JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2198 of 2021
Azhar Ali and another
Versus
Secretary, Ministry of Interior and others

Date of Hearing:	09.11.2021
Petitioners by:	Mr. Imran Fazal, Advocate.
Respondents by:	Raja Saad Sultan, learned Assistant Attorney-General. Mr. Qaiser Masood, Additional Director (Law) / Deputy Legal Advisor, F.I.A.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, Azhar Ali and Zulqarnain, impugn the office order dated 30.09.2020 issued by the Office of the Director General, Federal Investigation Agency (**"F.I.A."**), Islamabad, whereby they were repatriated to their parent department i.e., Sindh Police with immediate effect. Furthermore, the petitioners seek a direction to the F.I.A. to release their salaries.

2. Petitioner No.1 had also filed criminal original petition No.219/2020 seeking the initiation of proceedings for contempt of Court against *inter alia* the Secretary, Ministry of Interior and the Director General, F.I.A. for having repatriated him without a decision on his departmental appeal against his repatriation. It was asserted that during the hearing of writ petition No.1750/2018 before this Court, a consensus had been arrived at between the petitioners in the said petition and the F.I.A. that pending their departmental appeals, their repatriation orders would remain suspended.

3. Learned counsel for the petitioners submitted that the petitioners' absorption in the F.I.A. was strictly in accordance with the law and the procedure provided in Rules 15 and 16 of the Federal Investigation Agency (Appointment, Promotion and Transfer) Rules, 1975 (**"F.I.A. Rules"**); that the petitioners' absorption in the F.I.A. did not violate any judgment passed by the Hon'ble Supreme Court; that the petitioners had not been afforded an opportunity of a hearing before their absorption in the F.I.A. was recalled, and they were repatriated to their parent department; that

UNCERTIFIED COPY

the petitioners' repatriation order is based on *malafides* and bias of the senior officials in the F.I.A.; that the Establishment Division, in its meeting dated 22.09.2020, had taken the position that if the absorption of officers was in accordance with the applicable service rules, orders for their repatriation should not be passed; and that it had not been determined at any material stage that in the process for the petitioners' absorptio, any of the requirements under the F.I.A. Rules had been violated. Learned counsel for the petitioners referred to the orders dated 29.01.2019 and 05.03.2019 passed by the Hon'ble Supreme Court in civil petition No.4655/2018 in support of his contentions.

4. On the other hand, learned Assistant Attorney-General submitted that the petitioners had been repatriated to their parent department pursuant to the judgment dated 12.12.2018 passed by the Division Bench of the Hon'ble High Court of Sindh in Constitution petition No.D-791/2011 and connected matters; and that the civil appeals against the said judgment had been dismissed as withdrawn by the Hon'ble Supreme Court vide order dated 14.10.2020. Learned Assistant Attorney-General prayed for the writ petition as well as the contempt petition to be dismissed.

5. I have heard the contentions of the learned counsel for the petitioners as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

6. Petitioner No.1, Azhar Ali, was appointed on 15.10.1983 in the Sindh Police as a Constable. On 26.10.2007, he was sent on deputation to the F.I.A. On 01.02.2012, he was absorbed in the F.I.A. Vide impugned office order dated 30.09.2020, petitioner No.1 was repatriated to his parent department.

7. Petitioner No.2, Zulqarnain, was appointed on 15.10.1983 in the Sindh Police as a Constable. In July, 2007, he was sent on deputation to the F.I.A. On 07.02.2012, he was absorbed in the F.I.A. Vide impugned office order dated 30.09.2020, petitioner No.2 was repatriated to his parent department. Apparently, petitioner No.2's parent department had not issued a no objection certificate prior to his absorption in the F.I.A.

UNCERTIFIED COPY

8. Apparently, a committee constituted by the F.I.A. had recommended that the absorption orders of several employees who had been absorbed in the F.I.A. to be recalled and they be repatriated to their parent departments.

