

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

W.P. No.3084/2011

Rao Abdul Waheed

**Versus**

Federation of Pakistan through Secretary, Cabinet Division and  
others

**Date of Hearing:** 21.05.2019

**Petitioner by:** Mr. Muhammad Umair Baloch, Advocate.

**Respondents by:** Mr. Muhammad Nadeem Khan Khakwani,  
learned Assistant Attorney-General.

Hafiz Mazhar Maken, Advocate for  
respondent No.6.

Hafiz Arfat Ahmad Ch., learned *Amicus*  
*Curiae*.

Mr. Ghulam Safdar, Litigation Assistant,  
Finance Division.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Rao Abdul Waheed, seeks a direction to the respondents (which include the Federation of Pakistan, through the Secretary, Cabinet Division; the Board of Investment ("B.O.I."); and the Frequency Allocation Board ("F.A.B")) to release his salary and admissible allowances with effect from 30.08.2010 (when he joined his duties as a deputationist at the B.O.I.) in accordance with his last pay certificate dated 14.02.2011 issued by the Accountant General of Pakistan Revenues.

2. The facts essential for the disposal of the instant petition are that F.A.B. was established by the Federal Government pursuant to Section 42 of the Pakistan Telecommunication (Re-organization) Act, 1996, in order to take over the functions of the Pakistan Wireless Board. F.A.B. has the exclusive authority to allocate and assign portions of the radio frequency spectrum to the Government, providers of telecommunication services and telecommunication systems, radio and television broadcasting operations, public and private wireless operators and others. F.A.B.'s administrative control is with the Cabinet Division, Government of Pakistan.

3. On 01.10.1998, the petitioner was appointed as Assistant Director (BS-17) in F.A.B. On 15.03.1999, he was promoted to BS-18 and later as Director (BS-19). The Inter Services Intelligence, vide letter dated 27.10.2009, termed the petitioner as “unsuitable” from a security point of view for employment in F.A.B. Vide Establishment Division’s notification dated 13.02.2010, the petitioner was transferred and posted as Deputy Secretary in the Ministry of Sports, Government of Pakistan, on deputation basis. The petitioner served as a deputationist in the Ministry of Sports until 29.08.2010.

4. The Board of Investment, Prime Minister’s Secretariat (Public) (“B.O.I.”), vide letter dated 16.08.2010, requisitioned the petitioner’s services for posting on deputation. Vide Establishment Division’s notification dated 08.08.2010, the petitioner was transferred and posted as Director in the B.O.I. The petitioner served in this position from 30.08.2010 to 20.08.2011.

5. Vide Establishment Division’s notification dated 08.01.2011, the petitioner was repatriated. Since the said notification forms the genesis of the dispute, it is imperative to reproduce its operative part herein below:-

*“Rao Abdul Waheed, a BS-19 officer of Frequency Allocation Board, Cabinet Division, presently posted as Director (BS-19) Board of Investment, Prime Minister’s Secretariat (Public), is repatriated and his services are placed at the disposal of the Cabinet Division with immediate effect.”*

**(Emphasis added)**

6. Letter dated 28.01.2011 from the Secretary, B.O.I. to the Secretary, Establishment Division, shows that in the B.O.I., the petitioner had been entrusted with important assignments relating to administration and financial affairs. Difficulty to relieve the petitioner of his duties in the B.O.I. was expressed in the said letter on the ground that his substitute was not available. The Secretary, Establishment Division, was requested to allow the petitioner to continue serving in the B.O.I. on deputation basis. It appears that the said request was not acceded to. On 20.08.2011, the B.O.I. also issued a notification whereby the

petitioner was *“repatriated to the Cabinet Division with immediate effect.”*

7. After being relieved of his duties by the B.O.I., the petitioner reported for duty in the Cabinet Division on 22.08.2011. On 24.08.2011, the petitioner applied to the Secretary, Cabinet Division for the issuance of his formal posting orders in the Cabinet Division so as to enable him to receive his salary.

