CITATION AWAITED

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.907 of 2023

Muhammad Ismail, etc
Vs.
Federation of Pakistan, Cabinet Division, through its Secretary, Cabinet Secretariat, etc.

Date of hearing	:	02.09.2025
Petitioners by	:	Mr. M. Shafiq-ur-Rehman Dab, Advocate.
Respondents by	:	M/s. Azra Batool, AAG, a/w Muhammad Irfan, Section Officer, LIT-V, Establishment Division, Babar Altaf Awan, Assistant Director, IPO, Pakistan, Ahsan Iqbal, IPO, Pakistan.

MUHAMMAD ASIF, J.- Through the instant Writ Petition, the petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"), seeking the following reliefs:

> *"1. It is, therefore, respectfully prayed that the aforesaid Writ Petition may kindly be accepted and the IPO service Rules to the extent of Reserved posts for Commerce and Trade Group and the act of reserving the posts for Commerce and Trade Group by way of rule 5 (c) as read with schedule I to IV of Intellectual Property Organization rules 2022 be declared illegal and ultravires to law.*
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> *II. Respondents be restrained from appointments by deputation illegally, Further, Respondents be directed to repatriate the deputationist illegally appointed.*
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> *III. IPO also be directed to make appointments on all vacant posts, at the earliest, in accordance with its statutory rules.*
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> *IV. Respondents be restrained from any revengeful or prejudice action against the petitioners in terms*

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of invoking their fundamental rights through this petition.

V. Any other relief which this Hon'ble Court deems just and proper also be granted to the petitioner in the circumstances of the case."

2. The brief facts of case as narrated by the petitioners are that the petitioners are law-abiding citizens and regular employees of the Intellectual Property Organization of Pakistan ("**IPO-P**"). The IPO-P was established under Act No. XXII of 2012, namely the *Intellectual Property Organization of Pakistan Act, 2012* ("**the Act, 2012**"), enacted on 6th December 2012. The purpose of establishing the IPO-P was to create a regulator for intellectual property in Pakistan, as intellectual property rights including copyrights, trademarks, patents, industrial designs, layout designs of integrated circuits, trade secrets, and related rights are powerful tools for economic growth. Protection of such rights fosters creativity, stimulates innovation, provides incentives for technological advancement, attracts investment, and ensures an institutional framework within the State for dealing comprehensively with intellectual property matters. Under Section 3(2) of the Act, 2012, the IPO is an autonomous body. Section 4 of the Act, 2012 establishes the Policy Board, which is the apex authority for setting objectives and policy guidelines under Section 5(1) of the Act, 2012. Section 24 of the Act, 2012 authorizes the Policy Board to make appointments in the Organization, while Section 34 of the Act, 2012 empowers the Policy Board, with the approval of the Federal Government, to frame rules for carrying out the purposes of the Act, 2012. On 3rd September 2022, the IPO Pakistan Service Rules, 2022 ("**the Rules, 2022**") were published in the official Gazette. These Rules introduced "reserved posts" for the Commerce and Trade Group ("**CTG**") through Rule 5(c) of the Rules, 2022, read with Schedules I to IV. The petitioner's stance is that this provision is contrary to the Civil Servants Act and the Civil Servants (Appointment, Promotion and Transfer) Rules, 2019, and inconsistent with Sections 24 and 25 of the Act, 2012. They urged that posting civil servants with general administrative backgrounds on highly technical intellectual property posts undermines the regulator's efficiency, being

contrary to the very purpose of establishing an autonomous body, and is prejudicial to IPO's regular employees. The petitioners allege that the IPO-P has been excessively staffed with civil servants on deputation, most of whom lack the requisite qualifications or experience in intellectual property. Out of 26 officers working in IPO's Head Office at Islamabad, only eight are regular IPO employees, while 18 are deputationist from the CTG and other cadres. According to the petitioners, such deputation appointments were made without the lawful approval of the Policy Board, in violation of Section 24(1) of the Act, 2012. It is further submitted that the creation of reserved posts for CTG officers not only undermines the autonomy and purpose of the IPO-P, but also prejudices the legitimate service prospects of regular IPO-P employees. Hence, the petitioners challenge the validity of the statutory notification creating such posts as being unlawful and unjust.

