

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2604 of 2016
Muhammad Masroor-Ul-Haq
Versus

Federation of Pakistan through its Secretary, M/o Overseas
Pakistan & HRD Islamabad and others

Date of Hearing:	25.11.2016
Petitioner by:	M/s Muhammad Ramzan Khan, Advocate
Respondents by:	Mr. Muhammad Arbab Alam Abbasi, Advocate for respondent No.2, Ms. Sitwat Jahangir, learned Standing Counsel, Mr. Faisal Tariq, Deputy Director Workers Welfare Fund, Islamabad.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Masroor-ul-Haq, impugns the Office Order dated 20.06.2016, issued by the Workers Welfare Fund, Ministry of Overseas Pakistanis and Human Resource Development, Government of Pakistan, whereby the petitioner, along with other officers, who were posted on deputation basis in the Workers Welfare Fund (“WWF”) against posts reserved for promotion quota, were repatriated to their parent departments/organizations. In October, 2015, the petitioner had been sent on deputation from the Sindh Workers Welfare Board (“S-WWB”) to WWF on deputation basis.

2. Mr. Muhammad Ramzan Khan, Advocate, for the petitioner submitted that the petitioner has been serving as Assistant Director (BS-17) at the WWF, Islamabad, since 12.10.2015; that the WWF and the S-WWB are autonomous organizations working under the control of the Ministry of Overseas Pakistanis and Human Resource Development, Government of Pakistan; that the petitioner is not a civil servant; that the S-WWB is a body corporate under the supervision and control of the governing body of the WWF; that the S-WWB has been created in pursuance of the provisions of the Workers Welfare Fund Ordinance, 1971, which is a federal statute; that the petitioner was appointed as Assistant

Director (BPS-17) in the S-WWB in 2010; that subsequently, the petitioner was transferred from the S-WWB to the WWF, Islamabad; that the petitioner was not sent to the WWF on deputation; that in view of the order dated 07.07.2009, passed by the Hon'ble High Court of Sindh in Constitution Petition No.D-767/2009, the petitioner's posting to the WWF, Islamabad, is to be treated as a transfer and not as a deputation; that on account of the petitioner's employment at the S-WWB, the petitioner also became an employee of the WWF; and that the petitioner's transfer to the WWF cannot be treated as a deputation regardless of the fact that the letters dated 28.09.2015, 07.10.2015, 20.10.2015 and 20.06.2016, show him as a deputationist.

3. Learned counsel for the petitioner further submitted that the petitioner's wife was a permanent employee of the Statistics Division, Government of Pakistan and was posted as Statistical Assistant at Islamabad; that the petitioner had three young school going children; and that under the wedlock policy, the petitioner could not be repatriated or sent back to the S-WWB. It was further submitted that the petitioner had a legitimate right and an expectation to be absorbed in the WWF.

4. On the other hand, Mr. Arbab Alam Abbasi, Advocate, for respondent No.2/WWF, submitted that the petitioner was well aware that he was posted as a deputationist at the WWF, Islamabad; that the documents on the record including letters dated 28.09.2015, 07.10.2015, 20.10.2015 and 20.06.2016 clearly show that the petitioner was posted at WWF, Islamabad, on deputation basis; that at the WWF, the petitioner was working against the post reserved for promotion quota; that through Constitution Petition No.D-1943/2016, filed before the Hon'ble High Court of Sindh by employees of the WWF, the posting of deputationists on posts reserved for promotion quota were challenged; that the petitioner was one of the respondents in the said Constitution Petition; that the Hon'ble High Court of Sindh was informed about the repatriation of the petitioner and other officers posted on deputation against the posts reserved for promotion quota and consequently, vide order dated 16.08.2016, the said

petition was disposed of; that the petitioner cannot take refuge behind the wedlock policy to avoid his repatriation to his parent department i.e. the S-WWB.

5. It was further submitted that after the Constitution (Eighteenth Amendment) Act, 2010, the parent department of the petitioner had been devolved; that the S-WWB was operating under the provisions of the Sindh Workers Welfare Fund Act, 2014; and that FIRs had been registered against the petitioner by his previous employers.

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

7. The record shows that on 20.08.2010, the petitioner joined the S-WWB, and was posted as Assistant Director (Welfare) at its Regional Office in Hyderabad. On 04.09.2015, the petitioner applied to respondent No.1/the Secretary, Ministry of Overseas Pakistanis and Human Resource Division, Islamabad, for the transfer of his services to WWF or Overseas Pakistanis Foundation or Employees Old-age Benefit Institution. The petitioner claimed that he was facing life threats and that it was not possible for him to continue with his job and keep his family in Sindh. On 28.09.2015, the WWF requested the S-WWB to post the petitioner as an Assistant Director in the WWF on deputation basis. On 07.10.2015, the petitioner was relieved from the S-WWB for his deputation at the WWF, Islamabad. As per the office order dated 20.10.2015, issued by the WWF, the petitioner joined the WWF on deputation basis with effect from 12.10.2015. As mentioned above, vide the impugned Office Order dated 20.06.2016, the petitioner along with other officers working on deputation against posts reserved for promotion quota were repatriated to their parent departments/organizations. On 23.06.2016, the petitioner made a representation to the Secretary, Workers Welfare Fund against his repatriation. In the said representation, the petitioner sought suspension of his repatriation orders primarily on the ground of the wedlock policy. The petitioner also expressed his desire to be absorbed in the WWF.

