

B E F O R E T H E K H Y B E R P A K H T U N K H W A S E R V I C E T R I B U N A L  
P E S H A W A R

S.A.No.119/2022

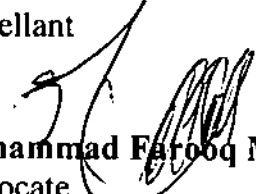
Ambar Nosheen.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa & others .....Respondents

I N D E X

S.No.	Description of documents.	Annex:	Pages.
1	Application for additional documents with affidavit.		1
2	Copy of judgment dated 20.10.2023 of the Federal Service Tribunal	A	2-7
3	Copy of order sheet dated 17.02.2021 of the Islamabad High Court Islamabad.	B	8-10
4	Minutes of the meeting dated 31.05.2023	C	11-14
5	Proposed bill of Ministry of law and justice on subject wedlock bill 2023	D	15-18
6	Copy of judgment dated 15.01.2024 of Federal Service Tribunal Lahore.	E	19-36
7	Status quo order of Islamabad High Court, Islamabad dated 18.02.2021	F	37-38

Appellant  
Through  
  
Muhammad Farooq Malik  
Advocate  
Supreme Court of Pakistan

Dated: 01.11.2024

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 17473

Dated 01-11-24

S.A.No.119/2022

Ambar Nosheen.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa & others .....Respondents

APPLICATION PLACING ON FILE  
ADDITIONAL DOCUMENTS IN THE ABOVE  
TITLED SERVICE APPEAL.


Respectfully Sheweth;

- 1) That the titled appeal is pending adjudication before this Hon'ble Court which is now fixed for 05.11.2024.
- 2) That the appellant through instant application wants to place on file additional documents, which are necessary/ essential for the just and proper decision of the case/ appeal.

Therefore, it is requested that the attached documents may kindly be brought on original court file.

  
Appellant

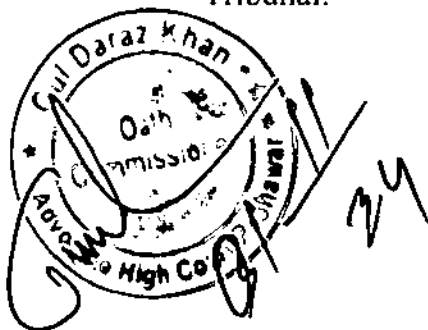
Through

  
Muhammad Farooq Malik  
Advocate  
Supreme Court of Pakistan

AFFIDAVIT:

I, do hereby affirm and declare on oath that the contents of the Application are true and correct and nothing has been concealed from this Hon'ble Tribunal.

  
Deponent



Amme Luv "A" (2)

IN THE FEDERAL SERVICE TRIBUNAL, 47-ATTATURK AVENUE,  
SECTOR. G-5/2, ISLAMABAD.  
\*\*\*\*\*

D. No. 2571

Dated 20 OCT 2023

Subject:- ORDER PASSED IN APPEAL NO. 496(R)CS-2020 FILED BY  
MRS. ASIFA BASHIR VS M/O F.E. & P.T. ETC.

A certified copy of the judgment passed by this Honourable Tribunal in the appeal noted in the subject is sent herewith for your information/compliance.



By Order

(G.H. Channer)  
Registrar

To,

1. Mrs. Asifa Bashir Wife of Amjad Farooq R/o House No.21-E, Street No.17, Sector.G-6/2, Islamabad.
2. Federation of Pakistan through Secretary, M/o Federal Education & Professional Training, Government of Pakistan, Islamabad.
3. Federation of Pakistan through Secretary, M/o Finance & Economic Affairs, Pakistan Secretariat, Islamabad.
4. Federal Directorate of Education through its Director General, Government of Pakistan, Rohtas Road, Mauve Area, Sector.G-9/4, Islamabad.
5. The Secretary, Establishment Division, Government of Pakistan, Islamabad.
6. The Solicitor, Law & Justice Division, Islamabad.

Attested  
Hla

**IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD**

**BEFORE:** Dr. Muhammad Hashim Popalzai and  
Dr. Mujeeb ur Rahman, Members.

Appeal No. 498(R)CS/2020

Date of Institution	18.08.2020
Date of Hearing	22.09.2023
Date of Judgment	28.09.2023

**APPELLANT :** Mrs. Asifa Bashir, Presently posted at Islamabad Model School (I-V), Hakeem Luqman Road, G-8/2, Islamabad. R/o House No. 21-E, Street No. 17, Sector G-8/2, Islamabad.

**RESPONDENTS:**

1. Federation of Pakistan through Secretary, M/o Federal Education and Professional Training, Government of Pakistan, Islamabad.
2. Federation of Pakistan through Secretary Economic Affairs, Pak Secretariat, Islamabad.
3. Federation of Pakistan through its Director General, Government of Pakistan, Rohtas Road, Mauva Avenue, Islamabad.

**PRESENT:**

Ch. Bilal Ahmed, Advocate for the appellant.  
Mr. Yash Arshad Abbasi, Assistant Attorney General.  
Mr. Amjed Ali, A.O and Mr. Musa Reza, Assistant FDE, as DRs.

**ORDER****DR. MUHAMMAD HASHIM POPALZAI, MEMBER:-**

The appellant was aggrieved of an impugned order dated 28.01.2020 whereby the appellant was repatriated to her parent department i.e. M/o Economic Affairs while serving as Trained Graduate Teacher (TGT) under Section 10 of Civil Servants Act, 1973. The appellant preferred a departmental appeal on 15.03.2020 against this repatriation which has not been responded to as yet. The appellant filed a writ petition before Hon'ble Islamabad High Court wherein the Hon'ble High Court has remanded the case back to the Federal Service Tribunal referring that the Hon'ble Court is not competent to hear the cases of Civil Servants. The appellant has thus come to the FST for redressal of his grievance.

2. The appellant is a regular employee of M/o Economic Affairs where she joined as Assistant (BPS-14) on 02.04.2007. She went on deputation to the Federal Directorate of Education (FDE) w.e.f 20.08.2009 as

REGISTERED

Registrar  
Federal Service Tribunal  
Islamabad

Attest  
[Signature]

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**ATTACHED**

20.01.2020 has wrongly mentioned her status as working on deputation basis in the FDE whereas her status at the moment is working under Section 10 of the Civil Servants Act, 1973 which does not have any time frame for repatriation back to her parent department. Furthermore, the approval for her services to be placed in the FDE under Section 10 of the Civil Servants Act, 1973 was given by the Additional Secretary of the CADD vide order dated 11.10.2018 who is the competent authority in her case whereas she was called back vide impugned order dated 29.01.2020 by the Director General, FDE who is a non competent authority. We see here that this impugned order dated 29.01.2020 suffers from many illegalities. We have also analyzed the stance taken by the respondent department that her services were called back by the parent Ministry. From the available record, we could not find any correspondence from the parent Ministry which could define that her repatriation was requested by the M/o Economic Affairs. She has served as TOT/TUOT for more than 14 years now and she is an experienced teacher by gaining such a long experience and it is in the fitness of things that she may continue working as TOT in the FDE. We, therefore, set aside the impugned order dated 29.01.2020 as it suffers from legal infirmities and direct the two ministries to resolve the issue of her placement under Section 10 of Civil Servants Act, 1973 between themselves.

