

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

C P D 5178 of 2022 : Muhammad Imran Mehmood & Others  
vs. Federation of Pakistan & Others

For the Petitioners : Mr. Ali Asadullah Bullo, Advocate

For the Respondent : Mr. Malik Naeem Iqbal, Advocate

Mr. Syed Yasir Ali Shah  
Assistant Attorney General

SPO Rizwan Ashraf, NH&MP

Date/s of hearing : 20.10.2022

Date of announcement : 20.10.2022

## JUDGMENT

**Agha Faisal, J.** The petitioners, serving employees of the National Highway & Motorway Police ('NHMP'), have assailed the order dated 16.08.2022 ("Impugned Order") rendered by the Secretary Communications, whereby the departmental appeals / representations of the private respondents were accepted and their absorption into the NHMP was validated, in demonstrated consonance with the orders of the honorable Supreme Court.

2. Briefly stated, the law with respect to absorption has been illumined by the Supreme Court in *Ali Azhar Baloch*<sup>1</sup> and it is the petitioners' case that the Impugned Order is in dissonance therewith, hence, the private respondents herein ought to be repatriated to their earlier parent departments. In order to illumine the *lis* before us, it is considered appropriate to reproduce the Impugned Order herein below:

"In pursuance of the order dated 07-02-2022 passed by the Honourable Federal Service Tribunal, Islamabad in appeals No. 991-1048 (R)CS/2021 titled Najaf Ali Zahid etc. versus FoP, this order shall dispose off the Departmental Appeals submitted by Najaf Ali Zahid, Senior Petrol Officer (SPO), NHMP and 56 others against the de-induction notification dated 28-05-2019 and consequent restoration of their induction and seniority fixed by the Judgment of the Honourable Supreme Court of Pakistan dated 16-01-2017 passed in Civil Appeals No. 709/2016 etc.

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<sup>1</sup>Per *Amir Hani Muslim J* in *Contempt Proceedings against Chief Secretary Sindh* reported as 2013 SCMR 1752 & *Ali Azhar Khan Baloch vs. Province of Sindh* reported as 2015 SCMR 456; collectively referred to herein as "*Ali Azhar Baloch*".

2. The Federal Services Tribunal vide order dated 07-02-2022 referred above, directed the Ministry of Communications to conduct Personal Hearing as per rules and take appropriate decision in the light of the orders of Honourable Supreme Court of Pakistan passed vide judgment dated 16-01-2017 in Civil Appeals No. 709/2016 and judgment dated 05-10-2018 in Criminal Review Petition No. 207 of 2016.

3. Accordingly, the appellant Najaf Ali Zahid along with others appeared before the undersigned for personal hearing on 23-05-2022 and were heard at length. Relevant record was also called from the National Highways & Motorway Police, which was presented by DSP (Legal) & Deputy Director (HRM), NHMP at the time of hearing.

4. The IG, NHMP has recommended that the instant departmental Appeals may be accepted and absorption of appellants in NHMP may be revived to the exclusion of all those police officers who have already been repatriated to their parent departments and their cases have therefore, become infructuous as held by the Honourable FST in the order dated 07-02-2022.

5. Ministry of Law & Justice has also referred to the following para of the order dated 21-02-2017, passed in CrI. Review Petitions No.131 & 133 of 2016:-

“all those employees who are in BPS-1 to BPS-7 will not be repatriated to their parent departments, rest of the employees who are not in regular police and are not in uniform shall be repatriated to their parent departments, as if they were never absorbed in the Motorway Police”

and further advised that:-

“if any de-induction order/notification had been issued against the NH&MP employees falling under the categories discussed at paras 2(i) and (ii) ante as settled by the Apex Court in Criminal Review Petitions Nos.131 and 133 of 2016, the same suffers from illegality and is liable to be rescinded/annulled with immediate effect”

6. Based on the Honourable Supreme Court of Pakistan order dated 21-02-2017, in Law Division concluded that following two categories of NH&MP employees are not required to be repatriated to their parent departments:-

- i. employees who are in BPS-01 to BPS-07 irrespective of the fact they were in uniform or not; and
- ii. Regular uniformed police employees above BSP-07.

7. The whole record of the case has been perused in the light of opinion of Law Division and the relevant Court orders passed on the issue. As per record, some de-inducted officers have already been repatriated to their respective parent departments on their own requests, and in compliance with the order of honourable Islamabad High Court in Writ Petition No. 2558/2019 titled Abdul Ghaffar and others versus FoP. Some officers have also been repatriated to their parent departments upon attaining the age of superannuation. The Honourable Federal Service Tribunal in its order dated 07-02-2022 has decided the fate of those officers who have been repatriated to their parent departments and have declared their cases as “infructuous”.

