

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**“Writ Petition No.761 of 2020”**

Sumaira Batool

*Versus*

Federation of Pakistan through Secretary, and another.

Petitioner By: Mr. Haseeb Shakoor Paracha,  
Advocate.

Respondent By: Mr. Nazar Hussain Shah, AAG.

Date of Hearing: 14.09.2020.

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**Ghulam Azam Qambrani, J:** Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks setting aside of the impugned Notification dated 04.02.2020, and further direction to respondent No.2 to allow the petitioner to join her permanent place of posting.

2. Brief facts of the case are that the petitioner was appointed as Lecturer Mathematics (BPS- 17) in the year 2010 by Sindh Public Service Commission; she applied for her transfer under wedlock policy of the Government of Pakistan through proper channel on January, 2014, which was refused on 23.04.2015 on the ground that the request of transfer cannot be entertained due to ban on deputation, induction, absorption and appointment by transfer. The petitioner again submitted an application on 11.08.2016 through the Director General of Federal Directorate of Education for her transfer/deputation of service under wedlock policy, but of no response. Thereafter, the petitioner again submitted a new application to the Joint Secretary Education on 22.05.2018, under wedlock policy and all the relevant document were provided by the Government of Sindh on 26.04.2019 and finally a Notification 1/192/2019/E-4, dated 17.07.2019 from the Cabinet Secretariat,

Establishment Division, Government of Pakistan was issued allowing the petitioner to relieve her duties and joined new assignment and was placed with Federal Education and Professional Training Division. The petitioner joined respondent No.2 on 02.09.2019, thereafter, the petitioner was posted at Islamabad Model College for Girls (PG), G-10/4, vide Notification dated 15.10.2019, however the petitioner was asked to perform temporary duty at Islamabad Model College for Girls, Bhara Kahu, Islamabad, which is located at a distance of around 40 Kilometres from the residence of the petitioner; that the petitioner submitted an application to the Director HRM requesting for placement of her services to any nearby college, which has not been decided and the petitioner was advised to submit application to the Directorate General of respondent No.2. The petitioner submitted an application to the Director General-Federal Directorate of Education, Islamabad requesting temporary posting near the place of her residence, but to no avail. Thereafter, the petitioner submitted third application on 07.01.2020 to the Director General- Federal Directorate of Education, Islamabad, to look into the matter. The petitioner again submitted fourth application to the Joint Secretary Education but instead of deciding the application of the petitioner, a Notification dated 04.02.2020 was issued by respondent No.2, which was sent to her at her village address, whereby the services of the petitioner was repatriated to Sindh Government and the period of 26.08.2018 till 04.02.2020 has been declared as Extra-ordinary leave.

3. Learned counsel for the petitioner contended that the impugned Notification of the petitioner dated 04.02.2020 has been issued without lawful authority and the same has been passed by respondent No.2, whereas, the petitioner was transferred by way of deputation by the notification issued by the Establishment Division, as such, her notification of repatriation can only be issued by the Establishment Division. Further Contended that as per Rule 3(3) of the Rules of Business, 1973 read with Schedule-II, it is the function of the Establishment Division to regulate all method of general

applicability to civil posts in connection with the affairs of Federation (Terms and Conditions of service including Deputation), Administration of Civil Servant Act, 1973 and rules made thereunder. That the petitioner has been repatriated without any reasons and justification, therefore, the impugned Notification is liable to be set aside.

4. On the other hand, learned A.A.G submitted that the service of petitioner was taken on deputation from government of Sindh and she was posted at Islamabad Model College for Girls (PG), G-10/4, Islamabad, and she was temporarily posted at Islamabad Model College for Girls, Bhara Kahu, Islamabad, which institution is facing acute shortage of teaching staff, but despite lapse of more than three months, the petitioner failed to join her place of posting; that the petitioner was advised to join the said school temporarily, but she refused to do so, therefore, the petitioner was repatriated to her parent department due to non-compliance of order of the competent authority.

