

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-4498 of 2017
(*Masood Ahmed versus Federation of Pakistan & others*)

Constitutional Petition No. D-6268 of 2024
(*Luke Victor versus Federation of Pakistan & others*)

Date	Order with signature of Judge
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Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Hasan (Akber)

Date of hearing and order: 18.5.2026

Mr. Jibran Nasir advocate for the petitioner in C.P. No. D-6268 of 2024

Nemo for the petitioner in C.P. No. D-4498 of 2017

Nemo for the petitioner

Mr. Aijaz Hussain Sherazi, advocate for respondent No.5,
in C.P. No. D-6268 of 2024

Mr. Khaleeq Ahmed, DAG

Mr. Akbar Khan AAG

ORDER

Adnan-ul-Karim Memon, J. Through the captioned petition No. D-6268 of 2024, the petitioner prayed that this Court issue a writ of quo warranto against Respondent No.5, requiring him to disclose the lawful authority under which he continues to hold the public office in question. He further sought a declaration that the absorption of Respondent No.5 into the Ministry of National Food Security & Research, along with all subsequent postings and promotions, is without lawful authority, void ab initio, and contrary to the principles laid down by the Hon'ble Supreme Court. It was also prayed that the operation of the impugned absorption, transfer, promotions, and appointments be suspended and Respondents No.1 and 2 be restrained from assigning any further post to Respondent No.5 within the Federation during the pendency of the petition. Lastly, the Petitioner requested directions for the immediate repatriation of Respondent No.5 to his parent department, along with any other relief deemed appropriate by this Court, including costs of the petition.

2. Nobody is in attendance on behalf of the petitioner in Constitutional Petition No. D-4498 of 2017, however, their case is that the apex Court declared the absorption of deputationists in government departments to be unconstitutional and contrary to Articles 240 and 242 of the Constitution. It was argued that the principles laid down in the said judgments are equally applicable to the Federation and all Provinces, and pursuant thereto, many deputationists were repatriated to their parent departments. The petitioners alleged that despite the clear law declared by the Hon'ble Supreme Court, the respondents continued to retain and favor certain officers on deputation and through absorption in blatant disregard of

the judgments of the apex Court. In particular, it was submitted that one Waseem-ul-Hassan, a BS-19 officer belonging to the Agriculture Department, Government of Balochistan, was initially brought on deputation to the Ministry of National Food Security & Research in December 2011 for a period of two years, but instead of being repatriated upon expiry of deputation, he was unlawfully absorbed in the Federal Government in the year 2015. It was further contended that he was subsequently granted additional and current charge of higher posts, including Food Commissioner and Director General (BS-20), in violation of the service rules and the law declared by the Hon'ble Supreme Court. Similar allegations were also levelled regarding the appointment of one Saleem Sadiq, Joint Secretary (Admin), who was serving on deputation in the Ministry. They submitted that such appointments by deputation and subsequent absorptions destroy the service structure, block promotional avenues of regular cadre officers, and violate the fundamental rights guaranteed under Articles 4, 9, 25, 27, 240, and 242 of the Constitution. It was contended that eligible officers serving in the Federal Government were deprived of their lawful right of consideration for promotion and appointment, while officers from provincial services were unlawfully accommodated through favoritism and backdoor arrangements. According to the petitioners, this practice not only undermines merit and transparency but also causes frustration and demoralization among regular civil servants. The petitioners further submitted that they had served a legal notice upon the respondents calling upon them to implement the judgments of the Hon'ble Supreme Court and repatriate the deputationists to their parent departments; however, instead of rectifying the illegality, the respondents further compounded the same by granting additional charge to Respondent No.3. It was asserted that the conduct of the respondents amounts to willful defiance of the judgments of the apex Court and a deliberate attempt to circumvent constitutional and statutory provisions governing civil service appointments. On these assertions, the petitioners prayed that the notifications relating to the deputation, absorption, and grant of additional/current charge to Respondent No.3, as well as the deputation of deceased Saleem Sadiq, be declared illegal, void ab initio, and without lawful authority; that the respondents be directed to repatriate the said officers to their respective parent departments; and that the respondents be restrained in future from making appointments through deputation and absorption in violation of the law laid down by the Hon'ble Supreme Court.

