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

**I.C.A.No.1109 of 2013**
**Muhammad Aslam and another**
**Versus**
**Federation of Pakistan through Secretary, Ministry of Interior and others**

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| **Date of Hearing:** | 29.08.2017 |
| **Appellants by:** | M/s Muhammad Shoaib Shaheen, Muhammad Umair Baloch, and Mirza Waqas Qayyum, Advocates. |
| **Respondents by:** | Ch. Abdul Khaliq Thind, learned Deputy Attorney-General,<br>Mr. Naseem Ahmed Shah, Advocate for respondent No.2. |

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant Intra Court Appeal, Muhammad Aslam (appellant No.1) and Raja Muhammad Basharat (appellant No.2), challenged the order dated 18.11.2013, passed by the learned Judge-in-Chambers, whereby writ petition No.4239/2013 instituted by the appellants was dismissed in *limine*.

2. During the pendency of this appeal, appellant No.1 passed away. Therefore, to his extent the appeal stands abated. It may be mentioned that learned counsel for the Chief Commissioner, Islamabad Capital Territory (respondent No.2) had taken the position that pensionary benefits regarding appellant No.1 were being paid by respondent No.2. He also submitted that respondent No.2 would continue to pay such benefits. Therefore, we do not feel the need to go any further in this appeal to the extent of appellant No.1. However, it may also be mentioned that as far as the facts of the case are concerned, appellant No.1 and appellant No.2 are similarly placed and circumstanced.

3. The question that needs to be determined in this case is whether appellant No.2 is entitled to be considered for permanent absorption in the administration of Islamabad Capital Territory ("I.C.T."), given the fact that while he was on deputation, respondent No.2/borrowing department had initiated his case for permanent absorption in the I.C.T. administration,

and in this regard had also obtained a No Objection Certificate ("N.O.C.") from appellant No.2's parent department. After such an N.O.C. was obtained, appellant No.2 along with several other deputationists were repatriated to their parent departments. Appellant No.2 has lost his lien with the parent department and his post has also been abolished.

4. Learned counsel for appellant No.2 submitted that appellant No.2 was working as a *Munshi* in the office of the Deputy District Officer (Revenue), Taxila; that his services were placed at the disposal of the office of respondent No.2 on deputation basis; that in 2007 appellant No.2 was sent on deputation after the necessary consultation between the lending and the borrowing departments; that after being relieved from his previous post, appellant No.2, on 22.01.2007, joined the office of respondent No.2; that vide order dated 12.11.2013, appellant No.2 along with several other deputationists were repatriated to their parent departments; that the said repatriation orders were issued without appellant No.2's consent and without consulting the lending department; that no reasons were given for issuing the repatriation orders; that aggrieved by the said repatriation orders, appellants No.1 and 2 filed writ petition No.4239/2013, before this Court; and that vide order dated 18.11.2013, the said petition was dismissed in *limine*.

5. Learned counsel for appellant No.2 further submitted that appellant No.2 had been meted out discriminatory treatment by respondent No.2 inasmuch as persons similarly placed as appellant No.2 had been absorbed in the office of respondent No.2; that respondent No.2 had initiated the process for appellant No.2's permanent absorption in the I.C.T. administration; that an N.O.C. for appellant No.2's absorption in the office of respondent No.2 had already been issued by appellant No.2's parent department; that the Departmental Selection Committee was supposed to consider the appellant No.2's case for absorption, but instead he was repatriated; and that the impugned order dated 18.11.2013, passed by the learned Judge-in-Chambers is contrary to the law laid down by

the Hon'ble Supreme Court in the case of Senate Secretariat etc Vs. Faiqa Abdul Hayee (2014 SCMR 522). Learned counsel for the appellants prayed for the appeal to be allowed and for direction to be issued to respondent No.2 to consider appellant No.2 for absorption in the I.C.T. administration.

