

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 2546 of 2020
Aftab Ahmed Mahar V/S The Speaker and another

Date of hearing : 20.05.2020
& decision : 20.05.2020

Mr. Ghulam Sarwar Chandio advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner has questioned his repatriation from the Secretariat of the Provincial Assembly of Sindh to his parent department i.e. Education Department, Government of Sindh vide notification dated 21.04.2020 issued by the competent authority of the Provincial Assembly, which is in pursuance of the directions contained in the order dated 07.04.2020 passed by this Court in Constitutional Petition No.D-6431/2019. Relevant para therefrom is reproduced herein below:-

“12. The above discussion leads us to an irresistible conclusion that the absorption / appointment of respondent No.7 as Senior Translator in BPS-16 in the Provincial Assembly of Sindh was *void ab initio* ; and, the impugned notification dated 01.03.2011 as well as the notification dated 17.10.2018 issued by respondent No.4, being without lawful authority and of no legal effect, are hereby set aside. All the respondents, including respondent No.2 / Chief Secretary Sindh and respondent No.4 / the Secretary and competent authority of the Provincial Assembly of Sindh, are hereby jointly and severally directed to ensure that the law laid down by the Hon'ble Supreme Court is implemented in letter and spirit and respondent No.7 is repatriated forthwith to his parent department. The notification in this behalf must be issued immediately and be placed before this Court on the next date of hearing.

13. Since the absorption / appointment of respondent No.7 was *void ab initio* as held above, he shall be deemed to have served as a Junior School Teacher in BPS-9 in the Education and Literacy Department of the Government of Sindh throughout the period as if he was never absorbed / appointed in the Provincial Assembly of Sindh, and he shall be entitled to salary during the entire said period only as per his pay scale. However, if his batch mates have been promoted during the said period, he shall also be entitled to the same treatment with seniority and other benefits in accordance with law.

14. In view of the above, respondent No.7 is liable to return the entire amount received by him during the entire said period towards

differential in the pay scales of BPS-9 and BPS-16, and respondents are duty-bound to recover such amount from him and to deposit the same in the Government exchequer. The Secretary Education and Literacy Department Government of Sindh, respondent No.3 / Secretary Finance Department Government of Sindh, respondent No.4 / Secretary Provincial Assembly of Sindh and respondent No.6 / Accountant General Sindh, are jointly and severally directed to calculate the differential amount recoverable from respondent No.7 and to submit a statement in this behalf before this Court on the next date of hearing.”

2. Relevant facts of the case that have emerged from the petition and documents filed therewith, are that petitioner was appointed in the year 1989 as a Junior School Teacher (JST) in BPS-9 in the Education and Literacy Department of Government of Sindh, subsequently, his services were placed at the disposal of Secretariat of the Provincial Assembly of Sindh on deputation as the reporter (BPS-17) vide notification dated 04.11.1993, thereafter he was permanently absorbed / regularized in BPS-17 in the Provincial Assembly of Sindh vide notification dated 15.5.1995 with retrospective effect, during his service tenure he obtained promotion as Sindhi Reporter (BPS-18) vide notification dated 17.4.2017, surprisingly his post was upgraded in BPS-19 vide notification dated 25.6.2011. Finally, he was relieved from the Secretariat of the Provincial Assembly of Sindh to report his parent department i.e. Education Department, Government of Sindh vide notification dated 21.04.2020. For convenience sake, an excerpt of the Notification dated 21.04.2020 is reproduced as under: -

“No.PAS/PF-10/93:-With the approval of Competent Authority and in pursuance of the Judgment dated 07.04.2020 of Honourable Sindh High Court, in Constitutional Petition No.D-6431 of 2019 and Criminal Original Petition No.89/2011 reported as 2013 SCMR 1752 Mr. Aftab Ahmed, Reporter (BPS-19) is hereby relieved/repatriated from the Secretariat of the Provincial Assembly of Sindh to his parent Department i.e. Education Department Government of Sindh with immediate effect against the post of his grade which he was holding immediately before absorption.

