

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon

C.P.No.D-6222 of 2023

Abdul Shakoor Abro

Petitioner through

Mr. Ali Asadullah Bullo advocate

Respondents

through

Mr. Kashif Nazir, Assistant Attorney
General

Date of hearing : 18.03.2024

Date of reasons : 18.03.2024

ORDER

Adnan-ul-Karim Memon, J. Petitioner claims to be a Cadre officer of the Secretariat Group and seeks withdrawal of Notification dated 30.09.2023 where he has been directed to report to his parent department; and non-compliance whereof disciplinary proceedings have been initiated against him by the Establishment Division vide Show Cause Notice dated 12.12.2023.

2. The petitioner is a BS-19 officer of the Secretariat Group, was transferred and posted at the disposal of the Government of Sindh, Karachi till 22.06.2022, on a deputation basis, vide notification dated 25th January 2021, however, he managed to retain his deputation with Sindh Government till today despite issuance of repatriation letter dated 30.09.2023 issued by Establishment Division but he remained adamant and now request that his representation pending before the competent authority may be ordered to be decided after providing him ample opportunity of hearing based on various grounds. This request has been objected to by the learned Assistant Attorney General on the premise that no such representation lies against the cancellation of deputation besides disciplinary proceedings have been initiated against him in terms of Rule 2(1) (k) of Civil Servant Efficiency and Discipline) Rules 2020, as his service appeal No. 127 (K) 2023 against the impugned order dated 30.09.2023 has also been dismissed by the Federal Service Tribunal (FST) as being not maintainable vide order dated 29.11.2023.

3. We have heard the parties at length and have perused the material available on record.

4. To appreciate whether the petitioner can prolong his deputation period and has a vested right to remain posted at a particular place, it is expedient to shed some light on the word “deputation” which 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. Since the petitioner has been transferred and posted at the disposal of the Government of Sindh on the deputation basis till 22.06.2022 and the aforesaid period has already expired and the Establishment Division has issued his repatriation order dated 30.09.2023 his Service Appeal No. 127 of 2023 before FST has already been dismissed being not maintainable. Thereafter proper show cause notice dated 12.12.2023 was issued to the petitioner but he failed and neglected to comply and continued to hold the present position at the disposal of Sindh Government based on the interim order dated 26.12.2023 passed by this Court.

5. There is no cavil to the proposition that the petitioner was transferred and posted with the consent of both Governments, however after the completion of the deputation period, the petitioner ought to have reported to the Establishment Division but the same directives were not complied with.

6. Let at the first instance see the rule position of the case, firstly section 10 of the Civil Servant Act 1973 provides that every civil servant shall be liable to serve within and outside Pakistan under the Federal Government or any Provincial Government, whereas Rule 20-A of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 provides appointment of deputation, which reads as under:-

20A. Appointment on deputation.- (1) A person in the service of a Provincial Government or an autonomous, semiautonomous body or corporation or any other organization set up, established owned, managed, or controlled by the Federal Government who possesses the minimum educational qualifications, experience or comparable length of service prescribed for a post shall be eligible for appointment to the said post on deputation for a period of two years on such terms and conditions as may be sanctioned by Federal Government in consultation with the lending Organization.

(2) Subject to any rule or orders on the subject issued by the Federal Government, a civil servant who fulfils the conditions and is considered suitable may be sent on deputation to an autonomous, semi-autonomous body or corporation established by law or to the Provincial Government on such terms and conditions as may be decided by the lending and borrowing organizations.

(3) In case of appointment under sub-rule (1) or sub-rule (2) pension contribution shall invariably be made by the borrowing organizations”.

7. In the light of the forgoing legal status of the term deputation, which explicitly recognizes the appointment on deputation under the terms and conditions as set forth under the aforesaid provision of law, however, it does

not speak about the permanent absorption of a person in the Service of the Province, controlled by the Provincial Government.

8. We have noticed that certain conditions have been imposed in the aforesaid Rules that a person, who possesses the minimum educational qualifications, experience, or comparable length of service prescribed for a post shall be eligible for appointment to the said post on deputation for two years on such terms and conditions as may be sanctioned by the Federal Government in consultation with the lending Organization. It means that only a Civil Servant as defined under the Civil Servant Act, 1973, who fulfils the conditions as discussed supra can be considered suitable to be appointed on deputation on such terms and conditions as may be decided by the lending and borrowing organizations/departments. In our view, a deputationist could not be treated as an aggrieved person, because he has no vested right to remain in a post as a deputationist forever or for a stipulated period and can be repatriated at any time to his parent department more particularly in the light of the decision of the Supreme Court in the case of Dr. Shafi-ur-Rehman Afridi vs. CDA, Islamabad through the Chairman and others (2010 SCMR 378).

9. We have noticed that the main purpose of the aforesaid Petition has been achieved and the petitioner has been repatriated to his parent department as per the Notification dated 30.09.2023, which has been resisted by the petitioner as he intends to retain his present position in Sindh Government though he is well aware of his status that his services belong to Federal Government and not Sindh Government. So far as the impugned order is concerned which falls within the ambit of terms and conditions of his service, the FST has exclusive jurisdiction under Article 212 of the constitution of the Islamic Republic of Pakistan 1973.

10. In the light of the foregoing, we are of the considered view that the petitioner cannot be allowed to be permanently posted in Sindh Province at his wish and will.

11. As regards the contention of the learned counsel for the petitioner that he was not provided an opportunity of hearing before passing of the impugned action, it is stated that there is no cavil to the proposition that the principle “audi-alteram partem” has always been considered to be embedded in the statute even if there is no implied or express provision because no adverse action can be taken against anyone yet at the same time the principle could not be treated to be of universal nature. Because before invoking/applying the said principle one has to specify the infringement of a vested right. In the present case, the

petitioner has failed to establish that he has a vested right to remain on deputation, by way of transfer from the Federal Government, therefore, the argument that the petitioner was not heard before the issuance of impugned action is of no importance, as he has defied the directives of the competent authority which action falls within the ambit of disciplinary proceedings under the law.

12. In the light of the foregoing, we direct Respondent No.2 to repatriate the petitioner to his parent department forthwith, non-compliance whereof shall entail penal consequences.

13. The captioned petition stands dismissed along with pending applications.

14. These are the reasons for our short order dated 18.3.2024 whereby we have dismissed the petition.

JUDGE

JUDGE

Shafi