JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No.54 of 2017
Mahmood Rashid
Versus
Federation of Pakistan through Secretary, Ministry of Interior and others

Date of Hearing:	24.05.2017
Petitioner by:	Mirza Waqas Qayyum, Advocate
Respondents by:	Mr. Ahsan Mehmood Satti, learned Deputy Attorney-General.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Mahmood Rashid, who is working as Assistant Disease Investigation Officer (BPS-17) on deputation basis at the Livestock and Dairy Development Department, Islamabad Capital Territory (respondent No.2), impugns the judgment dated 12.01.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the order dated 15.06.2012, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order dated 15.06.2012, the learned Civil Court dismissed the petitioner's suit for declaration and mandatory injunction praying for the setting aside of notification dated 20.11.2015 issued by the Ministry of Interior, Government of Pakistan (respondent No.1), whereby the petitioner's services were repatriated to his parent department i.e. Livestock and Dairy Development Department, Government of Balochistan (respondent No.4).

2. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant civil revision petition, submitted that the petitioner was initially sent on deputation from respondent No.4 to the Livestock and Dairy Development Department, ICT, Islamabad/ respondents No.2 and 3 on 21.10.2011 for a period of three years; that subsequently, his deputation period was extended up to 20.10.2015; that respondents No.2 and 3 had recommended that the petitioner's deputation period should be extended to 20.10.2016 on the basis of wedlock policy; that the petitioner's

parent department/respondent No.4 had not issued an N.O.C. regarding an extension in the petitioner's deputation period for *malafide* reasons; that the petitioner's wife was employed as a Lecturer at Islamabad Model College for Girls, on permanent basis and therefore, the benefit of the wedlock policy ought to have been extended to the petitioner; that as per notification dated 16.04.2012, issued by the Establishment Division in exercise of the powers conferred by Sub-Section 1 of Section 25 of the Civil Servants Act, 1973 read with notification dated 27.02.1998, the Prime Minister was pleased to direct an amendment in Rule 20-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, by inserting a *proviso* to the said Rule, whereby the posting of serving husband and wife at the same station were exempted from being transferred; that as per office memorandum dated 13.05.1998 issued by the Establishment Division, spouses already posted at one station, including those posted on deputation beyond the prescribed maximum period, may normally not be disturbed without compelling reasons; that as per office memorandum dated 08.01.2015, issued by the Establishment Division, the *proviso* to Rule 20-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, has an overriding effect on the deputation policy, and posting on deputation under the wedlock policy is without any limit of time. Learned counsel for the petitioner prayed for the instant civil revision petition to be allowed and for the concurrent orders passed by the learned Courts below to be set aside.

3. On the other hand, the learned Deputy Attorney-General submitted that the petitioner's deputation period had expired on 20.10.2015; that the petitioner's parent department/respondent No.4 had not issued an N.O.C. for an extension in the petitioner's deputation period; that there were no compelling reasons for an extension in the petitioner's deputation period; that there is no illegality in the notification dated 20.11.2015 issued by respondent No.1 repatriating the petitioner to his parent department with immediate effect; that the petitioner has continued to remain on deputation on the basis of stay orders issued by the learned Courts below as well as this Court; that in this way the petitioner has

avoided compliance with his repatriation orders for a period of one and half year; that the petitioner cannot claim an indefinite extension in his deputation period on the basis of wedlock policy; that the Superior Courts have held that a deputation period cannot be extended beyond five years unless there were compelling reasons for an extension. The learned Deputy Attorney-General prayed for the instant civil revision petition to be dismissed.

4. I have heard the learned counsel for the petitioner as well as learned Deputy Attorney-General, and have perused the record with their able assistance.

5. The record shows that the petitioner, who was a Veterinary Officer, Livestock and Dairy Development Department, Government of Balochistan (respondent No.4) was posted as Assistant Disease Investigation Officer (BPS-17) in the Livestock and Dairy Development Department, Islamabad Capital Territory (respondent No.2) on deputation basis for a period of three years i.e. from 21.10.2011 to 20.10.2014. On the petitioner's request, respondent No.4 was approached for an extension in the petitioner's deputation period for a further period of two years i.e. from 21.10.2014 to 20.10.2016. However, respondent No.4 agreed to an extension in the petitioner's deputation period for a period of one year only i.e. up to 20.10.2015. Prior to the expiry of the said extended deputation period, the petitioner, vide letter dated 02.10.2015, applied to respondent No.2 for the further extension of his deputation period on the basis of the wedlock policy. The petitioner asserted that his spouse was serving as a Lecturer BPS-17 in the Islamabad Model College for Girls, F-7/4, Islamabad. The extension in the deputation period was sought on the basis of office memorandum dated 08.01.2015 issued by the Establishment Division under the wedlock policy. Respondent No.3, vide letter dated 13.10.2015, requested respondent No.2 to recommend the petitioner's case to respondent No.1, for an extension in his deputation period on the basis of the wedlock policy. Vide letter dated 27.10.2015, respondent No.2 requested respondent No.1 to obtain an N.O.C. regarding the petitioner's extension in the deputation period up to 20.10.2016.

