

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

W.P No. 733 of 2020

Mrs. Nighat Yasmeen
Vs
The Ministry of Education, etc

Petitioner's : Sardar Rafiqur Rehman Sanjrani, Advocate.

**Respondent's : Ms. Ruqayya Sami, Assistant Attorney General.
Mr. Masood ul Hameed, Deputy Director (Legal),
FDE.
S.M. Rehan, Assistant Director (Legal), FDE.**

Date of hearing : 24.08.2020.

LUBNA SALEEM PERVEZ J. The petitioner, through present petition has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution assailing the Notification dated 14.02.2020, issued by Federal Directorate of Education, Government of Pakistan, to repatriate her to her parent department i.e. School Education Department, Government of Punjab.

2. The petitioner was appointed as Un-trained Teacher on 20.04.1986, in School Education Department, Government of Punjab, and vide order dated 02.03.1998, she was transferred to Federal Directorate of Education, Islamabad, as TUGT (BS-14) on her request for transfer on deputation, for a period of one year since, then she was serving in Islamabad and vide Notification dated 14.02.2020, she has been repatriated to her parent department.

3. Learned counsel for the petitioner submitted that petitioner has been serving in the Federal Directorate of Education (hereinafter referred to as FDE) since, last 23 years and her retirement is due on 09.08.2022; that no mandatory notice of 15 days as per order dated 02.03.1988, has been given to her; that she is a married woman and in terms of wedlock policy announced by Federal Government she has a right to be absorbed in the department of the city of her spouse in view of the summary approved by the Prime Minister on 08.03.2013, that the deputationists (teaching and non-

teaching) working in the Educational Institutions under FDE Islamabad, who have completed 5 years of deputation under wedlock policy are liable to be absorbed in their respective cadres; that the parent department of the petitioner has twice issued No Objection Certificate (NOC) for permanent absorption in FDE, vide letter dated 05.06.2004 and subsequently on 12.09.2013, however, her case for permanent absorption in FDE was not processed; that FDE vide letter dated 01.01.2015, also directed the Deputy Director School (Female) to provide up-dated personal data of the deputationist (female) for permanent absorption of the list of teachers which also included the name of the petitioner; that most of the female deputationist teachers serving with FDE have been permanently absorbed vide various notifications of permanent absorption from 2011 to 2015, hence, discriminated the petitioner from a right of being absorbed which is a violation of Article 25 of the Constitution of Pakistan; learned counsel has also relied on SRO 375(I)/2012, dated 16.04.2012, whereby, rule 20(A) has been amended by inserting a proviso; that the respondent FDE has violated their terms and conditions mentioned in order dated 02.03.1998; that no prior notice of 15 days has been issued and has thus deprived her from opportunity of hearing hence, in violation of Article 10-A of the Constitution of Pakistan; that the respondents have violated the wedlock policy announced by the Federal Government; that the petitioner is fully competent to be regularized on the basis of her educational qualifications and since, she is serving in FDE from past 23 years, a legitimate expectation has been created and a vested right has been accrued to the petitioner.

4. On the other hand, learned AAG and the Deputy Director (Legal), FDE, have controverted the arguments made on behalf of the petitioner and submitted that a request letter for NOC dated 17.07.2009, for further extension in deputation period of the petitioner, was issued to her parent department but no response has so far been received, therefore, she has been repatriated to her parent department as she cannot be retained in FDE without NOC/lien from her parent department; that summary has been approved by the Prime Minister for permanent absorption of the deputationist but the same is subject to the provision in the recruitment rule. He further submitted that petitioner is intermediate with 3rd division, therefore, her request for absorption cannot be entertained; that the petitioner

after transfer on deputation is not a civil servant under section 2(b)(i) of the Civil Servants Act, 1973; that amendment in Rule 20(A) of APT Rules, 1973, vide SRO 375(I)/2012, dated 16.04.2012, is not binding on Government of Punjab after 18th Constitutional Amendment due to devolution of education department to the provinces; that Rule 20(A) cannot override the basic law on deputation and the law laid down by the superior Courts on the subject. Hence, petition is liable to be dismissed.

5. In rebuttal, learned counsel for the petitioner submitted that the respondent FDE has permanently absorbed certain female deputationists on pick and choose basis; that no demand certificates has already been issued by the parent department, vide their letters dated 05.06.2004 & 12.09.2013, hence, no further NOC from the parent department is required for permanent absorption of petitioner's services in FDE; that the respondents' representative has misstated that petitioner has not improved her qualification after attaining 3rd division in intermediate and furnished a copy of her B.A. degree to show that she passed the bachelors exams with 2nd division; that her lien with the parent department after break of 22 years, which she served in FDE has been extinguished.

6. Arguments heard. Record perused.

7. Perusal of the record revealed that petitioner was appointed as a teacher as Trained Under Graduate Teacher (TUGT) (BS-09) in Education Department, Government of Punjab, and was transferred on deputation to FDE, vide order dated 02.03.1998, on the terms and conditions incorporated therein, which included that Federal Government has a right to revert her to the parent department at any time with the prior notice of 15 days. She was transferred on deputation for a period of one year, however, the period was extended subsequently from time to time. Therefore, admittedly she remained on deputation with the FDE till date as her case has not been processed for permanent absorption despite issuance of NOC dated 05.06.2004 & 12.09.2013 by her parent department. The Hon'ble Supreme Court has explained the term 'deputation' vide case titled as ***Dr. Shafi-ur-Rehman Afridi v. CDA (2010 SCMR 378)*** in the words *that deputation can be defined as an administrative arrangement between borrowing and lending Authorities for utilizing the services of an employee in the public*

interest and exigency of services against a particular post and the deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his own whims and wishes.

