JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2296 of 2017

Mst. Shahnaz Gul

Versus

Federation of Pakistan through Secretary Ministry of Interior and another

Dates of Hearing:	31.10.2022 and 08.11.2022
Petitioner by:	Mr. Abid Mehmood, Advocate
Respondents by:	Mian Faisal Irfan, learned Deputy Attorney-General, Mr. Rehan Shahid Rao, Assistant, Office of the District Health Officer, Islamabad

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MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Mst. Shahnaz Gul, impugns the office order dated 08.06.2017 issued by the Office of the District Health Officer, Islamabad Capital Territory (**"I.C.T."**), whereby she was repatriated to her parent department *i.e.,* the Health Department, Government of Khyber Pakhtunkhwa (**"K.P.K."**). Furthermore, she was relieved from her duties and directed to report for duty to the Office of the Agency Surgeon, Frontier Region Bannu, K.P.K.

2. The learned counsel for the petitioner submits that the petitioner's husband is employed as a Trained Graduate Teacher (BPS-16) in the Islamabad Model College for Boys, Chenual Bangial, Islamabad; that the petitioner was sent on deputation from the Health Department, K.P.K. to serve as a deputationist in the Health Department, I.C.T.; that although her three-year deputation period had expired and an order for her repatriation was issued on 08.06.2017, she has the right to continue serving as a deputationist in the Health Department, I.C.T. as long as her husband remains employed in Islamabad; and that the maximum deputation period of five years does not apply to the posting of a deputationist to a station where his / her spouse is employed by virtue of the *proviso* to Rule 20A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 (**"A.P.T.**

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Rules"). The learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, Mian Faisal Irfan, learned Deputy Attorney-General assisted by Mr. Rehan Shahid Rao, Assistant, Office of the District Health Officer, Islamabad submitted that the petitioner was appointed on deputation in the Health Department, I.C.T. on humanitarian grounds after her parent department had issued a No Objection Certificate; that vide letter dated 14.03.2016, the petitioner was appointed as a deputationist in the Health Department, I.C.T. for a period of three years; that the petitioner's three-year deputation period expired on 14.03.2019; that although vide office order dated 08.06.2017 the petitioner was repatriated to her parent department, she obtained an interim order from this Court vide order dated 15.06.2017; that by virtue of the said interim order issued more than five years ago, the petitioner is still serving as a deputationist in the Health Department, I.C.T.; and that the Health Department, I.C.T. does not want to retain the petitioner's services. Learned Deputy Attorney-General prayed for the writ petition to be dismissed.

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

5. The record shows that the petitioner was serving as Lady Health Visitor (**"LHV"**)(BPS-09) in the Health Department, K.P.K. when she applied to be sent on deputation to the Health Department, I.C.T. Vide letter dated 14.03.2016, the Health Department, K.P.K. informed the Office of the Chief Commissioner, I.C.T. that it did not have any objection to the petitioner proceeding on deputation to the Office of the Chief Commissioner, I.C.T. for a period of three years. Vide letter dated 04.05.2016, the Office of the Chief Commissioner, I.C.T. approved the petitioner's appointment as LHV (BPS-09) in the Health Department, I.C.T. on deputation basis for a period of three years. Vide letter dated 24.05.2016 issued by the Office of the

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District Health Officer, I.C.T., the petitioner was posted at Rural Health Centre, *Tarlai*, Islamabad.

6. Vide office order No.45/2017, dated 02.06.2017 issued by the Office of the Chief Commissioner, I.C.T., the petitioner was repatriated to her parent department on the ground that her deputation was in violation of the law laid down by the Hon'ble Supreme Court in the judgment reported as *2013 SCMR 1752*. Vide office order dated 08.06.2017 issued by the Office of the District Health Officer, I.C.T., she was relieved from her duties in the borrowing department.

7. On 14.06.2017, the petitioner filed the instant writ petition challenging the said order dated 08.06.2017, and on 15.06.2017, she was granted interim relief.

