JUDGMENT-SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No.3060 of 2020
Ahmad Hussain Soomro
Versus
Federation of Pakistan, etc.

Petitioner by:	Barrister Sajeel Sheryar Swati, learned ASC and Barrister Saman, Advocate,
Respondents by:	Ch. Muhammad Tahir Mehmood, AAG, Nadeem Ahmad Section Officer (Lit) Establishment Division,
Date of Hearing:	15.03.2021.

FIAZ AHMAD ANJUM JANDRAN, J:- Through instant writ petition, petitioner prays for setting aside of Notifications dated 07.01.2020 & 01.10.2020 issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division (**the respondent Division**) and seeks direction against the respondent division to place his case before the Departmental Selection Committee (**DSC**) for absorption in the Officers Management Group (**OMG**) against 10% quota reserved for deputationists in the light of the Summary (**the Summary**) dated 26.08.2010, approved by the Prime Minister.

2. Essential and relevant facts for adjudication of the instant writ petition are that the petitioner was appointed as Lecturer (BPS-17) in the Islamabad Model setup under the Federal Directorate of Education on 20.12.2001. On 10.04.2009, he was transferred on deputation as Section Officer in the respondent division for a period of three years. Subsequently, was repatriated to his parent

department vide Notification dated 18.06.2013. Being aggrieved of repatriation, he filed Writ Petition No.2874/2013 before this Court which was dismissed, while I.C.A. No.901/2013, met the same fate vide order dated 01.06.2016. Then, he filed another Writ Petition No. 2652/2016 before this Court for induction in OMG which was disposed of vide order dated 14.03.2017 with the direction to place his name before the DSC in the light of Summary approved by the Prime Minister. The respondent division assailed the said order before the Hon'ble Supreme Court of Pakistan through CPLA No.1806/2017 which was disposed of vide order dated 18.05.2018 "*with direction to the Establishment Division to consider his case and place it before the appropriate forum for consideration either DSC and or FPSC as the case may be in the light of the judgment as noted above.*"

3. Being dissatisfied with non-compliance, petitioner filed Criminal Original Petition No.120/2019 before the Hon'ble Supreme Court which was disposed of vide order dated 26.08.2020 in terms that *'let the respondent formally communicate whatever consideration was given to the case of the petitioner, who may if aggrieved avail the remedy as may be available to him under the law*. "

4. Pursuant to the direction of the Hon'ble Apex Court dated 18.05.2018 and 26.08.2020, passed in CPLA No. 1806/2017 and Criminal Original 120/2019, the respondent No.1, considered the petitioner and turned down his request for direct induction to OMG, vide Notification dated 01.10.2020, being assailed through instant writ petition.

5. Learned counsel argued that petitioner is required to be absorbed in the OMG in the light of the Summary, duly

approved by the Prime Minister of Pakistan in the year 2010; that his initial appointment had been through the Federal Public Service Commission **(F.P.S.C.),** therefore, not liable to undergo the process once again; that the impugned Notification is not in consonance with the spirit of orders passed by the Hon'ble Apex Court and by this Court as well and that many of his junior colleagues had been appointed in the light of the referred Summary, while petitioner has been treated with discrimination. Learned counsel placed reliance upon case law reported as **2013 SCMR 1752**.

6. On the other hand, learned AAG argued that the petitioner is a habitual litigant who was repatriated in the year 2013; that instead of complying with the order, kept lingering on the matter under the garb of litigation; that a deputationist cannot claim to remain in the borrowing department for indefinite period; that impugned Notification has been issued in compliance with direction of the Hon'ble Apex Court; that petitioner cannot escape the process of F.P.S.C. and that the referred Summary was not applicable to his case being not qualified. In this regard placed reliance upon the Judgment of this Court passed in W.P. No.3954/2018 titled ***Ghulam Nabi Sheikh and another v. Secretary, Establishment Division, Government of Pakistan and another***. At the end, requested for dismissal of instant writ petition.

7. Heard the learned counsel for the petitioner, learned AAG and perused the record with their able assistance.

8. It is necessary to mention that on the preceding date i.e. 08.03.2021, petitioner came up with an application

(C.M. No. 1114/2021) for certain amendments and to assail subsequent Notification and the Rules notified on 03.11.2020. The respondents contested the application. It would be just to decide the same before dilating upon merits of the case.