8. On the issue of her permanent absorption as TUOT either in BPS-14 or in BPS-16, has to be seen in conjunction with the reference quoted by the counsel for the appellant in case of Mrs. Raheela Ronag who was absorbed in BPS-14 as TUOT from back date and upgraded to BPS-16 in the same notification. The appellant has requested for her absorption as TUOT time and again and her case now has to be considered in line with that of Mrs. Raheela Ronag and we cannot allow any discrimination to take place in this regard. On the request of FDE, her parent Ministry i.e. M/o Economic Affairs had issued NOC for her permanent absorption as TUOT vide order dated 07.07.2018. She joined as TUOT (BPS-14) in Federal Directorate of

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*M*  
*15/11/20*

15/11/20  
15/11/20

4. The counsel for the appellant has further stressed that she, who may be allowed to continue working as TOT in the FDE, efficiency and dedication which is evident from her record and as such she her parent Ministry and furthermore she has been working as a TOT with of Education has wrongly sent her back as her services were not required by a civil servant is sent to a borrowing department and the Federal Directorate that Section 10 of Civil Servants Act, 1973 does not have any period for which The counsel for the appellant has pleaded his case by saying

3. The counsel for the appellant has pleaded his case by saying that Section 10 of Civil Servants Act, 1973 does not have any period for which a civil servant is sent to a borrowing department and the Federal Directorate of Education has wrongly sent her back as her services were not required by her parent Ministry and furthermore she has been working as a TOT with efficiency and dedication which is evident from her record and as such she may be allowed to continue working as TOT in the FDE.

It is, therefore, most humbly prayed before His Honourable Tribunal that after calling the record of the case the impugned repatriation order dated 29.01.2020 may kindly be set aside and the respondents may be directed to issue the Notification of permanent absorption of the appellant in accordance with law.

following prayers:-

1. That the appellant is a Trained Under Graduate Teacher (TUQT) initially for a period of three years. Her period was extended from time to time and finally she was posted as Trained Graduate Teacher (TGT) under Section 10 of Civil Servants Act, 1973 vide order dated 20.04.2018. In the meanwhile, the post was upgraded from BPS-14 to BPS-18. The post of Assistant was also upgraded from BPS-14 to BPS-16 vide office order dated 11.01.2017 and she, while working as TUQT in the FDE, was also upgraded to BPS-18. She continued serving as TGT (BPS-18) in the FDE till the issuance of impugned order dated 29.01.2020 when her services were repatriated to her parent department i.e. M/o Economic Affairs by the FDE. Being aggrieved, she has come to the FBT with the following prayers:-

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NOTIFIED

From perusal of the record, it transpires that the impugned order dated

Firstly we will take the issue of her appointment under Section 10 as TGT.

counsel for the appellant and rebutted by the departmental representative.

7. There are two issues which have been highlighted by the

record as well.

6. We have heard both the parties and have perused the available

does not merit further consideration and may be rejected.

absorption at this stage. He has, therefore, stressed that the instant appeal

Directorate or the Ministry cannot accept her request of permanent

as the case of her permanent absorption was never materialized so the

Civil Services Act, 1973 in the FDE as TGT (BPS-16). He has thus pleaded that

be finalized and the appellant continued working under Section 10 of the

several TUGTs including that of the appellant was processed but it could not

deliberated on the issue of permanent absorption by stating that a case of

recruitment rules for absorption of that category. Furthermore, he has

the appellant is now working as TGT (BPS-16) and there is no provision in the

absorption as TUGT (BPS-14), the departmental representative has said that

right to call his employees back for duty. On the issue of permanent

29.01.2020 on the request of her parent Ministry and that Ministry has every

appellant and has said that firstly she was repatriated vide order dated

department has strongly opposed the contention of the counsel for the

8. The departmental representative from the respondent

respect of Mr. Rahoela Romay vide order dated 09.12.2014.

lines as was done by the Ministry/Federal Directorate of Education in

therefore, pleaded that her case of absorption may be considered on similar

vide notification dated 09.12.2014. The counsel for the appellant has,

notification she was upgraded to the post of TGT (BPS-16) w.e.f. 01.01.2011

Education / Ministry, firstly as TUGT (BPS-14) on 12.09.2009 and in the same

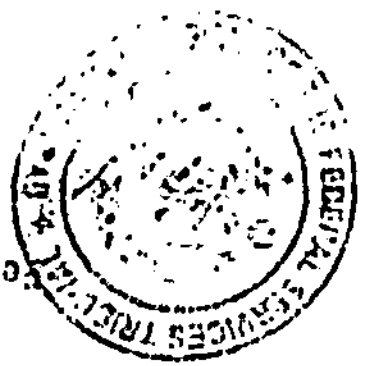
deputation and was permanently absorbed by the Federal Directorate of

was an employee of Government of Punjab, joined FDE as TUGT on

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Federal Services Tribunal  
Tribunal des Services Fédéraux

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Page 1/1

MEMBER

MEMBER

There shall be no order as to costs. Parties be informed.

Education on 80.08.8009 and continued working in BPS-14 till 11.01.2017 when she was upgraded to BPS-18. The Ministry and the Directorate can look into the possibility of her permanent absorption as TUCT (BPS-14) during this period as they have already done a back dated permanent absorption and upgradation in the same notification dated 09.12.2014 in respect of Ms. Raheela Ranaq. We cannot allow a discrimination to happen and, therefore, direct the respondent department to consider her case for permanent absorption as TUCT (BPS-14) in the FDE w.o. a suitable date when she was working in BPS-14 as recruitment rules dated 30.03.2011 allow permanent absorption of TUCT (BPS-14) and her parent Ministry also has no objection to

(7)



Annex " B "

(8)

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No. 186 of 2021

AbidaNaz, etc.

Vs

Federation of Pakistan through Secretary, etc.

S. No. of order/proceedings	Date of order/proceedings	Order with signature of Judge and that of parties or counsel where necessary.
03)	<u>17-02-2021.</u>	M/s Muhammad Raman Khan, Wajid Hussain Mughal, Ali Nawaz Kharal, Muhammad Nisar Khatak, Dr. G.M. Chaudhary, Afsheen Malik, and Malik Muhammad Zubair Advocates, for the petitioners. Syed Muhammad Tayyab, DAG. Mr M. Azam Ghakhar, Director Legal, FDE. Mr Nadeem Arshad, S.O. Establishment Division.

