

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-791 of 2011

Aijaz Ali Shah & 16 others.....Petitioners

Vs.

Federation of Pakistan & others.....Respondents

C.P No.D-422 of 2012

Hafizullah & 05 others.....Petitioners

Vs.

Federation of Pakistan & others.....Respondents

C.P No.D-423 of 2012

Muhammad Anwar & 08 others.....Petitioners

Vs.

Federation of Pakistan & others.....Respondents

Date of hearing: 05.12.2018

M/s. M.M Aqil Awan, Muhammad Arshad Khan Tanoli and Danish Rasheed, Advocates for the Petitioners in C.P No.D-422 of 2012 & D-423 of 2012.

Mr. Abdul Salam Memon, Advocate for the Petitioners in C.P No.D-791 of 2011.

Mr. Muhammad Nishat Warsi, DAG for Respondents No.1 to 4 along with Ali Sher Jakhrani, Additional Director (Law), FIA, Mumtaz-ul-Hassan Assistant Director (Law), FIA, Ms. Lubna Tiwana, Assistant Director, FIA and Mirza Tanveer Ahmed, Assistant Prosecutor, FIA.

Mr. Iqbal M. Khurram, Advocate for Respondent No.5 Muhammad Shehryar Khan in C.P No.D-422 of 2012.

M/s. Malik Naeem Iqbal, Faizan H. Memon and Khurram Memon, Advocates for Respondent No.6 Rana Ghulam Shabbir in C.P No.D-422 of 2012.

Mr. Muhammad Ishaq, Advocate for Respondent No.7 in C.P No.D-422 of 2012.

None present for the rest of the respondents.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - All the above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common questions of law and facts are involved therein.

2. Through the captioned petitions, the Petitioners have called into question the basic absorption of the private Respondents in all the petitions, in Federal Investigation Agency (FIA).

3. Learned counsel for all the Petitioners consented that Petition bearing No. C.P No.D-422 of 2012 may be treated as leading Petition and the same may be disposed of at Katcha Peshi stage along with other connected petitions.

4. Mr. M.M. Aqil Awan, learned counsel for the Petitioners in C.P No.D-422 of 2012 & C.P No.D-423 of 2012 has argued that the private Respondents are holding the public posts, therefore fall within the Purview of Sub-Clause (1)(b)(ii) of the Article 199 of the Constitution, which permits the High Court to issue a “Writ of Quo-warranto” requiring a person within its territorial jurisdiction of the Court holding or purporting to hold a Public Office to show under what authority of law he claims to hold that Office; that initially, the private Respondents were brought by the FIA on deputation for certain period, thereafter their services were absorbed in FIA, in violation of the laws and rules; that the aforesaid action of the Respondent-FIA was called in question by the Petitioners by filling the instant petitions, and during the pendency of the instant petition and due to the intervention of this Court all the private Respondents were repatriated to their parent departments except some Respondents, who are still holding the posts in FIA, who are also required to be repatriated by the FIA;

that retention of the aforesaid private Respondents in FIA is against the basic spirit of the decisions rendered by the Hon'ble Supreme Court of Pakistan in the cases of *Contempt proceedings against the Chief Secretary, Sindh (2013 SCMR 1752)* and *Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456)*; that this Court can enforce the decision of the Honorable Supreme Court of Pakistan; that the beneficiaries of the absorption are also liable to be proceeded under the contempt proceedings; that the private Respondents are in league with the official Respondents to defeat the very purpose of the aforesaid judgments of the Honorable Supreme Court; that official respondents, who misused public power vested upon them and flouted the principles of law laid down by the Hon'ble Apex Court in this regard. He lastly prayed for allowing the instant petitions. In support of his contention, he relied upon the cases of *Contempt proceedings against the Chief Secretary, Sindh (2013 SCMR 1752)* and *Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456)*.

5. Learned counsel for all the Petitioners in the connected Petition No.791 of 2011 has adopted the arguments of Mr. M.M Aqil Awan, learned counsel for the Petitioners in C.P No.D-422 of 2012 and C.P No.D-423 of 2012.