3. The learned counsel for the Petitioner in C.P. No. D-6268 of 2024 submitted that Respondent No.5, originally a BPS-19 officer of the Agriculture & Cooperative Department, Government of Balochistan, was brought into the Federal Government on deputation through notifications dated 02.12.2011 and 19.12.2013 in a person-specific manner, in violation of the law laid down by the

Hon'ble Supreme Court in 2013 SCMR 1752 and other judgments governing deputation and absorption. He argued that the deputation was extended unlawfully, and thereafter, Respondent No.5 was absorbed into the Ministry of National Food Security & Research on 03.04.2015 without lawful authority, without advertisement of the post, and without fulfilling the mandatory legal requirements for transfer or absorption into the Federal Civil Service. According to the Petitioner's counsel, the parent department of Respondent No.5 was never properly consulted and repeatedly sought his repatriation through letters dated 21.10.2016 and 22.11.2016, thereby demonstrating the absence of lawful consent for absorption. Learned counsel further contended that a special ex-cadre post was created only to accommodate Respondent No.5 and that his subsequent promotion to BS-20 was entirely dependent upon the illegal absorption. In support of his contention he relied upon the cases of *Ali Azhar Khan Baloch v Province of Sindh* **2015 SCMR 456**, *Contempt Proceedings against Chief Secretary Sind and others* **2013 SCMR 1755**, *The Chief Secretary Balochistan Quetta and others v Hidayat Ullah Khan* **2022 SCMR 39**, *The Federal Government through Secretary Interior, Government of Pakistan v Ms. Ayyan Ali and others* **2017 SCMR 1179**, *Barrister Sardar Muhammad v Federation of Pakistan and others* **PLD 2013 Lahore 343** and unreported judgment dated 12.06.2020 passed by this Court in C.P. No. D-444 of 2019 and other precedents to argue that absorption of deputationists into another service is alien to the statutory scheme and cannot confer vested rights. It was further argued that Respondent No.5 is presently facing inquiry in the wheat scandal, and despite judicial scrutiny in CP-D No.3232/2018, the Federation failed to repatriate him to his parent department. Learned counsel therefore prayed that a writ of quo warranto be issued declaring the absorption, subsequent promotions, and continuance of Respondent No.5 in Federal service to be without lawful authority.

4. Learned DAG appearing on behalf of Respondent No.2, assisted by counsel for Respondent No.5, at the very outset raised preliminary objections regarding the maintainability of the instant petition. He submitted that the petition pertains to a past and closed transaction, as Respondent No.5 has remained in continuous service with Respondent No.2 since the year 2011, and his absorption and subsequent promotion attained finality long ago. It was argued that revival of such stale and dormant claims after the lapse of many years is hit by the doctrine of laches and acquiescence, as equity aids the vigilant and not those who sleep over their rights. In support thereof, reliance was placed upon the cases of *Syed Asif Majeed v. A.D.C. Lahore* (2000 SCMR 998), *Mirza Magbool Elahi v. CDA* (1998 SCMR 1074), *Soofi Muhammad Din v. Settlement Commissioner* (1991 SCMR 905), and *Ahmed v. Ghama* (2005 SCMR 119). Learned DAG further contended that the petition is misconceived and not maintainable under Article

199 of the Constitution, as the controversy relates to the terms and conditions of service of a civil servant, jurisdiction whereof exclusively vests in the Service Tribunal under Article 212 of the Constitution. He argued that the issue of deputation, absorption, and promotion squarely falls within the service domain and, therefore, constitutional jurisdiction cannot be invoked. On merits, learned DAG submitted that the Ministry of National Food Security & Research was established in October 2011 through notifications issued by the Cabinet Division under the Rules of Business, 1973. Thereafter, various posts, including that of Deputy Food Commissioner, were duly created with the approval of the Establishment Division. Respondent No.5, who was serving as Director of Agriculture, Government of Balochistan, was initially appointed on deputation as Deputy Food Commissioner in December 2011, and his deputation was subsequently extended in accordance with law. He further submitted that the parent department of Respondent No.5 had issued the requisite No Objection Certificate for his absorption, which was duly communicated through the Government of Balochistan. Thereafter, the Departmental Selection Board, in its meeting held on 03.04.2015, recommended his absorption/appointment by transfer, pursuant to which he was regularly appointed as Deputy Food Commissioner (BS-19) through notification dated 16.04.2015 and was later promoted to the post of Food Commissioner (BS-20) after fulfillment of all codal formalities. Learned DAG argued that the petitioner has approached this Court based on hearsay, conjectures, and media reports, without any lawful basis, merely to malign the respondents and reopen a matter that has long attained finality. He submitted that such frivolous and vexatious litigation amounts to abuse of the process of the Court, unnecessarily consumes valuable judicial time, and burdens the justice system. In support of this contention, reliance was placed upon the judgments of the Hon'ble Supreme Court in *FIA v. Syed Hamid Ali Shah* C.P. No.1257/2020 and *Qazi Naveed ul Islam v. District Judge, Gujrat* C.P. No.3127/2020, wherein frivolous petitions were strongly deprecated and dismissed with costs. Lastly, learned DAG prayed that the instant petition, being barred by laches, not maintainable under Article 199 of the Constitution, and devoid of any legal substance, may be dismissed in limine with exemplary costs. learned DAG also submitted that the Establishment Division had no direct role in the appointment, absorption, promotion, or service management of Respondent No.5, as he was an ex-cadre officer under the administrative control of the Ministry of National Food Security & Research. It was argued that the Establishment Division merely nominated a representative to attend the Departmental Selection Board meeting, and all decisions regarding convening of the Board, preparation of working papers, evaluation, and issuance of notifications were undertaken by the Ministry concerned. Therefore, Respondent No.1 prayed for dismissal of the petition against it.