9. Constitution petitions No.D-791/2011, D-422/2012 and D-423/2012 were filed before the Hon'ble High Court of Sindh by officers appointed on regular basis in the F.I.A. calling in question the absorption of several officers who had initially been sent on deputation from different departments to the F.I.A., and subsequently absorbed in the F.I.A. Petitioner No.1 was respondent No.9 in Constitution petition No.D-422/2012 whereas petitioner No.2 was respondent No.39 in Constitution petition No.423/2012.

10. Vide judgment dated 12.12.2018, the Division Bench of the Hon'ble High Court of Sindh disposed of the said Constitution petitions with the direction to the Secretary, Ministry of Interior, Secretary, Establishment Division and the Director General, F.I.A. to repatriate all the private respondents in the said petitions, including the petitioners in the instant petition. For the purposes of clarity, paragraphs 27 to 32 of the said judgment are reproduced herein below:-

> ***"27. Reverting to the claim of the Respondents No.6 & 7 in C.P. No.D-422 of 2012 that they meet the qualification to be retained in FIA is concerned, suffice it to say, when the Hon'ble Supreme Court has set the criteria of absorption in paragraphs No.132 & 136 of the Judgment, therefore, we have no hesitation to hold that the appointment of the private Respondents in FIA by way of transfer on deputation as well as their permanent absorption is against the dicta laid down by the Hon'ble Supreme Court of Pakistan in the aforesaid judgments.***
>
> ***28. In the light of foregoing, we are of the considered view that the private Respondents cannot be allowed to be absorbed and subsequently promoted in FIA. We are clear in our minds that no department can be allowed to absorb any employee of another department/cadre except with certain exceptions as set forth by the Honorable Supreme Court of Pakistan in the cases referred to above.***
>
> ***29. Since the Competent Authority constituted a committee in compliance of the orders passed by the Hon'ble Supreme Court in Cr. Org. Petition No.89/2011 and recommended that all the absorbees should be repatriated to their parent departments. We are of the considered view that the committee has rightly recommended for repatriation of the private Respondents in all the petitions, therefore, we have no reason to order for retaining the services of the private Respondents in FIA.***
>
> ***30. As regards the contention of the learned counsel for the private Respondents that they were not provided an opportunity of***

UNCERTIFIED COPY

hearing before passing of the impugned action, it is stated that there is no cavil to the proposition that the principle 'audi-alteram-partem' has always been considered to be embedded in the statute even if there is no implied or express provision because no adverse action can be taken against anyone yet at the same time the principle could not be treated to be of universal nature. Because before invoking / applying the said principle one has to specify the infringement of a vested right. In the present case, private Respondents have failed to establish that they have a vested right to remain on deputation, thereafter absorption by way of transfer from another department without matching qualification and fulfilling other codal formalities. Therefore, the argument that the private Respondents were not heard before issuance of impugned action is of no importance. On the aforesaid issues, we are fortified with the recent decision dated 05.10.2018 rendered by the Hon'ble Supreme Court of Pakistan in the case of Criminal Review Petition No. 207 of 2016 in Criminal Original Petition No. 89 of 2011. The Hon'ble Supreme Court has held as under:-

> *"3. The case of the petitioners in Criminal Original Petitions No.62/2016 and 69/2017 is that they were directly appointed employees of NH&MP; that most of the officials were hired from different departments and the petitioners are deprived of their legitimate right of seniority and that most of the deputationist lacked the requisite qualification and experience. According to them this Court in the above said judgment has cancelled all absorptions/appointments by transfer and deputations but the department has partially implemented the said judgment. Hence, they pray that contempt of court proceedings be initiated against the respondent Authority.*
>
> *4. So far as the case of the petitioners in Criminal Review Petition No. 207/2016 is concerned, we have perused the judgment under review. The respondent Department on the recommendation of the Departmental Committee has repatriated the petitioners on the ground that their induction was without the recommendations of the Departmental Induction Committee, which to our mind is unexceptionable. No ground for review is made out. Criminal Review Petition No. 207/2016 is accordingly dismissed."*

31. In the light of foregoing, we direct the Respondents No.1 to 3 to repatriate all the private Respondents in the captioned petitions to their parent departments, if not earlier repatriated, strictly in the light of the directions of the Hon'ble Supreme Court of Pakistan in its judgments rendered in the cases of Contempt proceedings against the Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456). They are directed to submit compliance report through MIT-II of this Court within a period of two months. The period of two months shall commence from the date of communication of this judgment to the Respondents No. 1 to 3, who are further directed to implement the aforesaid judgments of the Hon'ble Supreme Court in their letter and spirit.