8. Vide letter dated 01.03.2012, the Cabinet Division asked F.A.B. to take the petitioner on its strength with effect from 22.08.2011, i.e. when he was repatriated from the B.O.I. Furthermore, the Cabinet Division asked F.A.B. to pay the petitioner's salary and allowances as admissible under the F.A.B. Employees Service Regulations, 2007. Apparently, on 06.03.2012, the petitioner went to F.A.B. to join his duties, but was not permitted to enter F.A.B.'s premises. The petitioner brought the said fact to the notice of the Secretary, Cabinet Division, vide letter dated 06.03.2012.

9. The Cabinet Division, vide letter dated 15.03.2012, called upon F.A.B. to comply with the earlier letter dated 01.03.2012 and to take the petitioner on its strength. The petitioner's second attempt to report for duty at F.A.B. on 16.03.2012 was met with the same resistance by F.A.B. as before. Apparently, the Cabinet Division had continued to make efforts for the petitioner to be taken back on F.A.B.'s strength. This state of affairs continued until 21.08.2015 when the petitioner was compulsorily retired.

10. F.A.B.'s letter dated 06.03.2014 to the Cabinet Division makes an interesting read. Vide the said letter, F.A.B. informed the Cabinet Division as to its inability to take the petitioner on its strength. The position taken by F.A.B. in the said letter was that the Inter Services Intelligence had not given security clearance to the petitioner for the continuation of his employment in a sensitive organization like F.A.B. The petitioner was also said to have been found guilty in a case of professional misconduct. F.A.B. had also taken the position that it could not pay the petitioner for the period during which he had not performed duties in F.A.B., and that paying the petitioner for such a period

would amount to taking him back on F.A.B.'s strength. The said letter also shows that the Cabinet Division had made efforts to adjust the petitioner in autonomous bodies under its administrative control, but no autonomous body had accepted the petitioner. As an alternative, it was suggested that the petitioner's case be referred to the competent authority for his compulsory retirement. F.A.B., vide letters dated 06.03.2012, 13.09.2012, 29.11.2012, 31.01.2013 and 06.11.2013 had requested the Cabinet Division to initiate a case for the petitioner's compulsory retirement from service, but to no avail. Vide the said letter dated 06.03.2014, F.A.B. once again requested the Cabinet Division to compulsorily retire the petitioner from service under Section 13(1)(i) of the Civil Servants Act, 1973, or to remove him from service, in which case F.A.B. would pay the petitioner's emoluments/retirement benefits in accordance with the rules/regulations.

11. As mentioned above, vide notification dated 21.08.2015 issued by F.A.B., major penalty of compulsory retirement was imposed on the petitioner in exercise of the powers under Regulation 181(4) of the F.A.B. Employees (Service) Regulations, 2014. The petitioner has challenged the said notification dated 21.08.2015 in writ petition No.3868/2016, which is pending adjudication before another Bench of this Court. The petitioner has not been paid any salary or allowance for the period between 22.08.2011 when the petitioner reported for duty to the Cabinet Division and 21.08.2015, when he was compulsorily retired by F.A.B.

12. The Finance Division, in its office memorandum dated 03.01.2019, has taken the position that since the petitioner was an employee of F.A.B., which is an autonomous body, and since he was compulsorily retired after the issuance of a show cause notice, *"FAB may determine the status of intervening period of the office in consultation with the Establishment Division."*

13. During the pendency of the instant petition, the Establishment Division issued office memorandum dated 08.02.2019 in which it was clarified that the petitioner's salary for

the period between 22.08.2011 and 21.08.2015 shall be paid by his parent department, i.e. F.A.B.

14. The petitioner seeks a direction to the B.O.I., Cabinet Division and F.A.B. to pay his salary and admissible allowances from 30.08.2010 to 21.08.2015, when he was compulsorily retired.

15. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner was a permanent employee of F.A.B.; that the petitioner's consent was not obtained when he was sent on deputation to the Ministry of Sports, vide Establishment Division's notification dated 13.02.2010; that the petitioner had to invoke the jurisdiction of the Hon'ble Supreme Court in order to get his salary for the period during which he served as a deputationist at the Ministry of Sports; that for the period between 30.08.2010 and 20.08.2011 while the petitioner served as a deputationist at the B.O.I., he was paid less than his salary package in his parent department; that instead of being repatriated to his parent department, (i.e. F.A.B.), the Establishment Division repatriated the petitioner to the Cabinet Division, vide notification dated 08.01.2011; that after 22.08.2011 the petitioner was not paid any salary until his compulsory retirement on 21.08.2015; that despite the Cabinet Division's letters dated 01.03.2012 and 15.03.2012, F.A.B. had not permitted the petitioner to resume his duties; that the petitioner's repeated efforts to join his duties were resisted by F.A.B.; that vide notification dated 21.08.2015 issued by F.A.B., major penalty of compulsory retirement had been imposed on the petitioner; that the petitioner has challenged the imposition of the said penalty in writ petition No.3868/2016 before this Court; and that the Establishment Division, vide office memorandum dated 08.02.2019, has clarified that the petitioner's salary between 22.08.2011 and 21.08.2015 is to be paid by his parent department, i.e. F.A.B. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

16. On the other hand, learned counsel for respondent No.6/F.A.B. submitted that ever since the petitioner was posted out of F.A.B. on 13.02.2010, he had not worked for a single day in F.A.B.; that F.A.B. was under no obligation to pay the petitioner since he had not performed his duties in F.A.B.; that since the petitioner was unable to obtain security clearance from Inter Services Intelligence, he could not be allowed to work in F.A.B.; and that the petitioner has been compulsorily retired from service. Learned counsel for F.A.B. prayed for the writ petition to be dismissed.

17. The learned *Amicus Curiae* concurred with the submissions made by the learned counsel for the petitioner. He further submitted that the Federal Government ought not to interfere in the functioning of autonomous bodies; that since the petitioner had not been paid his salary, his fundamental rights had been violated; that delay on the part of F.A.B. in proceeding against the petitioner departmentally did not absolve it from paying the petitioner; and that writ petition ought to be allowed. In making his submissions, learned *Amicus Curiae* placed reliance on the judgments in the cases of Chairman NADRA, Islamabad Vs. Muhammad Ali Shah (2017 SCMR 1979), and Irfan Ahmed Vs. Federation of Pakistan (2016 PLC (C.S.) 491.

18. I have heard the contentions of the learned counsel for the contesting parties as well as those of the learned *Amicus Curiae* and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 14 above, and need not be recapitulated.

19. The F.A.B. Employees Service Regulations, 2007 ("the 2007 Regulations") were made by F.A.B. in exercise of the powers conferred under Section 42(3) of the Pakistan Telecommunication (Re-organization) Act, 1996. The 2007 Regulations were made with the approval of the Federal Government and published in the official Gazette on 09.10.2007. Since the petitioner was initially sent on deputation on 13.02.2010, and the notification for his repatriation was issued on

08.01.2011, the dispute with respect to the quantum of his salary etc. would be determined in accordance with the 2007 Regulations, and not F.A.B. Employees Service Regulations, 2014. In this regard, paragraph 5.21 of the 2007 Regulations is reproduced herein below:-

***“Terms and Conditions of Deputation of Board employees to Foreign Service in Pakistan. –The terms and conditions of transfer of Board employees to Foreign Service in Pakistan shall be the same standard terms and conditions as applicable to the Civil Servant as per instructions of the Federal Government issued from time to time.”***

20. The terms and conditions on which civil servants can be sent on deputation are set out in Establishment Division’s O.M. No.1/13/87-R.I, dated 03.12.1990, which was issued after consultation with the Finance Division. According to this O.M., a deputationist is entitled to draw *“pay in BPS as admissible under the Government from time to time”*. This provision in the said O.M. affords protection to the deputationist’s pay. In addition to this, Fundamental Rule No.114 provides as follows:-

