

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.925 of 2020

[Against the judgment dated 29.07.2020, passed by the Peshawar High Court, Peshawar in Writ Petition No.2527-P of 2020]

*The Chairman Board of Governors, Medical Teaching Institute (MTI) Lady Reading Hospital, (LRH), Peshawar and others.* ...Appellant (s)

Versus

*Syed Roidar Shah, Clinical Technician (Pharmacy), Medical Teaching Institute (MTI), Lady Reading Hospital (LRH), Peshawar and others.* ...Respondent(s)

For the Appellant (s) : Mr. Waseem-ud-Din Khattak, ASC  
Mr. M.S.Khattak, AOR

For Respondents No.1-7 : Mian Shafaqat Jan, ASC  
Syed Rifaqat Hussain Shah, AOR

For Respondent No.9 : Imran Hamid, Additional Secretary, Health Department, KP  
Hafeez ur Rehman Shah, S.O. Health Department, KP  
Shehbaz Khan, Superintendent, Health Department, KP

Date of Hearing : 03.02.2021

ORDER

Gulzar Ahmed, C.J.— The appellants have challenged the judgment dated 29.07.2020, passed by the learned Division Bench of the Peshawar High Court, Peshawar (~~the High Court~~) by which the order of termination of deputation of the private respondents (~~the respondents~~) was set aside and the appellants were directed to continue the employment of the respondents on

deputation and their arrival reports be accepted. Leave to appeal was granted vide order dated 23.10.2020, relevant portion thereof is as follows: -

"The learned counsel for the petitioners contends that the respondents were not the employees of the petitioners rather they were on secondment to the petitioners. Adds that the petitioners having terminated their secondment and relieved them to report for duties to their parent department, such order could not have been interfered with by the learned High Court in exercise of its writ jurisdiction, in that, the petitioners are not interested to retain them as their employees and they cannot be forced upon the petitioners.

2. At the outset, learned counsel for the appellants has contended that all the respondents working in the Medical Teachings Institutions (MTI) were employed on deputation as per the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 (the Act of 2015), as amended from time to time, and the Board of Governors of the MTI was competent to terminate the deputation and to relieve the deputationists for reporting to their parent department. He has further contended that the very fact that the respondents were deputationists is not mentioned in the impugned judgment and thus, the High Court made a serious mistake in law by allowing the writ petition filed by the respondents, allowing them to continue on deputation in MTI.

3. Learned counsel for the respondents admitted the fact that the respondents were working on deputation in MTI and also read Regulation 16(3A) of the Act of 2015 to contend that it was

only the Board, which was competent to terminate the deputation of the respondents; whereas, in the order of relieving though it is mentioned that the Board of Governors of MTI has passed the order terminating the deputation and relieving the respondents with direction to report to their parent department, but contends that the very order of the Board of Governors is not attached. We have asked the learned counsel for the respondents to show us as to where in the writ petition the respondents have asserted this very point, as is raised by the learned counsel for the respondents before us, he admitted that such point has not been raised by the respondents in the writ petition.

4. To appreciate the arguments of the learned counsel for the parties, it is imperative to consider the provisions of Subsections (3A) and (3B) of Section 16 of the Act of 2015, which are as follows:

"16(3A) Civil servants, who do not opt for absorption in the Medical Teaching Institution, so notified, shall be dealt with in such a manner as provided in section 11A of the Khyber Pakhtunkhwa Civil Servants Act 1973, for their future posting, which includes deputation to the Medical Teaching Institution subject to a request being made by the Board:

Provided that a civil servant working in a Medical Teaching Institution, shall at all times, be deemed to be on deputation. All deductions made from the pay of such civil servants shall be deposited by the borrowing authority.

(3B) A civil servant at the request of the Board may be sent on deputation to a Medical

Teaching Institution by the Government. For civil servants on deputation to the Medical Teaching Institution, pension contribution shall be made by the Medical Teaching Institution. The deputation of a civil servant to a Medical Teaching Institution may be terminated by the Board at any time without assigning any reason thereof and such civil servants services shall revert to the Government immediately upon such termination being notified by the Board."

The reading of the above provisions show that all civil servants employed in MTI are deemed to be on deputation and the Board of Governors is competent to terminate the deputation period and relieve the employees from MTI and it is not required to give any reason for doing so.

5. The submission of the learned counsel for the respondents that Board of Governors' order has not been filed by the appellants is of not much significance for the reasons; firstly, the respondents have not taken up this issue before the High Court in the very writ petition and secondly, the very letter of terminating the deputation period and relieving the respondents specifically mentioned that it is issued on the directions of the Board of Governors.

6. The very mentioning that the letter has been issued on the direction of the Board of Governors, apparently, is sufficient for meeting the requirements of the compliance of law noted above, unless the respondents could have shown otherwise, which they have not done so.



7. It is established law that a deputationist has no right to continue in an employment as a deputationist and the employer, where the deputationist is employed, is competent to terminate the deputation and relieve the deputationist from its employment for reporting to his parent department. Reference in this regard is made to the case of Dr.Shafi-ur-Rehman Afridi vs. C.D.A., Islamabad through Chairman and others (2010 SCMR 378), wherein it was held as under: -

"7. We may mention here that the deputationist by no stretch of imagination and in absence of any specific provision of law can ask to serve the total period of deputation and he can be repatriated being a deputationist by the Competent Authority in the interest of exigency of service as and when so desired and such order of the competent authority cannot be questioned. ..."

Further reference is made to the cases of S. Masood Abbas Rizvi vs. Federation of Pakistan through Secretary Establishment and others (2014 SCMR 799) and Senate Secretariat through Chairman and another vs. Miss Faiqa Abdul Hayee (2014 SCMR 522).

8. We may note that the mistake has occurred in passing the impugned judgment by the High Court, in that, the High Court has altogether omitted to take into consideration the very fact that the respondents were deputationists and their deputation in terms of the law, as noted above, was always liable to be terminated by the Board of Governors without assigning any reason. No right of the respondents at all is violated and thus, the very writ petition

filed by the respondents before the High Court was on its face not maintainable.

9. In view of the above, the impugned judgment is not sustainable in law. The same is, therefore, set aside and the appeal is allowed.

Sd/- HCT  
Sd/- J  
Sd/- J

Bench-I  
Islamabad  
03.02.2021  
APPROVED FOR REPORTING  
Rabbani\*/