

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.194 of 2020
Mrs. Nusrat Rasheed and another
Versus

Federation of Pakistan through Secretary, M/o Education and
others

Dates of Hearing: 16.09.2020, 18.09.2020, 21.09.2020,
24.09.2020, 25.09.2020, 02.10.2020,
05.10.2020 and 06.10.2020

Petitioners by: M/s Muhammad Asif Gujjar, Muhammad
Masroof Khan and Amna Ali, Advocates in
W.P.s.No.194/2020, 932/2020, 1212/2020,
1425/2020, 1471/2020, 1486/2020,
1800/2020, 1851/2020, 2447/2020 and
2634/2020.

Raja Saif-ur-Rehman, Advocate in W.P.s
No.1520/2020 and 2242/2020.

Mr. Ali Murad Baloch, Advocate in W.P.
No.1146/2020.

Syed Sadaqat Ali, Advocate in W.P.
No.1158/2020.

M/s Zil-e-Huma and Ahmad Shahzad
Awan, Advocates in W.P.No.2216/2020.

Syed Mumtaz Mazhar Naqvi, Advocate in
W.P. No.2677/2020.

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

Mr. Saqib Shahab, Director (P&D) F.D.E.

Mr. S.M. Rehan Naqvi, Assistant Director
(Legal) F.D.E.

Mr. Tahir Taj, Deputy Director A.E.P.A.M.

M/s Zafar Ismail, Deputy Secretary
(Regulation) and Nadeem Arshad Section
Officer, Establishment Division

MIANGUL HASSAN AURANGZEB, J:- Through this
judgment, I propose to decide writ petitions No.194, 932, 1146,
1158, 1212, 1425, 1471, 1486, 1520, 1800 (to the extent of
petitioner No. 3), 1851, 2216, 2242, 2447, 2634, and 2677 of
2020, since they entail certain common features.

2. All the petitioners have been serving as teachers in the
Federal Directorate of Education ("F.D.E.") on deputation basis
for several years. They have assailed notifications issued by the
F.D.E. whereby they were repatriated to their respective parent
departments. In essence, the petitioners' case is that since the

F.D.E. had initiated a process of the petitioners' absorption in the F.D.E. and since the petitioners' respective parent departments had issued No Objection Certificates ("N.O.C.") for their absorption, they had acquired a vested right and had a legitimate expectation for their absorption in the F.D.E.

3. The challenge to the orders for the repatriation of deputationists serving in the F.D.E. have consumed precious public time of this Court. The root cause of this litigation is the policy of 'pick and choose' adopted by the officials in the F.D.E. and its controlling Ministry in making appointments on deputation and absorption of deputationists in the F.D.E. The voluminous documents brought on record by the contesting parties to this litigation indicate that appointments on deputation in the F.D.E. had been made not on merit but through means that are abhorrent to a transparent method of appointment or posting against posts in the service of the Federation.

FACTUAL BACKGROUND:-

4. Apparently, in the year 1998 lady teachers taken on deputation in the F.D.E from Provincial education departments were repatriated to their respective parent departments after the expiry of the maximum permissible deputation period of five years. These teachers filed a writ petition before the Hon'ble Lahore High Court, Rawalpindi Bench challenging their repatriation orders. Initially, the Hon'ble High Court suspended the repatriation orders but subsequently the writ petition was dismissed. The order passed by the Hon'ble Lahore High Court was assailed by the lady teachers before the Hon'ble Supreme Court. Vide order dated 04.12.1998, the Hon'ble Supreme Court disposed of the petition *inter alia* in the following terms:-

"In our view, it will be appropriate if no further action is taken against the petitioners for a period of three months. In the meantime, if some action is taken pursuant upon above [O.M.No.10/1/84-R-5, dated 26.11.1998] the same may be implemented, otherwise they will be repatriated to their respective Provinces. Petitions are disposed of in the above terms."

5. When the Hon'ble Supreme Court passed the said order, the recruitment rules of the F.D.E. did not have any provision for

appointment by transfer or absorption of deputationists. Therefore, vide letter (FDE, U.O.No.F.4-9/98(W)) dated 02.12.1998, the F.D.E. submitted a case for amendment in its recruitment rules to make room for absorbing deputationists on permanent basis. The recruitment rules of the F.D.E. were amended by placing 10% posts of Trained Under Graduate Teachers (“TUGT”) (BPS-14) and Matric Trained Teachers (“MTT”) (BPS-09) for appointment by transfer. This was done through notification dated 18.02.1999 issued pursuant to Rule 3(2) of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 (“the A.P.T. Rules”) by the erstwhile Ministry of Education, whereby the recruitment rules of the F.D.E. set out in the notification (SRO No.196(KE)/92) dated 16.07.1992 were amended to provide for 50% of the posts of TUGT (BPS-14) in the F.D.E. to be filled by promotion; 40% by initial appointment; and 10% by transfer. The said notification also made provision for 90% of the posts of MTT (BPS-09) in the F.D.E. to be filled through initial appointment and 10% by transfer. The said notification was issued after obtaining the concurrence of the Establishment Division.

6. For the absorption of deputationists, the F.D.E., on 23.01.2000, proposed the following criteria:-

- “(i) *N.O.C. of his/her parent department for absorption under the Federal Government.*
- ii) *The deputationist(s) must possess the requisite academic and professional qualification and fulfill the conditions of Division as notified in the Recruitment Rule.*
- iii) *In the light of Prime Minister’s Directive, 1st priority is to be given to those whose husbands are Federal Govt. employees and their services are not transferable to the stations of posting of their spouses, i.e. wives. Cases of those whose parents/brothers/sisters are settled in Islamabad may be considered by the Departmental Selection Committee if so desired.*
- iv) *Length of service of the deputationist(s) under the Federal Government. Absorption may only be considered after completion of the maximum period, availability of the post against 10% quota of the cadre to which he/she belongs.*
- v) *Consent/Affidavit to the effect that in case of absorption he/she will claim seniority from the date of absorption and not from retrospective effect.*
- vi) *Those who have already been repatriated will not be considered for absorption.”*

7. On 24.01.2000, the Secretary, Ministry of Education, approved the said criterion.

8. With effect from 01.01.2011, the post of MTT was upgraded from BPS-09 to BPS-14 and re-designated as Elementary School Teacher ("EST") whereas the post of TUGT was upgraded from BPS-14 to BPS-16 and re-designated as Trained Graduate Teacher ("TGT"). After the said upgradation of posts was carried out, the recruitment rules of the F.D.E. were again amended vide notification (SRO 338(I)/2011) dated 30.03.2011 which provided for the method of appointment to the post of EST to be 90% by initial appointment and 10% by transfer.

9. The postings on deputation basis in the F.D.E. and the continuation of such postings beyond a period of five years was deprecated by this Court in its judgment in the case of Asma Shaheen Vs. Federation of Pakistan (2013 PLC (C.S.) 391) in the following terms:-

"16. It is observed with great concern that some of the petitioners/deputationists are still working in borrowing department despite expiry of deputation period a few years ago, which is contrary to law, settled rules, against the principle of good governance and the same is also careless, callous, indifferent approach of the petitioners and both the concerned departments i.e. borrowing department and parent department. The same has been done in connivance with each other. This Court cannot close its eyes to such glaring illegalities and irregularities due to which certain other officials who are waiting for their deputation under wedlock policy in Islamabad have been deprived of their legal right. These illegalities, irregularities and violation of rules cannot be ignored."

10. In order to ensure that the public functionaries responsible for violating the requirement of repatriating deputationists upon the completion of the maximum permissible deputation period are appropriately dealt with, and for there to be a mechanism prescribed in the form of rules for the absorption of deputationists, this Court gave the following directions:-

"Therefore, it is directed that a fact finding committee shall be constituted by the Director General, Federal Directorate of Education, Government of Pakistan, Islamabad, who shall fix the responsibility of officers/officials who were responsible to take action for repatriation of deputationists who had completed their stipulated period and had not been repatriated except in those cases, in which courts had granted status quo order at the time of completion of maximum period and after determining such responsible officers/officials strict disciplinary action shall be taken against those delinquent officers/officers after inquiry in accordance with law."

17. It is also surprising to note that for the absorption of deputationists no hard and fast rule has been provided in law, and the matter has been left at the mercy and discretion of the competent

authority, which is creating untoward situation. Therefore, Ministry of Law, Justice and Parliamentary Affairs is suggested to examine the matter and frame specific rules/criteria regarding absorption of deputationists on permanent basis.”

11. After taking into consideration the said observations and directions of this Court, the Director General, F.D.E., on 29.11.2011, gave instructions to repatriate the deputationists who had completed the maximum permissible deputation period of five years. Additionally, it was decided to constitute a fact-finding committee to fix responsibility for the delay in the repatriation of deputationists who had completed five years of deputation. On 19.12.2011, a three-member fact-finding committee, comprising of (1) Chairman, Private Educational Institutions Regulatory Authority, (2) Director (A&C), F.D.E. and (3) Deputy Director (Legal), F.D.E., was constituted to *“probe into the matter in the light of decision/judgment of IHC.”* I am told by the representatives of the F.D.E. that no session of this committee ever took place. No inquiry was conducted; no responsibility was fixed on any delinquent officer; and obviously, no action was taken against anyone. This shows the scant regard that the officials in the F.D.E. and its controlling Ministry had for the observations and directions passed by this Court.

12. Rule 20A of the APT Rules provides *inter alia* that appointment on deputation can be for a period not exceeding three years which may be extended for another period of two years on such terms and conditions as may be sanctioned by the Federal Government in consultation with the lending organization.

13. The Establishment Secretary vide letter (Estab. Div. U.O. No.10/30/97-R-II) dated 27.02.2012 had proposed to the Prime Minister that a *proviso* to Rule 20A of the APT Rules may be inserted in order to exempt female government servants posted to Islamabad under the wedlock policy from the applicability of Rule 20A of the APT Rules. The said proposal was approved by the Prime Minister on 24.03.2012. Thereafter, vide notification (SRO 375(I)/2012) dated 16.04.2012 issued by the Establishment Division, a *proviso* to Rule 20A of the APT Rules was inserted. In order to perpetuate the tenure of deputationists whose spouses were residing at Islamabad beyond the maximum deputation period of five years, a *proviso* was inserted

to Rule 20A of the APT Rules. For the purposes of clarity, the *proviso* to Rule 20A of the APT Rules inserted through the said notification is reproduced herein below:-

“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.”

14. As a consequence of the said *proviso* having been inserted in Rule 20A of the APT Rules, the erstwhile Ministry of Capital Administration and Development (the then controlling Ministry of the F.D.E.) vide letter dated 09.05.2012 requested the Director General, F.D.E. to withdraw the repatriation orders issued to the deputationists and to process their cases for the release of their salaries.

15. The F.D.E. had taken the services of a number of teaching and non-teaching staff on deputation basis under the wedlock policy of the government, keeping in view the socio-economic problems faced by husbands and wives in government service due to posting at different stations. On 08.03.2013, the Ministry of Capital Administration and Development moved a summary for the Prime Minister proposing that *“all the deputationists (teaching and 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.”* In the said summary, it was also proposed that the absorption of the incumbents shall be subject to the provisions in the recruitment rules and be effected after the fulfillment/completion of all the codal/procedural formalities as contained in the Civil Servants Act, 1973. On 08.03.2013, the said proposal was approved by the Prime Minister. Vide letter dated 16.03.2013, the Ministry of Capital Administration and Development conveyed the said decision of the Prime Minister to the Director General, F.D.E. and asked for certain information so that the process for the absorption of the deputationists could be initiated. Thereafter, the F.D.E. started the process of completing the annual confidential reports of the female deputationists in the F.D.E. The

F.D.E. also requested the parent departments of the deputationists to provide NOCs for their permanent absorption in the F.D.E.