***“F. R. 114. A Government servant in foreign service will draw pay from the foreign employer from the date on which he relinquishes charge of his post in Government service. Subject to any restrictions which the Governor-General may by general order impose, the amount of his pay, the amount of joining time admissible to him and his pay during such joining time will be fixed by the authority sanctioning the transfer in consultation with the foreign employer.”***

21. F.R. 114 makes it imperative for a deputationist’s pay to be fixed by the lending and the borrowing departments. In the event the terms and conditions of an employee’s deputation are not settled between the borrowing and the lending department, the deputationist’s salary etc. payable to him by his parent department cannot be varied to his detriment. Under no circumstances, can a deputationist be made to suffer for the omission of his parent and lending department to settle the terms of his deputation.

22. When the petitioner was sent on deputation to the Ministry of Sports, the terms and conditions of his deputation were admittedly not settled between the borrowing and the lending department. It is not disputed that the pay scales of F.A.B.’s

employees are different/more attractive than those of the employees working in the Federal Secretariat. After the petitioner was sent on deputation to the Ministry of Sports, he was not paid any salary. The position taken by the Finance Division, in its O.M. dated 31.08.2010, was that there was no deputation policy for employees of autonomous organizations, and that since the petitioner was an employee of F.A.B. posted as Deputy Secretary in the Ministry of Sports on deputation basis, he was only entitled to the pay and perks attached to the post of Deputy Secretary in the Federal Government. The Finance Division also proposed certain terms and conditions for the petitioner's service as a deputationist in the Ministry of Sports.

23. Since the petitioner was not paid any salary during his service as a deputationist in the Ministry of Sports, he filed a petition (HRC No.27368-G/2010) before the Hon'ble Supreme Court. On 26.11.2010, the Director, Human Rights Cell of the Hon'ble Supreme Court, forwarded his application to the Secretary Establishment with the direction *"to ensure that the matter is resolved"* and a report submitted within 15 days". Vide Finance Division's office memorandum dated 31.12.2010, the Establishment Division was informed that a decision had been taken that the petitioner *"may be allowed pay and allowances admissible to him in his parent office i.e. FAB during the period he remained already posted as Deputy Secretary in the Federal Secretariat to resolve the issue as per direction of the Honourable Supreme Court of Pakistan."* Consequently, the petitioner was paid his salary for the period he had served as a deputationist in the Federal Secretariat/ Ministry of Sports.

24. After the petitioner was sent to B.O.I. on deputation, the Finance Division, in its O.M. dated 26.03.2012, took the position that for the period during which the petitioner served as a deputationist in the B.O.I. (i.e., between 30.08.2010 and 21.08.2011), the petitioner was entitled to the protection of his substantive pay (i.e. Rs.66,478/-) plus allowances admissible to a BS-19 officer in the Federal Secretariat. Accordingly, on 06.04.2012, for the period between 30.08.2010 and 20.08.2011,



an amount of Rs.10,21,725/- was paid by the B.O.I. to the petitioner. This amount also came to be less than what the petitioner would have been paid in his parent department.

25. It is an admitted position that the salary and allowance paid to the petitioner during his service as deputationist from 30.08.2010 to 20.08.2011 in the B.O.I. was lower than his salary package of a BS-19 officer in F.A.B. During his service as a deputationist in the B.O.I., the petitioner was entitled to be paid not less than the salary package admissible to him in his parent department. Consequently, the B.O.I. is bound to pay the petitioner the differential in the amount for his service in the B.O.I. and the amount which would have been payable to him by his parent department in addition to deputation allowance.

26. Vide Establishment Division's notification 08.01.2011, the petitioner was "*repatriated*" and his services were placed at the disposal of the Cabinet Division. It was not until 20.08.2011 when the B.O.I. issued a notification, whereby the petitioner was "*repatriated to the Cabinet Division*". On 22.08.2011 the petitioner reported for duty at the Cabinet Division. Ever since then the petitioner has not been paid a single penny until the imposition of the penalty of compulsory retirement upon him.