8. Now there is no denying the fact that the petitioner was employed at the S-WWB in 2010 as Assistant Director (Welfare), and served in that position until his posting on deputation at WWF, Islamabad, in October, 2015. The fact that the petitioner was posted as a deputationist has been expressly mentioned in the following letters:-

- (i) *Letter dated 28.09.2015 (whereby the petitioner's services were requisitioned by the Workers Welfare Fund from the Sindh Workers Welfare Board on deputation basis);*
- (ii) *Letter dated 07.10.2015 (whereby the Sindh Workers Welfare Board relieved the petitioner from his posting on deputation at the Workers Welfare Fund, Islamabad); and*
- (iii) *Letter dated 20.10.2015 (whereby the Workers Welfare Fund confirmed that the petitioner had joined the Workers Welfare Fund Islamabad on deputation basis from the Sindh Workers Welfare Board).*

9. The petitioner was well aware of the contents of above referred letters and never took steps to correct the position if he firmly believed that his posting to WWF, Islamabad was not on deputation basis. The learned counsel for the petitioner also did not deny that at the WWF, the petitioner had been working on a post reserved for promotion quota.

10. The petitioner has filed documents showing that Workers Welfare Boards were required by the WWF to adopt the Workers Welfare Fund (Employees Service) Rules, 1997. Rule 23 (1) and (2) of the said Rules reads as follows:-

*“(1) Appointment on deputation to posts in the Fund may be made by the appointing authority in the interest of the Fund.
(2) Civil Servants, Federal or Provincial, and employees of the corporations or other autonomous bodies set up, managed or controlled by the Federal Government or, as the case may be, any Provincial Government, holding appointment on regular basis, may, with the consent of the Federal Government or, as the case may be, of the Provincial Government or other authority concerned, hereinafter called the lending authority, be appointed by the appointing authority concerned on deputation to appropriate posts in the Fund for such periods and on such terms and conditions, as may be determined by appointing authority in consultation with the concurrence of the lending authority.”*

11. It is by virtue of the said Rules that the petitioner came as a deputationist to the WWF. Deputation has been defined as an administrative arrangement between borrowing and lending authorities for utilizing services of an employee in public interest and exigency of services against a particular post. Deputation was

a contract between the borrowing and the lending authorities, which was liable to be terminated at any stage during prescribed period of deputation. A deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his own whims and wishes.

12. It is settled law that a deputationist may not necessarily complete the tenure for which he was deputed and the power rested 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 & another reported as 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, replacing 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 reported as 2010 SCMR 378, it has been held by the Hon'ble Supreme Court of Pakistan that the provisions of Civil Servants Act, 1973, 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 reported as 2013 PLC (CS) 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 reported as 2015 PLC (CS) 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 reported as 2010 PLC (CS) 1377 (Karachi), 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 back to parent department at any time.

13. On account of the above referred trite law, the petitioner could not have any grievance against his repatriation by the borrowing department (Workers Welfare Fund, Islamabad) to his parent department (Sindh Workers Welfare Board).

14. In the WWF, the petitioner was posted against a post reserved for promotion quota. This has not been disputed by the petitioner. It is a matter of record that Constitution Petition No.D-1943/2016, titled "Muhammad Hanif, etc., Vs. Federation of Pakistan, etc." was filed before the Hon'ble High Court of Sindh by employees of WWF against the respondents/deputationists (including the present petitioner). The petitioners in the said case had voiced their grievance against deputationists in WWF occupying posts reserved for promotion quota. Vide Order dated 16.08.2016, the said petition was disposed of after the Hon'ble High Court was informed that the deputationists in WWF (including the present petitioner) had been repatriated to their parent departments.

15. The learned counsel for respondent No.2/WWF made it clear that WWF does not want to retain the services of the petitioner. If this Court is to accept the petitioner's plea that on account of the wedlock policy, the petitioner should not be repatriated to his parent department, it would not just be going against the wishes of the petitioner's parent department (S-WWB) as well as the borrowing department (WWF), but also against the well-settled principle that a deputationist cannot occupy a post reserved for promotion quota. Reference in this regard may be made to the following case law:-

- (i) In the case of Zubair Vs. Federation of Pakistan (2016 PLC (C.S.) 259) it was held by the Hon'ble High Court of Sindh that a deputationist could not hold a post which was required to be filled by promotion or direct appointment of a person holding a Masters degree. A person could be appointed on deputation only if no suitable person was available for a particular post.
- (ii) In the case of Dr. Altaf Hussain Vs. Federation of Pakistan (2013 PLC (C.S.) 1178), the respondent was appointed on

deputation against a post reserved for promotion. This Court declared the appointment of a deputationist against a post reserved for promotion to be illegal. Furthermore, the department was directed to commence the process of promotion by considering the eligible candidates on the basis of seniority-cum-fitness.