6. At this stage, we queried from Mr. Ali Sher Jakhrani, Additional Director/Est., FIA on the aforesaid assertion of the learned counsel for the Petitioners, he in reply to the query has submitted that in pursuance of the directions issued by this Court in the aforesaid matters, the Committee constituted by the Director General-FIA recommended repatriation of all the private Respondents to their parent departments, except the Respondents No.5 to 8 in C.P No.D-422 of 2012 had also obtained stay order dated 02.3.2018 from the learned Islamabad High Court in Writ

Petition No.802/2018, however, the repatriation letters and orders of the aforesaid respondents have been annexed with the Report dated 20.4.2018.

7. Mr. Malik Naeem Iqbal, learned counsel for the Respondent No.6 in C.P No.D-422 of 2012 has raised the question of maintainability of the instant petitions and attempted to justify the retention of the Respondent No.6 in FIA. He has submitted that the services of the Respondents are not required to be repatriated to his parent departments as he is legally absorbed in FIA in pursuance of Rule 15 of FIA Act, 1975, which empowers the Federal Government to make appointment by transfer on deputation and thereafter can be absorbed in FIA under Rule 16 of the Act. He next submitted that the Respondents have granted approval for absorption of the Respondent No.6 in accordance with law; therefore, there is no illegality or irregularity in the absorption. He next added that before passing any adverse order against any employee a right of personal hearing must be given to him; that no recommendation of repatriation can be made by the Competent Authority of FIA; that the Respondent No.6 belonged to Custom Department and met the eligibility criteria to be absorbed in FIA; that under FIA (Appointment, Promotion & Transfer) Rules, 1975 the appointment by transfer on deputation and absorption is permissible; that the report of the Committee explicitly show that the Respondent No.6 possess the qualification required for the post on which he was appointed on regular basis in BPS-14 and was rightly promoted by the order of the Competent Authority; that after his absorption he has acquired sufficient experience to retain his present position; that the Respondent No.6 has not blocked the promotion of any individual in FIA. He lastly prayed for dismissal of the Petitions.

8. Mr. Iqbal M. Khurram, learned counsel for Respondent No.5 and Mr. Muhammad Ishaq, learned counsel for Respondent No.7 have adopted the arguments of Mr. Malik Naeem Iqbal, learned counsel for the Respondent No.6 in C.P No.D-422 of 2012. Mr. Muhammad Ishaq, learned counsel for the Respondent No.7 has referred to his written synopsis and argued that one Zafar Mehmood, Assistant Director, FIA called in question the appointment of the Respondent No.6 before the learned Islamabad High Court, Islamabad in Writ Petition No.987/2013, which was dismissed vide order dated 06.06.2013. The aforesaid order was assailed before the Hon'ble Supreme Court of Pakistan in Civil Petition No.1485/2013, which was too dismissed vide order dated 01.10.2013 with the directions to file an Appeal (ICA) before the learned Islamabad High Court. He has further added that ICA No.19/2014 was then filed, which was dismissed in limine vide order dated 25.3.2014. He next added that another Writ Petition No.987/2013 was filed against the Respondent No.5 before the learned Islamabad High Court, which was also dismissed vide order dated 18.9.2015. He next submitted that the Respondent No.7 filed Writ Petition No.802/2018 before the learned Islamabad High Court, which was disposed of vide order dated 16.7.2018 with the following observations:-

“Through the instant writ petition, the petitioner, Nasrullah Khan, who was serving as Deputy Director (BS-18) in the Federal Investigation Agency (“F.I.A.”), impugns the recommendations made by the “Implementation Committee constituted pursuant to the judgment dated 12.06.2013 passed by the Supreme Court in Cr. Org. Petition No.89/2011 (2013 SCMR 1752 & 2015 SCMR 456)” to repatriate him to Punjab Police, which was his parent department at the time when he was sent on deputation to the F.I.A.

2. The record shows that vide notification dated 07.01.2005, the petitioner was sent on deputation from Punjab Police to the F.I.A. vide notification dated 07.02.2005, issued by the office of the Director General, F.I.A., the petitioner was placed at the disposal

of the Commandant, F.I.A., H.Q. for further posting. Vide letter dated 24.11.2007, the Inspector General of Police, Punjab conveyed his no objection certificate for the petitioner's absorption as Assistant Director (BPS-17) in F.I.A. Vide notification dated 11.04.2008 issued by the Ministry of Interior, Government of Pakistan, the petitioner was permanently absorbed as Assistant Director (BPS-17) in the F.I.A. in terms of Rules 15 and 16 of the F.I.A. (Appointment, Promotion and Transfer) Rules, 1975. Vide notification dated 18.06.2012 issued by the Ministry of Interior, the petitioner was promoted to the post of the Deputy Director (Investigation) (BS-18) on the recommendations of the Departmental Promotion Committee.