16. Vide letter dated 11.11.2014, the Capital Administration and Development Division solicited the advice of the Establishment Division regarding the absorption of teachers in the F.D.E. under the wedlock policy *“as one time dispensation.”* Vide Office Memorandum ("O.M.") dated 13.11.2014, the Establishment Division informed the Secretary, Capital Administration and Development Division as to the following:-

- “a) Legal framework for appointments has been provided in the Civil Servants Act, 1973 and under Section 5 of the Civil Servants Act, 1973 the appointments are required to be made in the prescribed manner.*
- b) Specific methods of appointment(s), qualifications and other conditions applicable to a post(s) are required to be laid down in the form of Recruitment Rules of the post(s) under sub-rule (2) of rule 3 of Civil Servants (Appointment, Promotion & Transfer), 1973 by the Ministry or Division concerned in consultation with the Establishment Division.*
- c) The Authorities competent to make appointments for various posts have been prescribed under rule 6 of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 and such Authorities upto the post in BS-19 & below borne on the cadre strength of the Ministries/Divisions are in the respective Ministries/Divisions.”*

17. Letter dated 25.11.2014 from the Capital Administration and Development Division shows that the Secretary of the said Division had approved the absorption / induction of deputationists serving in BPS-01 to BPS-15 in the educational institutions under the F.D.E. through a departmental promotion committee subject to the recruitment rules and completion of the codal formalities. It was also mentioned that the absorption / induction was to be in accordance with the seniority of the deputationists.

18. Vide office order dated 10.12.2014, the F.D.E. constituted a six-member committee to examine all the cases of deputationists (teaching and non-teaching) working under the F.D.E. for their absorption. The primary task of this committee was to scrutinize the particulars of only those deputationists working under the wedlock policy who had completed five years of service, for consideration for absorption in the F.D.E. Vide office order dated 17.02.2015, the said committee was re-constituted to reduce its composition to two members only. Vide office order dated 22.05.2017, the F.D.E.

constituted yet another committee comprising of five members to examine the cases of deputationists working under the F.D.E.

19. Letter dated 16.01.2014 from the Capital Administration and Development Division shows that a ban had been imposed on deputation, induction, absorption, and appointment by transfer in the said Division and its attached departments, autonomous bodies, subordinate offices and all other affiliated organizations under the administrative control of the said Division till the completion of the recruitment process. Vide letter dated 12.02.2015, the F.D.E. was informed about the decision taken by the Secretary, Capital Administration and Development Division to approve the continuation of the process of scrutinizing cases regarding all deputationists (teaching and non-teaching) (BPS-01 to BPS-15) working in the educational institutions under the F.D.E. on deputation basis under the wedlock policy and who had completed five years of deputation subject to the provisions of the recruitment rules and after the fulfillment of codal / procedural formalities under the Civil Servants Act, 1973 in pursuance of the Prime Minister's approval.

20. Vide letter dated 08.04.2016, the F.D.E. asked the Assistant Education Officers to direct the 54 deputationists (named in the list attached with the said letter) working in educational institutions under the F.D.E. to provide documents for further process of their cases for permanent absorption.

21. Vide office order No.F.1-1/2017/W/FDE dated 22.05.2017, the F.D.E. constituted yet another five-member committee to examine the cases of teaching and non-teaching deputationists working under the F.D.E. The minutes of the meeting of this committee, brought on record by the F.D.E., show that the said committee had recommended 34 deputationists serving as teachers in BPS-14 to be considered for absorption after the verification of their qualifications. It was also recommended that the remaining deputationists serving in pay scales below BPS-16, who had completed five years of deputation period by 31.05.2017, be asked to provide NOCs from their parent departments so that their cases could be processed. There is nothing on the record to show that the

said recommendations were accepted. It was in these circumstances that the repatriation orders under challenge before this Court were issued. The details of each of the petitions are set out in "Schedule-A" hereto.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-

22. Learned counsel for the petitioners, after narrating the facts leading to the filing of the petitions, submitted that the petitioners have served as deputationists for more than five years in the schools and colleges under the control of the F.D.E.; that upon completion of the maximum deputation period of five years the petitioners acquired a vested right to be absorbed in the F.D.E.; that the Prime Minister had also approved the absorption of deputationists in the F.D.E. subject to the fulfillment of the codal formalities under the recruitment rules; that the F.D.E. had expressed its intention to the petitioners' respective parent departments to absorb the petitioners in the F.D.E.; that in response to the F.D.E.'s request, the petitioners' respective parent departments had issued NOCs for their absorption in the F.D.E.; that upon the issuance of such NOCs by the petitioners' respective parent departments, their lien with their parent departments had terminated; and that if the petitioners' repatriation orders are not set-aside, they would be rendered jobless.

23. Learned counsel for the petitioners further submitted that the spirit of the wedlock policy would be violated if the petitioners were repatriated to their respective parent departments while their spouses were working or living at Islamabad; that by virtue of the proviso Rule 20A of the A.P.T. Rules, the petitioners had a right to remain on deputation until their retirement or until their spouses worked and lived at Islamabad; that given the petitioners' experience of working as teachers in the F.D.E., they were best suited for absorption in the F.D.E.; that the F.D.E. and its controlling Ministry were deliberately delaying the process for the petitioners' absorption in the F.D.E.; and that until the process initiated by the F.D.E. for the petitioners' absorption was completed, they could not have been repatriated to their respective parent departments.

Learned counsel for the petitioners prayed for setting aside of the repatriation orders, and for a direction to be issued for the petitioners' absorption in the F.D.E.

CONTENTIONS OF THE LEARNED ASSISTANT ATTORNEY-GENERAL:-

24. The learned Assistant Attorney-General, assisted by Mr. Saqib Shahab, Director (P & D) F.D.E. and Mr. S.M. Rehan Naqvi, Assistant Director (Legal), F.D.E., submitted that all the posts in the F.D.E. could only be filled in accordance with the method of appointment provided in the recruitment rules set out in the notifications (SRO 338(I)/2011) dated 30.03.2011 and (S.R.O. 373(I)/2019) dated 15.03.2019; that a deputationist cannot be appointed against a post which, according to the recruitment rules, is required to be filled by promotion or initial appointment; that the recruitment rules only provide for 10% of the sanctioned posts of EST (BPS-14) to be filled by appointment through transfer; that unless the recruitment rules provide for appointment by transfer to a particular post, a deputationist cannot be absorbed against such a post; that the appointment of deputationists in the F.D.E. had blocked the promotion of several deserving candidates for promotion; that none of the petitioners had been appointed on deputation after a process of selection; that the petitioners had applied for appointment on deputation basis in the F.D.E.; that the petitioners had been given the benefit under the *proviso* to Rule 20A of the A.P.T. Rules by allowing them to continue serving on deputation basis after the expiry of the maximum deputation period of five years; that there is no provision in *pari materia* to the *proviso* to Rule 20A of the A.P.T. Rules in the Provincial service rules which govern the terms and conditions of the petitioners; that the Provincial Governments can seek the repatriation of the petitioners notwithstanding the insertion of the proviso to Rule 20A of the A.P.T. Rules; and that since the petitioners have not been absorbed in the F.D.E. at any stage, their lien with their respective parent departments is intact.

25. Furthermore, the learned Assistant Attorney-General submitted that the petitioners cannot be termed as 'aggrieved persons' to file a writ petition to challenge their repatriation to their

parent departments; that a deputationist has no vested right to complete the deputation period or to be absorbed in the borrowing department; that a deputationist cannot claim to have a preferential right over the other candidates who can be appointed by transfer to the post of EST (BPS-14); that the wedlock policy cannot override the law laid down by the Superior Courts regarding the principles governing the repatriation of deputationists; that there is not a single judicial precedent where the High Court in exercise of its jurisdiction under Article 199 of the Constitution has interfered with an order for the repatriation of deputationists; and that with the issuance of the orders for the repatriation of the petitioners, their request for absorption in the F.D.E. stands turned down. Learned Assistant Attorney-General prayed for the writ petitions to be dismissed.

26. I have heard the contentions of the learned counsel for the petitioners as well as the learned Assistant Attorney-General and have perused the record with their able assistance. The facts leading to the filing of the instant petitions have been set out in sufficient detail in "Schedule-A" below, and need not be recapitulated.

WHETHER A PROCESS OF SELECTION IS NECESSARY FOR APPOINTMENT ON DEPUTATION:-

27. Section 1(2) of the Civil Servants Act, 1973 provides that the said Act shall apply to all civil servants wherever they may be. Under Section 2(b)(i) of the said Act, a person who is on deputation to the Federation from any Province or other Authority has been excluded from the definition of the term "civil servant." The term "deputation" has neither been defined in the Civil Servants Act, 1973 nor in any of the rules made thereunder. In the cases of Islamic Republic of Pakistan Vs. Israr ul Haq (PLD 1981 S.C. 531), Muhammad Arshad Sultan, Section Officer, Cabinet Division Vs. Prime Minister of Pakistan, Islamabad (PLD 1996 SC 771) and Province of Punjab Vs. Ikram-ul-Haq (1986 SCMR 1994), the Hon'ble Supreme Court referred to and endorsed the meaning given to the term "deputation" in Chapter IX of the Establishment Manual,

Volume I (O&M), and Serial No.29 of the Establishment Code (1989 Edition) which is reproduced herein below:-

*“Hitherto, the term “deputation” has not been formally defined. However, according to the practice in vogue a Government Servant begins to be regarded as a “deputationist” when he is appointed or transferred, **through the process of selection**, to a post in a department or service altogether different from the one to which he permanently belongs. He continues to be placed in this category so long as he holds the new post in an officiating or a temporary capacity but ceases to be regarded as such either on confirmation in the new post or on reversion to his substantive post.”*

(Emphasis added)

28. This is the definition of the term “deputation” accepted by the Superior Courts. In the case of Province of Punjab Vs. Ikram-ul-Haq(supra), it was held *inter alia* that the said interpretation of the term “deputation” has the effect of a statutory rule. It was also held that the Hon'ble Supreme Court had accepted the said definition of the term “deputation” in the case of Islamic Republic of Pakistan Vs. Israr ul Haq(supra).

29. In the case reported as 2013 SCMR 1752 (In the matter of Contempt Proceedings against Chief Secretary Sindh and Others), the Hon'ble Supreme Court observed *inter alia* that the issue of deputation has created a lot of unrest amongst the civil servants. In the said judgment, the Hon'ble Supreme Court referred to the meaning of the term “deputation” given at Serial No.29 in Chapter-III of the Establishment Code (2009 Edition), which meaning is exactly the same as the one at Serial No.29 of the Establishment Code (1989 Edition).