8. The petitioner bases her case on the *proviso* to Rule 20A of the A.P.T. Rules for continuing to remain on deputation as long as her husband remains employed in Islamabad. This Court in the case of Nusrat Rasheed Vs. Federation of Pakistan (2021 PLC (C.S.) 777) interpreted the said *proviso* to Rule 20A of the A.P.T. Rules in the following terms:-

> ***"68. A sine qua non for an officer to continue serving as a deputationist is the consent of the parent department. The wedlock policy and/or the proviso to Rule 20A of the APT Rules cannot operate to stop or stall the reversion of a deputationist to his parent department where such department declines to extend the deputation period or asks for the reversion of the deputationist to his/her own cadre. Establishment Division's O.M. No.10/30/97-R-II dated 28.01.2020 provides that where the parent department of the deputationist does not agree to issue an N.O.C. for a further extension of deputation under the wedlock policy, the incumbent shall be repatriated to the parent department. Similarly, a deputationist, whether or not sent on deputation under the wedlock policy, cannot be thrust upon a borrowing department which is unwilling to retain the services of such a deputationist. This is moreso where the recruitment rules require the post occupied by a deputationist to be filled through promotion or initial appointment. The method of appointment prescribed in the recruitment rules cannot be ignored, and merit cannot be given a go-bye in order to keep spouses at the same station. An order for the repatriation of a deputationist would imply that the process initiated for the permanent absorption of the deputationist had been brought to an end. In the case of Dr. Shafi-ur-Rehman Afridi Vs. CDA, Islamabad (2010 SCMR 378), it has been held by the Hon'ble Supreme Court of Pakistan that a deputationist cannot be treated as an "aggrieved person" because he has no vested right to remain on a post as***

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deputationist forever or for a stipulated period as mentioned in notification and can be repatriated at any time. The mere initiation of the process for a deputationist's absorption in the borrowing department or the issuance for an N.O.C. by the parent department does not arm the deputationist with a vested right to be absorbed. ...
69. ...
70. ...
71. In the event the borrowing department does not want to repatriate a deputationist appointed under the wedlock policy or the parent department is inclined to extend the deputation period of such deputationist beyond five years, such deputationist can continue serving for a reasonable period beyond the maximum permissible period of five years by virtue of the proviso to Rule 20A of the A.P.T. Rules. However, neither the parent department nor the borrowing department are under an obligation to keep the exempted categories on deputation for the complete five years or beyond."

9. The *proviso* to Rule 20A of the A.P.T. Rules cannot insulate the petitioner against the inapplicability of the law laid down by the Superior Courts in the cases of Pakistan Vs. Fazal Rahman Khundkar (PLD 1959 SC 82), Lal Khan Vs. Employees Old Age Benefits Institution (2010 PLC (C.S.) 1377), S. Masood Abbas Rizvi Vs. Federation of Pakistan (2014 SCMR 799), and Abdul Majeed Vs. Chief Secretary, Punjab (2015 PLC (C.S.) 1381), wherein it has been held that a deputationist may not necessarily complete the tenure for which he/she was sent on deputation, and power is vested with the competent authority to repatriate a deputationist without assigning any reason. It was also held that in case of transfer on deputation, no vested right accrues to a deputationist to continue for the period of deputation, and that the competent authority was empowered to repatriate a deputationist as and when the exigencies of service required.

10. It is an admitted position that upon the petitioner's repatriation, she will serve as an LHV (BPS-09) in her parent department. In other words, ever since 2016 when she came on deputation to the borrowing department, she has had a *lien* over her post in her parent department. The consequence of her deputation is that neither can the post she is occupying as a deputationist be filled by the borrowing department in accordance with the applicable recruitment rules nor does her post in the parent department become vacant so that the same

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could be filled in accordance with the recruitment rules of the parent department.

11. As per the notification (SRO 872(I)/88) dated 01.10.1988 issued by the Ministry of Interior, the method of appointment to the post of LHV (BPS-09) in the Health Department, I.C.T., is by transfer and failing that by initial appointment. Appointment by deputation cannot be equated with appointment by transfer. Appointment by transfer is made as a consequence of a competitive process and by subjecting the eligible candidates to a process of selection whereas appointment by deputation entails no competitive process. In the case of Nusrat Rasheed Vs. Federation of Pakistan *(supra),* it was held that *"it is well settled that appointment by transfer is a regular appointment in a particular department as a result of transfer from another one, and that for such an appointment one has to go through a process of selection."* Furthermore, it was held that a deputationist cannot be given a priority or preferential treatment over other candidates who may be eligible for appointment by transfer in terms of Rules 7 and 9 of the A.P.T. Rules; both categories will have to compete for appointment by transfer; and the best out of the best will have to be selected through a duly advertised competitive process of appointment by transfer.

12. I am told that presently, the sanctioned strength of LHVs in the Health Department, I.C.T. is 22 whereas only 13 posts have been filled. Apparently, the Health Department, I.C.T. has already requested the Ministry of National Health Services, Regulations and Coordination for the issuance of a No Objection Certificate so that the vacant posts in the Health Department, I.C.T. are filled.