3. An Implementation Committee was constituted by the Director General, F.I.A. for making recommendations on the question whether the absorption of deputationist in the F.I.A. had been in accordance with the law laid down in the judgments of the Hon'ble Supreme Court reported as 2013 SCMR 1752 and 2015 SCMR 456. The said Committee examined the petitioner's case and recommended that he be repatriated to the Punjab Police on the sole ground that he was not a civil servant at the time when he was sent on deputation to F.I.A.

4. The said recommendations have been impugned by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner submitted that since no opportunity of hearing was afforded to the petitioner at any stage, the instant petition may be disposed of with the direction to the competent authority to consider the petitioner's plea taken in the instant writ petition and to pass an order after affording an opportunity of hearing to the petitioner. Learned counsel for the petitioner also submitted that until a speaking order is passed by the competent authority, he may not be repatriated.

6. I have taken into consideration the contentions made by the learned counsel for the petitioner. I am of the view that there is no denying the fact that till date, no orders have been passed by the competent authority for the petitioner's repatriation. The petitioner in the instant writ petition has challenged the recommendations made for his repatriation.

7. Since no order for the petitioner's repatriation has been passed as yet, I am inclined to dispose of this petition with the direction to respondent No.1 to afford an opportunity of hearing to the petitioner before acting on the impugned recommendations. The petitioner is at liberty to raise his pleas which he raised in the instant petition before respondent No.1 during the personal hearing. It is expected that the said competent authority shall pass a reasoned order

after affording an opportunity of hearing to the petitioner. Until the decision taken by the competent authority, the petitioner shall not be repatriated.

8. Disposed of in the above terms. This issues with the consent of the learned counsel for the petitioner.

He lastly prayed for dismissal of the instant Petitions. It is seen that prima-facie, the assertions of the learned counsel for the Respondent No.7 are not in consonance with the decisions rendered by the Hon'ble Supreme Court on the issue of deputation and absorption as discussed *supra*, for the simple reason that the word 'Civil Servant' is defined under Section 2(1)(b)(i) of the Civil Servant Act, 1973; that a person who is on deputation to the Federation from any Province or other authority, is not a civil servant, therefore, the basic absorption of the Respondent No.7 in FIA, is against the law and dicta laid down by the Hon'ble Supreme Court of Pakistan in its various pronouncements on the aforesaid issues. Additionally the Petitioner consented for disposal of the Writ Petition No.802/2018 vide order dated 16.7.2018 by the learned Islamabad High Court that the Competent Authority shall pass a reasoned order after affording an opportunity of hearing to the petitioner. At this stage, Mr. Ali Sher Jakhrani has pointed out that in compliance of the orders passed by the learned Islamabad High Court, the Respondent No.7 & other deputationist/absorbees were heard and the committee unanimously decided to repatriate them to their respective departments vide letter dated 20.11.2018.

9. Mr. Muhammad Nishat Warsi, learned DAG representing Respondents No.1 to 4 has submitted that the official respondents have submitted compliance reports and the same may be treated as arguments put forward on behalf of the official respondents.

10. We have heard the parties at length and have perused the material available on record and the decisions relied upon by them.

11. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution.

12. As per the profile of the Federal Investigation Agency (FIA), it is a Statutory Body, established under the Act, 1974, which is a counter-intelligence and security agency under the control of the Ministry of Interior Government of Pakistan, tasked with the investigative jurisdiction, undertaking operations against terrorism, espionage, federal crimes, fascism, smuggling as well as infringement and other specific crimes, having Statutory Rules of Service, i.e. "the FIA (Appointment, Promotion & Transfer) Rules, 1975". Prima-facie, the posts held by the private Respondents in FIA, which is a Public Office/Public Post, fall within the Purview of Sub-Clause (1) (b) (ii) of the Article 199 of the Constitution, which permits the High Court to issue a "Writ of Quo-warranto" requiring a person within its territorial jurisdiction of the Court holding or purporting to hold a Public Office to show under what authority of law he claims to hold that Office. It is also clear that, while acting under Clauses (b) (ii) of Article 199 of the Constitution, the High Court could declare that the Holder of Public Office is not entitled, if the office in question of that post, it comes to the conclusion that incumbent has no authority to hold the same. The Officials holding the posts in the FIA is a Public Office and for that reason they are amenable to writ jurisdiction of this Court under Article 199 of the Constitution. So the argument of the learned counsel for the Respondent No 6 that Constitutional Petition is not maintainable under Article 199 of the Constitution of Pakistan against the private Respondents is not sustainable in the law as the Petition is maintainable under Article 199 of the Constitution and can be decided on merits.