5. Learned counsel for Respondent No.5 raised preliminary objections regarding maintainability and territorial jurisdiction of this Court. He argued that all notifications relating to deputation, absorption, and issuance of NOC originated from Islamabad and Balochistan; therefore, this Court lacked territorial jurisdiction under Article 199 of the Constitution. It was further contended that the Petitioner lacked locus standi and had filed the petition merely for publicity and harassment. On merits, learned counsel submitted that Respondent No.5 was lawfully deputed and later absorbed against a technical ex-cadre post after obtaining a valid NOC from the competent authority, namely S&GAD, Government of Balochistan. He argued that the absorption was approved through due process, including recommendation of the Departmental Selection Board and approval of the competent authority, and was fully distinguishable from the cases relied upon by the Petitioner. According to the counsel for the Respondent No.5, no separate consent from the subordinate department was required once the Provincial Government had issued the NOC. Learned counsel further argued that the post was technical in nature, service rules were not available at the relevant time, and the subsequent FPSC advertisement had no bearing upon the legality of the earlier absorption. He denied all allegations of favouritism, nepotism, and involvement in the wheat scandal and submitted that Respondent No.5 possessed the requisite qualifications and experience for the post. It was lastly contended that the earlier petition bearing CP-D No.3232/2018 had ultimately been withdrawn and therefore no adverse inference could be drawn against Respondent No.5.

6. Respondent No.3/Government of Balochistan adopted the stance that the deputation and subsequent extension of Respondent No.5 were made strictly in accordance with applicable rules and after issuance of lawful notifications by the competent authorities. It was submitted that the Government of Balochistan, through S&GAD, had validly issued the NOC for absorption after due consideration and consultation, and therefore, no illegality could be attributed to Respondent No.3. It is further urged that the subsequent communications issued by the parent department could not invalidate an absorption process already finalized with approval of the competent authority. It was also submitted that the Petitioner was not an aggrieved person and had failed to establish any legal prejudice caused to him. Accordingly, dismissal of the petition was sought.

7. In rebuttal, learned counsel for the petitioners submitted that the instant matter is not a mere service dispute but concerns illegal deputation and absorption in violation of the law declared by the Hon'ble Supreme Court in *2013 SCMR 1752* and *2015 SCMR 456*. He argued that actions which are void ab initio and unconstitutional cannot be protected on the ground of delay or treated as past and closed transactions, particularly when the continued retention of Respondent No.5