30. In the case of Rasheed Tareen Vs. Chairman Workers Welfare Board, Balochistan (2012 PLC (C.S.) 54), the Division Bench of the Balochistan High Court held as follows:-

*“.... a deputationist is a government servant, who is appointed or transferred **through the process of selection** to a post in a department or service altogether different from the one to which he permanently belongs. Such a government servant continues to enjoy his status so long as he holds the new post in an officiating or temporary capacity but ceases to be regarded, as such, either on confirmation/absorption in the new post or on reversion to his substantive post.”*

(Emphasis added)

31. The requirement for there to be a process of selection i.e. advertisement, test and interview before making an appointment by

deputation in the F.D.E. becomes all the more necessary since apart from Islamabad being the most preferred station of posting, a deputationist serving in the F.D.E. is paid deputation allowance at the rate of 20% of the relevant basic pay by virtue of Finance Division's O.M. No.F.5(8)R-II/2007 dated 04.07.2007. The learned Assistant Attorney-General, after taking instructions from the representatives of the F.D.E., confirmed that for the first five years of service on deputation, the deputationists in the F.D.E. had been paid deputation allowance at the rate of 20% of their basic pay. In addition to deputation allowance, the deputationists in the F.D.E. are also being paid teaching allowance.

32. Given the said definition of the term "deputation" accepted by the Superior Courts since the past few decades, it is safe to hold that a person cannot be appointed on deputation unless he or she has been subjected to a process of selection. An appointment of an officer on deputation basis would be void if such appointment is not preceded by a process of selection of the officer in question. The deputationists serving in the F.D.E. 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 F.D.E. Furthermore, the competent authority in the F.D.E. shall be failing in its duty if such deputationists are not immediately repatriated to their respective parent departments.

WHETHER A PERSON CAN BE APPOINTED BY TRANSFER TO ANY POST IN THE F.D.E. OTHER THAN THE POST OF ELEMENTARY SCHOOL TEACHER (BPS-14):-

33. The A.P.T. Rules were made by the President of Pakistan in exercise of the powers conferred by Section 25 of the Civil Servants Act, 1973. Rule 3(2) of the A.P.T. Rules provides that the method of appointment and qualifications and other conditions applicable to a post shall be laid down by the Ministry or Division concerned in consultation with the Establishment Division. In pursuance of Rule 3(2) of the A.P.T. Rules, the erstwhile Ministry of Education (which had administrative control over the F.D.E.), issued notification (SRO No.88(KE)/92) dated 25.03.1992 setting out the recruitment rules for appointment to posts in BPS-16 to BPS-20 in the F.D.E.

34. The F.D.E.’s recruitment rules, as amended vide notification (SRO 338(I)/2011) dated 30.03.2011 issued by the erstwhile Ministry of Education provide for the method of appointment to the post of EST (BPS-14) to be 90% by initial appointment and 10% by transfer. In other words, the said recruitment rules provided a quota of 10% for appointment by transfer for the post of EST (BPS-14) only. No quota for appointment by transfer was reserved for any other post of teaching and non-teaching staff in the F.D.E. The said notification also provided for the method of appointment to the post of Sub-Librarian (BPS-15) to be 50% by promotion and 50% by initial appointment. Paragraph 6 of the said notification provides that appointment by transfer shall be made in accordance with the provisions of Rule 7 and 9 of the A.P.T. Rules.

35. In the said notification, it was also provided that if no suitable person is available for promotion, the post or posts reserved for promotion shall be filled by initial appointment and, failing that, by transfer. Consequently, appointment by transfer to the post of Sub-Librarian (BPS-15) can be made only if the F.D.E. is satisfied, after considering all eligible persons for promotion, that there is no person available who is fit or suitable for promotion to the said post and the process initiated for appointment to the said post by initial appointment did not result in the selection of a suitable candidate.

36. As mentioned above, the method of appointment to the posts of EST (BPS-14) and Sub-Librarian (BPS-15) in the F.D.E. is set out in the said notification dated 30.03.2011. The method of appointment to posts in BPS-16 and above in the F.D.E. is set out in the notification (S.R.O. 373(I)/2019) dated 15.03.2019 issued by the Ministry of Federal Education and Professional Training (the successor of the Ministry of Capital Administration and Development) in exercise of the powers conferred by Rule 3(2) of the A.P.T. Rules and Section 7 (1)(b)(i) and (ii) of the Federal Public Service Commission Ordinance, 1977. This method of appointment is reproduced herein below:-

S.No	Designation and BS of the posts	Method of appointment	
		By promotion	By initial appointment

1.	Principal (BS-20)	100%	---
2.	Principal (BS-19)	75%	25%
3.	Vice Principal (BS-18)	75%	25%
4.	Secondary School Teacher (SST) (BS-17)	50%	50%
5.	Secondary School Teacher (Physical) (BS-17)	75%	25%
6.	Librarian (BS-17)	---	100%
7.	Senior Elementary Teacher (SET) (BS-16)	50%	50%
8.	Senior Elementary Teacher (Drawing) (BS-16)	---	100%
9.	Senior Elementary Teacher (Physical) (BS-16)	---	100%

37. In the said notification dated 15.03.2019, it is provided that if no suitable person is available for promotion, the post or posts reserved for promotion shall be filled by initial appointment and failing that by transfer. Paragraph 5 of the said notification provides that appointment by transfer shall be made by selection from amongst the persons holding appointment on regular basis under the Federal Government in the same basic pay scale in which the post to be filled exists, provided that the person concerned possesses the qualifications and experience prescribed for initial appointment to the post concerned. Since none of the petitioners are *“holding appointment on regular basis under the Federal Government”* they are not eligible for appointment by transfer to any of the posts in BPS-16 and above in the F.D.E.

38. Appointments to posts in BPS-16 and above in the F.D.E. can be made only in accordance with the method of appointment prescribed in the said notification dated 15.03.2019 and no other. In the case of Muhammad Ali Vs. Province of KPK (2012 SCMR 673), it has been held *inter alia* that the principles of good governance required every appointment in government service to be made in accordance with the relevant rules and completion of codal formalities. Additionally, in the case of Syed Mubashir Raza Jaffari Vs. Employees Old-Age Benefits Institution (2014 SCMR 949), it has been held *inter alia* that appointments to public offices were to be made strictly in accordance with the applicable rules and regulations. Recently, the Hon'ble Supreme Court in the case of Dr. Shamim Tariq Vs. International Islamic University, Islamabad (2020 PLC (C.S.) 499) held as follows:-

“Adherence to the statutory rules and procedures for selection of public jobs is the only surest method to objectively select the best out of the best from a competing lot; it is rooted into the fundamentals of equal opportunity, equal treatment and equal protections; any deviation therefrom would rock the bottom of the Republic, resting upon equiponderance. State authority in every sphere of life is a sacred trust to be exercised fairly and justly by the functionaries to accomplish the purposes assigned to them by law; it is their bounden duty to do right to the all manner of people, without any distinction. It is most important that right people are selected for official positions to serve the Republic as it is imperative to survive and sustain into today's competitive World; deviation would be treacherously seditious. Constitutionally recognized principle of equal opportunity is strengthened by divine affirmation, upheld and followed by every modern constitution of the day.”
(Emphasis added)

39. In exercise of the powers conferred by section 10 of the Federal Public Service Commission Ordinance, 1977, the Federal Government made the Federal Public Service Commission (Functions) Rules, 1978. Rule 3(1) of the said Rules provides that the F.P.S.C. shall conduct tests and examinations for recruitment to all posts in connection with the affairs of the Federation in BPS-16 and above or equivalent. In the said notification dated 15.03.2019, there is no quota reserved for appointment by transfer to any of the posts in BPS-16 and above. Appointment to civil posts in BPS-16 and above fall within the purview of the Federal Public Service Commission (“F.P.S.C.”). Appointment by transfer to posts in BPS-16 and above in the F.D.E. can be made only if either the department/F.D.E. certifies that there is no person eligible for promotion or the departmental promotion committee, after considering the persons eligible for promotion, does not find them fit for promotion (where the post is to be filled by promotion), and if the competitive process for initial appointment initiated by the Federal Public Service Commission does not result in the appointment of a suitable candidate (where the post is to be filled by initial appointment). An appointment by transfer made to a post in BPS-16 and above without the departmental promotion committee considering candidates for promotion or without the F.P.S.C. carrying out a competitive process for initial appointment, as the case may be, would be in violation of the method of appointment set

out in the said notification, and therefore unlawful. In holding so, I derive guidance from the law laid down in the following case law:-

- (i) In the case of Muhammad Sharif Tareen Vs. Government of Balochistan (2018 SCMR 54), it was held by the Hon'ble Supreme Court that a post which is required by the rules to be filled by initial recruitment cannot be filled by promotion, transfer, absorption, or by any other method which is not provided by the relevant law and rules. Furthermore, after making reference to the law laid down in the case of Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456), it was held as follows:-

“8. The quintessence of the paragraphs reproduced above is that the appointments made on deputation, by absorption or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance and that perpetuation of this phenomenon, even for a day more would further deteriorate the state of efficiency and good governance.”

- (ii) In the case of Sudhir Ahmed Vs. The Speaker, Balochistan Provincial Assembly (2017 SCMR 2051), the Hon'ble Supreme Court held that since under the Balochistan Provincial Assembly Secretariat (Recruitment) Rules, 2009, the post of Liaison Officer could not be filled except by promotion of an Assistant Liaison Officer with 5 years of service, the appointment to the said post by deputation or by absorption being against the law could not be maintained.
- (iii) This Court, vide judgment dated 14.02.2018 passed in writ petition No.324 of 2017, titled “Haseeb Iftikhar Ahmad Vs. The Secretary, Law and Justice Division, Government of Pakistan” allowed the said petition challenging respondent No.2's appointment by transfer to the post of Assistant Registrar (BS-16) in the Customs Appellate Tribunal, Peshawar on the ground that the appointment was contrary to the method of appointment to the said post prescribed in notification S.R.O.747(I)/98 dated 01.07.1998 issued by the Ministry of Law, Justice and Human Rights. The said notification provided that the post of Assistant Registrar shall be filled by initial

appointment and failing that by transfer. In the said judgment, it was held as follows:-

“12. There is no dispute as to the qualifications of respondent No.2 for appointment as Assistant Registrar, Customs Appellate Tribunal. The sole question that needs to be determined is whether respondent No.2’s appointment has been made in compliance with the method of appointment prescribed in the said notification dated 01.07.1998. The said notification provides that the post of Assistant Registrar shall be filled in by initial appointment and failing that by transfer. The import of the said requirement is that if the process for the initial appointment does not result in the selection of a suitable person with the requisite qualifications for appointment as Assistant Registrar, only then can the post of Assistant Registrar be filled by transfer. Since it is an admitted position that no steps, whatsoever, were taken to fill the post of Assistant Registrar by initial appointment, therefore, appointment of Assistant Registrar could not be made by transfer. The employment of the words “failing that”, in the said notification implies that an appointment by transfer can only be made if the process initiated for filling the post of Assistant Registrar by initial appointment is not successful. Indeed, paragraph-4 of the said notification provides the procedure for the appointment by transfer, but the same does not override the explicit requirement in the said notification that an appointment by transfer can be made only if an appointment by initial appointment cannot be made. If the contention of the learned counsel for the respondents is to be accepted then the words “the post of Assistant Registrar shall be filled in by initial appointment” in the said notification would be rendered redundant. Since no effort was made by the Ministry of Law, Justice and Human Rights to fill the post of Assistant Registrar, Customs Appellate Tribunal, by initial appointment, the appointment of respondent No.2 to the said post by transfer is contrary to the requirements of the said notification dated 01.07.1998, and therefore, unlawful.”

