

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

“Writ Petition No. 2345 of 2015”

Saira Yousaf and others

Versus

Federation of Pakistan, and others

<i>Petitioners By:</i>	<i>Mr. Muhammad Ramzan Khan, Advocate.</i>
<i>Respondent By:</i>	<i>Ch. Fayyaz Hussain, AAG along with S.M. Rehan Naqvi, Assistant Director (Legal) & Sohail Ijaz, Deputy Director, M/O FE&PT.</i>
<i>Date of Hearing:</i>	<i>28.01.2021.</i>

GHULAM AZAM QAMBRANI, J.: Through this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have made the following prayer:-

“Under the above said circumstances, it is most humbly prayed that the instant writ petition may please be accepted, inaction at the part of the respondents may kindly be declared illegal, unlawful and without lawful authority and respondents may please be directed to consider the petitioners for absorption/ induction and the condition of excluding BPS-7 to 13 from absorption may kindly be declared illegal, unlawful and set aside.

It is further prayed that respondents may kindly be directed to treat the petitioners equally keeping in view the law laid down in 2005 SCMR-100, 2009 SCMR -01 & 1996 SCMR- 1185 alongwith consequential/ back benefits.

Any other relief with cost which this honourable Court deems fit and appropriate may also be granted.”

2. Precisely facts of the case are that the petitioners are female teachers, working under the Federal Directorate of Education (FDE), Islamabad, on deputation basis under the wedlock policy in different Pay Scales and now they are seeking their permanent absorption in line with the revised wedlock policy, duly approved by the Prime Minister of Pakistan through amendments in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973. The petitioners were transferred from Government of Khyber Pakhtunkhwa, Government of Punjab, Azad Jammu & Kashmir, & Khyber Agency at Jamrud, on deputation basis and their services were placed under the Federal Directorate of Education, Islamabad, but now the

respondents are not considering the petitioners for absorption, hence, this petition.

3. Learned counsel for the petitioners has contended that the petitioners are working under the Federal Directorate of Education on deputation on the basis of wedlock policy; that some other teachers have been absorbed but the petitioners are not being considered for their absorption whereas summary for absorption of the petitioners was prepared and sent to the then Prime Minister for approval which was approved but the respondents are not complying with the same; that the former Secretary CA&DD has already recommended the case of all the deputationists as one time induction vide Office Order dated 11.11.2014 and sought advice from the Establishment Division but the induction of BPS-7 to 13 has been excluded without any justification whereas teachers in BPS-14 and BPS-15 are being accommodated, which action of the respondents is against the law.

4. On the other hand, learned A.A.G submitted that the services of petitioners were taken on deputation basis; that cases of the petitioners were considered in the light of judgment passed in W.P. No.194/2020, but they are not qualifying for their absorption in Federal Directorate of Education. It is next submitted that the Prime Minister of Pakistan approved a summary regarding permanent absorption of the deputationists; however, subject to the provision in the Recruitment Rules, whereas recruitment rules do not provide any quota for appointment by transfer, as such, request of the petitioners was not entertained.

5. Heard arguments of the learned counsels for the parties and perused available record.

6. Perusal of the record reveals that the petitioners were serving under the Government of Khyber Pakhtunkhwa, Government of Punjab, Azad Jammu & Kashmir, & Khyber Agency at Jamrud, their services were transferred from that Government and placed at the disposal of Federal Directorate of Education, Islamabad, under the wedlock policy. On 08.03.2013, the Ministry of Capital Administration & Development moved a summary for the Prime Minister proposing

that ***“All the deputationists (teaching & non-teaching) working in the educational institutions under FDE, Islamabad on deputation basis under Wedlock Policy and completed their 05 years of deputation may be absorbed in their respective cadres. Absorption of the incumbents shall be subject to provision in the Recruitment Rules and be affected after fulfilment/completion of all the codal/ procedural formalities as contained in the Civil Servants Act, 1973”***. The same was approved by the then Prime Minister of Pakistan and the matter was conveyed to the Ministry of Capital Administration & Development vide letter dated 16.03.2013 for completion of necessary documentation procedures of the deputationists regarding their absorption. The Establishment Division vide letter dated 13.11.2014 advised that the cases of the deputationists be examined and decided by the competent authority i.e. Director General, Federal Directorate of Education as per approval of the Prime Minister, thereafter, vide letter dated 25.11.2014, the Secretary of Capital Administration & Development Division, approval was conveyed that the Director General, Federal Directorate of Education, Islamabad, is the competent authority to absorb/ induct through Departmental Promotion Committee based on cadre wise seniority lists of all deputationists (Teaching & non-teaching falling in BS-01 to BS-15), working in the educational institutions under FDE, Islamabad, on deputation basis under the Wedlock Policy and completed their five years of deputation.