6. On the other hand, learned counsel for respondent No.2, submitted that a deputationist does not have any vested right for the continuation of his deputation for an indefinite period, or for his permanent absorption in the borrowing department; that appellant No.2 along with several other officers were appointed on deputation basis in the office of respondent No.2 and were assigned the responsibilities of *Patwaris*; that an extension in the deputation period does not give a deputationist a right to seek absorption in the borrowing department; that although process for appellant No.2's absorption in the I.C.T. administration had been initiated, and an N.O.C. from his parent department had been obtained, but no final decision regarding his permanent absorption in the I.C.T. administration was ever made; that this Court in its judgment dated 07.04.2011, passed in writ petition No.4832/2010, titled "Ch. Waqar Ahmed etc Vs. Chief Commissioner, Islamabad Capital Territory etc" had deprecated the practice of making appointments of *Patwaris* in the I.C.T. administration on deputation basis and without a competitive process; that appellant No.2's repatriation order dated 12.11.2013, is strictly in accordance with the law; that appellant No.2 can request his parent department to take him back, just like his other colleagues were taken back; that the mere fact that some deputationists had been absorbed in the I.C.T. administration did not give appellant No.2 a vested right to be absorbed in a similar manner; that appellant No.2 and other deputationists continued to serve in the I.C.T. administration after their repatriation, because the civil Court had issued an injunctive order in a suit filed by another deputationist/officer who had been repatriated; that after the injunctive order was vacated by the learned civil Court, the office of the Additional Deputy Commissioner, I.C.T., vide letter dated 18.01.2016,

informed the Additional District Collector, Rawalpindi, that appellant No.2's request for absorption in the I.C.T. administration could not be entertained. Learned counsel for respondent No.2 prayed for the appeal to be dismissed.

7. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

8. The record shows that Raja Muhammad Basharat (appellant No.2) was posted as a *Patwari* on 27.10.2007 in the I.C.T. administration on deputation basis. While on deputation, appellant No.2 requested for his permanent absorption in the I.C.T. administration. The *Tehsildar*, I.C.T. had recommended appellant No.2's absorption in the I.C.T. administration on permanent basis. After appellant No.2 completed three years of service as a deputationist, the Deputy Commissioner, Islamabad, vide letter dated 28.06.2010, sent appellant No.2's case to respondent No.2 for obtaining an N.O.C. from appellant No.2's parent department (i.e. Deputy District Officer (Revenue), Taxila), for his permanent absorption in the I.C.T. administration. Vide letter dated 22.12.2010, the respondent No.2 requested the District Coordination Officer, Rawalpindi, for the issuance of an N.O.C. for appellant No.2's permanent absorption in the I.C.T. administration. Vide letter dated 03.02.2011, the Deputy District Officer (Revenue), Taxila conveyed to the Executive District Officer (Revenue), Rawalpindi, the former's no objection to appellant No.2's permanent absorption in the I.C.T. administration. Vide letter dated 09.02.2011, the Executive District Officer (Revenue), Rawalpindi, conveyed to respondent No.2 the former's no objection to appellant No.2's permanent absorption in the I.C.T. administration. It appears that the Departmental Selection Committee never considered appellant No.2's case for permanent absorption in the I.C.T. administration.

9. Vide Office Order No.86/2013, dated 12.11.2013, issued by respondent No.2, eleven deputationists working as *Patwaris* in the I.C.T. administration were repatriated to their parent

departments. Appellant No.2 was amongst the said eleven deputationists. Vide order dated 13.11.2013, the District Collector, I.C.T. issued their relieving orders and directed them to report to their parent departments. The said repatriation order was challenged by the appellants in writ petition No.4239/2013, before this Court. As mentioned above, the said writ petition was dismissed in *limine.* Learned single Judge-in-Chambers while dismissing writ petition No.4923/2013 held *inter-alia* that deputation was not a vested right of a civil servant, and that a civil servant could not claim to continue on deputation. Furthermore, it was held that the borrowing department has every right to repatriate a civil servant even prior to the completion of the deputation period.