3. Learned counsel for the petitioners argued that the impugned provisions of the IPO-P the Rules, 2022 are mala fide, arbitrary, and framed to serve the personal interests of a few individuals; that the creation of reserved posts for CTG officers under Rule 5(c) of the Rules, 2022, read with Schedules I to IV, directly violates the Civil Servants Act and the 2019 Rules. He placed reliance on Office Memorandum No.8/1/2023/R/3 dated 24th January 2023 issued by the Establishment Division, which objected to the encadrement of CTG officers through Rule 5(c) of the Rules, 2022. The Ministry of Commerce also conveyed the same objection to the IPO. Learned counsel stressed that the statutory scheme of the Act, 2012 provides no room for reserved posts. Section 3(1) of the Rules, 2022 recognizes only four categories of IPO-P employees: (a) IPO employees; (b) civil servants absorbed under Section 36(b) of the Act, 2012 (pursuant to integration of the Trade Marks Registry, Copyright Office and Patent Office); (c) deputationist; and (d) contract employees and similarly neither Section 24 nor Section 36(b) of the Act, 2012 provides any basis for CTG officers to fall within these categories. By introducing reserved posts for CTG officers through impugned Rule 5(c) of the Rules, 2022 unlawfully encadred them into

the IPO's cadre, contrary to law and in violation of the principles laid down by the Hon'ble Supreme Court in *2013 SCMR 1880*. It was argued that CTG officers already have their own service structure and encadred posts within the civil service; therefore, their adjustment into IPO-P is without legal sanction. Counsel emphasized that this arrangement curtails the career prospects of IPO's regular employees. He pointed out that one post of Executive Director, two posts of Directors, three posts of Deputy Directors, and six posts of Assistant Directors have been illegally earmarked for CTG officers, in violation of Sections 24 and 36(b) of the Act, 2012. Counsel further argued that encadrement of civil servants into the IPO-P amounts to "regulatory capture" and undermines the autonomy of the institution; that deputation is meant only to serve as a temporary arrangement in exigent circumstances; reliance on deputation as a permanent staffing solution is contrary to settled principles of service law and repeatedly discouraged by the superior courts. Moreover, transfer of a civil servant from a non-cadre post to a cadre post is impermissible. It was also contended that in the first meeting of the IPO-P Policy Board, it had been resolved that no further deputation appointments would be made after the initial start-up phase. However, this decision was blatantly disregarded. Counsel maintained that IPO-P employees working in IPM scales since 2006 and 2009 have been deprived of promotions, officiating charge, and current charge appointments due to the influx of deputationists. He pointed out that even prior to the notification of the Rules, 2022, the IPO-P was already filled with deputationists, some of whom draw monetary benefits without actually serving the organization. This, according to counsel, not only blocks the career progression of regular employees, but also drains the public exchequer. Counsel relied on the principle of natural justice, arguing that the rights of the petitioners cannot be curtailed by discretionary powers exercised in a colorable manner. He maintained that the impugned notification was issued without notice or opportunity of hearing to the affected employees, in violation of due process. Reliance was placed on *Farkhanda Talat v. Federation of Pakistan* (2007 SCMR 886), wherein the Hon'ble Supreme Court held

that under Section 3(2) of the Civil Servants Act, 1973, civil servants are guaranteed protection against any action adversely affecting their service terms, such as tenure, pay, grade, right to promotion, retirement benefits, and other service conditions. Lastly, learned counsel submitted that under settled principles of judicial review, only the superior courts may examine the vires of laws, rules, and statutory notifications. The petitioners, therefore, have no other adequate or efficacious remedy except to invoke the constitutional jurisdiction of this Court.

4. The learned AAG opposed the petition and submitted on behalf of the Establishment Division (Respondent No. 2), the controversy does not pertain to the autonomy of IPO-P, which is admitted, but to the legality of placing CTG officers against its posts through the mechanism of "reserved posts."; that IPO-P posts, being those of a statutory organization, do not fall within the Federal civil service; hence, under the Civil Servants Act, 1973, CTG officers may only be posted on deputation in terms of Section 10, but cannot be initially appointed or promoted within IPO-P. It was contended that the device of "reserved posts" is ultra vires the governing framework, undermines the integrity of the cadre system, and creates an impermissible parallel promotion channel. She pointed out that the Establishment Division had earlier conveyed its concurrence only to the limited extent of allowing deputation of CTG officers, and not to their absorption or promotion in IPO-P. The learned AAG further submitted on behalf of the Commerce Division and IPO-P that the Rules, 2022 were validly framed under Section 34 of the Act, 2012. It was submitted that the Rules were duly approved by the IPO Policy Board, Establishment Division, Finance Division, and Law Division, and subsequently vetted by the Cabinet Committee on Disposal of Legislative Cases (CCLC) before being ratified by the Federal Cabinet. It was argued that Rule 5(c) does not violate any statutory or constitutional provision. Rather, it embodies a reasonable classification based on functional requirements. Officers of the CTG, having undergone structured training in trade policy, WTO law, TRIPS, and intellectual property, are particularly suited to IPO's specialized

