

# IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No. D –3184 of 2021**

Tahira Hanif

*Versus*

Province of Sindh and 04 others

Date of hearing  
& order : 03.06.2021

Syed Shoa-un-Nabi, advocate for the petitioner.

### **ORDER**

**ADNAN-UL-KARIM MEMON, J.** – Primarily, the main grievance of the petitioner is about her absorption as Lecturer in Physics (BS-17) in the College Education Department, Government of Sindh and the petitioner intends to continue on deputation till her absorption.

2. At the outset, we asked the learned counsel for the petitioner as to how her deputation could be continued in the Sindh Government, after her removal from service by the parent department i.e. Government of Pakistan, Federal Directorate of Education (College Wing) vide notification dated 16.03.2021 (page 89).

3. Syed Shoa-un-Nabi, learned counsel for the petitioner, has submitted that the petitioner was initially appointed as Lecturer in Physics (BS-17) through competitive process vide office memorandum dated 27.08.2005 in the Directorate of College Education, Government of Pakistan, however, on her request, her services were placed at the disposal of the Government of Sindh, Education & Literacy Department, on deputation for 01 year vide notification dated 08.7.2009 and she continued to serve the Sindh Government on deputation till date. However, in the meanwhile her parent department initiated departmental proceedings against her due to her absence from service and finally they dispensed with her service vide notification dated 16.03.2021 by awarding major penalty, which action has been assailed before the learned Federal Service Tribunal and the matter is still sub-judice.

4. We have heard the learned counsel for the petitioner on the issue of her deputation and absorption to the post of Lecturer in Physics (BS-17) in the office of the Education & Literacy Department, Government of Sindh.

5. We have noticed that the petitioner was initially transferred by the Government of Pakistan, Federal Directorate of Education on deputation at her request for a certain period; and, subsequently, her service was placed at the disposal of Education & Literacy Department, Government of Sindh, vide letter dated 08.07.2009. It is seen that *prima-facie*, the assertions of the learned counsel for the petitioner do not align with the decisions rendered by the Hon'ble Supreme Court on the issue of deputation and absorption as discussed supra, therefore, the basic deputation of the petitioner in the Sindh Government after the judgment of the Hon'ble Supreme Court as discussed supra. Besides deputation is defined in the ESTACODE 2009 Edition Chapter-III on page 385, Part-II at Page 426 ref. 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. In the present case, the respondent-Sindh Government has to establish the exigency in the first place, and then the person who is being transferred/placed on deputation in the Government of Sindh must have matching qualifications, expertise in the field with the required experience. In absence of these conditions, the competent authority cannot appoint anyone by transfer on deputation.

6. In view of the preceding paragraph, we are clear in our mind that the Competent Authority does not have unbridled powers to first appoint on deputation and then absorb any civil servant in the department / establishment /organization/agency, without fulfilling the conditions as outlined in the Recruitment Rules, thus, *prima-facie* the word "absorption" is not akin to the word-initial appointment /confirmation, in service, which has its meaning and procedure provided in-service law, there is no proper mechanism provided either under the Sindh/ Civil Servant Act, 1973. The Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch supra had recorded the following findings which are reproduced as under: --

"No Civil Servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process. A Civil Servant can be transferred out of cadre to any other department of the Government subject to the restrictions contained under Rule 9(1) of the Rules of 1974."

7. In the light of the above discussion, in our view, a deputationist could not be treated as an aggrieved person, because she has no vested right to remain on a post as deputationist forever or for a stipulated period and can be repatriated at any time to her parent department more particularly in the light of aforesaid decisions of the Honorable Supreme Court. Reference is also made to the case of Dr. Shafi-ur-Rehman Afridi V/s CDA, Islamabad through Chairman and others (2010 SCMR 378). Even otherwise she cannot continue to serve on deputation in Sindh Government after her removal from service by the parent department, as discussed supra.

8. To reiterate the proposition further the Hon'ble Supreme Court in the case of Muhammad Ali V/s Province of KPK (2012 SCMR 673) has held *inter alia* that the principles of good governance required every appointment in government service to be made under the relevant rules and completion of codal formalities. Additionally, in the case of Syed Mubashir Raza Jaffari V/s Employees Old-Age Benefits Institution (2014 SCMR 949), it has been held *inter alia* that appointments to public offices were to be made strictly under the applicable rules and regulations. Recently, the Hon'ble Supreme Court in the case of Dr. Shamim Tariq V/s International Islamic University, Islamabad (2020 PLC (C.S.) 499) held as follows:-

“Adherence to the statutory rules and procedures for selection of public jobs is the only surest method to objectively select the best out of the best from a competing lot; it is rooted into the fundamentals of equal opportunity, equal treatment and equal protections; any deviation therefrom would rock the bottom of the Republic, resting upon equiponderance. State authority in every sphere of life is a sacred trust to be exercised fairly and justly by the functionaries to accomplish the purposes assigned to them by law; it is their bounden duty to do right to the all manner of people, without any distinction. It is most important that right people are selected for official positions to serve the Republic as it is imperative to survive and sustain into today's competitive World; deviation would be treacherously seditious. Constitutionally recognized principle of equal opportunity is strengthened by divine affirmation, upheld and followed by every modern constitution of the day.” (Emphasis added)

9. Furthermore, after referring to the law laid down in the case of Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), it was held as follows:-

“8. The quintessence of the paragraphs reproduced above is that the appointments made on deputation, by absorption or by transfer under the garb of exigencies of service in an outrageous disregard of merit impaired efficiency and paralyzed the good governance and that perpetuation of this phenomenon, even for a day more would further deteriorate the state of efficiency and good governance.”

10. It is well-settled law that “deputation” is an administrative arrangement between borrowing and lending Authorities for utilizing the services of an

employee in the public interest and exigency of services against a particular post against which the deputationists cannot claim any right of permanent absorption. Petitioner does not have any vested right to remain on the post as deputationist for an indefinite period or to get absorption in the other department. Reliance is placed on the case reported as S. Masood Abbas Rizvi V/s Federation of Pakistan and others (2014 SCMR 799).

11. In the light of the foregoing, 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. 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 & 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.”

12. In the light of the foregoing, this petition is dismissed in limine along with all the pending application(s), leaving the petitioner at liberty to avail her remedy as provided under the law.

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