constitutes a continuing wrong affecting the promotional rights of eligible federal officers. Refuting the objection under Article 212 of the Constitution, learned counsel contended that the petition does not involve inter se service claims but challenges the legality and constitutionality of executive actions violating Articles 4, 25, 27, 240, and 242 of the Constitution; therefore, this Court has jurisdiction under Article 199 of the Constitution. On merits, it was argued that Respondent No.5, an officer of the Government of Balochistan, was initially appointed on deputation for a limited period but was unlawfully absorbed into the Federal cadre in disregard of the judgments of the apex Court. Learned counsel submitted that no NOC, departmental approval, or recommendation of the Departmental Selection Board could validate an unconstitutional act. He further argued that repeated conferment of current and additional charge upon Respondent No.5 reflected favoritism and arbitrary exercise of authority at the expense of eligible cadre officers. Regarding the plea of the Establishment Division, learned counsel submitted that the deputation, extension, and absorption of Respondent No.5 were processed under the policy framework administered by the Establishment Division; therefore, it cannot disassociate itself from the impugned actions. Lastly, learned counsel submitted that the petitioners approached this Court bona fide for the enforcement of the Constitution and implementation of the judgments of the Hon'ble Supreme Court, and prayed that the impugned notifications relating to deputation, absorption, and additional/current charge be declared illegal and Respondent No.5 be repatriated to his parent department.

8. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

9. The foremost question requiring determination is whether the deputation and subsequent absorption of Respondent No.5 into the Ministry of National Food Security & Research were made in accordance with the Constitution, the Civil Servants Act, 1973, and the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, or whether the same suffer from legal infirmity warranting interference by this Court in exercise of constitutional jurisdiction under Article 199 of the Constitution.

10. It is an admitted position that Respondent No.5 was originally serving as a BPS-19 officer under the Agriculture & Cooperative Department, Government of Balochistan, and was brought into the Federal Government through Notification dated 02.12.2011 on deputation basis, which deputation was later extended vide Notification dated 19.12.2013. Subsequently, he was absorbed in the Ministry of National Food Security & Research through proceedings of the Departmental Selection Board dated 03.04.2015 and thereafter earned promotion to BS-20. The legality of these actions has been assailed by the Petitioner mainly on the ground

that the deputation was person-specific, the absorption was alien to the statutory scheme governing civil servants, and the entire exercise was undertaken to accommodate Respondent No.5 against a specially created ex-cadre post.

11. To appreciate the controversy, it would be advantageous first to examine the governing statutory framework. Section 5 of the Civil Servants Act, 1973 provides that appointments to a civil service of the Federation or to a civil post in connection with the affairs of the Federation shall be made in the prescribed manner. The phrase “prescribed manner” refers to the procedure set out in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973. Rule 3 thereof recognizes only three recognized modes of appointment, namely: (i) initial appointment; (ii) appointment by promotion; and (iii) appointment by transfer. Rule 9 specifically regulates appointment by transfer and permits such appointment only from amongst persons already holding regular appointments in equivalent posts. Likewise, Rule 20-A governs deputation of provincial officers to the Federation for a prescribed period. However, neither the Civil Servants Act, 1973, nor the Rules framed thereunder contain any provision permitting permanent absorption of a deputationist into another service as a consequence of deputation.

12. The legal position regarding absorption and deputation now stands authoritatively settled by the Hon’ble Supreme Court in a catena of judgments. In the landmark case reported as 2013 SCMR 1752, the Hon’ble Supreme Court deprecated the culture of person-specific appointments, deputations, and absorptions made in disregard of recruitment rules and constitutional guarantees of equality under Articles 4 and 25 of the Constitution. The Hon’ble Supreme Court categorically held that absorption of deputationists into another cadre or service adversely affects the rights of regular civil servants and promotes favoritism and politicization in public administration. The Court further held that deputation cannot be used as a device to circumvent the prescribed modes of recruitment and that appointments must strictly conform to the recruitment rules.

13. Similarly, in 2015 SCMR 456, while interpreting Rule 9 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, the Hon’ble Supreme Court unequivocally held that appointment by transfer does not confer permanent status in the transferee department nor does it contemplate absorption as a consequence thereof. The Court observed that every appointment by transfer is necessarily temporary in nature, and upon expiry of deputation or transfer tenure, the officer must return to his parent department. The principle laid down therein is equally applicable to the Federal Civil Servants framework because the statutory language employed in both sets of rules is materially identical.

14. Furthermore, the Hon'ble Supreme Court held that a deputationist from a Province serving in the Federation does not become a civil servant of the Federation merely by virtue of deputation. It was reiterated that a deputationist has no vested right to continue on deputation and may be repatriated at any stage. Likewise, the Hon'ble Supreme Court strongly discouraged the creation of posts for accommodating specific individuals and held that newly created posts are ordinarily required to be filled through transparent recruitment in accordance with law.