6. It appears that the petitioner's parent department i.e. respondent No.4 did not grant an N.O.C. for an extension beyond 20.10.2015 in the petitioner's deputation period. Consequently, vide notification dated 20.11.2015 respondent No.1 repatriated the petitioner to respondent No.4 with immediate effect. The petitioner instead of showing compliance with the said repatriation order instituted a suit for declaration and permanent injunction against respondents No.1 to 4 before the Court of the learned Civil Judge, Islamabad. In the said suit, the petitioner prayed for the said notification dated 20.11.2015 to be declared illegal and unconstitutional. Furthermore, the petitioner prayed for a direction to respondent No.1 to approach respondent No.4 for the issuance of an N.O.C. regarding an extension in the petitioner's deputation period. The petitioner also prayed for a direction to respondent No.2 to absorb/induct him and not to disturb him in any manner. Along with the said suit, the petitioner applied for an injunction against his repatriation to his parent department/respondent No.4.

7. The learned Civil Court vide order dated 15.06.2016 dismissed the said suit. It was held by the learned Civil Court that a deputationist had no vested right to be retained in the borrowing department beyond the period of deputation. Against the said order dated 15.06.2016, the petitioner preferred an appeal before the Court of the learned Additional District Judge, Islamabad. Vide judgment dated 12.01.2017, the learned Appellate Court dismissed the petitioner's appeal. The learned Appellate Court held that the petitioner could not be given any benefit under the wedlock policy because the petitioner, being an employee of the Provincial Government, was seeking an extension in his deputation with the Federal Government. The said concurrent orders of the learned Courts below were impugned by the petitioner in the instant civil revision petition.

8. Deputation has been defined as an administrative arrangement between borrowing and lending authorities for utilizing services of an employee in public interest and exigency of services against a particular post. Deputation was a contract between the borrowing and the lending authorities, which was liable to be terminated at any

stage during prescribed period of deputation. A deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his own whims and wishes.

9. It is settled law that a deputationist may not necessarily complete the tenure for which he was deputed and the power rested with the competent authority to repatriate a deputationist without assigning any reason. In case of transfer on deputation, no vested right accrued to a deputationist to continue for the period of deputation. The competent authority was empowered to repatriate a deputationist as and when the exigencies of service required. Some of the cases in which this view has been taken are mentioned herein below:-

(i) In the case of Pakistan Vs. Fazal Rehman Khundkar & another reported as PLD 1959 Supreme Court (Pak.) 82, it has been held by the Hon'ble Supreme Court of Pakistan that it is a matter of practice and common experience, that officers of the Provincial cadres deputed for service at the Centre are frequently recalled by their Province, by the Provincial Government, in the exigencies of the public service. Against such a recall they have no right of any kind to object, being substantively officers of the Provincial Government and only on deputation to the Centre. The mere fact that they may be holding at the Centre a post higher in rank than that to which their place in the Provincial cadre entitles them in the Provincial service does not constitute the least bar to the making of an order by the Central Government at the request of the Provincial Government, re-placing the services of such an officer at the disposal of his parent Government.

(ii) In the case of Dr. Shafi-ur-Rehman Afridi Vs. CDA, Islamabad reported as 2010 SCMR 378, it has been held by the Hon'ble Supreme Court of Pakistan that the provisions of Civil Servants Act, 1973, and rules made thereunder, as well as Esta Code were silent about the fact that a deputationist must serve his entire period of deputation and such omission seemed deliberate enabling the competent authority to utilize service of an employee in the manner as it might deem fit and

proper. Period of deputation could at the best be equated to that of an expression of maximum period which could be curtailed or extended by competent authority and no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department.

(iii) In the case of Mst. Robia Ayub Vs. Federation of Pakistan reported as 2013 PLC (CS) 915, it has been held by this Court that a deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his/her own whims and wishes. Civil servant has no vested right to complete the deputation period as it is a matter relating to the terms and conditions of service. Competent authority of borrowing department having sole discretion to decide fate of deputationist could repatriate him at any time to parent department.