G.M. Umar Farooq
Secretary
Provincial Assembly of Sindh”

3. At the outset, we directed learned counsel for the petitioner to satisfy this Court with regard to the maintainability of this petition in view of the order passed by this Court in Constitutional Petition No.D-6431/2019, whereby respondent

No.7 was directed to be repatriated to his parent department i.e. Education Department, Government of Sindh.

4. Mr. Ghulam Sarwar Chandio, learned counsel for the petitioner has argued that the absorption / appointment of the petitioner as a reporter (BPS-19) in the Provincial Assembly of Sindh was in accordance with the law and his case does not fall within the ambit of the ratio of the order passed by this Court in the aforesaid petition as well as Judgment pronounced by the Hon'ble Supreme Court of Pakistan in Criminal Org. Petition No.89 of 2011 reported as 2013 SCMR 1752, whereby absorption of employees in different cadre was declared as illegal and they were ordered to be reverted to their respective parent departments. It is contended that the petitioner's repatriation is based upon malafide intention and without the approval of the competent authority as such liable to be struck down. It is contended that the absorption of the petitioner was permissible as this was the appointment by transfer and the same could be made under Rule 9 (1) of the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974; that initial appointment of the petitioner on deputation in the year 1993 is protected by the order of Hon'ble Supreme Court of Pakistan in Para No.175 (2013 SCMR 1752); the petitioner is holding the post of BPS-19 in accordance with the law laid down by the Hon'ble Supreme Court in the above-cited authority as well as in the case of Ali Azhar Khan Baloch and others V/S Province of Sindh and others, **2015 SCMR 456**. It is further contended that in any event, petitioner, who was a Junior School Teacher (BPS-9) in the Education Department of Government of Sindh, could not have been repatriated to his parent department after the lapse of approximately 27 years' service.

5. The stance taken by the petitioner that his service was regularized / absorbed against a post of Sindhi Reporter-1 (BPS-17) is, on the face of it, misleading and malafide, as the petitioner's services were initially placed at the disposal of Secretariat of the Provincial Assembly of Sindh on deputation as a reporter (BPS-17) in place of one Abid Qureshi, therefore, his services cannot be regularized as Sindhi Reporter which is against the Rules framed as far back as in the year 1975 specifically provide the qualification and mode of appointment of Sindhi Reporter. An excerpt of the Notification is reproduced herein below: -

“No.PAS/PF-10/93:- On is service having been placed at the disposal on deputation with the Assembly Secretariat, Mr. Aftab Ahmed Mahar s/o Abdul Rasool Mahar is appointed as Reporter (BPS-17) with immediate effect in place of Mr. Muhammad Abid Qureshi and to work as Additional Private Secretary to the Speaker.”

Ghous Bux Khan Mahar
Speaker
Provincial Assembly of Sindh

Under The Sindh Assembly Secretariat (Appointment, Promotion, and Transfer) Rules, 1975, only such candidate can be recruited / appointed for the said post who has a speed of 160 words per minute in shorthand and 40 words per minute in typing with certain relaxations. The above criteria prescribed by the Rules show that the petitioner was not eligible for the post of Sindhi Reporter. Moreover, if the contention of the petitioner that his services were regularized with retrospective effect as Sindhi Reporter, which contention is also not correct for the simple reason that his initial appointment on deputation and subsequent regularization of service with retrospective effect against the aforesaid post was in violation of the Rules of The Sindh Assembly Secretariat (Appointment, Promotion, and Transfer) Rules, 1975 and judgments passed by the Honourable Supreme Court in the aforesaid matters. Besides, it is a well settled law that no appointment made on deputation / contract / adhoc shall be regularized retrospectively. An Excerpt of Notification dated 15.05.1995 is reproduced as under: -

“NO. PAS/PF-10/93/and PAS/PF-8/94/. With the approval of the Finance Committee of Provincial Assembly of Sindh, I, Ghous Bux Khan Mahar, Speaker Provincial Assembly of Sindh, in exercise of powers conferred by Rules 10, 11 and 14 of the Sindh Assembly Secretariat (Recruitment) Rules, 1974, and all other Laws enabling me in this behalf in supersession of this Secretariat Notification No.PAS/PF-10/93/1648, dated 8th November, 1993 and Notification No.PAS/PF-8/94/8510 dated 18th September, 1994, respectively, hereby regularize the appointments of Mr. Aftab Ahmed S/o Abdul Rasool Mahar in BPS-17 as a Sindhi Report-I with effect from 8th November, 1993, and of Mr. Dhani Bux S/o Ali Muhammad Pathan in BPS-17 as Sindhi Reporter-II with effect from 18th September, 1994 and place them on a probation for a period of Nineteen Months from the same date.

