PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of .................................................................
Case No. .................................................. of .................................................................

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<th>Date of Order or Proceedings</th>
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<td>03-02-2020</td>
<td>W.P No. 300-M/2020 with Interim Relief</td>
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Present: Barrister Dr. Adnan Khan, for the petitioner.

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WIQAR AHMAD, J.- This order is directed to dispose of the petition filed by petitioner Farhan Zaib under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

2. Petitioner has stated in his writ petition that he was appointed as Taxation Officer in BPS-16 in Galiyat Development Authority, Abbottabad, hereinafter referred to as ‘the Authority’, vide order dated 11.03.2015. His post was later on upgraded from BPS-16 to BPS-17 on 08.02.2018. Petitioner was sent to Local Government Department on deputation by his parent department on 14.11.2016. Pursuant to the said order, services of petitioner were placed at the disposal of Secretary, Local Council Board Khyber Pakhtunkhwa, Pesahwar vide order dated 24.11.2016, and he was subsequently posted as ATO(R), TMA Town-II, Peshawar vide order dated 20.12.2016.
Petitioner served in Tehsil Municipal Administration for an year, whereafter he was repatriated to his parent department i.e. Galiyat Development Authority on 01.06.2017. Services of petitioner were again surrendered to the Provincial Government and after numerous postings under the Local Council Board, he was finally repatriated to his parent department on 31.01.2020. Petitioner is aggrieved of the said order of his repatriation to the Authority, which has been impugned through the instant writ petition, wherein petitioner has prayed for the following relief;

"It is, therefore, humbly prayed that on acceptance of this writ petition, the impugned notification No. AO-I/LCV/Esstt./I-1/2020 dated 31.01.2020 to the extent of the petitioner be declared as illegal and the same be set aside. Consequently, the present arrangement be treated as detailment and the petitioner be deemed as regular employee of the Local Council Board since his surrender to the Local Government Department. Any other remedy though may not specifically prayed for, but which the circumstances of the case would demand in the interests of justice, may also be granted."

3. Learned counsel for petitioner contended that once services of petitioner were surrendered to the Provincial Government, he has ceased to be an employee of the Authority and has become permanent employee of the Provincial Government. He added that
his services though not expressly absorbed by the Provincial Government, yet shall be deemed to have been so absorbed in the peculiar facts and circumstances of the case. In such situation, services of petitioner cannot be repatriated to his parent department i.e. Galiyat Development Authority.

4. We have heard arguments of learned counsel for petitioner and perused the record.

5. Perusal of record reveals that petitioner was appointed in the Authority as Taxation Officer in BPS-16 on 11.03.2015. On completion of his period of probation, his services were confirmed in the Authority vide order dated 09.05.2016 of Director (Admn: & Estab:) of the Authority. His post was also upgraded from BPS-16 to BPS-17 on 08.02.2018. His services were later on requisitioned by the Local Government, Elections & Rural Development Department and he was accordingly sent there on deputation on 14.11.2016. Secretary to Government of Khyber Pakhtunkhwa Local Government Department, put services of petitioner at the disposal of the Secretary, Local Council Board vide his order dated 24.11.2016. He was posted as ATO(R) TMA, Town-II, Peshawar
on 20.12.2016, whereafter he was repatriated to his parent department on 01.06.2017. On 07.05.2018, due to some misconception, the Authority again put his services at the disposal of the Local Government Elections & Rural Development Department, due to his statedly poor and unsatisfactory record and lack of interest in official duties. Such allegations, if true, should have been dealt otherwise. Anyway, the order was not only welcomed by the petitioner but the concerned authorities of the Local Government Department as well. He was posted against the vacant post of Tehsil Officer (Regulation), Tehsil Municipal Administration, Abbottabad on deputation basis vide order dated 25.05.2018 of the Secretary, Local Government Department of the Government of Khyber Pakhtunkhwa. He has been serving on various posts under the Local Council Board, wherefrom he was finally repatriated to his parent department on 31.01.2020.

6. In our view, he has never been absorbed nor could be deemed to have ever been absorbed in the Provincial Government or any of its department. The wordings used in letter dated 07.05.2018 of the Authority may not be construed to be a total surrender
of his services unilaterally. The decision of his absorption could not be taken by the Authority unilaterally nor had it ever taken such a decision. The subsequent order dated 25.05.2018 of the office of Secretary, Local Government expressly records that he was posted on deputation basis. No doubt has ever existed that he has been an employee of the Authority and had been on deputation to the Local Government Department and placed under the control of the Chairman, Local Council Board. He had no right of any further retention in the service of the Local Council Board, when the borrowing department did not need his service. Reliance in this respect is placed on the judgment of the Hon’ble Apex Court given in the case of Dr. Shafi-ur-Rehman Afridi vs C.D.A., Islamabad through Chairman and others reported as 2010 PLC (C.S.) 367, wherein it has been held that:

"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 thereunder 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 the best be equated to that of an expression of maximum period which can be curtailed or extended by the Competent Authority and no legal or vested rights whatsoever are available to a deputationalist to serve his entire period of deputation in the borrowing Department."

Further reliance in this respect may be placed on the judgments of the Hon’ble Apex Court given in the case of Pakistan vs Fazal Rahman Khundkar and another reported as PLD 1959 Supreme Court (Pak.) 82, case of Punjab Small Industries Corporation (PSIC) vs Sh. Abdu Salam and others reported as 2008 SCMR 583, case of S. Masood Abbas Rizvi vs Federation of Pakistan through Secretary Establishment and others reported as 2014 SCMR 799 and the case of Abdul Khaliq Anium vs Secretary Education, Government of Punjab and 2 others reported as 1998 PLC (C.S.) 839.

7. Petitioner could not be thrusted upon the borrowing department any further. He has been repatriated to his parent department, wherein no prejudice has been caused to him. Learned counsel for petitioner could not establish violation of any law, rules
or infringement of any right of petitioner due to passing of the impugned order.

8. The writ petition in hand was therefore found to be divested of any force, same is accordingly dismissed.

Announced
Dt: 03.02.2020

JUDGE

JUDGE