40. As mentioned above, paragraph 5 of the notification dated 15.03.2019 (laying down the method of appointment to posts in BPS-16 and above in the F.D.E.) provides *inter alia* that appointment by transfer shall be made by selection from amongst the persons *“holding appointment on regular basis under the Federal Government.”* The deputations serving in the F.D.E. against posts in BPS-16 and above, are certainly not holding appointment on regular basis under the Federal Government. The appointment on deputation is temporary in nature. Civil Service Regulation No.77 (Revised Edition 2014) provides that an officer is said to be on deputation when he is detached on special “temporary duty” for the performance of which there is no permanently or temporarily sanctioned

appointment. Therefore, the deputationists appointed to posts in BPS-16 and above in the F.D.E. cannot be considered for appointment by transfer in the F.D.E. since they do not hold an appointment on regular basis under the Federal Government. As per the information provided by the F.D.E., these deputationists are permanent employees of Provincial education departments or the employees of the education department of the Azad Government of the State of Jammu and Kashmir or Gilgit-Baltistan.

WHETHER APPOINTMENT BY TRANSFER RESERVED FOR 10% POSTS OF ELEMENTARY SCHOOL TEACHER (BPS-14) IN THE F.D.E. IS TO BE MADE ONLY BY ABSORBING THE DEPUTATIONISTS SERVING AGAINST THE SAID POST:-

41. Section 5 of the Civil Servants Act, 1973 provides that appointment to an All-Pakistan Service or to a civil service of the Federation or to a civil post in connection with the affairs of the Federation, including any civil post connected with defence, shall be made in the prescribed manner by the President or by any person authorized by the President in that behalf. Section 2(1)(g) of the Civil Servants Act, 1973 defines “rules” to mean rules made or deemed to have been made under the said Act. Section 25(1) of the said Act provides that the President or any person authorized by the President in this behalf may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.

42. In exercise of the powers conferred by Section 25 of the said Act, the President made the APT Rules. The three modes of appointment provided in Section 3(1) of the said Rules are (i) by promotion, (ii) by transfer, and (iii) by initial appointment. Appointments by transfer are required to be made in accordance with Part-II of the said Rules titled “*Appointments by Promotion or Transfer.*” Rule 7 which finds its place in Part-II of the said Rules provides that promotions and transfers to posts in BPS-02 to BPS-18 and equivalent shall be made on the recommendation of the appropriate departmental promotion committee, and promotions and transfers to posts in BPS-19 to BPS-21 and equivalent shall be made on the recommendation of the selection boards. Rule 8 provides that only such persons as possess the qualifications and meet the conditions laid down for the purpose of promotion or

transfer to a post shall be considered by the departmental promotion committee or the Central Selection Board, as the case may be. Rule 9 of the said Rules provides that appointments by transfer shall be made from amongst the persons holding appointment on a regular basis in posts in the same basic pay scale or equivalent to or identical with the posts to be filled.

43. Although the APT Rules do not expressly provide for the absorption of a deputationist to be one of the modes of an appointment by transfer, in the case reported as 2013 SCMR 1752 (In the matter of contempt proceedings against Chief Secretary, Sindh and Others), the Hon'ble Supreme Court, after making reference to the three modes for the appointment of civil servants prescribed in the APT Rules, held *inter alia* that 'absorption' itself is an appointment by transfer.

44. It is an admitted position that the absorption of a deputationist is not the only mode for appointment by transfer. As mentioned above, paragraph 6 of the notification (SRO 338(I)/2011) dated 30.03.2011 (laying down the method of appointment to posts of EST (BPS-14) and Sub-Librarian (BPS-15) in the F.D.E.) provides that appointment by transfer shall be made in accordance with the provisions of Rule 7 and 9 of the A.P.T. Rules. The A.P.T. Rules do not make absorption of deputationists to be the only mode of appointment by transfer. Therefore, the 10% quota reserved for appointment by transfer to the post of EST (BPS-14) under the F.D.E. is not to be filled only by the absorption of deputationists. Against the said 10% quota, persons holding appointment on a regular basis in posts in the same basic pay scale or equivalent to or identical to the post of EST (BPS-14) and who possess the qualifications and meet the conditions laid down for the purpose of transfer to the said post can also be considered for appointment by transfer by the departmental selection committee. Therefore, a deputationist in the F.D.E. who does not hold a post equivalent to that of EST (BPS-14) in his/her parent department cannot be considered for appointment by transfer to the said post in the F.D.E. The deputationists in the F.D.E. (whether or not appointed under the wedlock policy) do not have an exclusive right to have the 10%

quota for appointment by transfer to the post of EST (BPS-14) to be filled by their absorption. Other persons eligible in terms of Rules 7 and 9 of the APT Rules are also eligible to be appointed by transfer to the post of EST (BPS-14). Therefore, the deputationists serving as EST (BPS-14) cannot be considered for absorption without considering other persons eligible in terms of Rules 7 and 9 of the APT Rules for appointment by transfer to the said posts by subjecting both categories to a process of selection. An appointment by transfer ought to be distinguished from an ordinary transfer in the exigency of service for which a process of selection is not mandatory. It is well settled that appointment by transfer is a regular appointment in a particular department as a result of transfer from another one, and that for such an appointment one has to go through the process of selection. The deputationists serving the F.D.E. cannot be given a priority or preferential treatment over the other candidates who may be eligible for appointment by transfer in terms of Rules 7 and 9 of the APT Rules. Both categories will have to compete for appointment by transfer and the best out of the best will have to be selected through a duly advertised competitive process of appointment by transfer against the 10% of the quota reserved for appointment by transfer to the posts of EST (BPS-14) in the F.D.E. This is of course subject to the caveat that a deputationist in the F.D.E. would be considered for appointment by transfer to the said post only if his/her appointment on deputation was the result of a process of selection.

45. For the absorption or confirmation of any deputationist in the borrowing department, the Esta Code prescribes a procedure. Establishment Division's O.M. No.1(28)/75-D.II dated 06.03.1975 provides that where there is an intention to permanently absorb a deputationist in the cadre or department where he is serving on deputation and the recruitment rules for the post provide for such a course, in such cases the consent of a deputationist to the suspension or termination of lien on his permanent post in the parent department as well as the agreement of the parent department should be obtained. With the completion of these formalities, a deputationist will be treated as a regular member of

the establishment of the borrowing department. As early as 1952, it was stated in Ministry of Finance's letter No.600-R/III/52, dated 06.03.1952 that permanent officers belonging to a Government or Department, while on deputation to another Government or Department, should not be confirmed in the latter without the prior formal concurrence of the former and the consent of the officer concerned. This instruction has been formally recognized in Establishment Division's O.M. No.8.7/64-E.I dated 19.10.1964.

46. Now, the procedure for the absorption of a deputationist in the borrowing department prescribed in the said O.M. dated 06.03.1975 cannot override the method of appointment prescribed in the recruitment rules, and in particular the procedure for appointment by transfer prescribed in the recruitment rules. A deputationist serving in the F.D.E. cannot be absorbed if he/she does not meet the eligibility criteria for appointment by transfer prescribed in the recruitment rules.

WHETHER A PERSON CAN BE APPOINTED ON DEPUTATION TO ANY POST IN THE F.D.E. WHICH THE RECRUITMENT RULES REQUIRE TO BE FILLED BY PROMOTION OR INITIAL APPOINTMENT:-

47. The practice of making appointments on deputation to posts, which under the recruitment rules of the organization where such appointments are made are required to be filled by promotion or initial appointment, warrants condemnation in the strongest terms. It is a judicially recognized fact that appointments on deputation have created unrest and a sense of deprivation in the organization where such appointments are made. Such appointments cannot be permitted to continue and deprive the employees of the organization of their right to be considered for promotion to the posts over which deputationists are appointed. Equally abhorrent is the practice of appointing deputationists to posts which under the recruitment rules are reserved for appointment by direct recruitment. In the case of Zubair Vs. Federation of Pakistan (2016 PLC C.S. 259), the Hon'ble High Court of Sindh, after making reference to Serial No.21-A of the Esta Code (Edition 2007) Volume-I, observed that the filling of a post on deputation is necessary only if no suitable person is available for appointment to a particular post and where it is in the

public interest to make an appointment on temporary basis or by deputation. It is my view that public functionaries who facilitate or cause such appointments of deputationists without having carried out a process for promotion or initial appointment to fill the post in question are not just guilty of inefficiency and misconduct by violating the applicable recruitment rules, but also of misuse of authority by bestowing a service advantage on the deputationists.

48. Letter dated 08.04.2019 from the F.D.E. to the Deputy Secretary (Education), Ministry of Federal Education and Professional Training shows that 129 deputationists were working against the posts of TUGT (BPS-16), which posts are reserved under the recruitment rules for promotion. In the said letter, it was also mentioned that the 129 deputationists working against the posts of TUGT (BPS-16) had blocked the promotion of 129 Elementary School Teachers (BPS-14) to said posts. As per the information provided by the F.D.E., presently the number of deputationists working against posts in BPS-14 and above are as follows:-

**DEPUTATIONISTS WORKING UNDER FEDERAL
DIRECTORATE OF EDUCATION**

Working against the post					
BS	School Wing	Model College	F.G. College	Admn. Section	Total
BS-19	0	0	3	0	3
BS-18	5	5	2	0	12
BS-17	20	17	3	0	40
BS-16	81	2	0	0	83
BS-15	5	0	0	0	5
BS-14	142	0	0	0	142

49. The Ministry of Federal Education and Professional Training and the F.D.E. are under an obligation to initiate a process for promotion or direct recruitment, as the case may be, against all the posts in BPS-15 and above which, under the recruitment rules (contained in the notifications (SRO 338(I)/2011) dated 30.03.2011 and (S.R.O. 373(I)/2019) dated 15.03.2019), are required to be filled by promotion or initial appointment. Appointment on deputation against posts in BPS-15 and above in the F.D.E. is of no legal consequence since the said recruitment rules provide for the method of appointment to the said posts to be through promotion and direct recruitment. In holding so, reliance is placed on the following case law:-

- (i) In the case of Rashid Gul Vs. Controlling Authority, Board of Intermediate and Secondary Education, Mardan (2017 PLC (C.S.) Note 32), the Division Bench of the Hon'ble Peshawar High Court held as follows:-

“12. Even otherwise the appointment of deputationists in another department is always discouraged by the Superior Judiciary of the country, as it has been time and again held that by inducting outsiders in other department, the employees of that department who are already serving after qualifying the departmental examinations and going through the selection process, have been adversely effected and their reasonable expectation vis-a-vis their promotion, seniority etc, has been snatched away while importing the outsiders. By posting outsiders on the basis of deputation has also created an unrest and sense of deprivation having been created amongst the employees already working there and practice of such appointments on deputation basis has been declared against justice, equity and good governance. In this respect discretionary powers are not unbridled or unfettered, but said discretion required by law to be exercised in judicial manner which means that same must be exercised on sound judicial principles.”

- (ii) In the case of Zubair Vs. Federation of Pakistan (2016 PLC (C.S.) 259), the Division Bench of the Hon'ble High Court of Sindh declared the notification for appointment on deputation basis to the post of Director General, Department of Plant Protection to be without lawful authority and of no legal effect since recruitment rules provided for the method of appointment to the said post to be made by promotion or initial appointment. In the said case, it was held *inter alia* that *“it is inexplicable that in the whole hierarchy and or chain of command of the civil servants not a single person is competent to be appointed or promoted on regular basis as Director General DPP.”*
- (iii) In the case of Dr. Altaf Hussain Vs. Federation of Pakistan (2013 PLC (C.S.) 1178), this Court allowed a writ petition against the appointment of respondent No.3 as Executive Director, Pakistan Institute of Medical Sciences (“PIMS”) on deputation basis on the ground that the recruitment rules provided the method of appointment to the said post through promotion. Furthermore, this Court directed that the process of promotion to the post of Executive Director PIMS be

immediately commenced by considering the eligible candidates for promotion on the basis of seniority-cum-fitness.