Ghous Bux Khan Mahar
Speaker
Provincial Assembly of Sindh

Even otherwise Section 10 of the Sindh Civil Servants Act, 1973 also restricts out of cadre transfer of a civil servant. The posting and transfer under section 10 of the Sindh Civil Servants Act, 1973 authorizes the competent authority to transfer within the cadre and not out of cadre as the provisions of section 10 of the Act has to be read with a rider that the terms and conditions of service shall not be changed by such an order. The Honourable Supreme Court in the case of Masood Ahmed v. Taj Muhammad Baloch reported in **1999 SCMR 755** has held that Section 10 does not authorize the competent authority to transfer a civil

servant out of cadre. It is well settled law that a deputationist does not have any vested right to remain on the post as deputationist forever or for a stipulated period. He can be repatriated to the parent department at any time. The Honourable Supreme Court in the case of Shafiur Rehman Afridi v. CDA **2010 SCMR 378** has settled the issue on the aforesaid proposition forever as no further deliberation is required on our part.

6. We are not impressed by the submissions of the learned counsel for the petitioner for the simple reason that in Constitutional Petition bearing C.P. No. D-6431/2019 the appointment of respondent No.7 (JST) has already been declared as illegal and ordered his repatriation to his parent department i.e. Education Department, Government of Sindh, same is the case of the petitioner which fully covers his case. Prima facie, the permanent absorption/regularization of service of the petitioner as a Sindhi Reporter-1 in the Secretariat of the Provincial Assembly of Sindh is after the cut of date i.e. 1994 as set forth in Para No.175 of the Judgment of Hon'ble Supreme Court of Pakistan rendered in the case of Cr. Org. Petition No.89 / 2011 (2013 SCMR 1752). Besides the respondents have issued the impugned notification in pursuance of the order dated 07.04.2020 passed by this Court in the aforesaid proceedings, therefore, no indulgence of this Court is required in the present matter. The ratio of the order dated 07.04.2020 shall mutatis mutandi apply in the present matter. As regards the contention of learned counsel for the petitioner to the effect that the ratio of judgments of the Honourable Supreme Court in the cases (supra) is not applicable, suffice it to say that petitioner's appointment from School cadre to the Secretariat of the Provincial Assembly of Sindh on deputation as the Reporter (BPS-17) and subsequent regularization as Sindhi Reporter-I is itself illegal and void-abinitio, therefore, the question raised is not worth considering to be dilated upon furthermore, is hereby discarded.

7. Before parting with this order, we have noticed that prima-facie, respondent No.2 has disobeyed and violated the orders of the Hon'ble Supreme Court of Pakistan. Issue show cause notice to respondent No.2 to show cause as to why proceedings should not be initiated against him for committing willful and deliberate contempt of the orders of the Hon'ble Supreme Court. He is directed to submit his reply to the show cause notice.

8. In view of the above, petitioner is liable to return the entire amount received by him during the entire said period towards differential in the pay scale of BPS-9 to BPS-19 and respondents are duty-bound to recover such amount from

him and deposit the same in the Government exchequer. The Secretary Education & Literacy Department, Government of Sindh, respondent No.2 / Secretary Provincial Assembly of Sindh and Accountant General Sindh, are jointly and severally directed to calculate the differential amount recoverable from the petitioner and to submit a statement in this behalf through MIT-II of this Court, without fail within eight (08) weeks from today.

9. This being the legal position of the case, this petition is hereby dismissed in limine along with pending application(s) with no order as to costs.

JUDGE

JUDGE

Shahzad*