The learned Deputy Attorney General has appeared alongwith Mr M. Azam Ghakhar, Director (Legal), Federal Directorate of Education. They were heard at great length.

2. However, it appears to this Court that the respondents i.e. the Director General, Federal Directorate of Education and the Ministry of Federal Education and Professional Training have, prima facie, grossly misinterpreted the judgment of this Court, particularly paragraph 32 thereof.

3. The official of the Federal Directorate of Education who has appeared today was not able to give satisfactory explanation to queries raised by this Court. All the impugned



several petitioners were appointed on deputation basis and they have been working since a long time. One of them was appointed in 1998 and others in 2003 and 2006. Their respective tenures of deputation were extended from time to time. It, therefore, raises a presumption that the competent authority i.e. respondent no. 2 must have been satisfied with the performance of the petitioners. It is not the case of the respondents that they have adopted a policy whereby no appointment is to be made on the basis of deputation in future. In several cases the petitioners were selected through a transparent process by the respective provinces. This crucial factor was not taken into consideration in the light of the judgment, dated 11.12.2020, passed in W.P. no. 194/2020.


4. The official who has appeared on behalf of the Federal Directorate of Education has stated that since the petitioners were not selected pursuant to publishing an advertisement, therefore, the deputations were not legal. This argument does not appear to be tenable because the petitioners are civil servants and were thus eligible to be appointed under rule 21-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973[hereinafter referred to as the "**Rules of 1973**"]. Moreover, the learned counsels for the petitioners have drawn the attention of this Court to an advertisement posted by the Ministry of Federal Education and Professional

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nothing on record to show that the respective provinces have given their consent to such a mode of appointment on the basis of deputation. On the one hand the petitioners are being repatriated through stereotype orders while on the other a process has been initiated to replace them with other deputationists and that too in a manner that does not appear to be in consonance with law. In such an eventuality it appears to be an unnecessary and unreasonable exercise causing hardship to the petitioners. Nonetheless, an opportunity is afforded to the Director General, Federal Directorate of Education to appear in person and explain the crucial questions raised by this Court during the proceedings.

5. Relist, on 16.03.2021. The petition will be taken at 10:30 a.m.

6. At this stage, this Court is, prima-facie, satisfied that the respondents appear to have misconstrued the judgment of this Court, dated 11.12.2020, passed in W.P. no. 194/2020. The impugned stereotype office orders are, prima facie, not sustainable. Till the next date fixed the operation of the impugned orders shall remain suspended.

ATTESIT  


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under

3. The Director General, Federal Directorate of Education (FDE), Secretary, IDC, briefed the participants that as per Recruitment Rules, in-vogue in FDE, only the posts/cadre of Elementary School Teacher (EST) (BS-14) has 10% reserved quota for Appointment by Transfer. There are 972 sanctioned posts of EST (BS-14) (Female), 97 posts are reserved for Appointment by Transfer. Against them 48 teachers have already been absorbed in pursuance of repealed Recruitment Rules, 1992 which had the provision of absorption of Provincial employees. For all other remaining cadre/posts, there is no provision in Recruitment Rules, for Appointment by Transfer, rather posts are meant for either Appointment by Promotion or Direct Recruitment. The detail of deputationists working under FDE, is as

(1) Notwithstanding anything herein before, instruction, order or notification issued by any authority or decision of a High Court or the Supreme Court regarding repatriation to parent department, the person working or worked under the administrative control of the Federal Directorate of Education, Islamabad, belonging to any service of any provincial government or otherwise whose family/members/dependents are working or posted in any Ministry, Division or organization, autonomous bodies etc of the Federal Government or working in any association/body etc, having business office or Islamabad Capital Territory or residing in the Islamabad Capital Territory in connection with his/her family livelihood, shall stand absorbed on one-time basis, subject to their consent on the commencement of this Act."

2. Absorption of employees to protect family life-

was proposed that  
Wedlock Bill, 2023" submitted by Mr. Ijaz-ul-Haq, MNA, in the National Assembly, wherein it briefed the participants of the meeting regarding the private bill "The Protection of Family Life & The meeting started with recitation of the Holy Quran. The Chairman, IDC, welcomed and

2. The list of the participants is placed at Annex-II.  
Wedlock Bill, 2023". The list of the participants is placed at Annex-II.  
Room of Block "C" Pak Secretariat to discuss private bill titled "The Protection of Family Life & meeting of Inter-Departmental Committee (IDC) was held on 31-05-2023 at 10-30 am in the Committee Professional Training conveyed vide letter No. P.4(1)/2023-Com-II dated 5<sup>th</sup> May, 2023 (Annex-I), in pursuance of the directions of the Standing Committee on Federal Education and

Subject:- MINUTES OF MEETING

Islamabad, the 31<sup>st</sup> May, 2023

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Government of Pakistan  
Federal Directorate of Education  
Ministry of Federal Education & Professional Training  
++++

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(i)	Working against the posts of EST (BS-14)	213 employees
(ii)	Working against the posts of BS-16 & above	101 employees

He further informed that 81 deputations having substantive pay scales below BS-14, are working under educational institutions of FDE. He also briefed about the series of litigations & decisions of the Hon. Courts regarding reputation/absorption. As per Federal Public Service Commission Functions Rules, 1978, initial appointments against the posts of BS-16 & above, is the mandate of Federal Public Service Commission.

**View Point of Ministry of Federal Education & Professional Training**

The Ministry of Federal Education & Professional Training proposes following amendments in the bill:

- a) In para 2(1), in the sentence "(1) Notwithstanding anything herein before instructions or decision of High Court or the Supreme Court regarding reputation to parent department, the persons working or worked under the administrative control....." the words "under the wedlock Policy" may be added after the words "person working" and the underlined words i.e. "or worked" may be deleted.
- b) In para 2(1), after the words ".... subject to their consent" following additions may be inserted:

"on fulfillment of eligibility criteria as per Recruitment Rules in vogue, availability of vacant post meant for Appointment by Transfer in equivalent substantive pay scale and recommendations of the competent forum and working under Wedlock Policy."

**View Point of Establishment Division**

4. The representative of Establishment Division has stated that

- a) Establishment Division is custodian of Civil Service Act, 1973 and rules made thereunder including APT Rules and deputation policy and wedlock policy.
- b) He further submitted that there are three modes of Appointment i.e. Initial Appointment, Appointment by Promotion and Appointment by Transfer. The absorption/induction comes under the category of Appointment by Transfer. The absorption can be made subject to following conditions:

- i) There must be quota reserved/provision for Appointment by Transfer in the Recruitment Rules.
- ii) Must possess the requisite qualification of the post.
- iii) Has equivalent scale/grade in her/his parent department.
- iv) Must fall within the meaning of "Civil Service" as per Civil Service Act, 1973.

