JUDGMENT-SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 1118 of 2020
Allaud-din Tahir, etc.
Versus
Federation of Pakistan
through Secretary, Establishment Division, etc.

Petitioner by:	Mr. Muhammad Shoaib Shaheen, learned ASC, Mirza Waqas Qayyum & Mr. Saif ur Rehman, Advocates,
Respondent No.1 by:	Ch. Muhammad Tahir Mehmood, AAG,
Respondents 4,6 to 11, 13 to 18 by:	Mr. Ghulam Rasool Bhatti and Wajid Mehmood Advocates,
Respondent No.5 by:	Ch. Aneel Ashiq, Advocate,
Respondent No.18-A:	In person
Date of Hearing:	03.03.2021.

FIAZ AHMAD ANJUM JANDRAN, J:- Through the instant writ petition, petitioners seek direction against the respondents to withdraw absorption of private respondents and repatriate them to their parent departments. In addition, to restrain the official respondents from holding meeting of the Department Promotion Committee (**DPC**) to the extent of private respondents.

2. Essential and relevant facts for adjudication of the instant writ petition are that petitioners working as Senior Auditor BS-16 in the office of the Accountant General Balochistan, Quetta/respondent No.3, asserted that respondents 4 to 17, hailing from various departments i.e. Controller Military Accounts, Works Audit, Railway Accounts, AGPR and WAPDA were taken at the strength of respondent No.3 on deputation basis and were

subsequently absorbed in derogation to the rules besides the dictum laid down by the Hon'ble Apex Court reported as **2013 SCMR 1752, 2015 SCMR 450 and 2015 SCMR 253**.

3. The respondent No.1 *(Establishment Division)* in its separate written report maintained that it had been impleaded as *proforma* party while private respondents 4, 6 to 11, 13 to 17 & 18 filed their joint para-wise comments wherein they controverted the stance of the petitioners in terms that they joined the respondent No.3 through appointment by transfer in accordance with rules and were not deputationist; that they had the same scale, same education and same cadre before appointment with the respondent No.3. The respondent 18-A, in written arguments conceded the claim of the petitioner. The respondent No.5 filed separate written comments wherein the stance of other private respondents was reiterated. Respondent No.2 *(The Controller General of Accounts, Islamabad)* in its separate written comments denied the claim of the petitioners by contending that the private respondents were absorbed against the post of Senior Auditor in the same scale and same post in A.G Balochistan/respondent No.3 and were placed in the bottom of Seniority List of Senior Auditors maintained at that time and no right of the petitioners had been infringed. The respondent No.3, *parent department of the petitioners and private respondents*, also followed the line of respondent No.2.

4. During pendency of the petition, petitioners also filed CMA 1534/2020 for a direction to the respondents to restrain from issuing Notification of promotion of the

private respondents pursuant to the DPC held on 15.06.2020.

5. Learned counsel for the petitioners while reiterating the stance contained in writ petition argued that private respondents were taken at the strength of respondent No.3 on deputation and were subsequently absorbed against the posts exclusively meant for promotion of in-service employees; therefore, liable to be repatriated.

6. On the other hand, learned counsel for private respondents argued that the petitioners being aspirants from promotion against the questioned posts came up with a *quo warranto* petition in order to cover longstanding delay in challenging the seniority position before the learned Federal Service Tribunal; that neither the answering respondents were taken on deputation nor their case is covered under the said category as they were appointed by transfer under the rules and were subsequently absorbed.

7. Learned AAG added that petition is hit by laches as the absorption made way back in 2004 have been questioned in 2020 with inordinate delay and that the appointment of private respondents was in accordance with rules on the subject.

8. Heard the learned counsel for the petitioners, learned AAG, counsel for private respondents and perused the record with their able assistance.

9. At the inception, it is noticed that according to petitioners' own showing as reveals from Para-2 of the petition, private respondents were absorbed in the office of respondent No.3, during the period 2004-2015. The

appointments made way back in 2004 have been questioned through the instant writ petition filed in 2020 i.e. after sixteen years. Since there is unexplained delay of about sixteen years, in view of the law laid down by the Hon'ble Apex Court in cases reported as ***"Khursheed Latif v. Federation of Pakistan"*** *(2010 SCMR 1081),* ***"Ahmed and 25 others v. GHAMA and 5 others"*** *(2005 SCMR 119),* ***"Shahbaz Khan Mohmand v. Islamic Republic of Pakistan"*** *(1975 SCMR 04) and "****Muhammad Sadiq and others v. Commissioner, Rawalpindi Division and another****" (1973 SCMR 422),* the instant writ petition is not proceedable on this score.