27. The petitioner's repatriation notification issued by the Establishment Division is unique. Instead of repatriating the petitioner to his parent department, i.e. F.A.B., the Establishment Division's notification dated 08.01.2011 placed the petitioner's services at the disposal of the Cabinet Division. This having been done, the Cabinet Division had no valid reason not to pay the petitioner his salary and allowances as would be payable to him by his parent department, in addition to deputation allowance. This is regardless of the fact whether or not the Cabinet Division had issued the petitioner's formal posting orders. Since the Cabinet Division, vide letters dated 01.03.2012 and 15.03.2012, had called upon F.A.B. to take the petitioner back on its strength, the Cabinet Division's obligation to pay the petitioner would commence from 22.08.2011 (when the petitioner reported for duty at the Cabinet Division) until 01.03.2012 (when the Cabinet

Division first called upon F.A.B. to take the petitioner on its strength). As mentioned above, F.A.B. did not even let the petitioner enter its premises, let alone pay his salary.

28. If the petitioner's parent department was not willing to take him back on duty due to the absence of his security clearance by the Inter Services Intelligence, appropriate measures ought to have been taken by F.A.B. to deal with the situation. For instance, an inquiry could have been timely instituted against the petitioner and pending such inquiry, he could have been placed under suspension. This, F.A.B. did not do. F.A.B. not just ignored the requests made by the Cabinet Division to take the petitioner back on duty, but also refused to pay his salary. F.A.B. had no plausible justification to do this. Learned counsel for F.A.B. did not bring on record any service rule or regulation prior to the framing of F.A.B. Employees Service Regulations, 2014, governing the petitioner's service, to show that if an employee of F.A.B. was not given a security clearance by the Inter Services Intelligence, he would not be paid his salary or that he would perforce to be sent on deputation elsewhere.

29. Having gone through the voluminous record of this case, I have formed the view that the petitioner has been made to suffer due to sheer disregard of the law on the part of not just F.A.B., but also the Cabinet and the B.O.I. The Ministry of Sports and F.A.B. did not even bother to settle the terms and conditions of the petitioner's service as a deputationist. There is nothing on the record to show that the petitioner's consent was obtained before he was sent to the Ministry of Sports on deputation. If there was no policy for an employee of an autonomous body to be sent on deputation to the Federal Secretariat, the Establishment Division should not have sent the petitioner on deputation from F.A.B. to the Ministry of Sports and later to the B.O.I. The very least that a deputationist is entitled to is the protection of his salary package payable to him by his parent department. It is only through the intervention of the Hon'ble Supreme Court that the petitioner was paid his salary etc., for his service as a deputationist in the Ministry of Sports. The petitioner's pay certificate dated

14.02.2011 was issued by the Accountant General of Pakistan, after the Hon'ble Supreme Court's direction in HRC No.27368-G/2010. This pay certificate sets out the sum total of the petitioner's pay and allowances etc. The petitioner has a legal right to be paid in accordance with the said pay certificate and permissible increases, if any, for the period between 22.08.2011 until the imposition of the penalty of compulsory retirement on him.

30. It is well settled that the right to life guaranteed under Article 9 of the Constitution includes the right to livelihood. Salary from employment is considered a lifeline. The petitioner's salary for the period between 22.08.2011 and 21.08.2015 (date on which he was compulsorily retired) was never tendered/paid to him. By not paying the petitioner's salary and allowances, F.A.B. as well as the Cabinet Division have clearly deprived the petitioner of his right to livelihood. The petitioner's financial straits caused by such deprivation was not dealt with by his employers. In such circumstances, this Court holds that the petitioner's fundamental right to life, as explained above, was violated by F.A.B. and the Cabinet Division. In holding so, I derive guidance from the law laid down in the following cases:-