8. In view of aforesaid, I, Capt. (Retd) Muhammad Khurram Agha, Secretary, Ministry of Communications, Appellate Authority, hereby, accept the Departmental Appeals submitted by Najaf Ali Zahid, Senior Patrol Officer (SPO), NHMP & 56 others and restore their induction/absorption in NHMP in the light of facts of the case presented before me and advice of Law Division, the impugned notification dated 28-05-2019 is hereby rescinded ab initio

Provided that this order shall be ineffective in respect of all those police officers who have already been repatriated to their Parent Departments as held by the Honourable FST in the order dated 07-02-2022.

Provided further that willingness of all those officers still serving in NHMP, who were de-inducted through notification dated 28-05-2019, may be obtained in respect of their absorption in NHMP or repatriation to their Parent Department and their cases may be decided accordingly by IG, NHMP.

9. In the light of this decision IG, NHMP may take appropriate action to dispose off the cases of similar nature arising out of this order.”

Our surveillance was drawn to respective orders of the august Supreme Court pertinent directly hereto wherein the present matter was brought under

scrutiny. In Civil Appeals No.709 of 2016 and connected matters vide order dated 16.01.2017, the august Supreme Court was pleased to observe as follows:

“3. We have called the AIG (HRM), NH&MP, and after hearing him and with the consent of the learned Counsel for the parties as well as the learned Additional Attorney General for Pakistan, intend to dispose of the Appeals in the following terms:-

“The seniority of the Police Officials in the NH&MP shall be re-fixed. The deputationists (Police Officials) who were inducted in NH&MP by extending the benefit of one step higher than their substantive rank in the parent department, shall be assigned seniority from the date they were permanently absorbed in the department by the notification issued by the competent authority and their seniority shall be placed at the bottom. The one step promotion cannot be equated as out of turn promotion in terms of judgments of this Court reported as Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456). In fact the principles which this Court has enunciated in the case of Ch Muhammad Akram vs. The Registrar Islamabad High Court Islamabad (PLD 2016 SC 961), would be attracted in the case in hand where the issue of the nature was dealt with by this Court. The seniority of all the Police Officials shall be finalized in the above terms from the date when they were permanently absorbed in the department placing them at the bottom of seniority as concluded hereinabove.”

4. The process of re-fixation of the seniority shall be completed within one month from today, as suggested by the A.I.G (HRM), NH&MP. These Appeals are disposed of with the modification in the impugned judgment in the terms contained in paragraph 3 of this order.”

It is thus apparent that the principle enunciated in *Chaudhry Akram*<sup>2</sup> was held to be applicable in the present context, after considering the import of *Ali Azhar Baloch*. It is also within our notice that two contempt applications were filed before the Supreme Court against some of the present private respondents herein, on the specific plea of their non-repatriation, however, the said applications were dismissed vide order dated 05.10.2018. The relevant findings are reproduced herein below:

“5. So far as the case of the petitioners in Criminal Original Petition Nos. 62/2016 & 69/2017 that they are regular employees of NH&MP and the process of absorption of several employees is illegal and has affected the seniority of regular employees is concerned, it would be appropriate to refer to our order dated 16.01.2017 passed in Civil Appeal Nos. 709 to 717 of 2016 etc in which an almost a similar question was raised. Appellants of those appeals, who were working in different police organizations, were initially appointed on deputation basis in NH&MP and were subsequently absorbed. However, a dispute arose with regard to their seniority which came up to this Court. With consent of the parties, it was held as under:-

3. *We have called the AIG (HRM), NH&MP, and after hearing him and with the consent of the learned Counsel for the parties as well as the learned Additional Attorney General for Pakistan, intend to dispose of the Appeals in the following terms:*

*“The seniority of the Police Officials in the NH&MP shall be re-fixed. The deputationists (Police Officials) who were inducted in NH&MP by extending the benefit of one step higher than their substantive rank in the parent department, shall be assigned seniority from the date they were permanently absorbed in the department by the notification issued by the competent authority and their seniority shall be placed at the bottom. The one step promotion cannot be equated as out of turn promotion in terms of judgments*

<sup>2</sup> Per Amir Hani Muslim J in *Ch Muhammad Akram vs. The Registrar Islamabad High Court Islamabad* reported as *PLD 2016 SC 961*; relevant paragraph 79 at page 993.