10. It also gleans out from record, Page-14 of the petition that a grievance application was moved by the petitioners to the respondent No.1 wherein it is alleged that due to the absorption of private respondents, the officers/officials of respondent No.2 were deprived of their promotions to next scale due to the merger of the seniority list.

11. Likewise, the written arguments submitted by the respondent No.18-A also speaks all the arguments presented by the petitioners whereby promotion/seniority dispute is agitated. It has specifically been mentioned in para-5 of the arguments that writ of *quo warranto* will ultimately result in correction of seniority.

12. It is settled principle that a writ of *quo warranto* cannot be issued as a matter of course and the conduct of the petitioner can be looked into as laid down by the Hon'ble Apex Court in the case of ***"Ghulam Shabbir v. Muhammad Munir Abbasi and others"*** *(PLD 2011 SC 516)* as under:-

> *"A writ of quo warranto is not issued as a matter of course. The court can and will enquire into the conduct and motive of the petitioner. However, no precise rules can be laid down for the exercise of discretion by the court in granting or refusing the same and each aspect of the case is to be considered. In such cases it is not necessary that the petitioner be an aggrieved person and further that if it is established that the petitioner has approached the court with ulterior motive, mala fide intention etc. relief can be declined."*

13. Keeping the above principle in sight, the record shows that the conduct of the petitioners is not aboveboard. The petitioners, who hail from the same department as of private respondents, have their own axes to grind as their actual grievance seems to be against their supersession.

14. The status of the petitioners and of private respondents is of civil servant and the remedy of appeal before the competent authority is provided but as the petitioners have not challenged the appointments for about sixteen years, the matter within the hierarchy apparently became time barred and it appears that in order to cover the said limitation, instant writ petition in the form of *quo warranto* has been preferred.

15. It is settled principle that where the law requires something to be done in a particular manner it must be done in that manner alone and not otherwise and that what could not be done directly could not be done indirectly. Reliance is placed upon case law reported as ***"Muhammad Hanif Abbasi v. Imran Khan Niazi and others"*** *(PLD 2018 SC 189)* and ***"Communication House Private Limited v. Pakistan Telecommunication Authority"*** *(PLD 2014 Islamabad 1)*.

16. The claim of the petitioners is to the effect that private respondents were taken at the strength of respondent No.3 on deputation and were absorbed in derogation to the rules while respondents 1 to 3 categorically denied the said stance in terms that they were not taken on deputation but were appointed by transfer under the rules and their absorption was also in accordance with the said principle. The claim and counter response give rise to factual controversy which could not be resolved in constitutional jurisdiction in terms of Article 199 of the Constitution. In this respect reliance is placed upon case law reported as "***Amir Jamal v. Malik Zahoor ul Haq"*** (2011 SCMR 1023).

17. In addition, there is no denial of the fact that private respondents before appointment through transfer had been in the same scale, in same cadre with same education, therefore, the ground of any departure from the rule is also not available to the petitioners.

18. For seeking equitable relief, it is mandatory to explore that the petitioners came up with clean hands for which relevant documents/material is essential to be produced to establish that the private respondents were taken on deputation, subsequently absorbed in contravention of the rules but no such document has been produced, which *prima facie* casts aspersions on the conduct of the petitioners and debars them from seeking equitable relief.

19. Having examined the case from every angle, it is safe to hold that petition is hit by laches, entails disputed questions of facts and factual controversy which could not

be resolved in constitutional jurisdiction, conduct of the petitioners in seeking equitable relief is not aboveboard as they are aspirants for the questioned posts and have not tendered any document to substantiate claim of deputation and subsequent absorption of the private respondents.

20. The case law relied upon by learned counsel for the petitioner is of no avail to the petitioner having distinct factual/legal significance.

21. In sequel to above, instant writ petition fails and is accordingly **dismissed**. All C.Ms are disposed of accordingly.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on **30.04.2021**

JUDGE