13. As regards the 9 vacant posts, it is expected that instead of appointing deputationists against the same, the Ministry of National Health Services, Regulations and Coordination and the Health Department, I.C.T. shall immediately take steps to fill the said posts by making appointments strictly in accordance with the method of appointment prescribed in the said notification (SRO 872(I)/88) dated 01.10.1988. If the petitioner and other

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deputationists are eligible for appointment against the post of LHV(BPS-09), they are at liberty to participate in the appointment process for the same.

14. Sanctioned posts cannot be kept vacant and ought to be filled only in accordance with the method of appointment prescribed in the applicable recruitment rules. The practice of appointing a deputationist or a contract employee against a permanent / sanctioned post, without resorting to a method of appointment envisaged by the recruitment rules, has been deprecated by the Superior Courts. Reference in this regard may be made to the following case law:-

(i) In the case of Nemat Ullah Vs. Chairman Governing Body, Worker Welfare Board / Secretary to the Government of KPK (2017 PLC 1), the Hon'ble Supreme Court held that *"sanctioned posts unless abolished by the competent authority cannot be kept vacant and more particularly, in the education sector."*

(ii) In the case of Sudhir Ahmed Vs. Speaker, Balochistan Provincial Assembly (2017 SCMR 2051), it was held as follows:-

> ***"A look at the relevant table of the rules would reveal that the post of Assistant Engineer BPS-17 is to be filled by initial recruitment or promotion. There is nothing on the record to show what was that unusual which justified the deviation from the legal course. Appointment by absorption, which more often than not, is resorted to through the intervention of the people in power by ignoring the merit, cannot be approved and upheld. Having thus considered we do not feel inclined to interfere with the notification repatriating the appellants to their parent department."***

(iii) In the case of Nusrat Rasheed Vs. Federation of Pakistan (2021 PLC (C.S.) 777), this Court had the occasion to express the view that *"public functionaries who facilitate or cause such appointments of deputationists without having carried out a process for promotion or initial appointment to fill the post in question are not just guilty of inefficiency and misconduct by violating the applicable*

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recruitment rules, but also of misuse of authority by bestowing a service advantage on the deputationists."

(iv) In the case of <u>All Pakistan ZTBL Workers Union (CBA) Vs. Federation of Pakistan (2021 PLC 1</u>), this Court held as follows:-

> ***"38. It is not desirable to keep a statutory post vacant for a long time or to make appointment against such a post on an acting or look-after charge or provisional basis. There is a public duty cast on the concerned authorities to fill up the vacancy on regular basis within the shortest possible time. Not initiating a process for the appointment of an R.T.U. on a regular basis ever since the enactment of the I.R.A. on 14.03.2012 and to make appointments on ad hoc basis over a period of eight years is a breach of statutory duty cast on the Federal Government under Section 4 of the I.R.A."***

(v) The case of <u>Rizwan Ullah Vs. Government of Khyber Pakhtunkhwa (2019 PLC (C.S.) 1443</u>) pertained to appointing deputationists to several posts in the *Khyber Pakhtunkhwa* Board of Intermediate and Secondary Education despite the fact that Chapter XXVIII of the *Khyber Pakhtunkhwa* Boards of Intermediate and Secondary Education Act, 1990 provided for the qualification and modes of appointment of employees of the said Board. The Division Bench of the Hon'ble Peshawar High Court held *inter alia* that the filling of posts in the said Board on an *ad-hoc* / deputation basis was not only against the method of appointment prescribed by law but was a big question mark on good governance in the Province. The Hon'ble High Court issued directions for the filling of posts in the said Board by strictly adhering to the method of appointment and criteria provided in Chapter XXVIII of the said Act.

(vi) In the case of <u>Safdar Ali Sathio Vs. Province of Sindh (2011 PLC (C.S.) 956</u>), the Division Bench of the Hon'ble High Court of Sindh held as follows:-

> ***"23. ... The good governance demands that efforts should be made to fill up the permanent vacant posts and vacancies within a reasonable period of time. Our constitutional and legal system attaches foremost importance to transparency and fairness in the administration of matters relating to appointment and***

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> ***career building of civil servants who are required to perform sensitive public duties strictly in accordance with law. There is no room for spoils system in our jurisprudence."***

15. In view of the above, the instant writ petition is <u>dismissed</u> with no order as to costs. It is directed that a copy of this judgment be served on the Secretary, Ministry of National Health Services, Regulations and Coordination as well as the Director General, Health Department, I.C.T. for compliance with the directions issued in paragraph 12 *ibid*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN OPEN COURT ON <u>21/11/2022</u>

(JUDGE)

*Qamar Khan** ***<u>APPROVED FOR REPORTING</u>***

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