mandate. Reference was made to precedents such as the Trade Development Authority of Pakistan (TDAP), where statutory provisions expressly provide for CTG officers. Article 25 does not forbid reasonable classification, and the Federal Government enjoys wide discretion under Articles 240 and 242 of the Constitution to regulate service matters. Deputation postings are lawful, expressly envisaged under the Service Rules and Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, and presently cover only a fraction of IPO's sanctioned posts. It was also argued that the petitioners themselves were initially recruited on contract without specialized training, whereas CTG officers undergo rigorous Common Training Programme (CTP) and Specialized Training Programme (STP) with modules directly relevant to IPO's work. Deputation appointments, it was contended, are lawful, limited in number, and have enhanced IPO's performance. As the Rules were promulgated transparently, with approval of the IPO-P Policy Board and concurrence of relevant Divisions, no illegality or constitutional infirmity has been shown, and the petition is liable to be dismissed.

5. We have heard the learned counsel for the parties and perused the record. The core issues arising for determination are: (i) whether the petitioners are competent to challenge the vires of the IPO Service Rules, 2022 ("**the Rules, 2022**"); (ii) whether the provision of "reserved posts" for officers of the CTG, as introduced through Rule 5(c) read with Schedules I–IV of the Rules, 2022, is consistent with the Act, 2012 and the scheme of service law; and (iii) whether deputation appointments of CTG officers in IPO-P can lawfully be continued as a permanent staffing arrangement.

6. At the outset, it is an established principle that the framing of rules under a parent statute, or any amendment therein, is within the prerogative domain of the competent authority. Section 34 of the Act, 2012 expressly empowers the Policy Board, with the approval of the Federal Government, to make rules for carrying out the purposes of the Act. It is equally settled that unless a rule or subordinate legislation is shown to be ultra vires the parent statute or the Constitution, the Courts

ordinarily refrain from interfering in matters of policy or administrative discretion. It has been held by the Hon'ble Supreme Court in a series of judgments that that rule-making is a legislative function, the wisdom or efficacy of which is not open to judicial review unless tainted by lack of jurisdiction or violation of fundamental rights or in derogation of the parent statute.

7. The statutory scheme of the Act, 2012 provides that IPO-P is an autonomous body (Section 3(2)) and that the Policy Board is its apex authority empowered to set objectives and make appointments (Sections 4 and 24). Section 36(b) of the Act, 2012 further provides for absorption of employees of the Trade Marks Registry, Copyright Office, and Patent Office upon their merger into IPO-P. Importantly, these are the only categories of employees statutorily recognized for encadrement into IPO-P. Neither Section 24 nor Section 36(b) provides any authority to create a quota for any other cadre of federal civil service. Rule 5(c) of the IPO-P Service Rules, 2022, by earmarking statutory posts for CTG officers, effectively amounts to encadrement, which is not envisaged by the parent statute. The act of induction, encadrement of civil employees into other department(s) or into any autonomous body was outlawed by the Hon'ble Supreme Court on several occasions and deprecated the practice of parachuting civil servants into autonomous organizations in disregard of statutory limits. In *Sudhir Ahmed & Others v. Speaker, Balochistan Provincial Assembly* (**2017 SCMR 2051**), it was held:

> *"Even otherwise we would be defeating the spirit of the judgments rendered in the cases of Contempt proceedings against the Chief Secretary Sindh and others (supra) and Ali Azhar Khan Baloch v. Province of Sindh (supra) by approving the appointments of the persons who parachuted in any autonomous body, authority or department from above without undergoing the process laid down by law and the relevant rules for appointment."*

The of Hon'ble Supreme Court in paramount judgment passed in case of *Contempt Proceedings against Chief Secretary, Sindh & others (**2013 SCMR 1752**),* passed a judgment in a rem, by observing that:

> *"121. By the impugned legislations 'absorption' of an employee in ex-cadre group would deprive the seniority and progression of career of meritorious civil servants. A substantial number of unfit and unmeritorious officers and beneficiaries have been absorbed in the important groups, services, positions with the help of authorities and such legislations allow this to continue. The absorption, by way of impugned instruments, would practically cause removal of constitutional and legal differentiations that exist between various cadres, posts and services. Moreover, the culture of patronage will intensify the activity of bringing more politicization, inefficiency and corruption in the provincial services. The Civil Servants Act and Rules framed provide transparency in appointments, which would disappear and the employees who could not get in service through competitive process may also be obliged to look for a political mentor instead of relying on merits in order to protect their careers. We may also observe here that the absorption under the aforesaid impugned instruments is not only confined to non-civil servants to civil servants but through these impugned instruments non-civil servants, who were serving on non-cadre posts, have been transferred and absorbed to cadre posts, the pre-requisite of which is competitive process through Public Service Commission or by other mode provided in the relevant recruitment rules. Law of such nature which is violative of the recruitment rules will encourage corruption and bad governance and the public at large will loose confidence in the officials who are being absorbed under the garb of the aforesaid impugned instruments."*