*Moullism*

*Moullism*

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The meeting ends with vote of thanks.

7. The Committee unanimously decided to request the representatives of the Establishment and Law & Justice Division to bring their detailed report/opinion during the next meeting to enable the IDC to submit its recommendations before Standing Committee on Federal Education and Professional Training within stipulated time.

**Particulars of the IDC**

6. The representative of Finance Division pointed out that FDB specific law will create discrimination with other employees. There would be pay fixation and seniority issues, hence un-ending litigation.

**View Point of Finance Division**

5. The representative of Law & Justice Division submitted that an act cannot be promulgated only for specific class of persons. The same will be challenged in the courts of law being violation of the provisions of the Constitution. There is a need to examine the private bill in the light of the principles laid down by the apex Court in its various judgments regarding absorption of deputationists i.e. 2013 SCMR 1752, 2015 SCMR 456, 2018 SCMR 54, 2017 SCMR 2051, 2018 SCMR 5, 2018 SCMR 48, and 2021 SCMR 1569.

**View Point of Law & Justice Division**

1) He further apprised that a detailed report/opinion of Establishment Division on the bill, is under process and is being submitted to the IDC.

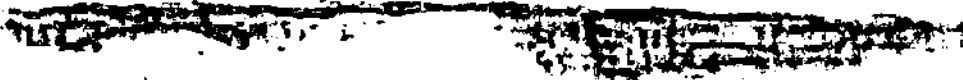
2) Establishment Division does not formulate policies specific to any Ministry/Division/attached department rather it formulates policies general in nature applicable to all. However, it vet, concurs to Recruitment Rules of the departments submitted to it.

3) He further submitted that where a post proposed to be filled in reserved under the rules for departmental promotion, appointment on deputation may be made only if the department certifies that no eligible person is available for promotion or the eligible persons are found until for promotion by the appropriate DPC/Selection Board. In such cases, deputation may be approved till such time a suitable person becomes available for promotion.

4) The representative of Establishment Division further elaborated that if the said bill becomes an Act, then the other employees of different Ministries/Division/attached department will use it as precedent and will file court cases for their absorption. Ultimately a non-stop litigation will be started.

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Ministry of Federal Education & Professional Training  
Additional Secretary  
(Salman Mulla)

*[Handwritten signature]*

Federal Directorate of Education  
Director General  
(Prof. Dr. Farooq Aijaz)

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Joint Secretary (Regulations)  
Establishment Division  
(Sana ul Islam)

*[Handwritten signature]*

(Syed Khurheed-ur-Rasheed)  
Assistant Consultant  
M/o Law & Justice  
No. --- K-1  
Senior Joint Secretary  
(Munir Ahmad)  
Finance Division

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Annex "D" (15)

GOVERNMENT OF PAKISTAN  
MINISTRY OF LAW AND JUSTICE

Subject: ASSENT TO THE PROTECTION OF FAMILY LIFE AND WEDLOCK BILL, 2023.

8. As per rules 27 and 28 of the Rules of Business, 1973, in case of Official Bills this Division shall be consulted at a drafting stage of the proposed legislation prior to introduction in the Parliament, and in case of non-official Bills introduced in the Parliament this Division shall be consulted by the administrative Division concerned for advising on legal implications of the proposed legislation and it is for the Minister in-charge to make a policy decision whether to support or oppose a private member's Bill.

9. As per the Constitution, once a Bill is passed by majority from both Houses of the Parliament, it has to be presented to the President for assent and the legislative procedure cannot be circumvented on the premise that there is a change of stance on the policy decision of the Government. In view thereof, at this stage this Division is unable to offer any comments and advises that the subject Bill in terms of Article 75 of the Constitution be presented to the President who may within ten days either assent to the subject bill or may return the same to the Parliament for reconsideration.

  
(Raja Naeem Akbar)  
Secretary

Mr. Nazar Muhammad Bozdar, Addl. Secretary-I, PM's Office, Islamabad.  
Ministry of Law & Justice u.o. F. No. 2(25)/2023-Legis, dated 14.09.2023.

JITEC



2/3



**BILL**

*to provide for absorption of employees working under the administrative control of the Federal Directorate of Education whose spouses are working, posted or residing in the Islamabad Capital Territory to ensure protection of family as provided in Article 35 and full participation of women in national life as provided in Article 34 and guaranteed in Article 25 of the Constitution of the Islamic Republic of Pakistan.*

**WHEREAS** it is expedient to provide for absorption of employees working under the administrative control of the Federal Directorate of Education whose parents/ spouses are working, posted or residing in the Islamabad Capital Territory to ensure protection of family and wedlock as provided in Article 35 and full participation of women in national life as provided in Article 34 and guaranteed in clause (3) of Article 25 of the Constitution of the Islamic Republic of Pakistan, and for the purpose hereinafter appearing;

It is hereby enacted as follows:—


1. **Short title and commencement.**— (1) This Act may be called "The Protection of Family Life and Wedlock Act, 2023".

(2) It shall come into force at once.

2. **Absorption of employees to protect family life.**— (1) Notwithstanding anything herein before, instruction, order or notification issued by any authority or decision of a High Court or the Supreme Court regarding repatriation to parent departments, the persons working or worked under the administrative control of the Federal Directorate of Education, Islamabad, belonging to any service of any provincial government or otherwise, whose family/parents/ spouses are working or posted in any Ministry, Division or organization, autonomous bodies etc. of the Federal Government or working in any association/body etc. having business office at Islamabad Capital territory or residing in the Islamabad Capital Territory in connection with his/her family livelihood, shall stand absorbed on one-time basis, subject to their consent, on the commencement of this Act.

(2) The seniority of the persons, for the purpose of promotion, under the rules absorbed by virtue of sub-section (1) shall be reckoned from their date of absorption in Federal Directorate of Education, Islamabad

3. **Removal of difficulties.**— If any difficulty arises in giving effect to the provisions of this Act, the Minister-in-Charge may make such order as it may deem necessary and equitable, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

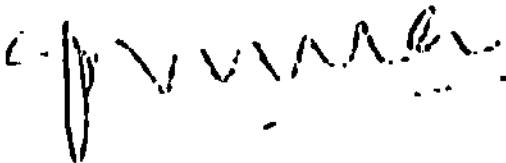


(17)

4. Act to override other laws.— The provisions of this Act shall have effect notwithstanding anything contrary contained in Civil Servants Act, 1973 (Act No. LXXI of 1973), and the rules made thereunder and in any other law or in any order or decree/judgment of a court or tribunal or any other authority for time being in force.