32. The captioned petitions stand disposed of in the above terms."

11. The said judgment dated 12.12.2018 had been assailed before the Hon'ble Supreme Court in civil appeals No.1125, 1126 and 1127 of 2019. The appellants before the Hon'ble Supreme Court did not press their appeals since they wanted to avail *"some other remedy."* After recording the statement of the learned counsel for the

UNDER THE LAW

appellants in the said appeals, the Hon'ble Supreme Court, vide order dated 14.10.2020, dismissed the said appeals. With the dismissal of the said appeals, the judgment dated 12.12.2018 passed by the Hon'ble High Court of Sindh attained finality.

12. This Court cannot sit in an appeal over the said judgment passed by the Hon'ble High Court of Sindh at Karachi. This Court also cannot dilute the unequivocal directions given by the Division Bench of the Hon'ble High Court of Sindh to repatriate the petitioners. The impugned office order dated 30.09.2020, whereby the petitioners were repatriated to their parent department was passed prior to the dismissal of the appeals against the said judgment dated 12.12.2018.

13. During the pendency of criminal original petition No.219/2020, petitioner No.1 was afforded an opportunity of personal hearing pursuant to the order dated 18.02.2021 passed in criminal original petition No.219/2020. Petitioner No.1 was afforded an opportunity of a personal hearing by the Appellate Authority (i.e. Secretary, Ministry of Interior) and thereafter, order dated 10.03.2021 was passed. Perusal of the said order shows that the Anomaly Committee of the F.I.A. had decided to repatriate petitioner No.1 to his parent department on 30.09.2020 on the ground that since he was not a civil servant in his parent department, he could not have been absorbed in the F.I.A. Furthermore, the said order shows that the Ministry of Interior had consulted the Attorney-General for Pakistan and on the latter's advice a committee was being constituted to examine all cases of absorption in the F.I.A. This committee was to give its opinion to the Secretary, Ministry of Interior for a final decision. The Secretary, Ministry of Interior had directed for petitioner No.1's case to be placed before the said committee.

14. It ought to be borne in mind that the order passed in criminal original petition No.219/2020 by this Court for affording an opportunity of a hearing to petitioner No.1 was prior to the filing of the report and written comments by the F.I.A. in which reference was made to the said judgment dated 12.12.2018 passed by the Division Bench of the Hon'ble High Court of Sindh. The order to

UNCERTIFIED COPY

afford an opportunity of a hearing to petitioner No.1 was passed on 18.02.2021 whereas the said judgment of the Hon'ble High Court of Sindh was brought on record on 08.10.2021 and 28.10.2021.

15. The relief sought by the petitioners in this petition is for the setting aside of their repatriation order dated 30.09.2020. Regardless of the fact that petitioner No.1's case is to be examined by a committee to be constituted by the Ministry of Interior, I am of the view that interference by this Court with the said repatriation order would amount to interference with the judgment dated 12.12.2018 passed by the Division Bench of the Hon'ble High Court of Sindh in which an unequivocal direction was given for the petitioners' repatriation. As mentioned above, appeals against the said judgment had been dismissed as withdrawn by the Hon'ble Supreme Court.

16. In view of the above, I do not find any merit in this petition, which is accordingly dismissed. Furthermore, no case for contempt of Court against the respondents in criminal original petition No.219/2020 is made out. Consequently, the said petition is also dismissed.

17. Since in the writ petition, there is no pleading to the effect that the Hon'ble High Court of Sindh, vide judgment dated 12.12.2018, had passed directions for the petitioners' repatriation to their parent department, costs of Rs.25,000/- are imposed on each of the petitioners for their said inequitable conduct. The said costs shall be paid to the Edhi Foundation within a period of one month and the deposit receipts shall be brought on record.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 12.11.2021.

(JUDGE)

*Ahtesham**

UNCERTIFIED COPY