9. It is abundantly clear from the prayer for substitution of Paragraph-12 that alongside multiple reliefs, petitioner questions vires of the rules notified on 03.11.2020 which gives rise to a new cause of action and cannot be allowed to be intermingled in order to make the issue complex without ascertaining its application with retrospective effect and applicability on the case of the petitioner. Consequently, C.M.A is turned down. The amendment sought is beyond the scope through which a writ petition could be amended.

10. Gist of his prayer by way of the instant writ petition is as under:-

i) To set aside order issued by the respondent division dated 01.10.2020 (petitioner was directed to report his parent department side by side he may apply for the post of Section Officer as and when same is advertised by the F.P.S.C..

ii) Setting aside of order dated 07.01.2020, petitioner was repatriated to his parent department with immediate effect.

iii) Implement the order passed by this Court dated 14.03.2017 as upheld by the Hon'ble Supreme Court vide order dated 18.05.2018 in letter and spirit and to place name of the petitioner before DSC for the purposes of appointment in O.M.G against 10% reserved quota for deputationists.

11. Adverting to the present status of the petitioner and in this respect it is stated that admittedly, petitioner is on deputation since 10.04.2009 although was repatriated to his

parent department after about four years vide Notification dated 18.06.2013.

12. According to the Civil Servants Act, 1973 wherein definition of civil servant is provided in clause 2(1)(b):-

> *"**civil servant**" means a person who is a member of an AllPakistan 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 not include—*
>
> *(i) a person who is on deputation to the Federation from any Province or other authority;*
>
> *(ii) ----------*
>
> *(iii) ----------" (underlined is by the Court).*

Thereafter, selection authority has been defined through 2(1)(h):-

> *"selection authority" means the Federal Public Service Commission, a departmental selection board, departmental selection committee or other authority or body on the recommendation of or in consultation with which any appointment or promotion, as may be prescribed, is made; and (i) "temporary post" means a post other than a permanent post. (2) For the purposes of this Act, an appointment, whether by promotion or otherwise, shall be deemed to have been made on regular basis if it is made in the prescribed manner. (underlined is by the Court).*

13. The Hon'ble Supreme Court of Pakistan, in ***"Dr.Shafi ur Rehman Afridi v. C.D.A Islamabad through Chairman and others"*** *(2010 SCMR 378)* enunciated the law where in paragraph 7&9, it has been 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.*

The Civil Servants Act, 1973 and rules made there under as well as ESTACODE are silent about the fact that a deputationist must serve his entire period of deputation and this omission seems deliberate enabling the Competent Authority to utilize the service of an employee in the manner as it may deem fit and proper. The period of deputation can at the best be equated to that of an expression of maximum period which can be curtailed or extended by the Competent Authority and no legal or vested rights whatsoever are available to a deputationaist to serve his entire period of deputation in the borrowing Department. In this regard we are fortified by the dictum laid down in the following authorities:---

Zain Yar Khan v. Chief Engineer 1998 SCMR 2419, Aslam Warraich v. Secretary, Planning and Development Division 1991 SCMR 2330, Pakistan v. Fazal-ur-Rehman PLD 1959 SC (Pak.) 82, Sheikh Abdul Rahim's case PLD 1964 Lah. 376, Abdul Khaliq Anjum's case 1998 PLC (C.S.) 839, Government of Pakistan v. Prof. M.A. Saeed C.P.No.427-L of 1991, Prof. M. Ashraf Khan Niazi v. Chairman Board of Governors, Allama Iqbal Medical College 2003 PLC (C.S.) 243.

9. It is worth mentioning that a deputationist could not be treated as an aggrieved person provided he had been placed in the same grade and status in borrowing cadre which he was enjoying before his status of deputationist. It may not be out of place to mention here that a deputationist has no vested right to remain on a post as deputationist forever or for a stipulated period as mentioned in the notification and can be repatriated at any time. In this regard reference can be made the case titled Muhammad Rafique v. Secretary, Wafaqi Mohtasib's Secretariat, Islamabad and 2 others 1998 SCMR 2631."