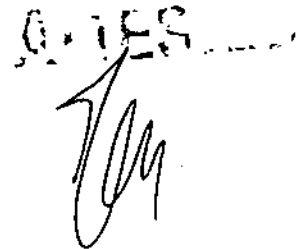
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**Passed by the National Assembly on 27<sup>th</sup> July, 2023  
and by the Senate on 07<sup>th</sup> August, 2023.**

  
**(Muhammad Sadiq Sanjrani)  
Chairman  
Senate of Pakistan**

**I assent to this Bill.**

**President**



2/3

(18)

[AS INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

*to provide for absorption of employees working under the administrative control of the Federal Directorate of Education whose spouses are working, posted or residing in the Islamabad Capital Territory to ensure protection of family as provided in Article 35 and full participation of women in national life as provided in Article 34 and guaranteed in Article 25 of the Constitution of the Islamic Republic of Pakistan*

WHEREAS it is expedient to provide for absorption of employees working under the administrative control of the Federal Directorate of Education whose parents/ spouses are working, posted or residing in the Islamabad Capital Territory to ensure protection of family and wedlock as provided in Article 35 and full participation of women in national life as provided in Article 34 and guaranteed in clause (3) of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 and for the purpose hereinafter appearing;

It is hereby enacted as follows:--

1 Short title and commencement.— (1) This Act may be called "The Protection of Family Life and Wedlock Bill, 2023".

(2) It shall come into force at once.

2 Absorption of employees to protect family life.— (1) Notwithstanding anything herein before, instruction, order or notification issued by any authority or decision of a High Court or the Supreme Court regarding repatriation to parent departments, the persons working or worked under the administrative control of the Federal Directorate of Education, Islamabad, belonging to any service of any provincial government or otherwise, whose family/parents/ spouses are working or posted in any Ministry, Division or organization, autonomous bodies etc. of the Federal Government or working in any association/body etc. having business office at Islamabad Capital territory or residing in the Islamabad Capital Territory in connection with his/her family livelihood, shall stand absorbed on one-time basis, subject to their consent, on the commencement of this Act.

(2) The seniority of the persons, for the purpose of promotion, under the rules, absorbed by virtue of sub-section (1) shall be reckoned from their date of absorption in Federal Directorate of Education, Islamabad

3 Removal of difficulties.— If any difficulty arises in giving effect to the provisions of this Act, the Minister-in-Charge may make such order as it may deem necessary and equitable, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

4 Act to override other laws.— The provisions of this Act shall have effect notwithstanding anything contrary contained in Civil Servants Act, 1973 (Act No. LXXI of 1973), and the rules made thereunder and in any other law or in any order or decree/judgment of a court or tribunal or any other authority for time being in force.



**IN THE FEDERAL SERVICE TRIBUNAL, LAHORE**

Before: Ch. Muhammad Amin Javed and  
Mr. Imtiaz Ahmad Khan, Members

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Sl. No.	Appeal No.	Appellant
1.	302(L)/2022	Muhammad Asghar (J-2390) son of Muhammad Saleem, resident of Cliftonabad Mohallah Irsal Colony Divaly, Gujranwala
2.	303(L)/2022	Abdullah Khan (J-2413) son of Gul Raham Zad, resident of Mohallah Shaheedabad, Kashmir Colony Hassanabad District Attock
3.	304(L)/2022	Noor Alam (J-2433) son of Aziz-ur-Rehman, National Highways and Motorways Police G-11/1, Islamabad
4.	305(L)/2022	Zubair Khan (J-2428) son of Saleem Khan, resident of Mohallah Sultan Khel, Mian Khan, Tehsil Katalang District, Mardan
5.	306(L)/2022	Irfan Yaqoob (J-2353) son of Muhammad Yaqoob, resident of Chaudhry Street Khayaban-e-Street Chakiala Scheme No. 3, House No. 126-A, Street No. 4, Rawalpindi
6.	307(L)/2022	Asif Hussain (J-2352) son of Sain Ahmed, resident of Post Office Jamkoy Cherna, Tehsil Daska, District Sialkot

**Respondents:**

- (1) Inspector General of Police, National Highways and Motorways Police G-11/1, Islamabad
- (2) Assistant Inspector General (IRRI), National Highways and Motorways Police G-11/1, Islamabad

Date of Institution : 28.06.2022  
29.07.2022  
Date of Hearing : 14.12.2023  
Date of Judgment : 15.01.2024

Present: Mr. Allah Nawaz Khosa, Advocate for the appellants  
Mr. Faisal Abbas Ranjha, Assistant Attorney General; and  
Rana Muhammad Faheem Fazal, Assistant Attorney General  
for the respondents alongwith the departmental representative  
Mr. Altaf Hussain, Inspector

**JUDGMENT**

**CII. MUHAMMAD AMIN JAVED, MEMBER:** Since the issue involved in all these cases is almost identical, therefore, we find it expedient to decide the titled cases together through this common judgment.

2. Precisely the facts of the case, as mentioned in the Memo of Appeals are that after NOC issued vide letter dated 07.06.2013 the present appellants were inducted into respondents-Organization (since 2013) vide letter dated 27.05.2013 and in pursuance of Order dated 28.03.2018 passed by the Hon'ble Supreme Court of Pakistan to the effect that employees of NH&MP belonging to BS-1 to BS-07 should not

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5. The issues in moot to be resolved by the Tribunal is as to whether the claim of the appellants voted in their appeals regarding consideration of their permanent absorption from the date of NOC instead of with immediate effect and fixation of seniority accordingly is legal and lawful under the prevalent rules. The record divulges that the

4. We have heard the arguments of the respective parties at length and have also perused the available record with their able assistance.

recommendation of the DIC.  
prerequisite including NOC from the lending department and effect passed by the Competent Authority after fulfillment of all the through the method of absorption only takes place when order to this process which does not *per se* operate as appointment. The appointment the grant of NOC to an employee applying for absorption is part of the Civil Service (Appointment, Promotion and Transfer) Rules, 1973 and for which NOC from the lending Department is a prerequisite under the added that absorption being a method of appointment through transfer not from the back date and then their induction was so materialized. It was reviewed and treated with effect from the date of issuance of NOC and wide letter dated 13.06.2014. After prolonged litigation case of induction Departmental Induction Committee (D.I.C) remained cancelled as into The induction of officials who were not recommended by the the Hon'ble Supreme Court of Pakistan in its various pronouncements. mentioning the officials as party being against the dictum laid down by absorption coupled with seniority with retrospective effect without their para-wise comments that the appellants have claimed that in 3. The respondents while resisting the appeals have maintained in

