

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

W.P.No.3567/2018

Malik Arshad Iqbal

**Versus**

Senate of Pakistan through Chairman, Senate Secretariat and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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02.10.2019

**Mr. Muhammad Anwar Mughal, Advocate for the petitioner,  
Mr. Inam Amin Minhas, Advocate for the respondents,  
Mr. M. Nadeem Khan Khakwani, learned Assistant Attorney-General,  
Mr. Inam Ullah Jan, Section Officer, Senate Secretariat, Islamabad**

Through the instant writ petition, the petitioner, Malik Arshad Iqbal, impugns the order dated 18.09.2018, whereby his services were repatriated to his parent department (i.e. Local Government & Community Development Department, Government of Punjab).

2. Learned counsel for the petitioner submitted that on 10.05.2007, a No Objection Certificate was issued by the petitioner's parent department for his permanent absorption in the Senate Secretariat; that prior to that, the petitioner had been serving as deputationist in the Senate Secretariat; that after the petitioner's absorption in the Senate Secretariat, he was promoted on 04.10.2010 to a post in BPS-18; that an inquiry had been initiated against the petitioner; that in the said inquiry, recommendations adverse to the interests of the petitioner were given; that the petitioner challenged the said proceedings before the Hon'ble Lahore High Court in writ petition No.735/2011 which was allowed vide order dated 20.02.2013; that in the said order, it was observed that the Senate Secretariat could proceed against the petitioner and conduct an inquiry against him; that no such proceedings were initiated against the petitioner by

the Senate Secretariat; and that all of a sudden, the petitioner has been repatriated to his parent department.

3. Learned counsel further submitted that in repatriating the petitioner's services, the law laid down in the cases reported as 2014 SCMR 522 and 2012 PLC (C.S) 1271 had not been taken into consideration; that the petitioner could not have been repatriated after he was permanently absorbed in the Senate Secretariat; and that the petitioner is ready, willing and able to subject himself to the inquiry proceedings by the Senate Secretariat. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned counsel for the respondents submitted that after an inquiry was conducted, disciplinary proceedings had been initiated against the petitioner under the provisions of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 vide order dated 23.04.2009; that there were serious charges of inefficiency and misconduct against the petitioner; that as per the report of the inquiry committee, the charges against the petitioner had stood proved; that the inquiry committee had recommended the imposition of a major penalty of dismissal from service on the petitioner; and that on 28.02.2011, a show cause notice was issued to the petitioner;

5. Learned counsel further submitted that vide order dated 21.03.2006, the petitioner was sent on deputation to the Senate Secretariat for a period of three years; that vide order dated 07.06.2007, the petitioner was absorbed in the Senate Secretariat; that the case against the petitioner was referred to the Secretary (Regulation) S&GA Department, Government of Punjab, for seeking advice as to

whether the penalty of dismissal from service recommended by the inquiry committee could be imposed on the petitioner or the said recommendation could be forwarded to the Senate Secretariat for appropriate action; that the advice received was that since the petitioner had ceased to be an officer of the Government of Punjab with effect from 07.06.2007, the proceedings against him initiated after his absorption were void and no penalty could be imposed on him; that it was decided to request the Senate Secretariat to initiate disciplinary action against the petitioner; that vide letter dated 24.08.2011, the Senate Secretariat was requested to take action against the petitioner; that the relevant documents regarding the disciplinary proceedings were also forwarded to the Senate Secretariat; that the petitioner challenged the show cause notice issued to him before the Hon'ble Lahore High Court in W.P.No.735/2011; that the said petition was allowed vide order dated 20.02.2013; that it was also ordered that the Senate Secretariat would be free to proceed against the petitioner on the basis of the allegations levelled against him; that after this, the Senate Secretariat cancelled the petitioner's absorption and repatriated him to his parent department; and that the petitioner's repatriation does not suffer from any legal infirmity. Learned counsel for the respondents prayed for the writ petition to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. It is not disputed that after the petitioner was sent on deputation to the Senate Secretariat, he was absorbed in the Senate Secretariat vide order dated 07.06.2007. After his absorption, the

petitioner had been promoted on 04.10.2010 to a post in BPS-18. It is also an admitted position that no opportunity of a hearing was afforded to the petitioner before cancelling his absorption and repatriating him to his parent department.

8. Recently, this Court has allowed writ petitions filed by the petitioners who had been repatriated to their parent departments after they had been absorbed in the borrowing departments. This Court, vide order dated 03.06.2019, passed in writ petition No.1294/2019 titled “Sheikh Fazal ur Raheem Vs. Capital Development Authority through its Chairman” held as follows:-

*“4. In all cases in hand, the impugned repatriation orders have been passed in violation of Article 10-A of the Constitution which guarantees due process as one of the fundamental rights. Each petitioner was required to be proceeded against under the applicable service rules or regulations, as the case may be. The respondents were required to examine each case independently having regard to the law where under the absorption was ordered and the principles and law enunciated by the august Supreme Court in case titled “Contempt proceedings against the Chief Secretary, Sindh and others” reported as [2013 SCMR 1752] and in case titled “Ali Azhar Khan Baloch Vs. Province of Sindh” [2015 SCMR 456]. Each case was therefore to be dealt with individually ensuring compliance with the mandatory requirements of due process. The learned counsels for the petitioners have stated that the impugned orders have been passed without lawful authority and jurisdiction and in violation of the principles and law expounded by the august Supreme Court in the aforementioned judgments. The learned counsels have further stated that the petitioners at this stage would be satisfied if the petitions are disposed of by directing the respondents to proceed in accordance with the law.*

*5. When confronted with the above, the learned counsel for the Authority could not satisfy this Court that the mandatory requirements of due process were complied with before passing the impugned orders. However, she has stated that all these cases could be remanded to the department for fresh proceedings.*

*6. In view of the above, all these petitions are allowed and the impugned orders are set aside. The competent authority will proceed under the relevant service regulations/rules and ensure that the principles of due process are complied with. If the competent authority concludes that the absorption was illegal in the light of the law laid down in the aforementioned judgments then it will record reasons."*

9. When the learned counsel for the contesting parties were informed by this Court as to the principles laid down in the aforementioned order, they agreed to the disposal of the instant petition in the same manner in which the abovementioned order was passed. Therefore, this petition is allowed and the impugned repatriation order dated 18.09.2018 is set-aside. The competent authority in the Senate Secretariat shall afford an opportunity of hearing to the petitioner and thereafter pass a speaking order in accordance with the law. The petitioner shall be at liberty to raise the pleas, which he raised through the instant writ petition, before the authority which affords him an opportunity of a hearing. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

*Sultan\**