8. The petitioner since serving on deputation for past 22 years claims regularization in FDE on the basis of wedlock policy announced by Prime Minister, however, the controversy that deputationist cannot claim permanent absorption on the basis of wedlock policy has already been considered by the Hon'ble Apex Court as well as Hon'ble High Courts in the following cases:

i. **Mrs. AbidaJabeen vs. Secretary Education (Schools) Government of Punjab, Lahore [2012 PLC(C.S.) 665].**

It has also been held by the Hon'ble Supreme Court in Secretary Education N.W.F.P. Peshawar and 2 others v. Mustamir Khan and another (2005 SCMR 17) that transfer of any civil servant could only be made by competent authority in the exigency of service and public interest and the civil servant had no right to remain posted at a particular place. If the transfer order is based on mala fide even then the Service Tribunal has jurisdiction to interfere and set aside the same.

ii. **AsmaShaheen v. Federation of Pakistan [2013 PLC (C.S.) 391].**

Insofar as period of deputation is concerned, under the law as provided at Sl.No.28 (Chapter-II) of ESTACODE, Civil Establishment Code (Edition-2007, Volume 1), the normal deputation period is three years, which is extendable for another two years. It is further mentioned that a government servant cannot remain on deputation for more than 5 years. It has never been provided anywhere that a deputationist cannot be repatriated to his parent department by the borrowing department before expiry of normal tenure of deputation. It is the sole discretion of competent authority of borrowing department to decide the fate of deputationist. Even Mr. Abdul Rahim Bhatti, Advocate has candidly admitted during the course of arguments this settled/legal position of law that it is the sole discretion of competent authority to repatriate a deputationist at any time and deputationist has no vested right to remain on deputation.

iii. **S. Masood Abbas Rizvi vs. Federation of Pakistan (2014 SCMR 799).**

It is settled principle that a deputationist does not have any vested right to remain on the post as deputationist forever or for a stipulated period, he could be ordered to be repatriated to the parent Department at any time without assigning any reason. This issue was raised in the case of Dr. Shafi-ur-Rehman Afridi v. C.D.A., Islamabad through Chairman and others (2010 SCMR 378) wherein this Court has held that a deputationist does not have vested right to continue for the stipulated period.

This Court also in case of *Fazal Dad v. Federation of Pakistan through Ministry of Education* (W.P. No. 1120/2019), while relying on the judgments of Hon'ble Supreme Court in cases tilted as *Azhar Rasheed vs. Board of Revenue* [2009 PLC (C.S.) 234], *Senate Secretariat through*

Chairman vs. Miss Faiqa Abdul Hayee (2014 SCMR 522) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) has observed that *similarly, transfer and deputation from one department to another does not by itself create a vested right in favour of transferred or deputed officials to claim absorption.* It has been further observed that *the question of absorption falls within the terms and conditions of the service which could not be agitated before the High Court in terms of bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan.*

9. This Court in the case reported as *Mansoor-ul-Haq vs. FOP [2017 PLC (C.S.) 365]* has also comprehensively dealt with an identical issue as agitated in the present petition and after discussing the case laws on the subject at length held that in case of transfer on deputation, no vested right accrued to a deputationist to continue for a period of deputation and that the competent authority is empowered to repatriate a deputationist as and when exigencies of service expire. While dismissing the petition the Hon'ble Court has held as under:-

"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."

10. The controversy of permanent absorption of a deputationist in the borrower's department on the basis of wedlock policy has now been settled by this Court in the above cited judgments that no vested right can be claimed by the deputationist for regularization and absorption.

11. Learned counsel for the petitioner also relied on SRO 375(I0/2012, dated 16.04.2012, whereby, the following proviso has been inserted in Rule

20(A) of Civil Servant (Appointment, Transfer and Posting) Rules, 1974, in support of his arguments:-

“Provided that posting of serving husband and wife at the same station, unmarried female government servants at the place of residence of their parents/family and that of married female government servants at the place of residence/posting of their husbands who are not in government employment shall be exempted from the said rule”.

Rule 20(A) dealing with appointments on deputation provides three years period of deputation on a particular post which may be extended for another two years. The above proviso added to the said Rule intended to intended to relax this condition of maximum extension of deputation i.e. five years by providing exemption to married female government servants at the place of residence/posting of their husbands who are not in government employment, however, it cannot be interpreted to mean permanent posting at the place of deputation or absorption of the female government servant or it imposes any bar on the borrower department to repatriate the civil servant to her parent department. The female civil servant, unless absorbed as per rules, remains on deputation, whose services can be repatriated at any time to her parent department according to the requirement and exigencies.

12. For the foregoing reasons and in the light of the above mentioned case law the present petition, being devoid of any merit, is hereby **dismissed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this 02nd day of September, 2020.

JUDGE