13. Much emphasis has been laid on Rules 15 and 16 of the FIA (Appointment, Promotion & Transfer) Rules, 1975, to justify, absorption in FIA, by way of transfer. For convenience, the relevant Rules are reproduced hereunder:-

“15. Appointment by transfer on deputation for a specified period shall be made from amongst the persons holding appointments in the departments or organizations in the same grade in which the post to be filled exists or on promotion from the next lower grade, or rank provided that the person concerned possess the qualifications and experience prescribed for direct appointment or promotion to the post concerned”.

16. A person appointed under Rule 15 may, with the approval of the appointing authority, be retained on regular basis in the Agency and may, after obtaining the consent of the official concerned and the agreement of his parent department, be confirmed in due course against permanent post”.

14. To appreciate the above factum, it is expedient to shed some light on the word ‘deputation’, which is defined in the ESTACODE 2009 Edition Chapter-III at 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 FIA has to establish the exigency in the first place and then the person who is being transferred/placed on deputation in FIA must have matching qualifications, expertise in the field with required experience. In absence of these conditions, FIA cannot appoint anyone by transfer on deputation.

15. Let us further elaborate on the aforesaid issue of deputation; we have to see Rule 20A of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973. An excerpt of the same is reproduced as under:-

20A. Appointment on deputation.- (1) 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 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 fulfills 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”.

16. In the light of 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 FIA, controlled by the Federal Government.

17. 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 a period of 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 fulfills 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.

18. In view of the forgoing, we are clear in our mind that the Competent Authority has no unbridled powers to first appoint on deputation and then absorb any person in the Organization/Agency, without fulfilling the conditions as set forth in the aforesaid Rules, thus, prima-facie the word "absorption" is not akin to the word "confirmation", in service, which has its own meaning and procedure provided in service law, there is no proper mechanism provided either under the Civil Servant Act or FIA Act and Rules framed thereunder for permanent absorption of any Civil Servant in another Organization, except under Section 11A of the Civil Servants, Act 1973 which provides as under:-

"11A. Absorption of civil servants rendered surplus.- Notwithstanding anything contained in this Act, the rules, agreement, contract or the terms and conditions of service a civil servant who is rendered surplus as a result of re-organization or abolition of a Division, department, office or abolition of a post in pursuance of any Government decision may be appointed to a post, carrying basic pay scale equal to the post held by him before such appointment, if he possesses the qualifications and fulfills other conditions applicable to that post:

Provided that where no equivalent post is available he may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and; where such civil servant is appointed to a lower post the pay being drawn by him in the higher post immediately preceding his appointment to a lower post shall remain protected."

19. Reverting to the contentions of the learned counsel for the private Respondent No.6 that the Competent Authority of FIA was empowered under the Rules 15 and 16 of the FIA (APT) Rules, 1975 to absorb the deputationist from different organizations to FIA against the posts meant for Initial Appointment or Promotion. If this being the position, then we need to examine the entire scheme of the Rules, 1975:-

Rule 2 (e) defines "Departmental Selection Committee" means a Committee constituted

for the purpose of making selection for direct appointment or through transfer to posts under Federal Investigation Agency in Grade 18 and below:

Rule 3 provides that the Appointments to the posts under the Federal Investigation Agency shall be made by the following methods, namely:

- (a) by promotions of persons employed on regular basis in the Agency;
- (b) by transfer of person from other Departments of the Federal Government and the Provincial Governments, on deputation for a specified period; and
- (c) by direct appointment.

Rule 8 provides that 50 per cent, of the posts in Grades 3 to 15 shall be filled by promotion and 50 per cent by direct appointment or transfer: Provided that if no suitable person is available in the Agency to fill a post by promotion, the post may be filled by direct appointment or transfer as may be appropriate.

Rule 10 provides that there shall be three Departmental Selection Committees each consisting of three officers for selecting persons for appointment by direct recruitment or transfer to the Grades specified against each in Schedule II.