7. It also transpires from record that petitioners are deputationists and working under the Federal Directorate of Education and they have also completed five years of their deputation period, but no extension order has been passed in their favour. As per Recruitment Rules 10% deputation quota is reserved for the cadre of EST (BS-14) and prescribed qualification for the post of EST (BS-14) is F.A. 2nd Division with C.T., as such, Federal Directorate of Education has asked the only eligible deputationists of BS-14 for provision of NOC by their departments and certificate of their substantive pay scale, whereas, the posts of MTT (BS-09) has been upgraded as EST BS-14 and TUGT BPS-14 has been upgraded as TGT BS-16 w.e.f 01.01.2011. In this way, the posts of MTT BS-09 and TUGT BS-14 do

not exist in the system, however, the eligible deputationists are being considered for their absorption by the Federal Directorate of Education. The cases of the petitioners were considered in the light of summary approved by the Prime Minister of Pakistan regarding permanent absorption of the deputationists, whereas recruitment rules do not provide any quota for appointment by transfer, as such, request of the petitioners was turned down and repatriated to their parent departments vide order dated 12.01.2021, as the petitioners are working in BS-7 to BS-12 except petitioner No.11 namely Mst.Rabia Niaz who is working in BS-14 but she is 3rd Division in F.A.

8. Perusal of the record reveals that this Court in its judgment dated 11.12.2020 passed in Writ Petition No.194/ 2020 has held that a person cannot be appointed on deputation unless he or she has been subjected to a process of selection and any appointment of an officer on deputation basis is void, if his appointment is not preceded by a process of selection, and that the deputationists serving in the Federal Directorate of Education, Islamabad, who have not been appointed after a process of selection, have no right to continue serving as deputationists much less to be considered for absorption in the Federal Directorate of Education, Islamabad, and that the competent authority in the Federal Directorate of Education shall be failing in its duty, if such deputationists are not immediately repatriated to their respective parent departments. In the judgment dated 03.02.2021 passed in Writ Petition No.2869/ 2018, wherein repatriation was challenged by the petitioner, but this Court dismissed the petition despite the fact that the petitioner was serving on deputation basis under wedlock policy. Further the Establishment Division vide its office memorandum No.10/301/97R-II dated 28.01.2020 has framed Standard Operating Procedure in the light of the recommendations of the Standing Committee on Cabinet Secretariat to develop SOPs for disposal of the cases of deputation in the Federal Government Department, under the wedlock policy and after considering the case of the petitioners in the light of said SOPs, the petitioners have not been absorbed and repatriated to their parent departments vide order dated 12.01.2021.

9. 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:-

"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."

The proposition that needs to be determined is whether the petitioners posted on deputation at a particular station can claim to remain so posted for all the period during, which their 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 (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 petitioners in that case had also prayed for a direction to the borrowing department to absorb them. 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:-

"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."

In the case of "Dr. Shafi-ur-Rehman Afridi v. CDA, Islamabad, through Chairman and others" (2010 SCMR 378), it has been held as under:-

"The Civil Servant Act, 1973 and Rules made thereunder as well as ESTA Code are silent about the fact that a deputationist must serve his entire period of deputation and this omission seems deliberate enabling the competent authority to utilize the service of an employee in the manner as it may deem fit and proper. The period of deputation can at the best be equated to that of an expression of maximum period which can be curtailed or extended by competent authority and no legal or vested rights are available to a deputationist to serve his entire period of deputation in borrowing department."

Absorption of an employee is based on tripartite agreement comprising consent of lending department, borrowing department as well as the person concerned, and not on sole wish of a deputationist. A deputationist has no vested right to remain on deputation for an indefinite period or to be absorbed in the borrowing department rather a deputationist can be repatriated to his parent department at any time.

10. For the reasons stated above, the instant writ petition having no force, is hereby **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 30th day of March, 2021.

JUDGE