- (iv) In the case of Safeer Hussain Vs. Federation of Pakistan (2013 PLC (C.S.) 28), this Court held that *“deputation in the government department have a very significant feature, which requiring to be hired under some special circumstances when there is no any expert person is available in such department in the relevant subject or field.”*
- (v) In the case of Syed Imtiaz Ali Shah Vs. Government of Sindh (2012 PLC (C.S.) 1232), the Division Bench of the Hon'ble High Court of Sindh observed that as a result of making appointments on deputation *“those who are eligible and are likely to be promoted in the department are deprived of their lawful right to promotions which is a permanent cause of heart burning to the cadre officers.”*
- (vi) 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.

50. Establishment Division's O.M. No.1/28/75-D.II/R.3/R.I dated 11.04.2000 makes it clear that *“where a post proposed to be filled is reserved under the rules for departmental promotion, appointment on deputation may be made only if the department certifies that no eligible person is available for promotion or the eligible person is found unfit for promotion by the appropriate DPC / Selection Board.”* Furthermore, it is provided that *“in such cases, deputation may be approved till such time a suitable person becomes available for promotion.”* The said O.M. also provides that *“in case of posts reserved for initial recruitment,*

appointment on deputation may be made only as temporary arrangement, pending joining of the nominee of the FPSC, and subject to the condition that such appointment shall be made only after a requisition has been placed with the FPSC.” Additionally, Establishment Division’s O.M. No.1/28/75-R.I dated 14.03.1995 (Serial No.29 of the Esta Code) provides *inter alia* that “*no deputation proposals will be entertained which will adversely affect the method of appointment to the post as laid down in the recruitment rules.*” Appointments on deputation in the F.D.E. without the fulfillment of the conditions laid down in the said O.M. would be unlawful and the incumbents would be liable to immediate repatriation to their respective parent departments so as to pave the way for appointment by promotion or initial appointment, as the case may be, strictly in accordance with the recruitment rules. The mere fact that the post required by the recruitment rules to be filled by promotion or initial appointment is occupied by a deputationist shall not pose as an obstacle in the initiation of the process for filling up the post in accordance with the method of appointment envisaged by the recruitment rules.

WHETHER A DEPUTATIONIST IS LIABLE TO BE REPATRIATED TO HIS/HER PARENT DEPARTMENT UPON COMPLETION OF MAXIMUM DEPUTATION PERIOD OF FIVE YEARS:-

51. The period for which a government servant could be sent on deputation was initially regulated by Establishment Division’s O.M. No.1(28)/75-D.II/R.I dated 18.02.1987 (Serial No.27 of the Esta Code). The said O.M. provided *inter alia* that the normal period of deputation for all categories of government servants would be three years, and that this period would be extendable by two years with the prior approval of the competent authority. The said O.M. further provided that on completion of the maximum period of five years, both the borrowing and the lending organizations should ensure immediate repatriation of the deputationist. In case it is not possible to repatriate a person to his parent organization for compelling reasons, the case should be referred to the Establishment Division before the expiry of the maximum period of five years, fully explaining the circumstances due to which immediate repatriation is not possible

and measures taken to obtain or groom a replacement as early as possible.

52. Instructions on the subject of deputations issued vide Establishment Division's O.M. dated 18.2.1987, were modified vide Establishment Division's O.M. No.1/28/75-D.2/R.I dated 14.03.1995 (Serial No.29 of the Esta Code) by providing *inter alia* that in future, the deputation period will be limited to three years only; that a maximum two years extension in the deputation period will be considered only in exceptional cases, in the public interest, and with the prior approval of the Establishment Division in all cases of Government servants in BPS-17 and above; and that the extension cases shall be forwarded to the Establishment Division at least six months before the expiry of the three-year deputation period and with proper justification for the proposal. The said modification was necessitated due to the growing tendency to resort to postings through deputation despite the fact that deputation is not a normal prescribed method of appointment under the A.P.T. Rules. It was also noted in the said O.M. that filling up the posts through deputation, if not provided so in the recruitment rules, leads to the following adverse implications:-

- "(i) In case of promotion posts, the promotions of departmental personnel are delayed/stopped.*
- (ii) In case the post is required to be filled through initial appointment, quota of a particular province is affected."*

53. In an earlier O.M. No.1(28)/75-D.II dated 06.03.1975, the Establishment Division had expressed its concern with regard to officers whose services were obtained on deputation for a specific period were not returned by the borrowing department when the parent department asked for their reversion. Establishment Division's O.M. No.1(28)/71-D.II dated 28.03.1972 provided *inter alia* that officers obtained on deputation should be reverted to their parent department on the expiry of the period of deputation.

54. The Esta Code is a compendium of laws, rules and administrative instructions pertaining to the terms and conditions of service of civil servants, and is said to have served as a standard reference work in officialdom. The Esta Code contains instructions and policy decisions in the form of office memoranda issued by the

Establishment Division regarding appointment by deputation. The said Office Memoranda dated 28.03.1972, 06.03.1975 and 18.02.1987 are contained in the Esta Code. In the interest of official administration, the said instructions should be followed rigidly.

55. The administrative instructions and the policy guidelines contained in the Esta Code would not be worth the paper they are written on if they are allowed to be flouted with impunity by the government departments or public functionaries manning such departments. It is my view that breach of such administrative instructions and policy guidelines by public functionaries amounts not only to inefficiency but also misconduct, and ought to expose the delinquent officials to disciplinary action. In the case of Ghansham Das Vs. Federation of Pakistan (2017 PLC (C.S.) 191), while making reference to the law laid down in the cases of Muhammad Yousaf Vs. Abdul Rashid (1996 SCMR 1297), Azra Riffat Rana Vs. Secretary, Ministry of Housing & Works (PLD 2008 SC 476) and Fazali Rehmani Vs. Chief Minister, N.-W.F.P. (PLD 2008 SC 769), I had the occasion to hold as follows:-

“12. Office Memoranda issued by the Establishment Division from time to time, consistent with the statute and statutory rules on the subject, is a matter of policy, which all government departments and public functionaries are expected to strictly adhere to. The Establishment Division is at liberty to improve or amend the policy set-out in such Office Memoranda in order to bring them in complete harmony with the applicable statute or statutory instrument. As long as the policy contained in such Office Memoranda is there, the Government or its instrumentality is expected not to deviate therefrom. These Office Memoranda have acquired the force of rules on the strength of the language of Section 25(2) of the Civil Servants Act, 1973. Any deviation from such a policy by the state or its instrumentality can be corrected by the Service Tribunal at the instance of an aggrieved party/civil servant, and, if the bar contained in Article 212 of the Constitution is not attracted, such deviation can be subjected to judicial review in the constitutional jurisdiction of the High Courts.”

56. In the case of Fazl-i-Qadir Vs. Secretary, Establishment Division (PLD 1988 S.C. 131), the Hon'ble Mr. Justice Shafi ur Rehman (as he then was) speaking for the Full Bench of the Hon'ble Supreme Court with reference to the administrative instructions contained in Serial No.11 of the Esta Code (1983) regarding the formation of Occupational Groups, held as follows:-

“The contents of the Office Memorandum are general in character and contain all the necessary details for giving them the form and

efficacy of a Service Rule. They appear in a printed volume of the Establishment Code governing the terms and conditions and the discipline in service. Merely because they did not bear the appellation of Rules is not sufficient to reduce their legal status. There is abundant authority of decisions of this Court to treat such instructions as rules and fully capable of setting aside or modifying the rules.”

57. In suo moto case No.24/2011 (PLD 2011 S.C. 277), an eight-member Bench of the Hon'ble Supreme Court set-aside the re-employment of a retired police officer on contract basis due to non-adherence with the requirements of Section 14 of the Civil Servants Act, 1973 as well as the instructions contained in the Esta Code, Volume-I (Edition 2007) under the heading “Re-employment.” Additionally, in the case of Pir Muhammad Qureshi Vs. Chairman, P.O.F. Board, Wah Cantt. (1998 PLC (C.S.) 476), the Hon'ble Supreme Court observed that the Departmental Promotion Authorities must strictly adhere to the instructions contained in the Esta Code while determining the criteria for promotions.

58. Rule 20A was inserted in the APT Rules through Establishment Division's notification SRO 365(I)/2007 dated 03.05.2007. The maximum period for which a deputationist can be appointed is regulated by Rule 20A of the A.P.T. Rules. Rule 20A(1) of the A.P.T. Rules, titled “*Appointment on deputation*” provides that “*a person in the service of a Provincial Government or an autonomous, semi autonomous body or corporation or any other organization set-up, established, owned, managed, or controlled by the Federal Government who possesses the minimum educational qualifications, experience or comparable length of service prescribed for a post shall be eligible for appointment to the said post on deputation for a period not exceeding three years which may be extended for another period of two years on such terms and conditions as may be sanctioned by Federal Government in consultation with the lending Organization.*”

59. There was no scope under Rule 20A of the A.P.T. Rules for the deputation period of a deputationist to be extended beyond five years. Unlike the Establishment Division's said O.M. dated 18.02.1987, Rule 20A of the A.P.T. Rules does not provide for an extension of the deputation period beyond five years for “compelling

reasons.” Therefore, upon completion of the maximum permissible deputation period of five years, it is obligatory upon the borrowing department to repatriate a deputationist to his/her parent department. Failure on the part of the borrowing department to repatriate a deputationist who completes the maximum permissible deputation period of five years would be an actionable wrong. Payment of salary to a deputationist beyond the maximum deputation period of five years is an unnecessary and unjustified burden on the exchequer and ought to be made good from the personal coffers of the public functionaries in the borrowing department who are derelict in their duty in not relieving a deputationist upon completion of the said period. In cases where a deputationist is not relieved by the borrowing department, a deputationist should nevertheless resume his/her duties in her parent department on completion of the five years, failing which a deputationist would be liable to be proceeded against for misconduct by the parent department. At this stage, it is apposite to refer to Establishment Division’s O.M. No.1/28/75-D.II(CV) dated 04.11.1980 (Serial No.28 of the Esta Code), paragraphs (ii) and (iii) whereof are reproduced herein below:-

“(ii) If a person is on deputation to a Government organization, and has completed the maximum tenure of five years, he must revert or be reverted by the borrowing office to his parent/lending Organization of the expiry of that period, otherwise, the Audit Offices concerned shall not make payment of salary and allowances to him beyond the date of expiry of five years, unless specifically authorized by the Establishment Division.

(iii) If a person is on deputation to an autonomous organization/corporation etc., and has completed the maximum tenure of five years, it will be obligatory for that person to report back to his parent/lending Organization on the expiry of that period irrespective of his being relieved by the borrowing Corporation/Body etc. Failure to report back unless specifically authorized otherwise by the Establishment Division will be construed as "Misconduct" and make him liable to disciplinary action under the Government Servants (Efficiency and Discipline) Rules, 1973.”

60. The only exception to the said rule is that where the posting of a deputationist is on the basis of the wedlock policy.