26.05.2022, so conveyed by the Deputy Director (HR&I).  
representation was not and favour wide impugned order dated 238567 of 2018 dated 17.12.2018 in similar circumstances. Their a verdict of the Hon'ble Lahore High Court, Lahore rendered in W.P. No. 22.04.2019 but they are being discriminated. They have also relied upon absorbed from the date of NOC vide order dated 08.01.2019 & dated 07.03.2013. They have urged that similarly placed employees were they were actually taken in the Organization viz., on the strength of NOC Order dated 19.07.2019 with immediate effect rather from the date when permanent absorption. Resultantly they were permanently absorbed vide disposed of with a rider to consider the request of the appellants for which was filed before the Hon'ble Lahore High Court, Lahore and was be transferred to their parent Department. However, a Writ Petition

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appellants joined in the Punjab Police on 15.02.2001 and thereafter they were transferred/seen on deputation to the respondent-NHA&P on 31.08.2007 and NOC was issued by the lending Department on 20.07.2013, 14.10.2013, 04.09.2014, 17.09.2014 & 08.02.2013 were permanently inducted/absorbed on 19.07.2019 with immediate effect. Before referring to the resolution of the stated issues it is relevant to be noted here that with reference to para-4 of the appeal it is an admitted fact that the appellant/deputants officers shown their option / willingness for permanent absorption/induction in the borrowing Department and a list of willing officers was prepared on 27.05.2013 and their transfer was not compulsory or the result of conscriptions or assignments and their work.

6. The principal contention of the appellants in this regard is that some of the deputants were absorbed from the date of issuance of NOC by the parent Department whereas their induction/absorption was materialized with immediate effect when the impugned order was passed and strenuously pointed out element of discrimination meted out to them by the borrowing Department. Contrary to the respondents' side met this objection with the plea no raised in their para-wise comments that on circulation of seniority list of the rank of Constable/Junior Patrolling Officer and Head Constable/Assistant Patrolling Officer upon receipt of objections it transpired that some officers were inducted as HC/APO and C/JPO subject to receipt of NOC and their NOCs were issued by their Department after issuance of induction orders in order to remove anomaly their date of induction in the rank of HC/APO & C/JPO was revised and treated with effect from the dates of issuance of NOC. Their further stance is that no back dated induction/seniority has been granted to anyone rather in that case too the effective date of induction was further delayed to the date of NOC which was issued subsequent to the induction orders, as such, allegation of discrimination has no force at all. The careful examination of the record transpires that wide Office Order dated 19.07.2019 by the office of Inspector General/respondent No.1 as many as 35 officials inducted/permanently absorbed as Constables/JPO/BS-07 in the respondent-NHA&P as per Rule-5 of The NHA&P (Appointment, Promotion and Transfer) Rules, 2007 with immediate effect and upon receipt of NOCs have already been issued by their parent Department. The detail of issuance of NOC of the present appellants is given below for emphasis:-

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Sr	Rank, Name & No. of Officer	Joined NHMP on deputation basis	Date of NOC	Date of Induction in NHMP as C/JPO (DS-07)	Parent Department
1	C/JPO Muhammad Asghar, J-2390	01.04.2010	04.09.2014	19.07.2019	Punjab Police
2	C/JPO Irfan Yaqoob, J-2353	13.08.2009	17.09.2014	19.07.2019	Punjab Police
3	C/JPO Zubair Khan, J-2428	11.11.2011	14.10.2013	19.07.2019	KPK Police
4	C/JPO Abdullah Khan, J-2413	14.01.2013	08.02.2016	19.07.2019	KPK Police
5	C/JPO Noor Alam, J-2433	07.01.2013	08.02.2016	19.07.2019	KPK Police
6	C/JPO Asif Hussain, J-2352	03.07.2008	20.07.2013	19.07.2019	Punjab Police

As shown in the above tabular contents the dates of joining in the respondent-NHMP of the appellants on deputation basis were made effective from 03.07.2008, 13.08.2009, 01.04.2010, 11.11.2011, 07.01.2013 & 14.01.2013 respectively whereas NOCs were issued by the lending department on 20.07.2013, 14.10.2013, 04.09.2014, 17.09.2014, 08.02.2016 & 08.02.2016 respectively and finally they were inducted/absorbed on 19.07.2019 by the respondent-NHMP on permanent basis alongwith 29 other officials.

7. The concept of permanent absorption in a new Department is dealt within The Civil Servants (Appointment, Promotion and Transfer) Rules, 1973. The absorption being a method of appointment through transfer after issuance of NOC from the parent Department to a civil servant showing willingness for absorption is a part of its process which *per se* is not operate as appointment. The permanent absorption being akin to appointment by transfer which is materialized and effectuated after having fulfilled the required conditions precedent besides the eligibility criteria for the post which is as under:-

- Request or willingness of the concerned deputationists for permanent absorption;
- No Objection Certificate (NOC) from his parent department; and
- Issuance of absorption order on the basis of request/willingness and NOC from parent department.

8. The appointment through method of absorption only takes place when in this regard the order is passed by the Competent Authority after having fulfillment of all prerequisites including NOC from the lending department and recommendation of the Departmental Induction Committee (DIC), so far as the issuance of NOC before the order of permanent induction/absorption cannot be taken as date of permanent

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Induction in a new Department. In other words it cannot be given retrospective effect. The record also indicates that pursuant to the orders of the Hon'ble Lahore High Court, Lahore passed in W.P. No. 173161/2018, dated 05.03.2018, 235262/2018 dated 17.09.2018, 238567/2018, dated 17.12.2018, 238566/2018 dated 17.12.2018, 258319/2018 dated 24.12.2018 read with Orders passed by the Hon'ble Supreme Court of Pakistan in CrI. Review Petition No. 132/2016 dated 28.03.2018, on the recommendation of Departmental Induction Committee (DIC) during its meeting held on 26.06.2019 and with the approval of the Inspector General NHMP, the appellants alongwith 29 others were inducted / permanently absorbed as Constable/Junior Patrol Officers (BS-07) in NHMP vide Order dated 19.07.2019.

9. Now the issue of seniority as per the stance of the appellants from the date of NOC is required to be elaborated to clinch this matter in accordance with law. Although the appellants have sought seniority from the date of NOC in the prayer clause of the appeals besides of any other better relief which deems fit may also be accorded for the sake of justice. In our view we can grant relief other than specifically prayed but covers under any other better relief to impart justice with the believe to avoid remand of the matter to the Department on this issue and even otherwise we as Judge/Court are under legal obligation to know the law and to apply it correctly. Reliance is placed on Chairman, Nab v. Afuhammad Usman and others (2018 PLD Supreme Court 28) while observing that "...one cannot ignore the fundamental principle relating to administration of justice that law is written on the sleeves of the Judges and it is the primary duty of a Judge to apply the correct law to a case before it and even the party is not bound to engage a counsel for telling the Court how a particular law is to be applied and how the jurisdiction is to be exercised..." and also in Muhammad Gulshan Khan v. Secretary, Establishment Division, Islamabad and others (2003 PLD Supreme Court 102) wherein it has been laid down that "It is the bounden duty of the Courts to decide the cases on merits in accordance with law and the rules. The Courts, while dispensing justice, are duty bound to apply the provisions of law in their true perspective and application of the same cannot be avoided simply on the ground that the said provisions of law were not brought to their notice by the parties..." More so, this Court is also competent to grant a different relief as prayed for to meet the ends of justice in the prayer clause of any other relief deems appropriate.

