

Judgment Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 2951 of 2013

Date

Order with signature of Judge

Present

1. Mr. Justice Ghulam Sarwar Korai
2. Mr. Justice Nadeem Akhtar

1. For orders on Misc. No.21206/2013 :
2. For orders on office objection No.1 :
3. Katcha Peshi :
4. For hearing of Misc. No.20666/2013 :

Petitioner : Fareed Ahmed Khan, through
Syed Rizwan Ahmed Advocate.

Respondents : Province of Sindh and others, through
Mr. Adnan Karim Memon, AAG, Sindh.

Date of hearing : 29.07.2013.

J U D G M E N T

Nadeem Akhtar, J. – Through this Constitutional Petition, the petitioner has impugned the orders dated 11.07.2013 and 12.07.2013 issued by respondents No.2, 3 and 4, whereby the petitioner was relieved from his duties as the Inspector, Anti-Corruption Establishment, East Zone, Karachi, with directions to report to his parent department, that is, the Police Department, and to handover complete charge to the Office Superintendent of the Office of the Anti-Corruption Establishment, East Karachi.

2. It is the case of the petitioner that he was initially appointed in the Sindh Police Department in the year 1990 as A.S.I., and in the year 1998, he was promoted to the rank of Inspector. In paragraph 4 of the petition, the petitioner has stated that, keeping in view his service record, respondent No.2 / the Chairman Enquiries and Anti-Corruption Establishment, Government of Sindh, vide order dated 06.06.2012, acquired his services on deputation basis, and posted him in the office of Directorate, Anti-Corruption Establishment. It has been averred that, due to acquisition of his services by respondent No.2, the petitioner was relieved from the Police Department on the same day. In the petition, the petitioner has given in detail the complete background of his service career, and his achievements during the tenure of his deputation.

3. The petitioner has further stated that he was conducting an inquiry in respect of several matters involving corruption and malpractices, and he had prepared an inquiry report in this behalf. The petitioner has alleged that respondents No.3 to 5 were pressurizing him to delete from his inquiry report the name of a person against whom he was conducting the inquiry, and who was found by him to be involved in serious corruption and malpractices. It has been further alleged by the petitioner that when he did not succumb to the threats and pressure of respondents No.3 to 5, they issued the impugned orders for relieving the petitioner in order to get rid of him.

4. It was urged on behalf of the petitioner that he could not be relieved, as the minimum period of his deputation was three years ; the respondents had no authority to issue the impugned orders, as such power vested only with the Chairman of the Anti-Corruption Establishment ; he was not provided any opportunity of hearing before passing the impugned orders ; and, the impugned orders are malafide and discriminatory.

5. It is an admitted position that the petitioner was on deputation in the Anti-Corruption Establishment, East Karachi, Government of Sindh, when the impugned orders were issued, relieving him from his duties with directions to report to his parent department (Police Department), and to handover complete charge to the Office Superintendent of the Anti-Corruption Establishment. In this context, we deem it necessary to refer to a recent judgment delivered on 12.06.2013 by a learned Full Bench of the Hon'ble Supreme Court of Pakistan in Criminal Original Petition No.89/2011 and other cases. In paragraph 30 of the said judgment, some paragraphs, including paragraph 6, of the judgment delivered by this Court in a Petition filed at the Circuit Court Hyderabad by one Syed Imtiaz Ali Shah, have been reproduced. The portion of paragraph 6, which is relevant for the purposes of the instant petition, is reproduced below for convenience and ready reference :

“ 6.
 A civil servant who is on deputation even loses the status of civil servant during the period of deputation as has been held by Honourable Supreme Court in the case of *Mazhar Ali v. Federation of Pakistan* reported in **1992 SCMR 435** which by itself is sufficient ground to discourage the posting of the nature. Additionally Article 240 of the Constitution provides that appointments to and the conditions of the services of a person could be determined by Act of the Parliament and or of the Provincial Assembly. In other words the terms and conditions of a civil servant cannot be deviated from by an Administrative / Executive order which in the case in hand has been done by the competent authority under the garb of exigency. Such orders have no sanction of law.”

