

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3576/2019
Gulshan Shamem
Versus

Secretary of Federal Education & Professional Training etc.

| 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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| | 17.10.2019 | Ms. Asma Shabbir Malik, Advocate for the petitioner. |

Through the instant writ petition, the petitioner, Gulshan Shamem, impugns the notification dated 26.08.2019 issued by the Federal Directorate of Education (Human Resource Development Wing), whereby she was repatriated to her parent department. i.e. Government Girls Degree College, Marghuz, Swabi, Government of Khyber Pakhtunkhwa ("K.P.K.").

2. The record shows that the petitioner's parent department is Higher Education, Archives and Libraries Department, Government of K.P.K. Vide notification dated 18.12.2018 issued by the Establishment Division, Government of Pakistan, the petitioner was sent on deputation for a period of three years under the wedlock policy to the Ministry of Federal Education and Professional Training, Islamabad for further posting in the Federal Directorate of Education. Vide notification dated 23.04.2019, the petitioner was promoted to BPS-20 on regular basis by the Establishment Department of the Government of K.P.K. The petitioner went as Professor/Principal, Government Girls Degree College, Wana, South Waziristan for the actualization of her promotion after which she was to rejoin her duties as a deputationist at the Islamabad Model College. It is an admitted position that the petitioner was

repatriated due to her promotion as Professor (BPS-20). The notification whereby the petitioner was repatriated to her parent department has been assailed by her in the instant petition.

3. Learned counsel for the petitioner submitted that the petitioner has not been allowed to complete three-year period for which she was sent on deputation to the Ministry of Federal Education and Professional Training, Islamabad; that the petitioner's spouse works in Islamabad and under the wedlock policy, she is entitled to remain on deputation in Islamabad; and that the notification dated 18.12.2018 was issued on the basis of the wedlock policy. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making her submissions, learned counsel for the petitioner placed reliance on the judgment reported as 2003 PLC (C.S.) 1322.

4. I have heard the contentions of the learned counsel for the petitioner and have perused the record with her able assistance.

5. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraph 2 above, and need not be recapitulated.

6. The petitioner has assailed the notification dated 26.08.2019, whereby she has been repatriated to her parent department. Vide notification dated 18.12.2018, the petitioner was sent on deputation to the Ministry of Federal Education and Professional Training, Islamabad. While she was serving as a deputationist, she was promoted as Professor (BPS-20). She briefly went to South Waziristan for the actualization of her promotion. The petitioner claims that she is

entitled to continue serving as a deputationist on the basis of the wedlock policy.

7. It is settled law that a deputationist may not necessarily complete the tenure for which he/she 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 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 (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.

8. 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 petitioner could have invoked the Constitutional jurisdiction of this Court to prevent her repatriation to her 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 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, has the petitioner been absorbed in the borrowing department.

9. Yet 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 (C.S.) 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)."

10. 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."

11. In view of the above, I do not find any merit in this petition which is accordingly dismissed in limine with no order as to costs. The dismissal of this petition shall have no bearing on the decision that the respondents may take on the petitioner's application dated 29.08.2019 (annexed at page 65 of this petition) for the recall of the impugned notification dated 26.08.2019.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Ahtesham*