Rule 11 provides that the authorities competent to make appointment, whether by promotion, transfer or direct recruitment to the various Grades shall be as follows: ---

- (i) Grades 17 and above: Prime Minister.
- (ii) Grades 11 to 16: Director General.
- (iii) Grades 3 to 10: Director General or Additional Director General or any Officer not below the rank of a Director of the Agency (Grade 19) to whom the powers are delegated by the Director General.
- (iv) Grades 1 and 2: Deputy Director of the Agency (Grade 18 officer).

Rule 12 provides that for the purposes of promotion, and direct appointment, and transfer, the posts in the Federal Investigation Agency will be placed in the following groups, namely--

- (i) Investigation
- (ii) Accounts
- (iii) Customs
- (iv) Income tax.
- (v) Engineering.
- (vi) Legal.

These groups may, for the smooth administration of the Agency and with the prior approval of Federal Government, be added to or modified as may be considered appropriate by the Director General.

Rule 13 (1) Appointments by promotion shall ordinarily be made within the Groups

mentioned in rule 12 by promotion of officers and staff working in the next lower grade or rank on the recommendation of the appropriate Departmental Promotion Committee or the Central Selection Board, as the case may be.

(2) Only those persons who are employed on regular basis in the Agency shall be considered by the Departmental Promotion Committee for promotion.

(3) Persons appointed in the Agency by transfer can be considered for promotion only after they have been selected to serve the Agency only on regular basis.

Rule 15 Appointment by transfer on deputation for a specified period shall be made from amongst the persons holding appointments in the departments or organizations in the same grade in which the post to be filled exists or in promotion from the next lower grade, or rank provided that the person concerned possess the qualifications and experience prescribed for the direct appointment or promotion to the post concerned.

Rule 16 A person appointed under rule 15 may, with the approval of the appointing authority, be retained on regular- basis in the Agency and may, after obtaining the consent of the official concerned and with agreement of his parent department be confirmed in due course against permanent post.

Rule 17 Direct appointments to posts in Grade 16 and above shall be made on the basis of examination or test to be held by the Commission.

Rule 18 Direct appointments to posts in Grades 3 to 15 shall be made on the recommendation of the Departmental Selection Committee after the vacancies have been advertised and the candidates interviewed.

Rule 19 A candidate for direct appointment to a post must possess the educational qualifications and experience, must be within the age limits and fulfill other conditions laid down for the post in Schedule III.

20. Keeping in mind the aforesaid scheme provided by the Act & Rules, 1975, we would like to examine the scope of Rule 15 and 16 of the Rules, 1975. The appointment by transfer can only be ordered if the Civil Servant is eligible and qualifies for his transfer under Rule 3(a) (b) (c) of the Rules of the department to which he is to be transferred, read with Rules 8, 10, 11, 12 & 18 of the Rules, which prescribe the conditions as laid down for such appointments by transfer to such posts. A Civil Servant who is to be appointed by

transfer has to appear before the Departmental Selection Committee, which will consider his eligibility, qualification and such other conditions applicable to the post as laid down in the recruitment rules of the department to which his transfer is to be ordered.

21. We, after looking at the scheme of the Rules, 1975, are clear in our minds that Rule 15 & 16 do not empower the Government or Selection Authority, as defined under the aforesaid Rules, to appoint a Civil Servant by transfer to any other cadre, service or post without his eligibility, qualifications and the conditions laid down under Rules discussed *supra*. Rules 15 & 16 do not confer permanent status to a Civil Servant on his appointment by transfer nor does it contemplate his absorption in the transferee Department as a consequence of his appointment. There is neither any procedure nor a mechanism provided under the Act or the Rules to treat appointment by transfer as absorption in the transferee department. Rules 15 & 16 cannot be used as a tool to allow horizontal movement of a civil servant from his original cadre to another cadre against scheme of the Act and the Rules of 1975, nor the Act or Rules could be used to condone eligibility of the civil servant, while appointing by transfer. The term 'transfer' has to be interpreted in its common phraseology/parlance and is subject to the limitations contained in the Rules discussed *supra*. Any appointment by transfer under the Rules 15 & 16 has to be for a fixed term and on completion of such term, a Civil Servant has to join back his parent department. The word '*appointment*' used in the Rule 3 cannot be equated with the word '*initial appointment*' used under the Rules which excludes appointment by transfer and promotion. Therefore, restricted meaning has to be given to the expression '*appointment by transfer*'.