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The main contention of the appellants in the above cases was that the private respondents, in these appeals having been appointed on deputation in O.M.O. were not entitled to claim seniority from the date of their deputation as during the period of their deputation they remained and continued to be the member of the service/cadre from where they were sent on deputation. It is contended that these deputationists became the members of O.M.O. from the date their services were transferred/regulatorized as Section Officer (BPS-17) in O.M.O. It is, accordingly, contended that they could not claim seniority in O.M.O. prior to the date of their transfer to O.M.O. The appellants in support of their above contention have relied on an unreported decision of this

Whether the private respondents in the above appeals who were initially appointed as Section Officers (BPS-17) in O.M.O. on deputation from other departments and were absorbed subsequently by transfer of their services to O.M.O. were entitled to claim seniority from the date of their joining as Section Officer on deputation or from the date of their regular appointment/liberation in O.M.O. as Section Officers.

10. We have ourselves traced the history/background of seniority given to the deputationists after having gone through the different judgments of the Hon'ble Supreme Court of Pakistan in the case of *Muhammad Ashraf Sultani, Section Officer, Cultural Division, Islamabad and another versus Prime Minister of Pakistan, Islamabad and others* (PLD 1996 Supreme Court 771) has dealt with the issue of seniority of the deputationist with reference to facts of this case narrated in para-2 which the appellant was appointed as Section officer (BPS-17) on acting charge basis in the Cabinet Division with effect from 7.3.1985, through Federal Public Service Commission (FPSC). His service was, regulatorized on 14-11-1988. Private respondents 3 to 9 in this appeal were posted as Section Officers (BPS-17) in Office Management Group (O.M.O.) on deputation from different departments during the period from 2.8.1976 to 10.11.1985. Respondents 3 to 9 were finally absorbed in O.M.O. through transfer of their services with effect from 18.2.1989. In the graduation list issued by the Establishment Division on 10.7.1990, respondents 3 to 9 were shown senior to appellant. The appellant, therefore, submitted representation against the graduation list which was rejected on 27.1.1991. Having failed to get redress from departmental authorities, the appellant approached the Federal Service Tribunal and filed service appeal which too was dismissed on 4.5.1992. Eventually the matter was brought to the Hon'ble Supreme Court of Pakistan and leave was granted in the above appeals to consider.

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Court in Civil Appeal Nos. 361, 362 and 363 of 1990 (M. Afzal Khokar and others v. Asmat Ali Afzal and others), decided on 31.8.1992. The learned Deputy Attorney-General and the private respondents in the above appeals on the other hand contended that in view of the law laid down by this Court in the case of Muhammad Zafar Khan v. Secretary, Establishment Division 1998 SCMR 1840, the respondents were rightly granted seniority as Section Officer from the date of their deputation in O.M.O. The respondents have also placed reliance on the following reported and unreported decisions of this Court in support of their contentions: --

- (i) Federation of Pakistan v. Miss Akhter Jamal (C.A. 1340/91), decided on 22.6.1991;
- (ii) Federation of Pakistan v. Manzoor Hussain and others (C. A. 54/91) decided on 11.11.1992, and
- (iii) Sher Ali Bey and another v. Secretary, Establishment Division (PLD 1991 SC 143).

It may be mentioned here that through Ordinance, No.III of 1984 published in the Gazette on 22.1.1984, the word 'post' in place of 'grade', in subsection (1); the words "service or cadre" in place of "service, cadre or grade" in subsection (2) and word "Cadre" in place of "Grade" in subsection (3) of section 8 were substituted. Similarly in place of subsection (4) of section 8, the following new subsection (4) was substituted with effect from 1.7.1983:--

- (4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post:

Provided that civil servants who are selected for promotion to a higher post in one batch shall on their promotion to the higher post, retain their *inter se* seniority as in the lower post."

Therefore, it appears that prior to the amendments in section 8 of the Act through Ordinance III of 1984, the seniority list of civil servants was prepared on the basis of such civil servants being member of a service, cadre or grade. However, after the amendment of 1983, the concept of preparation of seniority list of civil servants on the basis of being in a particular grade was done away with. Subsections (3) and (4) of section 8 of the Act, which respectively deal with the determination of seniority *inter se* of direct recruits, and seniority between the promoters *inter se* are not attracted in the present cases. The present cases are governed under section 8(2) of the Act which deals with determination of seniority of a civil servant in relation to other civil servants belonging to the same service or cadre. The question which, therefore, immediately arises for,

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The Federal Service Tribunal has referred to the Establishment Manual, Volume-1, Chapter IX, to demonstrate that the departmental authorities in accordance with the practice in vogue have defined a 'deputationist' to be a Government servant who is appointed or transferred through the process of selection to a post in a department or service altogether different from the one to which he permanently belongs. Such a Government servant continues to enjoy this status so long as he holds the new post in an officiating or a temporary capacity but ceases to be regarded as such either on confirmation in the new post or on reversion to his substantive post.

The above definition of the word 'deputation' came up for consideration before this Court in the case of *Province of Punjab v. Birmul Hagg* (1986 SCMR 1994). In that case, the respondent who was a permanent employee of Punjab Government and had been against a post, was selected in the Foreign Affairs Group, Government of Pakistan through Lateral Entry Competitive Examination. He was, however, not confirmed against any post in the Foreign Affairs group. He was compulsorily retired from service by the President of Pakistan in exercise of the powers conferred by Section 13(j) of the Act. He challenged his retirement before Federal Service Tribunal but his appeal was dismissed as not maintainable on the ground that being a deputationist from provincial Government, he was not covered by the definition of 'civil servant' as given under the Act. He then challenged his retirement before the Punjab service Tribunal, which allowed the appeal holding that the President was not competent to pass an order for the retirement of respondent who was a deputationist. The Province of Punjab challenged the decision of Punjab Service Tribunal before this Court which failed. During the course of discussion in the above case, this Court approved the interpretation of the word 'deputation' reproduced above in these words:-

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Illustrative the term 'deputation' has not been formally defined. However, according to the practice in vogue a Government servant begins to be regarded as a 'deputationist' when he is appointed or transferred, through the process of selection, to a post in a department or service altogether different from the one to which he permanently belongs. He continues to be placed in this category so long as he holds the new post in an officiating or a temporary capacity but ceases to be regarded as such either on confirmation in the new post or on reversion to his substantive post.