6. In paragraph 131 of the said judgment dated 12.06.2013 of the Hon'ble Supreme Court, it is mentioned that the petition for leave to appeal filed by some of the deputationists against the above mentioned judgment of this Court was refused, and the said judgment of this Court was affirmed with the following observations :-

“ 4. We have heard learned counsel for the petitioners in CP No.802-K of 2010 and we have examined the material made available before us. The petitioners appear to have grievance against directions in para No.10 of impugned judgment so far as it relates to their repatriation or relieving them from their deputation. The main contention raised by their learned counsel was that the unexpired period of deputation could not be cancelled / withdrawn and the petitioners were ordered to be relieved and repatriated to their departments without providing them an opportunity of hearing. When confronted whether the petitioners enjoy any vested right as deputationist or otherwise to hold any particular post for all times to come, he admitted that no such right inhered in the petitioners.

*5. **It is well settled a deputationist does not have any vested right to remain on the post as deputationist for ever or for a stipulated period. He can be repatriated to the parent department at any time.** In this reference may be made to the case of Shafiur Rehman Afridi v. CDA (2010 SCMR 378). As regards the question of contention of the petitioners that they were not provided an opportunity of hearing before passing the impugned judgment, it may be stated that there is no cavil with the proposition that the principle of audi alteram partem (hear the other side ; hear both sides ; no man to be condemned unheard) has always been considered to be embedded in the statute even if there is no specific or express provision because no adverse action can be taken against any one yet, at the same time this principle could not be treated to be of universal nature because before invoking / applying this principle one has to specify that as against action contemplated, prima-facie, he has a vested right to defend the action. Equally, in cases where the claimant has no entitlement in his favour he would not be entitled to the principle of natural justice. In this reference may be made to the case of Justice Khurshid Anwar Bhindar v. Federation of Pakistan (PLD 2010 SC 483). **In the instant case, as noted hereinabove, learned counsel for petitioners could bring nothing to our notice that the petitioners have any vested right to remain on a post as a deputationist or otherwise and that they cannot be repatriated / relieved at any time. Thus, the petitioners cannot claim the protection of the cited principle.**”*

(Emphasis added).

7. In view of the exhaustive discussion on “DEPUTATION” in paragraphs 127 to 137 of the said judgment dated 12.06.2013, the Hon'ble Supreme Court was pleased to hold in paragraph 137 as under :

“ The impugned legislation is promulgated to benefit patent class of persons specific and violative of Article 25 of the Constitution as it is not based on intelligible differentia not relatable to the

lawful object. The impugned legislation on deputation is violative of the service structure guaranteed under Article 240 and 242 of the Constitution which provides mechanism for appointments of Civil Servants and their terms and conditions as envisaged under Act of 1973 and the Rules of 1974 framed thereunder. The object of the Act of 1973 is to maintain transparency in appointments, postings and transfers of Civil Servants, whereas deputationists who otherwise are transferred and appointed by the Sindh Government under the impugned instruments have destroyed the service structure in Sindh and has blocked the promotions of the meritorious civil servants in violation of the fundamental rights guaranteed to them under Articles 4, 8, 9, 25, 240 and 242 of the Constitution, as discussed hereinabove and are liable to be struck down.”

(Emphasis added).

8. In view of the above quoted extracts of the judgment of the Hon’ble Supreme Court, it can be safely concluded that it is well settled 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 his parent department at any time ; the principle of *audi alteram partem* is inapplicable in the case of a deputationist, as he has to first specify that he has a vested right to defend the impugned action ; likewise, in cases where a deputationist has no entitlement in his favour, he would not be entitled to the principles of natural justice ; and, a civil servant who is on deputation even loses the status of civil servant during the period of deputation. Therefore, the petitioner, admittedly being a deputationist, has no *locus standi* to question or challenge the impugned orders, as he does not have any entitlement in his favour, and / or any vested right to remain on deputation forever or for a stipulated period.

For the foregoing reasons, we do not find any merit in this Petition, which is accordingly dismissed with all the pending applications with no order as to costs.

J U D G E

J U D G E