It was further held that:

> *132. The procedure provided under the ESTACODE requires that a person who is transferred and appointed on deputation must be a government servant and such transfer should be made through the process of selection. The borrowing Government has to establish the exigency in the first place and then the person who is being transferred/placed on deputation in Government must have matching qualifications, expertise in the field with required experience. In absence of these conditions, the Government cannot appoint anyone*

by transfer on deputation. The Sindh Government has conceded before this Court that the deputationists did not have the matching qualifications to the cadre in which they were working on deputation and were ordered to be repatriated. Instead of repatriation, the Sindh Government absorbed them by the impugned instruments granting them backdated seniority as well. Some of the civil servants serving in their parent department on non-cadre posts were transferred and absorbed to the cadre posts against the language of section 10 of the Act of 1973 on the basis of the impugned enactments. We are conscious of the definition given under section 2(1)(b)(i) of the Act of 1973 reproduced here under:--

"2(1)(b) "civil servant" means a person who is a member of a civil service of the Province or holds a civil post in connection with the affairs of the Province, but does not include--

(i) a person who is on deputation to the Province from the Federation or any other Province or authority or,

(ii) .....

(iii) ....."

133. The aforesaid subsection specifically mention s that a person on deputation will loose the status of a civil servant. The word "authority" used under this subsection does not authorize the Sindh Government to transfer and appoint on deputation any person who is not a civil servant within the definition given under the Sindh Civil Servant Civil Servants Act, 1973 and or Government servant as mentioned under the ESTACODE. In order to harmonize section 2(1)(b)(i) and bring it in conformity with the language of ESTACODE, should be read as under:--

"2(1)(b) "civil servant" means a person who is a member of a civil service of the Province or holds a civil post in connection with the affairs of the Province, but does not include--

(i) a person who is on deputation to the Province from the Federation or (to) any other Province or (to) authority or,

(ii) .....

(iii) ....."

The aforesaid word 'to' shall bring an end to the controversy on deputation besides it will be in conformity with the civil service structure and the ESTACODE."

Reference can also be made on reported judgment of Hon'ble Supreme Court in case of *Ali Azhar Khan Baloch v. Province of Sindh*, (**2015 SCMR 456**)

8. Nonetheless, the present petition raises a substantial question: whether Rule 5(c) of the Rules, 2022 lawfully provides for "reserved posts" for CTG officers within IPO-P. The statutory scheme of the Act, 2012, when read as a whole, recognizes IPO-P as an autonomous body. Section 24 empowers the Policy Board to make appointments in the Organization, while Section 36(b) contemplates absorption of employees of the Trade Marks Registry, Copyright Office, and Patent Office upon integration. Neither provision envisages the creation of a separate quota for officers of any other cadre of the Federal Government. By earmarking statutory posts for CTG officers, Rule 5(c) appears to have the effect of encadrement, a mechanism alien to the Act, 2012, and contrary to the cadre integrity of the civil service as well as the autonomy of IPO-P. It is settled law and held time and again by the superior courts that no person being in civil service of Pakistan or of any province can be transferred and posted in other department including autonomous body permanently, for indefinite period or absorbed, rather his/her/their posting can be made purely on transfer basis for a specific period or on deputation, but that too on the prescribed manner, however, any employee/officer posted on deputation shall have no right of promotion in the avenue of his posting department, but for promotion he has to seek such relief before his parent department.

9. In the present case, the admitted position on record is that IPO-P is heavily manned by CTG officers on deputation, with 18 out of 26

officers in its Head Office being deputationists. The effect of Rule 5(c) is to entrench this arrangement permanently by encadrement through "reserved posts." Such a practice not only erodes the autonomy of IPO-P, but also prejudices its regular employees, who are deprived of promotional prospects, officiating charge, and legitimate career progression. This directly contravenes the settled dicta of the Hon'ble Supreme Court that absorption or encadrement through subordinate legislation is impermissible. The illegality of Rule 5(c) is further evident from the stance of the Establishment Division itself, which is the competent authority for regulating matters of civil service under the Rules of Business, 1973. The record shows that vide Office Memorandum dated 24-01-2023, the Establishment Division categorically objected to the proposal of creating "reserved posts" in IPO-P for CTG officers. The said O.M. records:

> *"(i) The proposal of encadrement of officers of Commerce and Trade Group into IPO as proposed in Rule 5 (c) of (IPO-P) Rules, 2022 has no legal basis as it is in contradiction with the Section 9 of Civil Servants Act, 1973 read with Rule 2 of Civil Servant Promotion (BS-18 to BS-19) Rules, 2019.*
> *(ii) Establishment Division has not accorded approval of rule 5 (c) of (IPO-P) Rules, 2022 as notified by the Ministry of Commerce and is thus not covered under the decision of Cabinet Committee for Disposal of Legislative Cases (CCLC) in Case No. 53/08/2022 dated 29th June, 2022 (copy enclosed).*
> *(iii) The Cabinet Committee for Disposal of Legislative Cases (CCLC) has approved the IPO Rules, 2022, not the proposal to change the cadre strength of Commerce and Trade.*
> *(iv) The proposed encadrement for the officers of Commerce and Trade in the light of proposed rule, if agreed, would mean that the officers after being included in IPO would be absorbed in the said organization and would not able to go back to their original cadre"*

This objection, coming from the very custodian of federal service law, underscores that the impugned rule was not only contrary to the statute, but also opposed to the policy framework of the Government itself. The Court cannot ignore such a clear institutional position of the Establishment Division, which reflects

settled service jurisprudence that deputation must remain temporary, and absorption or encadrement of deputationists into an autonomous organization is impermissible. Thus, even on administrative wisdom, the impugned provision could not withstand scrutiny. It amounts to an attempt by subordinate legislation (the Service Rules, 2022) to override the statutory design of the IPO Act, 2012 as well as the constitutional principle of equality of opportunity in public service guaranteed by Article 27 of the Constitution.

10. As to deputation, the law is settled that it is a temporary arrangement to meet exigencies of service. Section 10 of the Civil Servants Act, 1973 allows a civil servant to be deputed to another department or organization for a limited period, but deputation cannot be employed as a device for permanent adjustment, absorption, or promotion in an outside organization.

11. In this background, the contention of the petitioners that the influx of deputationists and the reservation of IPO-P posts for CTG officers undermine their career progression carries weight. At the same time, however, the petitioners' broader challenge to the entire rule-making power cannot succeed, as the framing and amendment of service rules is the exclusive prerogative of the competent authority under the parent statute. What is open to judicial scrutiny is only whether the impugned provision is intra vires or ultra vires the parent statute and the Constitution. From the record and the admitted stance of the Establishment Division, it is evident that while deputation of CTG officers was concurred to a limited extent, their encadrement or permanent adjustment in IPO-P was never approved. The introduction of "reserved posts" has, in effect, altered the service structure of IPO-P without express sanction in the Act, 2012. Such an arrangement is

inconsistent with the statutory autonomy of IPO-P and the scheme of deputation recognized in service law.

12. It follows, therefore, that while the Policy Board possesses the prerogative to frame rules, the encadrement of CTG officers through Rule 5(c) is ultra vires the Act, 2012 and contrary to service law. Deputation remains permissible only as a temporary measure under Section 10 of the Civil Servants Act, 1973, and even then subject to matching qualifications and exigency of service. Any attempt to create parallel channels of appointment or promotion for CTG officers in IPO-P stands opposed to both the statutory scheme and the jurisprudence of the superior Courts.

13. For the reasons discussed above, the instant Writ Petition No.907 of 2023 is **partly allowed** in the following terms:

> (i) Rule 5(c) of the IPO Service Rules, 2022, to the extent that it creates "reserved posts" for officers of the Commerce and Trade Group (CTG), is declared ultra vires the IPO Act, 2012, and void ab initio.
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> (ii) Civil servants, including CTG officers, may be posted in IPO-P only on deputation strictly in accordance with Section 10 of the Civil Servants Act, 1973. Such deputation shall remain a temporary arrangement, and shall not confer any right of absorption, encadrement, or promotion within IPO-P.
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> (iii) The IPO Policy Board shall remain competent to frame or amend rules under Section 34 of the Act, 2012, subject to approval of the Federal Government, provided that such rules are consistent with the Act and do not prejudice the vested rights of IPO-P's regular employees.

(iv) The respondents are directed to ensure that all future appointments in IPO-P are made in strict accordance with the statutory framework, and that the career progression of IPO-P's regular employees is not obstructed by unlawful encadrement or prolonged deputation arrangements.

The petition stands **disposed of** in the above terms.

(MUHAMMAD ASIF)
JUDGE

Announced in open Court on_____September, 2025.

JUDGE

/MALIK KAKAR/

APPROVED FOR REPORTING