(iv) In case of Abdul Majeed Vs. Chief Secretary, Punjab reported as 2015 PLC (CS) 1381, it has been held by the Hon'ble Lahore High Court that a deputationist did not have any vested right to remain on the post as deputationist forever or for a stipulated period. A deputationist could be ordered to be repatriated to his parent department at any time without assigning any reason. Parent department of appellant-employee was not bound to assign reason for his repatriation.

(v) In case of Lal Khan Vs. Employees Old Age Benefit Institution reported as 2010 PLC (CS) 1377 (Karachi), it has been held by the Hon'ble High Court of Sindh that a deputationist had no vested right to remain on post forever or for a stipulated period. A deputationist could not challenge order of his repatriation as he could be repatriated back to parent department at any time.

10. On account of the above referred trite law, the petitioner could not have any grievance against his repatriation by the borrowing department to his parent department in the Province of Balochistan. If this Court is to accept the petitioner’s plea that on account of the wedlock policy, the petitioner should not be repatriated to his parent

department, it would not just be going against the wishes of the petitioner's parent department as well as the borrowing department.

11. The petitioner's posting on deputation in the year 2011 was certainly not on the basis of the wedlock policy. The record shows that the petitioner's wife was employed at Islamabad after the petitioner's posting on deputation. It is indeed not pleasant for a husband and wife to be working at different stations, but the law cannot be circumvented to bring them to the same station. The vital question to be answered is whether a person posted on deputation at a particular station can claim to remain so posted for all the period during which his or her spouse remains employed at such a station, regardless of decision of the parent department and the borrowing department to repatriate the deputationist. I would think not. To hold in favour of such a deputationist would be tantamount to disregarding the innumerable authorities from the Superior Courts that no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department. In the case of Mst. Robia Ayub Vs. Federation of Pakistan, (2013 PLC (CS) 915), the petitioner had challenged the repatriation to the parent department on the ground that it was contrary to *inter-alia* the wedlock policy. The petitioner in that case had also prayed for a direction to the borrowing department to absorb her. This Court dismissed the writ petition by *inter-alia* holding that the petitioner's claim on the basis of the wedlock policy was not justifiable. Furthermore, it was held as follows:-

> ***"10. The law on the subject is very much clear. The petitioner is a civil servant and remained on deputation for a fixed term and was returned to her parent department in consequence of terms and conditions of her deputation. A deputationist cannot remain on deputation for an indefinite period or stipulated period in accordance with his/her own whims and wishes. While taking this view, I am fortified by a judgment rendered by the Hon'ble Apex Court in the case of Dr.Shafi-ur-Rehman Afridi v. CDA Islamabad through Chairman and others (2010 SCMR 378)."***

12. Additionally, in the case of Asma Shaheen Vs. Federation of Pakistan (2013 PLC (C.S.) 391, this Court spurned the plea that a deputation cannot be repatriated due to the wedlock policy. At paragraph 13 of the said judgment, it has been held as follows:-

> *"13. From the plain reading of above said wedlock policy, it is obvious that the word "may" has been used in the said letters and not "shall". It has never been stressed that all the deputationists whose spouses are working at Islamabad shall must be absorbed or will continue to serve at Islamabad. As regards the contention that some of deputationists have been absorbed, the same cannot be taken into consideration, for the simple reason that it was the discretion of the competent authority to absorb some of deputationists according to requirement of department, capabilities, know how, performance, qualification, general reputation and on the basis of annual confidential reports. The others cannot claim the same treatment as of right. The deputation is a contract and if borrowing department does not need the services of a deputationist, he or she must go back to parent department and thus no fundamental rights of the petitioners have been infringed and no provisions of Constitution have been violated. Learned counsel for the petitioners have failed to rebut the contention of learned Deputy Attorney-General that at present no deputationist is being absorbed. There appears no political element with regard to repatriation of the petitioners to their parent departments."*

13. As regards the petitioner's desire to be absorbed against the post where he was working as a deputationist, at no material stage has the borrowing department sought the formal concurrence of the parent department for the petitioner's absorption during the deputation period. Since the very process for the absorption of the appellant had not been initiated in accordance with the applicable law, the desire of the petitioner for absorption is immaterial. As it is, the petitioner, on the basis of stay orders has been able to stay away from his parent department for a year and a half after his repatriation orders were issued by respondent No.1.

14. By reason of the aforementioned, I do not find any merit in this civil revision petition, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Sultan*

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