THE WEDLOCK POLICY:-

61. The socioeconomic problems and hardships faced by husbands and wives in government service due to posting at

different stations of duty was taken into account by the Government more than two decades ago and it was decided to prescribe guidelines to facilitate posting of husbands and wives at the same station. These guidelines were contained in the Establishment Division's O.M. No.10/30/97-R.II dated 13.05.1998 which provided *inter alia* that if a request involves temporary deputation to another department, it may be processed in consultation with the concerned department, and may be accepted on the prescribed term of deputation subject to the availability of a post in the same basic pay scale. It was also provided that spouses posted at the same station, including those posted on deputation beyond the prescribed maximum period, may normally not be disturbed without compelling reasons of public interest, and that requests for extension of deputation period beyond the permissible limit may be considered with compassion if interests of public service would permit. Furthermore, it was provided that when a request is made for permanent transfer to or absorption in another department or agency, the request may be processed in consultation with the department concerned. The policy guidelines set out in the said office memorandum came to be known as the wedlock policy.

62. By virtue of the Establishment Division's O.M. No.10/30/97-R-2 dated 17.12.1999, the guidelines for postings under the wedlock policy were also made applicable to unmarried female government servants. Furthermore, it was also decided that the said guidelines would be followed by autonomous / semi-autonomous bodies / corporations, etc. under the control of the Federal Government.

63. With the view to facilitate those female government servants whose spouses are not in government service or employed in the private sector or unemployed, it was decided to extend the facility under the wedlock policy to this class of government servants also so that they are able to serve at the place of residence of their spouses. This decision is contained in the Establishment Division's O.M. No.10/30/97-R-2 dated 21.04.2006.

64. Under Rule 20A of the A.P.T. Rules the maximum period for which a deputationist could be posted was five years. Vide notification dated 16.04.2012 a *proviso* was inserted to Rule 20A,

which exempted (i) husband and wife serving at the same station, (ii) unmarried female government servants serving at the place of residence of their parents/family, and (iii) married female government servants serving at the place of residence/posting of their husbands who are not in government employment from the applicability of maximum deputation period of five years prescribed in Rule 20A(1) of the A.P.T. Rules. The said three categories of deputationists shall herein after be referred to as the “**exempted categories.**”

65. Now, the vital question that needs to be answered is whether the exempted categories of deputationists can claim a vested right to remain on deputation until their retirement or until their spouses/family members continue to reside in Islamabad or indefinitely regardless for the fact that the borrowing department no longer wants to retain their services or the parent department is seeking their repatriation. This question already stands answered by this Court in the case of Muhammad Masroor-ul-Haq Vs. Federation of Pakistan through Secretary, M/o Overseas Pakistan and HRD, Islamabad (2017 PLC (CS) 1365) in the following terms:-

“17. It is indeed not 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."

66. Vide letter dated 01.04.2019, the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa vented its anguish at the omission on the part of the F.D.E. to repatriate the deputationists who had been on deputation for more than five years in the following terms:-

"I am directed to refer to the subject noted and to state that services of the employees of Government of Khyber Pakhtunkhwa are placed at the disposal of Federal Government on deputation basis. The deputation period in respect of most of the teachers whom deputation period beyond 05 years have already been expired and they are enjoying unauthorized / illegal deputation which tantamount to willful absence. This department intimated the Federal Government time and again to relieve the teachers who are on unauthorized deputation to report back to their parent department, but they failed to comply with the direction of the parent department which is misconduct on their part. It is also pertinent to bring it into your kind notice that this province has already a shortage of teachers which badly affects the school's children.

Therefore, it is requested in your honor that all those teachers who have completed their 5-years deputation period and are enjoying an unauthorized deputation period beyond 5-years may be relieved

from their duties and they should report back to parent department immediately.”

67. After the said communication from the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa, the earlier N.O.C.s issued by the said Department for the absorption of the deputationists no longer hold good. In the face of the said request, the conduct of the public functionaries in the F.D.E. as well as in its controlling Ministry in not repatriating such deputationists en masse bespeaks of a sorry state of affairs and renders them liable to disciplinary action. The salaries paid to such deputationists after 01.04.2019 has been a wasteful burden on the national exchequer.

68. A *sine qua non* for an officer to continue serving as a deputationist is the consent of the parent department. The wedlock policy and/or the *proviso* to Rule 20A of the APT Rules cannot operate to stop or stall the reversion of a deputationist to his parent department where such department declines to extend the deputation period or asks for the reversion of the deputationist to his/her own cadre. Establishment Division's O.M. No.10/30/97-R-II dated 28.01.2020 provides that where the parent department of the deputationist does not agree to issue an N.O.C. for a further extension of deputation under the wedlock policy, the incumbent shall be repatriated to the parent department. Similarly, a deputationist, whether or not sent on deputation under the wedlock policy, cannot be thrust upon a borrowing department which is unwilling to retain the services of such a deputationist. This is moreso where the recruitment rules require the post occupied by a deputationist to be filled through promotion or initial appointment. The method of appointment prescribed in the recruitment rules cannot be ignored, and merit cannot be given a go-bye in order to keep spouses at the same station. An order for the repatriation of a deputationist would imply that the process initiated for the permanent absorption of the deputationist had been brought to an end. 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. The mere initiation of the process for a deputationist's absorption in the borrowing department or the issuance for an N.O.C. by the parent department does not arm the deputationist with a vested right to be absorbed. In the case of Mst. Robia Ayub Vs. Federation of Pakistan (2013 PLC (C.S.) 915), this Court held as follows:-

"I have no hesitation to hold that "deputation" is 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 against which the deputationists cannot claim any right of permanent absorption."

69. Furthermore, in the case of Syed Imran Qadir Gilani Vs. Federation of Pakistan (2020 PLC (C.S.) 815), the Hon'ble Lahore High Court held *inter alia* as follows:-

"The petitioner does not have any vested right to remain on the post as deputationist for an indefinite period or to get absorption in the other department. The parent department at any time without assigning any reason can pass orders in respect of repatriation of its employee. Reliance is placed on the case reported as S. Masood Abbas Rizvi v. Federation of Pakistan and others (2014 SCMR 799)."

70. It is settled law that a deputationist may not necessarily complete the tenure for which he/she was sent on deputation, and power is vested with the competent authority to repatriate a deputationist without assigning any reason. In case of transfer on deputation, no vested right accrues 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.

71. In the event the borrowing department does not want to repatriate a deputationist appointed under the wedlock policy or the parent department is inclined to extend the deputation period of such deputationist beyond five years, such deputationist can continue serving for a reasonable period beyond the maximum permissible period of five years by virtue of the *proviso* to Rule 20A of the A.P.T. Rules. However, neither the parent department nor the borrowing department are under an obligation to keep the exempted categories on deputation for the complete five years or beyond. The exempted categories cannot be insulated from the

application of the law laid down by the Hon'ble Supreme Court in the following cases:-

- (i) In the case of S. Masood Abbas Rizvi Vs. Federation of Pakistan (2014 SCMR 799), it was held as follows:-

“It is settled principle that a deputationist does not have any vested right to remain on the post as deputationist forever or for the 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 a stipulated period. We are of the considered view that petitioner being deputationist has no vested right to remain on a post as deputationist or otherwise and can be ordered to be repatriated and or relieved at any time. Moreover, in terms of section 2(b)(i) of Civil Servants Act, 1973 such person even loses his status as “Civil Servant” during the period he is on deputation. The parent Department of the petitioner is not obliged in law, to assign reasons for his repatriation.”

- (ii) As far back as 1959, the Hon'ble Mr. Justice A.R. Cornelius (as he then was) speaking for the Hon'ble Supreme Court in the case of Pakistan Vs. Fazal Rahman Khundkar (PLD 1959 SC 82), held that a deputationist had no vested right to remain on deputation contrary to the wishes of the lending department or the borrowing department. The relevant portion of the said report is reproduced herein below:-

“It is sufficiently clear from this that where an officer of a Provincial cadre is occupying on deputation, a post in the central Government, he does not acquire any right in himself to hold that post. The right which he can claim to be vested in himself, as a member of his Service, is to be given a post appropriate to his grade in the Province to which he belongs. His occupation of the post at the Centre is at the option of the Central Government, and subject to the consent of the Provincial Government. Such posts are fairly often designated as “tenure posts”, a maximum period of incumbency being prescribed in the public interest, perhaps in order that the services of such officers should not be lost to their parent Provinces indefinitely, or perhaps in order that no officer should make, as it were, a monopoly of a particular post in the Central Government. However that may be, what appears to us to be undeniable is that when a post is a deputation post, the occupant of that post being a person holding a substantive rank in his Service, relatable to a different territory and Government, he does not gain by such occupation any vested right to retain that post contrary to the wishes of the Government under which he is serving in that post, or to the wishes of his own parent Government.”

- (iii) In the 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. The parent department of appellant-employee was not bound to assign reason for his repatriation.
- (iv) In the 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 the order of his repatriation as he could be repatriated to parent department at any time.

72. The petitioners have brought on record office orders/notifications dated 03.09.2005, 24.05.2007, 17.05.2011, 05.09.2012, 10.09.2012, 10.01.2013, 09.12.2014, 13.02.2015 and 22.09.2020 issued by the F.D.E. or its controlling Ministry whereby a number of deputationists were absorbed in the F.D.E. These office orders were referred to by the learned counsel for the petitioners to demonstrate that a policy of pick and choose had been adopted by the decision makers in the F.D.E. in absorbing deputationists. Since the legality of these absorptions are not in issue in these proceedings the less said about them the better.

WHETHER THE PETITIONERS' LIEN WITH THEIR RESPECTIVE PARENT DEPARTMENTS HAD TERMINATED UPON THE ISSUANCE OF N.O.C. FOR THEIR ABSORPTION IN THE F.D.E.:-

73. Learned counsel for the petitioners' fall back position was that the petitioners were not in a position to rejoin their duties in their respective parent departments, since upon the grant of N.O.C.s for permanent absorption in the F.D.E. their lien with their parent departments stood terminated. This contention does not espouse the cause of the petitioners since at no material stage was any order issued for their permanent absorption in the F.D.E.

74. Rule 21(1) of the A.P.T. Rules provides that persons appointed by initial appointment, promotion or transfer shall be on probation

for a period of one year whereas Rule 3 of the Civil Servants (Confirmation) Rules, 1993 (“the 1993 Rules”) provides *inter alia* that a civil servant initially appointed to a post, on probation, including a civil servant promoted or appointed to a post on transfer shall, on satisfactory completion of his probation, be eligible for confirmation in that post. Rule 5(1)(a) of the 1993 Rules provides that on confirmation in a permanent post, a civil servant shall acquire a lien in that post and shall retain it during the period when he holds a temporary post other than the post in the service or cadre against which he was originally appointed. Rule 5(2) of the said Rules provides that a civil servant acquiring a lien under Rule 5(1) shall cease to hold a lien acquired previously on any other post. Fundamental Rule 14-A(a) provides *inter alia* that “*a government servant’s lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.*”

75. As a government servant on deputation retains a lien on the permanent post in his parent office, he/she is ordinarily governed by the rules of the lending government in matters of pay, leave, pension, etc., and continues to be under the rule-making control of the lending government which has a right to recall him. The lien of a government servant holding substantively a permanent post is terminated on his appointment substantively to a permanent post outside the cadre on which he is borne. Therefore, a government servant on deputation from a Provincial Government retains a lien on the permanent post in his parent office till his confirmation in the borrowing department.

76. By operation of law, a deputationist’s lien with his/her parent department terminates only upon confirmation in the borrowing department i.e. upon the satisfactory completion of his/her probation period after appointment by transfer/ permanent absorption in the borrowing department.