- (iii) In the case of Safdar Ali Sahito Vs. Province of Sindh (2011 PLC (C.S.) 956), the Hon'ble High Court of Sindh observed that the authorities had created unrest and a sense of deprivation amongst employees already working in a particular department when outsiders are first posed in such a department on deputation basis, and then subsequently absorbed. The Hon'ble High Court noted that if such a tendency was encouraged, it would create frustration amongst the employees of the same grade and cadres and would obstruct and hinder the right of promotion of deserving employees.

16. Although the petitioner has not filed any document to show that his wife is working as a Statistical Assistant at the Pakistan Bureau of Statistics, Islamabad, but assuming that she is, the petitioner could not explain as to whether she was working in that position prior to his posting on deputation in October, 1995. The petitioner's application dated 04.09.2015 for transfer makes no mention about his wife's employment. The petitioner's posting on deputation to the WWF, Islamabad, was certainly not on the basis of the wedlock policy. He had explicitly mentioned in his application dated 04.09.2015, that he could not keep his family in Sindh. The wedlock policy placed reliance on by the petitioner is contained in Establishment Division's Office Memorandum No.10/30/97-R.II, dated 13.05.1998, which *inter alia* reads as follows:-

"(vi) Spouses already posted at one station, including those posted on deputation beyond the prescribed maximum period, may not normally be disturbed without compelling reasons of public interest. Requests for extension of deputation period beyond the permissible limit may be considered with compassion if interests of public service would permit."

17. It is indeed no pleasant for a husband and wife with school going children to be working in different provinces. But the law cannot be circumvented to bring them to the same station. The question that crops up in the mind is that 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 posted at such a station, regardless of decision of the borrowing department to repatriate the deputationist to the parent department. I would think not. To hold in favour of such a deputationist would be tantamount to disregarding the innumerable authorities from the Superior Courts that no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department. Interestingly, the petitioner was not sent on deputation for any specific 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)."

18. Additionally, in the case of Asma Shaheen Vs. Federation of Pakistan (2013 PLC (C.S.) 391), this Court spurned the plea that a deputation 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."

19. Coming to the petitioner's contention that he was in fact 'transferred' from S-WWB to WWF, and not sent on 'deputation'. The petitioner submitted that as S-WWB was under the administrative control of WWF, his transfer should be considered as within a department. The WWF was established under the provisions of the Workers Welfare Fund Ordinance, 1971, ("WWF Ordinance") for providing low cost housing in other amenities to the industrial labour. The Federal Government made an initial contribution of Rs.100 Million, and further resources were to be paid by the industrial establishments in terms of Section 4 of the said Ordinance. Section 11-A of the WWF Ordinance, *inter-alia*, provides that where an allocation is made from the WWF to a Provincial Government, such Provincial Government may constitute a Workers Welfare Board for the efficient management and administration of the allocated money and projects, etc. A Workers Welfare Board constituted by a provincial government consists of a Chairman (who is required to be a Secretary to that government) and nine other Members appointed by the Provincial Government. The Workers Welfare Board is a body corporate having perpetual succession and a common seal with the power to contract, acquire, hold and dispose of property etc. The S-WWB was constituted in pursuance of Section 11-A of the WWF Ordinance. However, after the enactment of the Constitution (Eighteenth Amendment) Act, 2010, this subject was devolved to the provinces. Consequently, the Sindh Workers Welfare Fund Act,

2014 ("S-WWF Act"), was enacted. By virtue of Section 20 (1) of the S-WWF Act, the provisions of the WWF Ordinance stand repealed in its application to the Province of Sindh. Under Section 3 (1) of the S-WWF Act, the Government of Sindh is to constitute and establish the Workers Welfare Board. Section 9(5) of the S-WWF Act provides that the Board may also adopt the existing employees of the Board or Fund other than those who are on deputation from other departments, corporations, as the employees of the Board after the commencement of the S-WWF-Act.

20. The petitioner did not dispute that he was working at S-WWB in October, 2015, when he was sent to WWF. Since the S-WWB was functioning under the provisions of the S-WWF Act, the petitioner cannot claim to have been 'transferred' to WWF. Since the petitioner's employer was S-WWB established and operating under the provisions of a provincial statute, the petitioner cannot contend that he was not sent on deputation by S-WWB to WWF, Islamabad, which was under the administrative control of the Ministry of Overseas Pakistanis and Human Resource Development.

21. As regards the petitioner's desire to be absorbed against the post where he was working as a deputationist, at no material stage has the borrowing department sought the formal concurrence of the parent department for the petitioner's absorption during the deputation period. Since the very process for the absorption of the appellant had not been initiated in accordance with the applicable law, the desire or concurrence of the petitioner for absorption is immaterial.

22. Another vital question that needs to be answered is whether the appellant could invoke the constitutional jurisdiction of this court to prevent his repatriation to his parent department. The law in this regard is also well settled. In the case of Dr. Shafiqur-Rehman Afridi Vs. CDA, Islamabad through Chairman & others reported as 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 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.

23. By reason of the aforementioned, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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