

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.4168-P of 2024 with IR.

Tufail Muhammad

Vs.

**Government of Khyber Pakhtunkhwa, through the Chief
Secretary, Civil Secretariat, Peshawar and others**

Date of hearing **10.09.2024**
Petitioner(s) by: **Mr. Qazi Jawad Ehsanullah, Advocate.**
Respondent(s) by: **Nemo (Motion).**

JUDGMENT

IJAZ ANWAR, J. This writ petition has been filed under
Article 199 of the Constitution of the Islamic Republic of
Pakistan, 1973, with the following prayer: -

“It is, therefore, most humbly prayed that on
acceptance of this writ petition, this august court
may be pleased to:

- A. Declare the impugned order dated 13.08.2024
not to absorb the services of the petitioner in
the Provincial Management Service based on
discrimination, Law & Rules is illegal,
unlawful & liable to be set aside, thus,
ineffective upon the rights of the petitioner,
and
- B. Direct the respondents to absorb the petitioner
in PMS (BPS-18) in accordance with Rules
read with case law as highlighted in the body of
this petition and in the light of available
departmental & legal precedents of absorption
of similarly placed persons in PMS and/or
- C. Any other relief deemed fit and appropriate in
the given circumstances of the case”.

2. In essence, petitioner was initially serving as
Assistant Manager Technical (BPS-17) in the Pakistan

Ordnance Factory, Wah Cantt. Thereafter, he was transferred on a deputation basis to the Provincial Government, where he served in various higher posts from time to time. He then approached this Court and filed Writ Petition No. 6176-P of 2018 for his induction/absorption into the Provincial Management Service (PMS) on the analogy of similarly placed employees. His writ petition was disposed of with direction to the Chief Minister of Khyber Pakhtunkhwa to decide pending summary regarding absorption of the petitioner strictly in accordance with the law. However, the Competent Authority i.e. the Chief Minister of Khyber Pakhtunkhwa, through the impugned order dated 13.08.2024, has refused the absorption of petitioner. Hence, the instant writ petition.

3. Arguments heard and record perused.

4. Perusal of the record reveals that while serving as Assistant Manager Technical BPS-17 in the Pakistan Ordnance Factory Wah Cantt, petitioner managed his deputation in the Provincial Government in the year 2008. It is pertinent to mention here that he was serving at the relevant time in the Ordnance Factory and was not a Civil Servant. Thereafter, he was posted in the administration of the Provincial Government on different higher posts not commensurate with his Basic Pay Scale and has served alongside the Pakistan Administrative Service (PAS) and Provincial Management Service (PMS) employees.

5. We have gone through the deputation policy of the Provincial Government notified vide SOR-VI (E&AD 4-5/2005 dated 20.03.2006, and found that, being non-civil servant and employee of a factory petitioner was not even eligible to have been posted at the relevant time on deputation in the Provincial Government.

6. The deputation policy provides a maximum period of five years to remain on deputation, while in the instant case, from the year 2008 till date, petitioner has been allowed extension from time to time and the Chief Secretaries, who approved such extension, from time to time, have never adhered to the deputation policy or law on the subject.

7. Interestingly, now the petitioner is seeking absorption in the Provincial Management Service (PMS) by taking refuge under the Provincial Management Service Rules, 2007. The reliance of learned counsel for the petitioner on the earlier absorption of certain individuals was in fact alien to the Rules *ibid*, however, by then there were no clear pronouncements of the Hon'ble Supreme Court of Pakistan, as such, such absorptions were allowed, however, after the judgment of the Hon'ble Supreme Court of Pakistan in cases; **"Contempt Proceedings against Chief Secretary, Sindh and others (2013 SCMR 1752); and "Ali Azhar Khan Baloch and others Vs Province of Sindh and others" (2015 SCMR 456)**, the issue of absorption has been settled once and for all.