77. Since none of the petitioners have been permanently absorbed or appointed by transfer in the F.D.E., their lien against their respective posts in the parent departments is intact. As long as the petitioners’ status in the F.D.E. continued to be that of a

deputationists, the question of the termination of their lien with their respective parent departments did not arise. Refusal by the petitioners' parent departments to take them back on duties against the substantive posts held by them would be a violation of the law laid down by the Superior Courts in the following judgments:-

- (i) In the case of Chief Secretary, Government of N.-W.F.P. Vs. Zafarmand Ali (2005 SCMR 1212), it was held that there was no justification for the respondent's parent department to have terminated his lien since the competent authority in the borrowing department had neither passed an order for the respondent's permanent induction or appointment by transfer nor were any terms and conditions of the respondent's absorption settled between the borrowing and the lending department.
- (ii) In the case of Muhammad Israrullah Vs. Assistant Director, Manpower (2005 SCMR 716), it was held *inter alia* that a deputationist retains his/her lien in the parent department until he/she is confirmed in the borrowing department.
- (iii) In the case of Executive Engineer, Provincial Building Circle, Lahore Vs. Muzaffar Bil Haq (2000 SCMR 656), the Hon'ble Supreme Court did not interfere with the findings recorded by the learned Punjab Service Tribunal that since the respondent had never been permanently absorbed in the borrowing department, he continued to be on deputation and therefore his lien could not be terminated in his parent department.
- (iv) In the case of Secretary Education Vs. Viqar-ul-Haq (2000 SCMR 1780), the Hon'ble Supreme Court, after referring to Fundamental Rule No.14-A(a), held *inter alia* that the lien of a permanent civil servant cannot be terminated even with his consent, and that the same could be terminated only when he was confirmed against some other permanent post.
- (v) In the case of Mazhar Ali Vs. Federation of Pakistan (1992 SCMR 435), the Hon'ble Supreme Court, after making reference Fundamental Rules, 13, 14 and 14-A, held as follows:-

“According to these, the lien of the permanent civil servants cannot be terminated, even with their consent. It can be terminated only when the civil servant is confirmed against some other permanent post. There is nothing on the record to suggest nor any indication or plea that the Federal Government had confirmed him on any post under the Federal Government. In the absence of such a material or evidence, his lien will be retained with the Punjab Government and notwithstanding the non-specification of the terms and conditions of his deputation, he will be deemed to be on deputation with the Federal Government.”

78. In view of the aforementioned, I do not find any merit in any of the petitions under disposal which are accordingly dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

Uploaded By: Umer Rasheed Dar

"SCHEDULE - A"

Writ petition No.194/2020 (Nusrat Rasheed, etc. Vs. Federation of Pakistan, etc.)

Petitioner No.1 (Nusrat Rasheed)

79. The petitioner's parent department is the School Education Department, Government of the Punjab. Vide office order dated 25.01.2008 issued by the F.D.E., the petitioner was posted on deputation basis at the Federal Government Junior Model School, G-7/3, Islamabad as P.T.I. (Junior) (BPS-14) for a period of three years. Prior to the issuance of the said office order, the petitioner was serving as P.E.T. in the Government Girls Elementary School, Chak No.91, S.B. Sargodha, Government of the Punjab.

80. Vide letter dated 12.09.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 16.09.2013, the petitioner's parent department issued an N.O.C. for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

81. The petitioner has been serving on deputation basis in the F.D.E. since the past 12 years. Vide impugned office order dated 20.01.2020 issued by the F.D.E., the petitioner was repatriated to her parent department upon completion of maximum deputation period i.e. 05 years and non-provision of N.O.C.

Petitioner No.2 (Mrs. Rahat Sultana)

82. The petitioner's parent department is the Pakistan Railways. Vide office order dated 07.11.2001 issued by the F.D.E., the petitioner was posted on deputation basis at the Federal Government Girls High School, Sihala (Federal Area), Islamabad. Prior to the issuance of the said office order, the petitioner was serving as Physical Training Instructor (BPS-14) at the Pakistan Railway Lady Griffin Girls High School, Lahore.

83. Subsequently, the petitioner's deputation period was extended for a further period of two years i.e. up to 26.10.2012.

It appears that vide letter dated 12.02.2013, the F.D.E. sought an N.O.C. for an extension in deputation period/permanent absorption of the petitioner from her parent department. Vide letter dated 04.03.2013, the petitioner's parent department informed the F.D.E. that the petitioner had completed her maximum period of deputation of five years, and that there was no provision in the rules for a further extension in the deputation period. In the said letter, the petitioner's parent department expressed that it had no objection for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

84. The said petitioner has been serving on deputation basis since the past 19 years. Vide impugned office order dated 20.01.2020 issued by the F.D.E., the petitioner was repatriated to her parent department upon completion of maximum deputation period i.e. 05 years and non-provision of N.O.C.

Writ petition No.932/2020 (Siraj ul Hasana Vs. Federation of Pakistan, etc.)

85. The petitioner's parent department is the Elementary & Secondary Education Department, Government of the Khyber Pakhtunkhwa. Vide office order dated 25.09.2003 issued by the F.D.E., the petitioner was posted on deputation basis at the Federal Government Junior Model School, I-10/2, Islamabad for a period of three years. Prior to the issuance of the said office order, the petitioner was serving as PTC Teacher in Government Girls Primary School, Mughalandeh, District Chitral (N.-W.F.P.).

86. Vide letter dated 30.08.2006, the F.D.E. sought an N.O.C. from the petitioner's parent department for an extension in her deputation period. Subsequently, vide letter dated 02.10.2006 issued by the Schools and Literacy Department, Government of N.W.F.P, the petitioner's deputation period was extended for a further period of two years with effect from 24.09.2006 to 23.09.2008.

87. Vide letter dated 12.09.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent

absorption in the F.D.E. Vide letter dated 30.09.2013, the petitioner's parent department conveyed an N.O.C. for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

88. The petitioner has been serving on deputation basis in the F.D.E. since the past 17 years. Vide impugned office order dated 06.03.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Petition No.1146/2020 (Mst. Rehana Qasim Vs. Federation of Pakistan, etc.)

89. The petitioner's parent department is the Education Department, Government of Sindh. Vide office order dated 22.10.2007 issued by the F.D.E., the petitioner was posted at Federal Government Girls Secondary School, Talhar (F.A), Islamabad on deputation basis for a period of one year. Prior to the issuance of the said office order, the petitioner was serving as H.S.T. (BS-16) at the Government Girls Secondary School No.1, Jacob Lines, Karachi.

90. Vide letter dated 23.09.2013, the F.D.E. requested the petitioner's parent department to issue an N.O.C. for her permanent absorption in the F.D.E. Subsequently, vide letter dated 07.10.2013, the Services, General Administration and Coordination Department, Government of Sindh issued an N.O.C. for the petitioner's permanent transfer to the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

91. The petitioner has been working on deputation basis in the F.D.E. since the past 13 years. Vide impugned notification dated 19.03.2020, the petitioner was repatriated to her parent department.

Writ petition No.1158/2020 (Mst. Ume Kalsoom Vs. Ministry of Federal Education and Professional Training, etc.)

92. The petitioner's parent department is the Education Department, Government of Sindh. Vide office order dated 30.05.2006 issued by the F.D.E, the petitioner was posted on

deputation basis at the Federal Government Girls Model School, G-7/2, Islamabad for a period of three years. Prior to the issuance of the said office order, the petitioner was serving as Trained Under Graduate Teacher in Government Girls High School, New Pind Sukkur.

93. Vide office order dated 07.01.2010 issued by the F.D.E., the petitioner's deputation period was extended for a period of two years with effect from 12.05.2009 to 11.05.2011. Vide letters dated 20.08.2013 and 29.06.2015, the F.D.E. requested the petitioner's parent department to issue an N.O.C. for her permanent absorption in the F.D.E. Vide letter dated 17.09.2013, the Services, General Administration and Coordination Department, Government of Sindh issued an N.O.C. for the petitioner's permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

94. The petitioner has been serving on deputation basis in the F.D.E. since the past 14 years. Vide impugned notification dated 19.03.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.1212/2020 (Rabia Shireen Vs. Federation of Pakistan, etc.)

95. The petitioner's parent department is the School Education Department, Government of the Punjab, Lahore. Vide office order dated 03.02.2000 issued by the F.D.E, the petitioner was posted on deputation basis at the Federal Government Primary School No.40, I-10/1, Islamabad for a period of one year. Prior to the issuance of the said office order, the petitioner was serving as P.T.C. Teacher in Government Girls Primary School, Bakhtwar Wala, District Multan.

96. Vide letter dated 12.09.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Subsequently, vide letter dated 20.09.2013, the petitioner's parent department conveyed an N.O.C. for her permanent absorption in the F.D.E. There is

nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

97. The petitioner has been serving on deputation basis in the F.D.E. since the past 20 years. Vide impugned office order dated 06.03.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.1425/2020 (Syeda Salma Tabasum Bukhari Vs. Federation of Pakistan, etc.)

98. The petitioner's parent department is the Elementary and Secondary Education, Government of A.J.K., Muzaffarabad. Vide office order dated 04.07.2005 issued by the F.D.E, the petitioner was posted on deputation basis at the Federal Government Girls Secondary School Maira Bagwal (FA) Islamabad for a period of three years. Prior to the issuance of the said office order, the petitioner was serving as a Primary Teacher in the Government Girls Primary School, Malak Soli, Government of Azad Jammu and Kashmir, Muzaffarabad.

99. Vide letter dated 26.08.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 30.09.2013, the petitioner's parent department issued an N.O.C. for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

100. The petitioner has been serving on deputation basis since the past 15 years. Vide impugned office order dated 28.04.2020 issued by the F.D.E., the petitioner was repatriated to her parent department with immediate effect.

Writ petition No.1471/2020 (Asia Tanveer, etc. Vs. Federation of Pakistan, etc.)

Petitioner No.1 (Ms. Asia Tanveer)

101. The petitioner's parent department is the School Education Department, Government of the Punjab, Lahore. Vide office order dated 23.11.2006 issued by the F.D.E, the petitioner was posted on deputation basis at the Federal Government Junior Model School No.54, E-9, Islamabad for a period of three

years i.e. from 20.09.2006 to 19.09.2009. Prior to the issuance of the said office order, the petitioner was serving as Elementary Education Teacher (EET), Government Girls Primary School, Dewal, District Chakwal, Government of the Punjab.

102. Vide letter dated 30.08.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for the petitioner's permanent absorption in the F.D.E. Vide letter dated 12.09.2013, the petitioner's parent department conveyed an N.O.C. for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

103. The petitioner has been serving on deputation basis in the F.D.E. since the past 14 years. Vide impugned notification dated 28.04.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Petitioner No.2 (Ms. Shagufta Gill)

104. The petitioner's parent department is the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa. Vide office order dated 03.06.2006 issued by the F.D.E, the petitioner was posted on deputation basis at the Federal Government Girls Secondary School, Dhoke Gangal (FA), Islamabad. Prior to the issuance of the said office order, the petitioner was serving as Certified Teacher in the Government Girls High School, District Mansehra, Khyber Pakhtunkhwa.

105. Vide letter dated 29.08.2013, the F.D.E. sought an N.O.C. for the petitioner's permanent absorption in the F.D.E. Vide letter dated 19.09.2013, the petitioner's parent department placed her services at the disposal of the F.D.E. *"on permanent basis without retaining her lien in the E&SE Department."* There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

106. The petitioner has been serving on deputation basis in the F.D.E. since the past 14 years. Vide impugned office order dated 28.04.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.1486/2020 (Syeda Rubina Kalsoom Vs. Federation of Pakistan, etc.)

