatriation to their parent department. 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 for a stipulated period as mentioned in notification and can be repatriated at any time. At no material stage, had the petitioners been absorbed in the borrowing department.

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:-

20. 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)."

21. 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."

22. As regards the contention of the learned counsel for the petitioner that by virtue of the *proviso* of Rule 20A to the 1973 Rules, the petitioner is entitled to continue serving as a deputationist until her husband is 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 to provide for an indefinite period for an appointment on deputation. 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. It is an admitted position that in the cases at hand, the petitioners' parent departments have not issued N.O.C. for an extension in their deputation period. By issuing reparation 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):-

23. 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. 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 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.

24. 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 order. 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 (2013 PLC (CS) 915), 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. 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. Additionally, in case of Rasheed Tareen Vs. Chairman Works Welfare Board (2012 PLC (CS) 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.

25. In view of the above, I find the instant petitions to be without merit and the same are accordingly dismissed with no order as to costs.

26. Before parting with this judgment, it may be observed that the F.D.E. must not discriminate while deciding to repatriate deputationists who have completed the permissible deputation period or whose parent departments have not given N.O.C. for an extension in their deputation period. Furthermore, since there is a growing propensity for deputationists from Provinces to be absorbed in the borrowing departments at Islamabad, the absorption of such deputationists must be made through a competitive process. Instead of appointing deputationists against posts in the F.D.E., regular appointments ought to be made against the posts vacated as a result of repatriation of deputationists. In the case of Sudhir Ahmed Vs. Speaker Balochistan Provincial Assembly (2017 SCMR 2051), it was held that where rules required a post to be filled by initial recruitment or promotion, a deviation from the legal course should not be adopted by making appointment by absorption.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**