5. Arguments heard, record perused.

6. Perusal of the record reveals that the petitioner was serving under the Government of Sindh and vide Notification dated 17.07.2019, the services of the petitioner were transferred from Government Degree Collage for Women, Karachi, College Education Department, Government of Sindh and placed at the disposal of Federal Education and Professional Training Division for her further posting in Federal Directorate of Education for a period of one year on deputation basis under wedlock policy with immediate effect and until further orders. Vide Notification dated 15.10.2019, the petitioner was posted at Islamabad Model College for Girls (PG), G-10/4, Islamabad with effect from 02.09.2019, however, she was directed to perform her duty temporarily at Islamabad Model College for Girls, Bhara Kahu, Islamabad, till further orders, but she did not join her place of posting for more than three months without any justification and cogent reasons and lastly, she refused to join

Islamabad Model College for Girls, Bhara Kahu, Islamabad. As a result of her refusal, she was repatriated to her parent department due to non-compliance of orders of the competent authority, which shows that she has not approached this court with clean hands.

7. The constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan is a discretionary jurisdiction meant to foster justice and to remedy wrong. The discretionary relief under the extra ordinary constitutional jurisdiction can only be claimed by a person having a bona fide claim and coming to the Court with clean hands. Since constitutional jurisdiction is discretionary in character, therefore, it cannot be invoked by a person who comes to the Court with un-cleaned hands and likewise no one can be allowed to take advantage of his wrong act. According to settled principle of law, one who seeks equity must come to the Court with clean hands.

8. It is settled principle of law that the relief in the extraordinary writ jurisdiction is discretionary and the foremost condition for grant of such relief is that the party has to approach the Court with clean hands. The remedy under the extraordinary writ jurisdiction cannot be granted to justify the illegal acts of a person, who approaches the Court with unclean hands just to misuse the process of law and the Courts. In this regard, reliance is placed upon the case reported as "Dr. Ashiq Hussain Bhatti v. Azad Government and others" [2016 SCR 365], wherein it has been held as under:-

*"So far as the argument of the learned counsel for the appellant regarding entitlement for leave according to his length of service is concerned, it has no substance as the appellant himself has submitted that after availing sanctioned leave, he remained absent from duty for a pretty long period without any duly sanctioned leave by the competent Authority. No doubt, the privilege of leave is available to the civil servants but for taking benefit of the same, there is a mode prescribed by law, especially the Leave Rules. It is not the sweet discretion of the civil servants to remain absent without adopting proper course provided by law for sanction of leave and that too for more*

*than 5 years' period. Therefore, this argument having no substance is hereby repelled."*

This principle has also been followed in the case reported as "Azad Jammu and Kashmir Government and others v. Mehr-un- Nisa and others" [2016 SCR 594], wherein, it has been observed as under:-

*"The superior courts of Pakistan and Azad Jammu and Kashmir have time and again held that a civil servant having remained absent from duty for more than five years ceased the status of civil servant. The respondent has not come in the High Court with clean hands. The impugned judgment of the High Court is based on surmises and conjectures, which is liable to be set aside."*

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:-

*"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."*

The 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:-

*"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."*

In the case of "Dr. Shafi-ur-Rehman Afridi v. CDA, Islamabad, through Chairman and others" (2010 SCMR 378), it has been held as under:-

*"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."*

Perusal of the record reveals that the petitioner failed to join her place of posting i.e. Islamabad Model College for Girls, Bhara Kahu, Islamabad, inspite of the advice of the competent authority. As a result of her refusal, the respondent No.2 has rightly issued repatriation Notification of the petitioner on 04.02.2020. Infact, absorption is based on tripartite agreement comprising consent of lending department, borrowing department as well as the person concerned, and not on sole wish of a deputationist. A deputationist has no vested right to remain on deputation for an indefinite period or to be absorbed in the borrowing department.

9. For the reasons stated above, this writ petition having no force, is **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~  
JUDGE

Announced in open Court on this 18<sup>th</sup> day of September, 2020.

JUDGE

*Rana M. Ift*