JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO.2399 OF 2020

Muhammad Iqbal
Vs.
Ministry of Finance and others

Petitioner by : Mr. M. Shafiq Ur Rehman Dab, Advocate.

Respondents by : Rana Imran Farooq, Assistant Attorney General.

Date of hearing : 26.01.2022.

SAMAN RAFAT IMTIAZ, J. Through the instant writ petition, the Petitioner has prayed for setting aside of the impugned Office Memorandum No.1(1) R-2/2019-951 dated 10.02.2020 ("**Impugned Memorandum**") issued by Respondent No.1 and a declaration to the effect that the Petitioner was entitled to foreign allowance as is permissible to officers serving in BPS-17 in Pakistan Missions Abroad.

2. The facts, as per the memo of the petition, are that:

(i) the Petitioner is a retired Federal Government Servant who served as Accounts Officer, Chief Accounts Office of Ministry of Foreign Affairs ("**MOFA**");

(ii) during his service, he was placed on deputation at the Pakistan High Commission, New Delhi as Subordinate Accounts Services (S.A.S.) Accountant (BPS-16) on 01.09.1991;

(iii) thereafter, vide Office Memorandum No.F.1(12)-Imp.11/91 dated 28.11.1991 issued by Finance Division, the Petitioner was granted 'selection grade BPS-17' with effect from 01.06.1991 (whereas his 'regular/substantive scale' remained at BPS-16) therefore his pay was fixed as admissible to BPS-17 officers;

(iv) that during posting in Pakistan Missions abroad, Government employees are entitled to draw running basic pay and in addition, to "Foreign Allowance";

(v) Petitioner filed an application dated 12-4-2018 with Respondent No.3 stating that while he was in selection grade BPS-17 he should have been allowed foreign allowance as applicable to BPS-17, as such requested for issuance of a revised pay slip;

(vi) Respondent No.3, through Respondent No.2, forwarded the same to Respondent No.1 for decision. Respondent No.1 vide the Impugned Memorandum (conveyed to Respondent No. 2 vide letter dated 14-02-2020 which was conveyed to the Petitioner vide letter dated 21-02-2020) regretted the request of the Petitioner. It was observed that the Petitioner was serving in 'selection grade' BS-17 while holding 'regular/substantive grade' in BPS-16 therefore in light of the Honorable Supreme Court's judgment dated 30-09-2016 selection grade is not substantive grade. It was further stated that the Petitioner was neither regularly promoted to BPS-17 nor granted status of Third Secretary during service therefore, foreign allowance attached to the status of Third Secretary was not admissible to the Petitioner.

3. According to the written comments submitted on behalf of the Respondents, foreign allowance is fixed on the basis of designation not scale. That officers at regular/substantive pay scale of BPS-17 are selected and granted status of Third Secretary whereas the Petitioner was not promoted to BPS 17 on regular basis, therefore, he was neither eligible for entitlement of grant of diplomatic status of Third Secretary nor did he apply for the same or performed the functions thereof, as such he was not entitled to foreign allowance attached to the status of Third Secretary and the same cannot be granted retrospectively.

4. Learned counsel for the Petitioner, *inter alia*, contended that the Impugned Order is in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the Impugned Order is non-speaking, hence in violation of Section 24(A) of the General Clauses Act; that the Petitioner was granted BPS-17 selection grade therefore, he is entitled to all financial benefits of BPS-17 including foreign allowance.

5. The learned counsel, by way of explanation, submitted that a 'selection grade' is not a regular promotion as the position of the concerned officer remains the same. He argued that the purpose however, is to receive higher grade pay without awarding promotion. He submitted that the Petitioner was enjoying salary and all other privileges according to BPS-17 except foreign allowance and that

there was no reasonable basis for treating foreign allowance on a different footing. He relied upon para 3.1 contained in Chapter III on Foreign Allowance of Respondent No. 2's Financial Management at Missions Abroad, Volume-II, Guidelines for Internal Control, 7th Edition to submit that the very purpose of the grant of foreign allowance is to supplement the income of the persons posted in a Mission due to difference in cost of living, representational expenditure or any other expenditure which they may have incurred due to posting abroad. Learned counsel relied on case reported as *Javaid Hussain Qureshi Vs. Finance Department*, 2004 PLC (C.S.) 586 and prayed for the acceptance of the instant writ petition.

6. On the other hand, learned Assistant Attorney General, contended that the instant writ petition is not maintainable on account of (a) the fact that the Petitioner was a 'civil servant' and whether or not he was entitled to foreign allowance as per BPS-17 pertains to terms and conditions of his service, which falls within the domain of the Services Tribunal and as such this Court is barred from entertaining this writ in view of sub-clause (2) of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 and (b) due to laches as the Petitioner retired in the year 2015 whereas the request was made for the very first time in 2018 when he had already retired.