8. The claim of the petitioner for his absorption /induction in the Provincial Management Service is based on Rule 4(2) of the Provincial Management Service Rules, 2007. Under the said Rules there is no scope for absorption of employees of Federal Autonomous Bodies in the Provincial Services. Similarly, Rule 4(2) of the *ibid* Rules has now been amended to the effect that *"Fifty percent of posts in BPS-17 shall be filled in by initial recruitment through Khyber Pakhtunkhwa Public Service Commission and remaining by promotion and selection on merit as prescribed in Schedule-I. Government may reserve twenty percent posts for leave, deputation and training etc in each pay scale"*. Thus, even such deputation is for a specific period and it cannot be considered as absorption in the Provincial Management Services. The precedents referred to have no relevance to the case of the petitioner and those were unprecedented and alien to the Service laws. Recently, the August Supreme Court of Pakistan in the case titled *"Ghansham Das Vs Govt of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others (2024 SCMR 188)"* has held as under:-

"10.....The normal period of deputation is three years and the concerned officer has to report back after completion of his three years' period unless it has been extended to further two years and the maximum period is five years in terms of Serial No.27 (iv) of ESTA Code Volume-I (Civil Establishment Code)....."

11. We may mention here that the deputationist by no stretch of the imagination and in the absence of any

specific provision of law can ask to serve the total period of deputation and he can be repatriated being a deputationist by the Competent Authority in the interest of exigency of service as and when so desired and such order of the competent authority cannot be questioned. The Civil Servants Act, 1973 and the rules made there-under as well as ESTACODE are silent about the fact that a deputationist must serve his entire period of deputation and this omission seems deliberate enabling the Competent Authority to utilize the service of an employee in the manner as it may deem fit and proper. The period of deputation can at best be equated to that of an expression of the maximum period which can be curtailed or extended by the Competent Authority and no legal or vested rights whatsoever are available to a deputationist to serve his entire period of deputation in the borrowing Department”.

Similarly in case titled “Sudhir Ahmed and others Vs The Speaker Balochistan and Provincial Assembly and others” (2017 SCMR 2051), the Apex Court has held that:-

“13.....Appointment by absorption, which more often than not, is resorted to through the intervention of the people in power by ignoring the merit, cannot be approved and upheld. Having thus considered we do not feel inclined to interfere with the notification repatriating the appellants to their parent department”.....

Reference can be made to the case titled “Ali Azhar Khan Baloch and others Vs Province of Sindh” (2015 SCMR 456), the relevant paras of which is reproduced as under:-

120.Neither a person can be absorbed under these Rules nor a Civil Servant or non-Civil Servant or a deputationist could be allowed to travel horizontally outside his cadre

to penetrate into a different cadre, service or post through an appointment by transfer. Rule 9(1) cannot override the provisions of section 8 of the Act, which have been introduced by the Legislature for proper administration of Service law.....

209.....The petitioner could neither have been transferred permanently to the Sindh Government, nor could he be absorbed in Ex-PCS cadre for the reasons given in the impugned judgment. The petitioner did not have the status of a Civil Servant while serving on deputation in Sindh Government nor could he continue on deputation for an indefinite period..."

In another case having titled "S. Masood Abbas

Rizvi Vs Federation of Pakistan and others" (2014 SCMR

799), the Hon'ble Supreme Court of Pakistan has held as

under:-

4. We have heard the petitioner and have perused the record. It is settled principle that a deputationist does not have any vested right to remain on the post as deputationist forever or for a stipulated period, he could be ordered to be repatriated to the parent Department at any time without assigning any reason.....

We are of the considered view that petitioner being deputationist has no vested right to remain on a post as deputationist or otherwise and can be ordered to be repatriated and or relieved at any time. Moreover, in terms of section 2(b)(i) of Civil Servants Act, 1973 such person even loses his status as "Civil Servant" during the period he is on deputation. The parent Department of the petitioner is not obliged in law, to assign reasons for his repatriation. The learned High Court while dismissing the Petition of the petitioner has rightly held that the parent Department of the petitioner was competent to issue the Notification dated 22nd July, 2013, for which the Department was not required to assign reasons as the petitioner was holding regular/substantive post with the Department of Auditor-General of Pakistan".