14. Thereafter, Hon'ble Apex Court in another judgment reported as ***"National Assembly of Pakistan through Speaker v. Muhammad Aslam Shami and other"*** *(2012 SCMR 412):-*

"8. It would be seen that the controversy hinges around the status of Mr. Shami i.e. whether he should be treated as an employee of the National Assembly or an officer of the Punjab Judiciary. In this regard it would be seen that per the ESTACODE where a deputationist is proposed to be absorbed permanently in the borrowing department, a proposal is to be initiated by such department at least six

> *months before the expiry of the deputation period. In the event of non-acceptance of the proposal the individual shall revert back to his parent department."* *[Emphasis added]*

15. This Court in a judgment passed in W.P. No.3954/ 2018 titled ***Ghulam Nabi Sheikh and another v. Secretary, Establishment Division, Government of Pakistan and another,*** in paragraph 62 held that:-

> *"Policy guidelines for government servants set out in the Establishment Division's Office Memorandum No.1(28)/ 75-D.II/R.I, dated 18.02.1987 made it clear that the normal period of deputation for all categories of Government servants would be three years and that this period was extendable by two years with prior approval of the competent authority. All cases of initial deputation of government services holding posts in BS-17 and above are required to be referred to the Establishment Division for approval of the competent authority. The authority competent to grant an extension in deputation beyond the initial period of three years for government servants in BS-17 to 18 was the Secretary of the Ministry concerned. The said Office Memorandum further provides that on completion of the maximum period of five years, both the borrowing and lending organizations should ensure immediate repatriation of a deputationist. In case, it is not possible to repatriate a person to his/her parent organization for compelling reasons, the case should be referred to the Establishment Division before the expiry of maximum period of five years, fully explaining the circumstances due to which immediate repatriation is not possible and measures taken to obtain or groom replacement as early as possible."* *[Emphasis added]*

16. After seeking guidance from the law expounded by the Hon'ble Apex Court of the land, as well as by this Court, I am of the humble view that till now, law has been settled that normally, an employee could remain on deputation for a period of three years which, if circumstances so warrant, may be extended for another term of two years. Thus, total period of deputation would not be more than five years.

17. Legal position on the subject is very much clear that for retaining a deputationist beyond the maximum period of five years, there is requirement of explicit consent of the borrowing and parent department for compelling reasons and by referring case to the Establishment Division, wherein circumstances would be fully explained that how immediate repatriation is not possible. But in the case at hand, here consent is explicitly far away and borrowing department is voicing again and again since 2013 and till this day i.e. 2021 that they are not in requirement of the services of the petitioner and even at present he is an Officer on Special Duty (OSD) and receiving salary without performing any duties as submitted by the learned A.A.G in the open Court. In this view of the matter, and the legal position as stated above and by considering explicit stance, advanced by the respondent division, petitioner could not remain in the respondent division for indefinite period against the will and consent of the respondent division.

18. As legal position explained above and keeping in view the detailed legal/factual background of the case at hand, petitioner was asked to report to his parent department firstly in 2013 and currently vide order dated 07.01.2020 reiterated on 01.10.2020, wherein he was and is repatriated to his parent department. Whatever may be the reason, no one including the petitioner can abridge or frustrate the legal position on the subject.

19. The grounds that whether he is required to be considered by the DSC and not by the F.P.S.C., his case falls within the parameters of the policy or interpretations of different circulars, the mandate of law on the subject guides to hold that petitioner is required to report his parent

department first and then to agitate these issues, if so desires, in the humble view of this Court.

20. Now considering the submissions of the learned counsel regarding application of the policy approved on 08.09.2010, the same has been examined. It reveals vide Para 187(a), of the policy that certain criteria for induction/ appointment by transfer was fixed. Two years length of service in the Federal/Provincial secretariat as Section Officer BS-17/18 on deputation under section 10 of the Civil Servants Act, 1973 was required for that purpose, last two years PERs were required to be considered. It is mentioned in the reply of the respondents that at the relevant time petitioner was having one and a half year period on deputation therefore, could not meet the said criteria and could not be appointed. How this Court in constitutional jurisdiction can direct the official respondents to act in contravention of the policy relied upon by the petitioner himself, therefore, said argument in the light of reply of the official respondents, after its due consideration is not available to the petitioner.