7. He further submitted that as per Finance Division letter No.F.No.1(1)R-2/2019-951 dated 10.02.2020, the Petitioner is not entitled to foreign allowance as admissible to officers in BPS-17 as he does not possess regular/substantive pay scale in BPS-17. It was also contended by the learned AAG that the Petitioner has only impugned Office Memorandum dated 10.02.2020 which is only a forwarding letter and has not impugned the letter dated 14.02.2020 which is the order that actually affects the Petitioner. The learned AAG relied on the judgment of Honourable Supreme Court in Civil Petition No.21424 of 2016 titled *Federal Public Service Commission Vs. Anwar-ul-Haq* and prayed for the dismissal of the instant petition.

8. While exercising the right of rebuttal, the learned counsel for the Petitioner contended that the Petitioner was not a "civil servant" as he was on "deputation" therefore, fell within the exception to the definition of a civil servant as provided under clause (i) of sub-section (b) of Section 2 of the Civil Servants Act, therefore per learned counsel the instant writ is maintainable. He contended that the

Petitioner was an accountant with the Office of Accountant of Respondent No. 2, which was his parent department and was placed on deputation to the Pakistan High Commission in New Delhi. According to the learned counsel for the Petitioner, the Petitioner was therefore transferred from one department of Respondent No. 2 to another department within the Respondent No. 2. He relied upon the case of *Associated Press of Pakistan Corporation Vs. Federation of Pakistan*, 2021 PLC (C.S.) 1103 to argue that deputation meant service outside the parent department. Lastly, that the decision was taken by the Impugned Order and only conveyed vide letter dated 14.02.2020.

9. Arguments heard. Record perused.

10. Since objection has been made to the maintainability of this petition, hence the same will be decided first. The first ground of objection is on the basis of the Petitioner being a civil servant, which is denied by the Petitioner, therefore, it will be beneficial to reproduce the definition of the term "civil servant" as provided in the Civil Servants Act:

> *"(b) "civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence,* ***but does include-***
>
> ***(i) a person who is on deputation to the Federation from any Province or other authority;***
>
> *(ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies; or*
>
> *(iii) a person who is "worker" or "workman" as defined in the Factories Act, (XXV of 1934), or the Workman's Compensation Act, 1923 (VIII of 1923):"* [Emphasis added].

11. Perusal of the said definition reveals that according to sub-section (b)(i) of Section 2 the Civil Servants Act *'a person who is on deputation to the Federation from any Province or other authority'* is indeed excluded from the definition of 'civil servant'. The question arises whether the Petitioner fell within the exclusion as described in Clause (i) of Sub-section (b) of Section 2 the Civil Servants Act on account of his posting to the Pakistan High Commission, New Delhi from the Chief Accounts Office of MOFA.

12. The appointment on deputation is covered under Rule 20A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, which is reproduced herein below:

> *"**20A. Appointment on deputation**.- (1) 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.*
>
> *(2) Subject to any rule or orders on the subject issued by the Federal Government, a civil servant who fulfills the conditions and is considered suitable may be sent on deputation to an autonomous, semi-autonomous body or corporation established by law or to the Provincial Government on such terms and conditions as may be decided by the lending and borrowing organizations.*
>
> *(3) In case of appointment under sub-rule (1) or sub-rule (2) pension contribution shall invariably be made by the borrowing organizations."*

13. Under clause (1) of Rule 20A, 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 may be appointed on deputation whereas under clause (2) thereof, a civil servant may be sent on deputation to an autonomous, semi-autonomous body or corporation established by law or the Provincial Government.

14. The term "deputation" has not been defined in the Civil Servants Act. However, in the case of *Islamic Republic of Pakistan Vs. Israrul Haq*, PLD 1981 SC 531, the Honorable Supreme Court held:

> *"In Chapter IX of the Establishment Manual Volume I (O&M) are contained instructions/rules on Deputation/Transfer and Duty. The term Deputation has been dealt with as follows:*
>
> > *"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].

15. In the case of *Muhammad Bakhsh Vs. Government of Pakistan through the Secretary Establishment Division, Rawalpindi*, PLD 1985 Karachi 619, it was held that:

> "***Deputation of a Government employee involves his transfer from one Department to another Department of the same Government or from one government to another Government or from Government to any Autonomous or other Body or Institution.*** *Thus it is an arrangement whereby one Department of Government or Government itself agrees to lend and another Department of the same Government or another Government or Autonomous or other Body or Institution agrees to borrow the services of the employee concerned on certain conditions mutually acceptable to both the*

lending and borrowing authorities. When the Government employee is deputed to serve under the borrowing authority, he continues to be borne on service cadre of the lending authority until he is permanently absorbed in the service of the borrowing authority and upon his such absorption his further association with the lending authority stand severed and his lien on the post of the latter authority is terminated. However, during the period of deputation of the Government employee, the lending authority retains the power to recall him if it is so desired. Likewise the borrowing authority enjoys such power to repatriate the deputationist employee to his parent department or Government.