Likewise, in case titled *“Dr. Shafi ur Rehman Afridi Vs C.D.A Islamabad through Chairman and others”* (2010 SCMR 378), the Apex Court has held as under:-

“7. We may mention here that the deputationist by no stretch of imagination and in absence of any specific provision of law can ask to serve the total period of deputation and he can be repatriated being a deputationist by the Competent Authority in the interest of exigency of service as and when so desired and such order of the competent authority cannot be questioned. The Civil Servants Act, 1973 and rules made there under as well as ESTACODE are silent.....”

9. It is worth mentioning that a deputationist could not be treated as an aggrieved person provided he had been placed in the same grade and status in borrowing cadre which he was enjoying before his status of deputationist. It may not be out of place to mention here that a deputationist has no vested right to remain on a post as deputationist forever or for a stipulated period as mentioned in the notification and can be repatriated at any time.....”

Similarly, reference can be made to the case titled *“Ghulam Nabi Sheikh and another Vs Secretary Establishment Division Government of Pakistan and another ”* (2023 PLC (C.S) 32), of the Hon'ble Islamabad High Court, the relevant paras of which is reproduced as under for the purpose of ease.

“61. Rule 20-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, provides that a person in the service of a Provincial Government or an autonomous, semi-autonomous 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 not exceeding three years which may be extended for another period of two years on such terms and conditions as may be sanctioned by the Federal Government in consultation with the lending Organization.

62. The policy guidelines for deputation of government servants set-out in Establishment Division's Office Memorandum No.1(28)/75-D.II/R.I, dated 18.02.1987, make it clear that the normal period of deputation for all categories of government servants would be three years and that this period was extendable by two years with prior approval of the competent authority. All cases of initial deputation of government service holding posts in BS-17 and above are required to be referred to the Establishment Division for approval of the competent authority. The authority competent to grant an extension in deputation beyond the initial period of three years for Government servants in BS-17 to 18 was the Secretary of the Ministry concerned. The said office memorandum further provides that on completion of the maximum period of five years, both the borrowing and the lending organizations should ensure immediate repatriation of a deputationist. In case, it is not possible to repatriate a person to his/her parent organization for compelling reasons, the case should be referred to the Establishment Division before the expiry of the maximum period of five years, fully explaining the circumstances due to which immediate repatriation is not possible and measures taken to obtain or groom replacement as early as possible.

63..... wherein it was laid down that officers obtained on deputation should be reverted to their parent department on the expiry of the period of deputation.

64. It is settled law that a deputationist may not necessarily complete the tenure for which he/she was sent on deputation and the power is vested with the competent authority to repatriate a deputationist without assigning any reason.....”

Similarly, in case titled "Hamid Nasrullah Ranjha Vs Chief Commissioner, Islamabad, ICT and others " (2022 PLC (C.S) 73), the Hon'ble Islamabad High Court has held as under:-

"20. In view of above, I am of the considered view that absorption is not vested right of an employee and the employer has right as well as authority to terminate the deputation period or repatriate the employee back to his/her parent department and as such no illegality has been disclosed by the petitioner regarding his repatriation nor he has been able to demonstrate that his services are necessarily required for proper functioning of the said department....."

9. In light of the above determinations by the Hon'ble Supreme Court of Pakistan, the deputationist cannot remain on deputation for an indefinite period and that such deputationist has even no vested right to complete the deputation period and the borrowing department has sole discretion to decide fate of the deputationist and could repatriate him at any time to parent department.

10. Petitioner is holding a substantive post in his parent department, and the period of deputation spent in this province is unprecedented and is a question mark on the Authorities, who allowed such extension in deputation from time to time.

11. As stated above, there is no concept of absorption of employees of Federal Autonomous Bodies in services of the province, particularly in the Provincial

Management Service. As such, we find no merit in the instant writ petition, it is accordingly dismissed in *limine*.

Announced
Dt:10.09.2024.


**Senior
Puisne Judge**


Judge

*(Amir Shehzad) * (DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Sahibzada Asadullah.*