21. The argument of the learned counsel that order passed by this Court on 14.03.2017 as upheld by the Supreme Court on 18.05.2018 is not complied with, is misconceived. The order dated 14.03.2017 was impugned by the respondent division before the Hon'ble Apex Court, wherein following directions was passed on 18.05.2018 in CP No.1806/2017. It was ordered that:

> *"In view of the facts noted above, we would direct the Establishment Division to consider the case of the petitioner and place it before the appropriate forum for consideration either DSC and or FPSC as the case may be in the light of the judgment as noted above."* *[Emphasis added]*

22. It is manifestly revealed that direction *ibid* was to the extent of the DSC or for the F.P.S.C. and the official respondents by complying the said direction, came to the conclusion that case of the petitioner would be processed, finalized through the F.P.S.C. The petitioner could not force the official respondents to consider him for permanent absorption in the OMG and that, too, according to his desire i.e. not to undergo through the F.P.S.C. This position as depicted in the order of the Apex Court, is not available to the petitioner rather would amount in negation of the said direction.

23. Thereafter, the Hon'ble Apex Court in Criminal Original Petition 120/2019, filed by the petitioner, passed the order in following terms:-

> *"3. Mr. Shoaib Shaheen, learned counsel for the petitioner states that in the comments filed by the respondent though it is stated that compliance of the order dated 18.05.2018 was made but no formal intimation has been given to him.*
>
> *4. Let the respondent formally communicate whatever consideration was given to the case of the petitioner who may if aggrieved avail the remedy as may be available to him under the law."*

24. The order dated 01.10.2020 *(impugned order)*, if examined, reveals that same is in compliance of the orders of the Hon'ble Apex Court. It is nowhere provided in the said order that official respondents have no authority to transmit the case of the petitioner to the F.P.S.C. It is also nowhere provided that petitioner with his sweet-will, had to remain on deputation for indefinite period. Petitioner could not insist upon his absorption through DCS instead of F.P.S.C.

25. In the judgment ***Ghulam Nabi Sheikh*** *supra*, this Court has observed that:-

> "*The said order makes it very clear that the selection process for induction in the O.M.G. has to be undertaken by the F.P.S.C. A civil servant who was appointed in his parent department through the F.P.S.C., was not exempt from going through the F.P.S.C., for his selection/induction in the O.M.G. indeed, a civil servant who is not selected through the F.P.S.C or the P.P.S.C., as the case may be, for his appointment in his parent department, and serving as a deputationist, did not qualify to be considered for induction in the O.M.G. This was explicitly provided in the criteria dated 08.09.2010, approved by the Prime minister*." [Emphasis added]

26. The contention of the petitioner that he was initially appointed through F.P.S.C., therefore, is not required to undergo the same process once again, seems to be not convincing. Previous appointment through F.P.S.C. was in regard to the initial appointment of the petitioner for the purposes of his induction in his parent department, while the process initiated by the respondent division through F.P.S.C. is for the purposes of absorption in OMG against 10% quota reserved for the deputationists working on deputation in the respondent division. The process initiated by the respondent division could not be equated and substituted for the initial induction of the petitioner that was a separate process having no concern with the present one, therefore, said contention is not justified.

27. In line with above discussions/findings this Court has come to the conclusion that services of the petitioner were borrowed on deputation by the respondents in the year 2009 and by any stretch of the imagination, he could not remain in the respondent division beyond the period of five years or after repatriation by the borrowing department

whichever is earlier, in the instant case, borrowing department is not willing to retain him on deputation since 2013 and is voicing till this day for his repatriation, he cannot claim absorption in OMG against the 10% quota reserved for deputationists without undergoing through the process i.e. through F.P.S.C., as framed/introduced by the respondent division. He is not entitled to compel the respondent division to process his case through DSC instead of F.P.S.C. and in this matter, orders passed by the Hon'ble Supreme Court are very much clear on the subject that the respondent division may proceed either through DSC or F.P.S.C., he has been communicated said decision in the light of directions of the Hon'ble Apex Court.

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

29. In sequel to above, instant writ petition fails and is accordingly **dismissed**. All C.Ms stand dismissed. Injunctive orders recalled.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on 26.03.2021.

JUDGE

Approved for Reporting