For the purpose of examining the case of the petitioner in the light, of above criteria we have to see if the petitioner's appointment to the Federal post was in pursuance of any mutual agreement between the two Governments and if so on what terms and conditions the Provincial Government of Sind agreed to lend and the Federal Government agreed to borrow the services of the petitioner. *Of course the order of the petitioner's appointment to the post of the Federal Government has been placed on record (vide Annexure 'A' at page 21) but the petitioner has not produced any order of the Provincial Government whereby he was relieved to join the service of the Federal Government. In absence of the relieving order, it is difficult to know the terms and conditions of the petitioner's release from the Provincial Government. However, the stand taken in the counter-affidavit filed on behalf of the Provincial Government is that on joining the Federal Service, the petitioner ceased to be the employee of the Provincial Government. In any case the Provincial Government does not recognize that the petitioner was deputed by the said Government to serve under the Federal Government."* [Emphasis added].

16. In light of the relevant provisions of law reproduced herein above and the case law discussed above, a posting within the same ministry/department does not appear to constitute "deputation" within the meaning of the Civil Servants Act that would exclude the Petitioner from the ambit of a "civil servant". However, in order to conclusively answer the question, the relevant documentation between the lending and borrowing entities would have to be seen. The Petitioner has not placed before this Court any office memo or notification or any other documentation, whereby he was posted to the Pakistan High Commission, New Delhi. Without such documentation, this Court cannot conclusively determine whether the posting of the Petitioner to the Pakistan High Commission, New Delhi constituted a 'deputation' for purposes of the definition of "civil servant". The case of *Associated Press of Pakistan Corporation (Supra)* cited by the learned counsel for the Petitioner is also not helpful in this regard as the petitioner in such case was placed on deputation by his parent department i.e., Controller General of Accounts, Islamabad to the Food Department, Government of Punjab, which were altogether two separate departments.

17. The only document that is available on record is an Office Order dated 28-11-1991, whereby the Petitioner was granted selection grade in BPS-17. This

Office Order contains a remark in relation to the Petitioner describing him to be on *"deputation to Pahic New Delhi w.e.f. 1.9.1991. On deputation to the Ministry of Foreign Affairs"*. This description, in the absence of any agreement between lending and borrowing entities sheds little light on the question raised in the instant matter.

18. Be that as it may, the second ground raised by the learned AAG on the issue of maintainability of the instant petition is laches. It was submitted that the Petitioner never raised this issue during his service and that it was raised for the first time several years after the retirement of the Petitioner. In response the learned counsel for the Petitioner referred to the application dated 12-04-2018, which is admittedly almost three years after the Petitioner's retirement. Moreover, the instant writ petition was filed six months after the issuance of the Impugned Memorandum. No reason, whatsoever, has been given for such delay in the Memo of Petition or during arguments.

19. The issue pertains to the purported deputation of the Petitioner in the year 1991. The period of deputation is not mentioned in the Memo of Petition or the documents attached thereto, however, it cannot be more than 5 years in any case in light of Rule 20A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 assuming it was indeed a deputation. However, no claim for foreign allowance commensurate with BPS-17 was made by the Petitioner during such time. In fact, Petitioner remained silent throughout his service period and for three years after retirement. No steps were taken by the Petitioner to claim his alleged right till 2018. Discretionary relief under Article 199 of the Constitution cannot be exercised in favor of the indolent.

20. I would like to quote the following passage from the case of *Ghulam Sarwar Vs. Federation of Pakistan*, 2020 PLC (C.S.) 1211 on the issue of "laches":

> *"27. It is well settled that under Article 199 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds on which relief can be refused by a Court exercising writ jurisdiction is that the petitioner is guilty of delay and laches. It is imperative that where a petitioner invokes extraordinary remedy under Article 199 of the Constitution, he should come to the Court at the earliest possible opportunity. An inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the petitioner. Courts cannot come to the rescue of persons who are not vigilant regarding their rights. It is unjust to give the petitioner a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver. Thus, when a petitioner approaches the High Court with undue delay, the principle of laches disentitles him from discretionary relief under Article 199 of the Constitution, particularly when there is no plausible explanation on the petitioner's part for his blameworthy dilatory*

conduct. Since the unexplained delay in filing the instant writ petitions is of more than nine years, and taking account of the law laid down by the Superior Courts in the cases of Khursheed Latif v. Federation of Pakistan (2010 SCMR 1081), Ahmad and others v. Ghama and others (2005 SCMR 119), Shahbaz Khan Mohmand v. Islamic Republic of Pakistan (1975 SCMR 4), and Muhammad Sadiq and others v. The Commissioner Rawalpindi (1973 SCMR 422), which are on the subject of delay in approaching the Court for the issuance of a writ, laches is an added reason why the instant petitions should be dismissed."

21. In view of the above, the objection taken to the maintainability of the instant petition on account of laches succeeds. The Petition is being decided on the question of maintainability; as such no finding is necessary on merits.

22. Therefore, the instant petition is not maintainable, hence the same is hereby, **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on _____.

JUDGE