*of this Court reported as Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 456). In fact the principles which this Court has enunciated in the case of Ch Muhammad Akram Va. The Registrar Islamabad High Court Islamabad (PLD 2016 SC 961), would be attracted in the case in hand where the issue of the nature was dealt with by this Court. The seniority of all the Police Officials shall be finalized in the above terms from the date when they were permanently absorbed in the department, placing them at the bottom of seniority as concluded hereinabove."*

6. The above order is very much clear regarding inasmuch as the seniority of all deputationists who are subsequently absorbed and have not been repatriated shall be placed at the bottom. In view of the above order, Criminal Original Petition Nos. 62/2016 & 69/2017 are dismissed being misconceived."

It is *prima facie* apparent that the august Supreme Court appears to have dealt with controversy sought to be agitated *de novo* before us, however, the Impugned Order is predicated upon the observations of the august Supreme Court contained in the order dated 21.02.2017 in Criminal Revision Petitions No.131 of 2016 and connected matters ("2017 Order"). The pertinent observations are reproduced herein below:

"The above listed Petitions are disposed of in the terms that all those employees who are in BPS-1 to BPS-7 will not be repatriated to their parent departments, rest of the employees who are not in regular police and are not in uniformed shall be repatriated to their parent departments, as if they were never absorbed in the Motorway Police and their lien even if terminated shall stand revived in terms of the directives contained in the cases reported as Contempt Proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752) and Ali Azhar Khan Baloch and others v. Province of Sindh and others (2015 SCMR 456), as the issue of absorption raised in these cases has already been decided by this Court in the aforesaid judgments."

The Impugned Order has admittedly been rendered in direct compliance *inter alia* of the aforesaid order of the honorable Supreme Court, however, the petitioners have inexplicably filed this petition to reopen the issue again.

3. Petitioners' counsel submits that while the Impugned Order is in consonance with the 2017 Order, however, remains dissonant with *Ali Azhar Baloch*. It was also insisted that even though the Impugned Order was issued in Islamabad, the official respondents to whom the writ is sought to be issued are situated in Islamabad, however, this court ought to assume territorial jurisdiction since orders of a Federal body could be assailed anywhere in the Federation.

4. Per respondents' learned counsel, the petition was not maintainable in view of Article 212 of the Constitution and the manifest lack of territorial jurisdiction. In addition thereto, it was submitted that this matter has already been adjudicated all the way up to the honorable Supreme Court, hence, the present petition is a misconceived / *mala fide* attempt to re-agitate settled issues.

5. Heard and perused.

6. There is no cavil to the factum that the present controversy, being the absorption of the private respondents in the NHMP, has been considered by the august Court itself and such absorption has been found to be lawful. In addition thereto, contempt petitions filed against some of the present private respondents, on account of them not being repatriated to their earlier parent departments, were also dismissed by the august Court. Finally the 2017 Order, while expressly referring to *Ali Azhar Baloch*, ostensibly settled the matter decisively and the petitioners' counsel has unequivocally submitted that the Impugned Order is in accord therewith. The respective orders of the august Court appear to have clearly clinched the issue before us and petitioners' counsel remained unable to justify as to how any interference by this Court could be warranted under such circumstances.

7. We are cognizant that earlier orders for repatriation, since rescinded vide the Impugned Order, were assailed before the honorable Islamabad High Court and such challenges were dismissed<sup>3</sup>. It is imperative to denote that the said dismissals were on account of jurisdiction only<sup>4</sup>, in view of Article 212 of the Constitution. In our view, the non-suiting of the aforesaid challenges confers no benefit upon the petitioners as the *lis* sought to be agitated by them has already been determined on merit by the august Supreme Court.

8. In summation it is observed that the petitioners' counsel remained unable to justify as to maintainability hereof and furthermore failed to make out any case for interference by this Court into a matter demonstrably determined by the august Supreme Court.

9. In view hereof, we find this petition to be misconceived and even otherwise devoid of merit, hence, the same, along with pending application/s, was dismissed with costs vide our short order announced in Court at the conclusion of the hearing. These are the reasons for our short order.

JUDGE

JUDGE

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<sup>3</sup> WP No 2199 of 2019; judgment dated 11.07.2019 & ICA No 314 of 2019; judgment dated 12.02.2020.

<sup>4</sup> As observed by the Supreme Court in its order dated 02.07.2021 in Civil Appeals 131 & 132 of 2021.