

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 1989 OF 2019

*(On appeal against the judgment dated 11.10.2018
passed by the Federal Service Tribunal, Islamabad in
Appeal No. 407(L)CS/2016)*

Secretary (M-V) Federal Board of Revenue, Islamabad

...Appellant(s)

VERSUS

Zeenat Bangash and others

...Respondent(s)

For the Appellant(s): Mr. M.D. Shahzad Feroz, ASC

For the Respondent (1): In person

Date of Hearing: 29.04.2021

...

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this appeal by leave of the Court under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellant has assailed the judgment dated 11.10.2018 passed by the Federal Service Tribunal, Islamabad, whereby the Service Appeal filed by the respondent No. 1 was accepted and he was held entitled to deputation allowance.

2. Briefly stated the facts of the matter are that the respondent No. 1 being officer of Postal Group remained working in Federal Board of Revenue on deputation from the year 1994 to 2001 but he was not given deputation allowance. After his repatriation to his parent department, he on 27.11.2012 approached the Federal Board of Revenue for grant of deputation allowance on the basis of judgment of the Federal Service Tribunal, which was upheld by this Court and also on the basis of discrimination that the same was extended to other employees with similar circumstances. However, the request of the respondent was turned down by the department vide order dated 12.05.2015 on the ground that pursuant to Office Memorandum No. F3(8)R.2/2007 dated 01.07.2007 deputation allowance is only admissible to fresh cases and it is not meant for old cases, therefore, it

could not be given retrospective effect. The respondent then filed appeal before the Appellate Authority i.e. Secretary Finance Division, which was referred to the Establishment Division vide letter dated 01.02.2016 but it was never decided. The respondent, thereafter, filed appeal before the Federal Service Tribunal, which has been allowed vide impugned judgment. Hence, this appeal with leave of the Court.

3. Learned counsel for the appellant inter alia contended that the respondent was repatriated to his parent department in the year 2001 and he filed departmental appeal on 08.06.2015 which was clearly barred by limitation; that the office memorandum of 2007 clearly states that deputation allowance is admissible to only fresh cases and it has no retrospective effect.

4. On the other hand, the respondent No. 1, who appeared in person defended the impugned judgment by stating that several of his colleagues were granted deputation allowance whereas he was ignored, which act is grossly arbitrary, illegal, unlawful and against the principle of natural justice.

5. We have heard learned counsel for the appellant and respondent in person and have gone through the available record.

6. We have noted that vide Office Memorandum dated 02.04.1999 the deputation allowance was made admissible only to the cases of foreign service of Pakistan and the cases of other deputationists of ministries, divisions etc were excluded. However, pursuant to a judgment of the Federal Service Tribunal passed in Appeal Nos. 39 & 40(R)CS/2003, which was upheld by this Court vide order dated 21.09.2005 passed in Civil Petition Nos. 519 & 524/2004, all officers/officials of ministries, divisions etc, who have been transferred and posted on deputation basis were held entitled to deputation allowance vide Office Memorandum No. F.5(8)R-2/2007 dated 04.07.2007. Therefore, the only question which remains to be clarified is whether the said office memorandum has retrospective effect or is it only meant for "fresh cases". The learned Service Tribunal took into consideration the Office Memorandum dated 02.04.1999 which was further elaborated by Office Memorandum dated 04.07.2007 and while observing that according to paragraph 'ii' of the Office Memorandum dated 04.07.2007, the old cases of transfers/postings on deputation basis were granted deputation allowance held that "there is no denying the fact that on the basis of O.M. of the Finance Division dated 4th of

July, 2007, deputation allowance was allowed and disbursed to all the civil servants either old or fresh and no distinction was made between those, inducted in OMG or otherwise. It could not be acceptable even otherwise on the touchstone of rule of consistency i.e. that one set of civil servants posted on deputation or under Section 10 is allowed deputation allowance retrospectively and others are deprived of that", which otherwise would be in defiance of Article 25 of the Constitution of Islamic Republic of Pakistan. When we confronted learned counsel for the appellant with this aspect of the matter, he could not give any plausible answer. So far as the question raised by learned counsel for the appellant that the claim of the respondent was barred by laches as he was repatriated to his parent department in the year 2001 and he filed departmental appeal on 08.06.2015 is concerned, suffice it is to state that being a financial matter, limitation will not have any adverse implication on respondent's claim.

7. *For what has been discussed above, we are of the candid view that the learned Service Tribunal has passed a well reasoned judgment to which no exception can be taken. This appeal having no merit is accordingly dismissed.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
29th of April, 2021
Approved For Reporting
Khuram