22. For the aforesaid reasons, we are clear in our minds that Rules 15 & 16 do not permit the transfer of a non-Civil Servant to a non-cadre post or to a cadre post. The Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch *supra* had recorded the following findings which is 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."

23. We have noticed that Respondents No.6 belonged to Pakistan Customs Department (Preventive) and was on deputation w.e.f. 05.7.2010, before his absorption in FIA vide letter dated 04.1.2011 so also the case of Respondent No.7, who was serving in Punjab Police and was taken into FIA on deputation on one step promotion on 11.1.2005 and when he was promoted in his parent department to the rank of officiating Inspector, then he was placed on 2 years' probation and was appointed as Assistant Director (FIA) on 17.6.2006. We are not convinced that this is the only criteria on which the private Respondents have been absorbed, besides that they have to fulfill the other conditions as provided under the Rules.

24. In the light of above discussion, we are only concerned as to whether the decisions rendered by the Honorable Supreme Court of Pakistan in the case of Contempt proceedings against the Chief Secretary, Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) have been complied with by the official respondents on the premise that the absorption of all the employees working in different departments of Government of Pakistan were declared nullity in the eyes of law, thus the status of the private Respondents became deputationist only and in our

view, a deputationist could not be treated as an aggrieved person, because he 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 his 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 vs. CDA, Islamabad through Chairman and others (2010 SCMR 378)***.

25. Upon perusal of the compliance report which explicitly show that consequent upon the recommendations of the Committee constituted for scrutiny of the absorption cases in FIA since 1994, in compliance of the Judgments of the Hon'ble Supreme Court of Pakistan as discussed *supra*. Respondent No.9 has already been repatriated to his parent department i.e. Sindh Police vide letter dated 19.4.2018. So far as the Respondents No.6 & 8 are concerned, they have been recommended to be repatriated to their parent departments vide letter dated 19.4.2018 addressed to the Ministry of Interior, Islamabad.

26. We have noticed that the main purpose of the aforesaid Petitions has been achieved and all the private Respondents have been repatriated to their parent department as per Report submitted by the Respondent-FIA.

27. Reverting to the claim of the Respondents No.6 & 7 in C.P No.D-422 of 2012 that they meet the qualification to be retained in FIA is concerned, suffice it to say, when the Hon'ble Supreme Court has set the criteria of absorption in paragraphs No.132 & 136 of the Judgment, therefore, we have no hesitation to hold that the appointment of the private Respondents in FIA by way of transfer on deputation as well as their permanent absorption is

against the dicta laid down by the Hon'ble Supreme Court of Pakistan in the aforesaid judgments.

28. In the light of forgoing, we are of the considered view that the private Respondents cannot be allowed to be absorbed and subsequently promoted in FIA. 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.

29. Since the Competent Authority constituted a committee in compliance of the orders passed by the Hon'ble Supreme Court in Cr. Org. Petition No.89/2011 and recommended that all the absorbees should be repatriated to their parent departments. We are of the considered view that the committee has rightly recommended for repatriation of the private Respondents in all the petitions, therefore, we have no reason to order for retaining the services of the private Respondents in FIA.

30. As regards the contention of the learned counsel for the private Respondents that they were 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, private Respondents have failed to establish that they have a vested right to remain on deputation, thereafter absorption by way of transfer from another department without matching qualification and

fulfilling other codal formalities. Therefore, the argument that the private Respondents were not heard before issuance of impugned action is of no importance. 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.”

31. In the light of foregoing, we direct the Respondents No.1 to 3 to repatriate all the private Respondents in the captioned petitions to their parent departments, if not earlier repatriated, strictly in the light of the directions of the Hon'ble Supreme Court of Pakistan in its judgments rendered in the cases of Contempt proceedings against the *Chief Secretary, Sindh (2013 SCMR 1752)* and *Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456)*. They are directed to submit compliance report through MIT-II of this Court within a period of two months. The period of two months shall

commence from the date of communication of this judgment to the Respondents No. 1 to 3, who are further directed to implement the aforesaid judgments of the Hon'ble Supreme Court in their letter and spirit.

32. The captioned petitions stand disposed of in the above terms.

Karachi
Dated: 12.12.2018

JUDGE

JUDGE

Nadir/PA