- (i) In the case of Mazhar Abbas Shah Vs. Managing Director, Punjab Seed Corporation (2015 PLC (C.S.) 1440), it was held by the Hon'ble Lahore High Court that there was no justification in withholding the salary of a civil servant during the pendency of departmental proceedings against him. Furthermore, it was held that a civil servant was entitled to all the salaries, service benefits, bonus, and medical expenses till the date he is terminated from service.
- (ii) In the case of Ghulam Umar Kazi Vs. General Manager (2006 PLC (C.S.) 1143), the Division Bench of the Hon'ble High Court of Sindh held as follows:-

*"[I]t is evident that non-payment of living salary to low paid employees prima facie amounts to deprivation of right to life guaranteed by Article 9 of the Constitution. It is extremely disturbing to note that delay in disbursement of funds or settlement of liability between different arms of the government have brought them to*

*this state of affairs. Evidently, the services of the petitioners have not been terminated in accordance with law and, as such, they are required to be paid their salaries. The fact that funds could not be obtained is only a matter of inefficiency of different departments and obviously the petitioners could not be made to suffer on this account.”*

- (iii) In the case of Metropolitan Corporation, Lahore Vs. Imtiaz Hussain Kazmi (PLD 1996 Lahore 499), it was held as follows:-

*“6. If an employee/servant is not paid his salary/wages for the work done by him for his employer, he is not expected to live a proper life. If he does not get his salary then how can he sustain himself and his family members. Even if he does not starve and manages to keep his soul and body intact, his own life and those of his dependent members of the family are bound to heavily suffer in quality. The life as contemplated by Article 9 does not merely mean a vegetative life but it also includes a qualitative life which should ensure enjoyment of such other amenities and facilities as are enjoyed by a person born in a civilized society. The term 'life' used in Article 9 of the Constitution has been used in a wider sense, which means that a man should not be able only to sustain life but to enjoy it as well.*

*7. Similarly Article 14 of the Constitution which guarantees dignity of man is contravened when an employee/servant is denied his right to receive his salary/wages by him. Article 14, inter alia, commands “the dignity of man and, subject to law, the privacy of home, shall be inviolable”. A man who is denied the fruit of the labour and work done by him is bound to live in a manner which will deprive him of his dignity.”*

- (iv) In the case of Qazi Khan Vs. The State of Pakistan (PLD 1965 (W.P.) Peshawar 41), it was held that there is a Constitutional guarantee under which the tenure and conditions of service of any person serving under the Government shall not be varied to his disadvantage.
- (v) In the case of Muhammad Anwar Vs. Government of Pakistan (PLD 1962 Lahore 443), it was held by none other than the great jurist Justice M.R. Kayani, that *“mandamus can now issue to Government to pay to a government servant his salary at a certain rate, and it is only logical to say further that mandamus can issue to require Government to pay his salary to a government servant or to pay arrears of salary ..... it would not be logical to say that*

*while the fixation of salary is a public duty, its payment is not a public duty”.*

31. In view of the aforementioned, the instant petition is allowed with the following directions:-

- (i) For the period between 30.08.2010 (when the petitioner joined his duties as a deputationist at the B.O.I.) and 20.08.2011 (when the petitioner was repatriated by the B.O.I.) the differential in the amount actually paid to the petitioner by the B.O.I. and the amount under the petitioner's pay certificate dated 14.02.2011 along with the permissible increases during the said period, shall be paid by the B.O.I.
- (ii) For the period between 22.08.2011 (when the petitioner reported for duty at the Cabinet Division after the B.O.I. issued his repatriation notification) and 01.03.2012 (when the Cabinet Division, vide letter dated 01.03.2012, called upon F.A.B. to take the petitioner on its strength) the petitioner's salary etc. shall be paid by the Cabinet Division in the amount as payable to a BS-19 officer of F.A.B.
- (iii) For the period between 01.03.2012 (when the Cabinet Division first called upon F.A.B. to take the petitioner on its strength) and 21.08.2015 (when major penalty of compulsory retirement was imposed on the petitioner), the petitioner's salary etc. shall be paid by F.A.B. in the amount as payable to a BS-19 officer of F.A.B.

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

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2019**

**(JUDGE)**

*Qamar Khan\**

**APPROVED FOR REPORTING**