10. During the pendency of this appeal, certain developments took place which ought to be taken into account. Because some of the repatriated officers/*Patwaris* had challenged the repatriation order dated 12.11.2013, before the learned civil Court at Islamabad, which had also granted a status quo order, it was decided to release their salaries until the pendency of the said case. This is apparent from the letter dated 13.03.2014, from the Additional Deputy Commissioner (Revenue), I.C.T. Vide letter dated 18.01.2016, the office of the Deputy Commissioner (Revenue), I.C.T. informed the Additional District Collector, Rawalpindi (i.e. appellant No.2's parent department) that appellant No.2's request for permanent absorption could not be entertained. The position taken in the said letter was that the eleven deputationists in the I.C.T. administration had been repatriated in compliance with the judgment dated 15.03.2011 passed by this Court in writ petition No.4832/2010.

11. In writ petition No.4832/2010, titled "Ch. Waqar Ahmed etc Vs. Chief Commissioner, Islamabad Capital Territory etc", the petitioner had challenged the appointments/absorptions of *Patwaris* working on deputation in the I.C.T. The petitioners' case was that they were residents of the I.C.T., and were qualified for appointment as *Patwaris*, but were being ignored because the respondents in the said petition were occupying the

**posts of *Patwaris* as deputationists. They also asserted that the absorptions of such deputationists, who were not local inhabitants of the I.C.T., had violated the petitioners' lawful rights. This Court, vide judgment dated 07.04.2011, held *inter-alia* that *"appointments in Islamabad Capital Territory are to be made from all over Pakistan, but at the same time locals of Islamabad may also be considered for appointments if they otherwise qualify and come on merit."* Furthermore, the Chief Commissioner, I.C.T. was directed to refrain from filling up vacant posts without advertising and following the relevant laws and rules. The Chief Commissioner, I.C.T. was also required to lay down a proper strategy about the work force, vacancies, criteria and process for filling the posts within two months under intimation to the Registrar of this Court. In paragraph- 34 of the said judgment, it was held as follows:-**

> ***"34. The respondents No.1 & 2 are under obligation to abide by the relevant laws and policies in respect of appointment and postings. The deputation period of every employee should be clearly mentioned and after its expiry the employee should be repatriated to the parent department and such vacant posts should be filled through process of law by widely advertising the same on merits. The Government should also prescribe the quota on the basis of provinces and regions so that there should be no sense of deprivation among any Province or region. The absorption policy should also be very clearly mentioned by the Government. The local residents of Islamabad Capital Territory also have legal and lawful right to be considered for appointment on merit."***

**12. We would echo the observations enunciated by this Court in the judgment dated 07.04.2011, passed in writ petition No.4832/2010, regarding the absorptions of deputationists in the I.C.T. Administration, but it must be noted that the said judgment was rendered after the process of appellant No.2' permanent absorption in the I.C.T. administration had been initiated, and after N.O.C. had been issued by appellant No.2's parent department for his permanent absorption in the I.C.T. administration.**

**13. Vide letter dated 17.03.2016, the office of the Additional District Collector, Rawalpindi, informed the Additional Deputy Commissioner (Revenue), I.C.T. that appellant No.2's lien had**

**expired, and his post had been abolished. Additionally, vide letter dated 27.04.2016, the Office of the Additional District Collector, Rawalpindi, informed the Additional Deputy Commissioner (Revenue), I.C.T. that since appellant No.2's services had not been surrendered at the end of his deputation period in 2010, he had lost his lien in the parent department. In the said letter dated 27.04.2016, it is mentioned that instead of relieving appellant No.2 at the end of his deputation period, he was posted with Tehsildar, I.C.T. It was also stated in the said letter that appellant No.2's post had been abolished in terms of the notification dated 03.01.2011, issued by the Services and General Administration Department, Government of Punjab. The said notification was issued in exercise of the powers conferred under Section 23 of the Punjab Civil Servants Act, 1974, making the following amendment in the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974:-**