107. The petitioner's parent department is the School Education Department, Government of the Punjab. Vide letter dated 15.08.2006, the F.D.E. approved the petitioner's transfer to the F.D.E. on deputation basis for a period of three years. In the said letter, it was requested that the petitioner may be relieved from her parent department and report to the F.D.E. At that time, the petitioner was serving as E.S.T. (BPS-14) in Government Girls Elementary School, Badshahpur, Tehsil Malakwal, District Mandi Bahaud Din, Government of the Punjab.

108. It appears that vide letter dated 12.09.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 20.09.2013, the petitioner's parent department issued an N.O.C. for her permanent absorption in the F.D.E. It appears that vide letter dated 29.06.2015, the F.D.E. again sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 09.02.2016, the petitioner's parent department informed the F.D.E. that it had already issued N.O.C. for the petitioner's permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

109. The said petitioner has been serving on deputation basis in the F.D.E. since the past 14 years. Vide office order dated 30.04.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.1520/2020 (Raheela Anjum Vs. Federation of Pakistan, etc.)

110. The petitioner's parent department is the Government of the Punjab Higher Education Department, Lahore. The record shows that the petitioner was posted at Islamabad Model College for Girls, F-10/2, Islamabad on deputation basis. Prior to that the petitioner was serving as Lecturer in Government College for Women, Mandi Baha-ud-Din, Government of the Punjab.

111. Vide notification dated 08.10.2010 issued by the F.D.E., the petitioner was repatriated to her parent department. Against the said repatriation order, the petitioner filed writ petition No.4408/2010 before the Hon'ble Lahore High Court, Rawalpindi Bench. Vide order dated 14.10.2010, this Court granted an interim injunction to the petitioner.

112. Vide letter dated 31.05.2013, the F.D.E. sought an N.O.C. for the petitioner's permanent absorption in the F.D.E. Vide letter dated 06.02.2014, the petitioner's parent department issued an N.O.C. for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

113. Vide impugned notification dated 12.05.2020 issued by the F.D.E., the petitioner was repatriated to her parent department upon completion of maximum period of deputation and dismissal of writ petition No.4408/2010.

Writ petition No.1800/2020 (Najm ul Sadain, etc. Vs. Federation of Pakistan, etc.)

Petitioner No.3 (Robina Sardar)

114. The petitioner's parent department is the Education Department, Government of the Balochistan. Vide office order dated 23.09.1996 issued by the F.D.E, the petitioner was posted on deputation basis at Federal Government Girls Middle School, Badia Qadir Bukhsh (FA), Islamabad for a period of two years. Prior to the issuance of the said office order, the petitioner was serving as J.V. Teacher, Government Girls Primary School, Sheikh Sanda, Kali Taj Mohammad, Quetta.

115. Vide letter dated 16.09.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 04.01.2014, the Directorate of Education (Schools), Balochistan, Quetta submitted a report to the petitioner's parent department for an N.O.C. for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

116. The petitioner has been serving on deputation basis in the F.D.E. since the past 24 years. Vide impugned office order dated 30.06.2020 issued by the F.D.E., the petitioner was repatriated to her parent department due non receipt of N.O.C. for grant of extension in her deputation period beyond 08.11.2001 by her parent department.

Writ petition No.1851/2020 (Zahida Parveen Vs. Federation of Pakistan, etc.)

117. The petitioner's parent department is the School Education Department, Government of the Punjab, Lahore. Vide office order dated 04.10.2003 issued by the F.D.E., the petitioner was posted on deputation basis at the Federal Government Girls Primary School (MV) Chak Shahzad, Islamabad for a period of three years. Prior to the issuance of the said office order, the petitioner was serving as SV Teacher in Government Girls High School, Tornwal, District Sialkot, Government of the Punjab.

118. It appears that vide letter dated 10.11.2008, the F.D.E. sought an N.O.C. for the petitioner's permanent absorption in the F.D.E. Vide letter dated 17.11.2008, the petitioner's parent department issued an N.O.C. for her permanent absorption in the F.D.E. Vide letter dated 27.07.2015, the F.D.E. again sought an N.O.C. for the petitioner's permanent absorption in the F.D.E. Vide letter dated 14.10.2015, the petitioner's parent department again issued an N.O.C. for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

119. The petitioner has been serving on deputation basis in the F.D.E. since the past 17 years. Vide impugned notification dated 30.06.2020, the petitioner was repatriated to her parent department.

Writ petition No.2216/2020 (Abida Zaman Vs. Federation of Pakistan, etc.)

120. The petitioner's parent department is the Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa. Vide O.M. dated 07.02.2008 issued by the F.D.E., the petitioner was posted on deputation basis at the Islamabad

Model College for Girls, I-8/4, Islamabad, for a period of one year or till the joining of regular incumbent whichever is earlier. Prior to the issuance of the said office memorandum, the petitioner was serving as Qaria in Government Girls Higher Secondary School, Balakot, District Mansehra.

121. Vide letter dated 05.03.2009 issued by the Ministry of Education, Government of Pakistan, the petitioner's deputation period was extended for a period of one year with effect from 07.02.2009. Vide office order dated 03.03.2010 issued by the F.D.E., the petitioner's deputation period was further extended for a period of one year with effect from 07.02.2010. Vide letter dated 12.03.2011, the Establishment and Administration Department, Government of Khyber Pakhtunkhwa issued an N.O.C. regarding extension in the petitioner's deputation period for a further period of two years. Vide office order dated 17.05.2011 issued by the F.D.E., the petitioner's deputation period was further extended for a period of two years with effect from 07.02.2011 to 06.02.2013.

122. Vide letter dated 04.09.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 19.11.2013, the petitioner's parent department issued an N.O.C. for her permanent absorption in the F.D.E. *"subject to the condition that no right of lien will be available to her in the Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa."* Vide letter dated 02.12.2013, the petitioner's parent department placed her services at the disposal of the F.D.E. on permanent basis on the condition that no right of lien will be retained by her in her parent department. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

123. The petitioner has been serving on deputation basis in the F.D.E. since the past 12 years. Vide impugned office order dated 11.08.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.2242/2020 (Fariha Khurram Vs. Federation of Pakistan, etc.)

124. The petitioner's parent department is the School Education Department, Government of the Punjab. Vide letter dated 29.04.2010, the Ministry of Education conveyed its N.O.C. for the petitioner's posting on deputation basis in the F.D.E. for a period of three years on standard terms and conditions. Vide letter dated 10.05.2010, the petitioner's parent department conveyed its N.O.C. for placing the services of the petitioner at the disposal of the F.D.E. for a period of three years on the usual terms and conditions of deputation. Prior to the issuance of the said letters, the petitioner was serving as Subject Specialist (BS-17) in Government Girls Higher Secondary School, Samanabad, Faisalabad.

125. Vide letter dated 25.09.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for an extension in her deputation period for a further three years with effect from 26.07.2013. Vide letter dated 04.04.2014, the petitioner's parent department conveyed an N.O.C. regarding an extension in the petitioner's deputation for a period of one year with effect from 27.07.2013 to 26.07.2014. Vide letter dated 24.11.2014, the petitioner's parent department conveyed an N.O.C. regarding the extension in deputation for a further period of two years with effect from 27.07.2014 to 26.07.2016. Vide notification dated 22.01.2015, the Director General, F.D.E. granted *ex-post facto* approval for an extension in the petitioner's deputation under wedlock policy with effect from 27.07.2013 to 26.07.2016.

126. Vide letter dated 22.08.2016, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 31.08.2017, the petitioner's parent department issued an N.O.C. from the F.D.E. for her permanent absorption in the F.D.E. Vide letter dated 07.11.2017, the F.D.E. made a reference to its earlier letter dated 22.08.2016 requiring an N.O.C. for the petitioner's permanent absorption in the F.D.E. Vide letter dated 26.02.2018, the petitioner's parent department issued an N.O.C. for her

permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

127. The petitioner has been serving on deputation basis in the F.D.E. since the past 10 years. Vide impugned notification dated 11.08.2020 issued by the F.D.E., the petitioner was repatriated to her parent department upon completion of maximum period of deputation. Against the said repatriation order dated 11.08.2020, the petitioner, vide application dated 13.08.2020 addressed to the Secretary, Ministry of Federal Education and Professional Training, seeking the withdrawal of the said repatriation order dated 11.08.2020. She also sought her permanent absorption in the F.D.E. under the wedlock policy. The said letter has not been responded to as yet.

Writ petition No.2447/2020 (Shahnaz Hashmi Vs. Federation of Pakistan, etc.)

128. The petitioner's parent department is the Education Department, Government of Punjab. Vide order dated 06.04.2009, the petitioner's parent department issued an N.O.C. for her transfer on deputation basis for a period of three years in the F.D.E. Prior to the issuance of the said order, the petitioner was serving as Arabic Teacher in Government Girls Elementary School, Shahdra District Bahawalpur.

129. Vide letter dated 03.07.2015, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 04.09.2015, the petitioner's parent department conveyed an N.O.C. for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the said petitioner's permanent absorption in the F.D.E. was passed.

130. The petitioner has been serving on deputation basis in the F.D.E. since the past 11 years. Vide impugned notification dated 12.08.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.2634/2020 (Mst. Safia Begum Vs. Federation of Pakistan, etc.)

131. The petitioner's parent department is the Education Department, Government of the Punjab. Vide order dated 09.12.2005, the petitioner's parent department issued an N.O.C. for her transfer on deputation basis for a period of one year in the F.D.E. Prior to the issuance of the said order, the petitioner was serving as JVT in Government Girls Primary School, Soharab-wala, District Mianwali, Government of the Punjab.

132. Vide letter dated 26.08.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 19.09.2013, the School Education Department, Government of the Punjab issued an N.O.C. for the petitioner's permanent absorption in the F.D.E. There is nothing on the record to show that an order for the said petitioner's permanent absorption in the F.D.E. was passed.

133. The petitioner has been serving on deputation basis in the F.D.E. since the past 15 years. Vide impugned office order dated 06.03.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.

Writ petition No.2677/2020 (Mrs. Yasmin Akhter Vs. Federation of Pakistan, etc.)

134. The petitioner's parent department is the Education Department, Government of Punjab, Lahore. Vide office order dated 03.09.2005 issued by the F.D.E., the petitioner was posted on deputation basis in the Federal Government Girls Primary School, Sarai Madhu (FA) Islamabad for a period of three years. Prior to the issuance of the said office order, the petitioner was serving as PTC Teacher in Government Girls High School, Kohinoor Mills Peshawar Road, Rawalpindi.

135. Vide letter dated 30.04.2008, the F.D.E. sought an N.O.C. from the petitioner's parent department for an extension in her deputation period. Vide letter dated 30.08.2008, the petitioner's parent department conveyed an N.O.C. for an extension in the petitioner's deputation for a period of two years with effect from 04.08.2008 to 03.08.2010.

136. The record shows that vide office order dated 30.07.2012, the petitioner's repatriation order dated 29.11.2011 was

cancelled/withdrawn with effect from 29.11.2011 till further orders.

137. Vide letter dated 13.09.2013, the F.D.E. sought an N.O.C. from the petitioner's parent department for her permanent absorption in the F.D.E. Vide letter dated 24.09.2013, the petitioner's parent department conveyed an N.O.C. for her permanent absorption in the F.D.E. There is nothing on the record to show that an order for the petitioner's permanent absorption in the F.D.E. was passed.

138. The petitioner has been serving on deputation basis in the F.D.E. since the past 15 years. Vide impugned office order dated 26.08.2020 issued by the F.D.E., the petitioner was repatriated to her parent department.