15. In light of the above settled legal position, this Court has examined the manner in which Respondent No.5 was inducted into the Federal Government. The record reflects that the requisition for deputation was person-specific, as Respondent No.5 was called by name instead of being invited through a transparent selection process. No material has been placed before this Court demonstrating any emergent exigency of service justifying such person-specific induction. Equally significant is the fact that the post in question was admittedly an isolated ex-cadre post lacking duly notified recruitment rules at the relevant time. Once there were no statutory recruitment rules, the respondents were under a greater obligation to ensure transparency and adherence to constitutional principles of fair competition and equal opportunity. However, the record reveals that no advertisement was issued before the absorption of Respondent No.5, although subsequently the same post was admittedly advertised through FPSC in the year 2021. This itself demonstrates that the post was capable of being filled through a regular recruitment process.

16. The stance of Respondent No.5 that the absorption stood validated merely because an NOC had been issued by S&GAD, Government of Balochistan, is legally misconceived. Consent of the lending government may validate deputation for a limited period, but such consent cannot override the statutory scheme nor create a power of absorption where none exists under the law. An administrative NOC cannot confer legality upon an action that otherwise lacks statutory sanction. The repeated letters issued by the parent department in 2016 seeking repatriation of Respondent No.5 further indicate that the lending department itself did not intend permanent severance of his lien from provincial service.

17. The argument advanced by Respondent No.5 that the post was technical and ex-cadre in nature also does not improve his case. Even ex-cadre or technical posts are required to be filled in accordance with law and cannot be converted into avenues for backdoor induction into civil service. The constitutional mandate embodied in Articles 4, 18, and 25 of the Constitution obligates the State to ensure transparency, equal opportunity, and fairness in matters relating to public

employment. Any appointment made dehors the recruitment rules or in a manner favouring a particular individual is liable to judicial scrutiny.

18. At the same time, this Court is conscious of the legal distinction between an irregularity in appointment and a total lack of jurisdiction. The material available on record reflects that Respondent No.5 was initially brought on deputation through notifications issued by competent authorities, and his absorption was processed through the Departmental Selection Board with participation of representatives from the Establishment Division and Law Division. Therefore, the process cannot be termed as wholly clandestine or without any administrative approval. Nevertheless, mere administrative approval cannot sustain an action contrary to the governing statutory framework and the law declared by the Hon'ble Supreme Court under Article 189 of the Constitution.

19. As regards the objection relating to territorial jurisdiction, the same carries little substance. The impugned actions pertain to the Federation of Pakistan, whose executive authority extends throughout the country. The consequences of the actions of the Federal Government are not confined to Islamabad alone. Moreover, the earlier petition concerning the same subject matter remained pending before this Court. Therefore, this Court is competent to examine the legality of the impugned actions in exercise of jurisdiction under Article 199 of the Constitution.

20. The objection regarding locus standi is equally untenable in the peculiar facts of the present case. A writ of quo warranto is maintainable not merely at the instance of an aggrieved person but also where a citizen questions the legal authority under which a person occupies a public office. The purpose of such jurisdiction is to protect public offices from unauthorized occupation and to ensure adherence to the rule of law in public administration.

21. In view of the foregoing discussion, this Court is of the considered opinion that while the initial deputation of Respondent No.5 for a temporary period may not by itself be open to serious exception, his subsequent absorption into the Federal service and the consequential benefits flowing therefrom were not supported by the statutory scheme governing civil servants and were inconsistent with the principles laid down by the Hon'ble Supreme Court in 2013 SCMR 1752, 2015 SCMR 456 and other authoritative pronouncements. The absorption process, having been undertaken without open competition, without duly framed recruitment rules, and through a person-specific mechanism, cannot be sustained in law.

22. Consequently, the instant petition bearing No. 6268 of 2024 is allowed to the extent that the absorption of Respondent No.5 into the Ministry of National Food Security & Research, along with all consequential benefits accruing solely based on such absorption, is declared to be without lawful authority and of no legal effect. Respondents Nos. 1 and 2 are directed to take necessary steps for the repatriation of Respondent No.5 to his parent department in accordance with law within a period of sixty days from the date of this judgment. However, it is clarified that this judgment shall not preclude the competent authorities from considering Respondent No.5 for any appointment through a lawful and transparent process strictly in accordance with the applicable recruitment rules. All pending application(s) stand disposed of with no order as to costs.

23. Consequently, Constitutional Petition No. D-4498 of 2017 filed by Masood Ahmed and others stands disposed of in the above terms.

JUDGE

JUDGE