> ***"7-A. Lien. – Notwithstanding anything in any other rules, a confirmed civil servant shall acquire lien against the substantive post held by him when he is relieved as a consequence of his selection against some other post, cadre or service in the service of Pakistan, and he shall retain his lien in the relieving department until he is confirmed in the said other post, cadre or service of for a maximum period of three years whichever is earlier and the said period of lien shall in no case be extended."***

**14. It is well settled that a deputationist does not have a vested right for absorption in the borrowing department. There is an elaborate procedure prescribed for the absorption of a deputationst in the borrowing department. In the case of Ghansham Das Vs. Federation of Pakistan, through Secretary Establishment (2017 PLC (C.S.) 191), the Division Bench of this Court has alluded to such a procedure. In paragraph 17 of the said report, it has been held as follows:-**

> ***"17. For the absorption or confirmation of any deputationist in the borrowing department, the ESTA CODE prescribes a procedure. Establishment Division's Office Memorandum No.1(28)/75-D.II, dated 06.03.1975, provides that where there is an intention to permanently absorb a deputationist in the cadre or department where he is serving on deputation and the recruitment rules for the post provide for such a course, in such cases the consent of the deputationist to the suspension or termination of lien on his permanent post in the parent department, as well as the agreement of the parent department,***

***should be obtained. With the completion of these formalities, the deputationist will be treated as a regular member of the establishment of the borrowing department. As early as 1952, it was stated in Ministry of Finance's letter No.600-RIII/52, dated 06.03.1952 that permanent officers belonging to a Government or Department, while on deputation to another Government or Department, should not be confirmed in the latter without the prior formal concurrence of the former and the consent of the officer concerned. This instruction has been formally recognized in Establishment Division's Office Memorandum [No.8.7/64-II,] dated 19.10.1964."***

**15. Given the fact that respondent No.2 had initiated the process for appellant No.2's permanent absorption in the I.C.T. administration, and had also obtained an N.O.C. from appellant No.2's parent departments for his permanent absorption, we are of the view that appellant No.2' case is not a simple case of a deputationist seeking his permanent absorption in the borrowing department. The actions of respondent No.2 initiating the process for appellant No.2's permanent absorption in the I.C.T. administration cannot be lost sight of. This process, which, although did not culminate in a permanent absorption order in appellant No.2's favour, has to be considered in the light of law laid down by the Hon'ble Supreme Court in the case of Senate Secretariat etc Vs. Faiqa Abdul Hayee (2014 SCMR 522).**

**16. The learned counsel for appellant No.2 brought on record judgment dated 27.06.2013, passed by the Division Bench of this Court in I.C.A.No.593/2013, titled "Ms. Faiqa Abdul Hayee Vs. Senate Secretariat etc". In the said case, the appellant had come on deputation from the University of Balochistan to the Senate Secretariat. While on deputation, a no objection certificate was obtained from the appellant's parent department for her absorption in the borrowing department. Thereafter, the appellant was repatriated to her parent department. The reason for denying her absorption in the borrowing department was that her performance was unsatisfactory. The appellant challenged her repatriation orders in writ petition No.539/2012, before this Court. The said writ petition was allowed by this Court, vide judgment dated 11.02.2013, and the matter was remanded to the borrowing department (i.e. the Senate Secretariat) with the direction to the said department to pass a speaking order. The**

**said judgment was impugned by the appellant in I.C.A.No.593/2013. The appellant had sought a specific direction regarding her absorption. Vide judgment dated 27.06.2013, the Division Bench of this Court set aside the appellant's repatriation orders directed the borrowing department to process her case for permanent absorption by taking into consideration the no objection certificate issued by her parent department. The respondents in the said appeal were also directed to allow the appellant to resume her duties and to pay her salaries.**

**17. The said judgment dated 27.06.2013, was impugned by the Senate Secretariat before the Hon'ble Supreme Court in civil petition No.1127/2016. Vide judgment dated 07.11.2013 (reported as 2014 SCMR 522), the said petition was dismissed. Furthermore, the Honourable Supreme Court reiterated the directions given in the judgment of the Division Bench of this Court. In paragraph-4 of the said report, it was held as follows:-**

> ***"7. There can be no cavil to the proposition solicited by the learned Advocate Supreme Court for the petitioner that absorption is not a vested right of the employee and the employer has the right and authority to terminate the deputation period or repatriate the employee back to his/her parent department and the judgments relied on by the learned Advocate Supreme Court support his contention and, therefore, on the basis of these judgments the appeal may have been allowed. However, when we examine the facts of the case we see that the respondents has built up the case of mala fide exercised by the petitioner and the discriminatory treatment meted out to her. She has also submitted that once the petitioner has sought NOC for her absorption from the parent department i.e. University of Balochistan, it means that she was being considered for absorption and she had the right to be dealt with fairly and judiciously. In the process of her absorption she was entitled to be treated at par with similarly placed employees. In our view this contention of the respondent has a lot of force and is strengthened when we review the documents on record."***

**18. Through C.M.No.1513/2017, the appellants brought on record the list of 07 Revenue Officers/*Patwaris* who had been absorbed in the office of respondent No.2 during 2008 and 2009. Now it is not disputed that a number of officers serving as *Patwaris* in the I.C.T. Administration on deputation basis were absorbed in the I.C.T. Administration. The list of such absorbed officers is herein below:-**

| *S. No.* | *Name of Patwari* | *Present District* | *Date of joining in ICT* | *Date of absorption in ICT Administration* |
|---|---|---|---|---|
| *1.* | *Mr. Zakir Hussain* | *Azad Jammu & Kashmir* | *21.07.1998* | *24.06.2008* |
| *2.* | *Mr. Shafqat Javed Cheema* | *Rawalpindi* | *06.08.1998* | *24.06.2008* |
| *3.* | *Mr. Muhammad Ashraf* | *Sargodha* | *03.04.1999* | *10.01.2008* |
| *4.* | *Mr. Abid Hasan* | *Sargodha* | *22.04.1999* | *12.11.2003* |
| *5.* | *Mr. Muhammad Shakeel* | *Chakwal* | *15.07.2006* | *10.07.2008* |
| *6.* | *Mr. Zafar Iqbal* | *Chakwal* | *07.11.2007* | *18.12.2008* |
| *7.* | *Mr. Babar Hussain* | *Rawalpindi* | *04.06.2008* | *16.01.2009* |

**Learned counsel for respondent No.2 did not dispute the said absorptions in the I.C.T. administration.**

**19. In view of the fact that respondent No.2 did not repatriate appellant No.2 to his parent department after he served as a deputationist for three years, but instead initiated a process for his permanent absorption in the I.C.T. administration; and that appellant No.2's parent department had issued an N.O.C. for his permanent absorption in the I.C.T. administration; and that appellant No.2 had lost his lien with his parent department, and his post had also been abolished, the instant appeal is allowed and the impugned order dated 18.11.2013, passed by the learned Judge-in-Chambers is set aside. Writ petition No.4239/2013, is allowed in terms that respondent No.2, shall consider appellant No.2's case for permanent absorption in the light of the law laid down by the Hon'ble Supreme Court in the case of Senate Secretariat etc Vs. Faiqa Abdul Hayee *(supra)*. Respondent No.2 shall also take into account the fact that the process for appellant No.2's absorption in the I.C.T. Administration had been initiated by respondent No.2, and an N.O.C. regarding appellant No.2's absorption in the I.C.T. has also been issued by the appellant No.2's parent department, and that appellant No.2 had lost his lien regarding his post in his parent department by operation of law. Respondent No.2 shall afford an opportunity of a hearing to appellant No.2 and,**

**thereafter, pass a speaking order in accordance with the law and facts of the case.**

**20. Since appellant No.1 has died, his appeal stands abated. The learned counsel for respondent No.2, submitted that appellant No.1's pensionary benefits were being paid by the I.C.T. administration. There shall be no order as costs.**

**(AAMER FAROOQ)**
**JUDGE**

**(MIANGUL HASSAN AURANGZEB)**
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON _____/2017**

**(JUDGE)** **(JUDGE)**

***Ahtesham****

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