In the cases is, whether the appellants and the private respondents belonged to the same service or cadre. To answer this question, it is necessary to examine the status of a deputationist in the office where he is working on deputation. The word 'deputation' or deputationist are not defined in 'the Act' or in 'the Rules'. However, at page 334, Serial No.29, of ESTACODE (1989 Edition), the following interpretation of the word 'deputation' is given:-

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Para 6 of the above instructions clearly lays down the criteria for determining the seniority of a deputationist in the office where he is sent on deputation. It provides that where it is open to a deputationist to accept or refuse an offer of appointment in another office, he should count his seniority in the new office from the date of his transfer to that office. However, where the transfer is compulsory or result of conscription or alongwith the post and his work, he may count his previous continuous service in the grade towards seniority in that grade.

- (a) When it is open to the person concerned to accept or refuse an offer of appointment in another office, he should count his seniority in the new office from the date of his transfer to that office.
- (b) When a person is compulsorily transferred to another office as a result of conscription, or alongwith the post and his work, he should be allowed to count his previous continuous service in the grade towards seniority in the new office.

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6. Seniority on transfer from one office to another.-(i) The instructions in the foregoing paragraphs regulate the position of a deputationist in the parent office. As regards his seniority in the office to which he is transferred it should be determined in the following manner:-

- 2. ....
- 3. ....
- 4. ....
- (a) ....
- 5. ....

91. Para 50. Instructions to regulate cases from one office to another. - The following instructions are issued to regulate cases of transfer from one office to another of the industrial staff employed in Pakistan Federal Secretariat and its Attached Departments with particular reference to the position of a deputationist in his parent office as well as in the borrowing office.

At page 335 of the ESTACODE (Edition 1989), Serial No. 10, detailed instructions to regulate cases of transfer of civil servants from one office to another are laid down. The authority for these instructions is stated to be O.M No.6/15/48 ME, dated 31st March, 1951 read with O.M. No.6/39/57 ME, dated 5.2.1958. These instructions deal not only with the cases of transfer in public interest but also with the cases of civil servants working on deputation. These instructions do not come in conflict with any of the provisions of the Act and, therefore, shall be deemed to be rules made under the Act by virtue of the provisions of section 25(2) of the Act. These instructions read as follows:-

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having the effect of statutory rule has still being retained, as is evident from the ESTACODE (1983 Edition) in Chapter 111, part 11 on page 217. This Court has also accepted the aforesaid definition of the term 'deputation' in Islamic Republic of Pakistan v. Sarwat Iqbal and others PLD 1981 SC 531.

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There appears to be no conflict between Rule 9-A quoted above and the Rules printed at page 335, of ESTACODS under Serial No.30 relating to regulation of transfer of Government servants from one office to another, reproduced in extenso in earlier part of this judgment. In our view, the respondents who were deputationists in O.M.O. had the right to accept or refuse the offer of appointment as Section Officer in O.M.O. If cannot be disputed that a deputationist continues to remain a member of his parent service or cadre unless absorbed permanently in the service or cadre where he is sent on deputation. The appointment of respondents, who were admittedly deputationists, as Section Officers in O.M.O. under Rule 9-A referred to above in public interest, was subject to recommendation of Departmental Promotion Committee, consent of the Ministry/Division/Provincial Government and the officer concerned, with the approval of competent Authority. The learned Deputy Attorney General admitted before us that before induction of respondents as Section Officers in O.M.O., the consent of concerned officers and their parent offices were obtained. The learned Deputy Attorney General is, however, unable to state whether the respondents while exercising their option to join O.M.O. had the right to refuse the option. It may be pointed out here that under section, 8(2) of the Act, the seniority of a civil servant is to be reckoned in relation to other civil servants belonging to the same service or cad and for this purpose it is not necessary that such civil servant should be serving in the same department or office at the time. It is, therefore, necessary for determining the seniority of a civil servant in a service or cadre that he must be a member of that cadre or

9-A(a) Appointment by transfer.—Civil servants belonging to other occupational groups, services, cadres and the Provincial Governments, including those serving in the Federal Government on deputation basis, may be appointed as Section Officers in the Federal Government, in public interest, on the recommendation of the Departmental Promotion Committee, and with the approval of the competent Authority. The consent of the Ministry/Division/Provincial Government and the officer concerned will be obtained before making such appointments.

extending rules constituting the O.M.O., reads as follows:—  
Division O.M. No.7/12181-C III B/(O.M.O.-II), dated 4.11.1985 in the deputation to O.M.O. Rule 9-A which was added through Establishment were entitled to count their seniority from the date they were sent on in public interest under Rule 9-A of O.M.O. Rules, and therefore, they respondents here in were appointed as Section Officers by way of transfer the, learned Deputy Attorney General jointly contended that the private in the new office. The learned counsel for the private respondents and

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service at the relevant time. In the conclusion of the judgment after having discussed contents of various judgments, such as, Pasle Qadir v. Secretary, Establishment Division (PLD 1988 SC 131); Appel No.68(R) of 1989; Appel No.350(R) of 1990; M. Afzal Khokhar and others v. Azmat Ali Afridi and others Civil Appeals Nos. 361, 362 and 363 of 1990; Muhammad Zafar Khan v. Secretary, Establishment Division (1995 SCMR 1840); Federation of Pakistan v. Miss Mehr Jamal C.A. 1340 of 1990; Federation of Pakistan v. Manzoor Hussain and others C.A. No.54 of 1991; ESCTACODE 1989 Edn., 81.29, p.334; Province of Punjab v. Ikratul Haq (1986 SCMR 1994); Establishment Manual Vol. 1, Chap-IX; ESTACODE 1989 Edn. S1.30 Bria, Sher Ali Baz Ind another v. Secretary, Establishment Division and others (PLD 1991 SC 143). With reference to para-14, we were of the view that the private respondents in the above appeals were entitled to get their seniority determined in relation to others in accordance with paragraph 6 of the instructions appearing at page 335 of the ESTACODE (Edition 1989) at Serial No. 30 which relates to the persons concerned to refuse or not the offer of appointment to another office but should count his seniority in the new office from the date of his transfer to that office and the case of the present appellants covered in para 6(a) of the instructions printed at page 335 of the ESTACODE (Edition 1989).

11. In the case of Din Muhammad Versus Director-General, Pakistan Post Office, Islamabad and 20 others (2003 SCMR 333). This issue has been discussed elaborately with reference to facts of this case the appellant, was appointed as Sorter in Railway Mail Service, Rawalpindi on 14-7-1969 and later he was transferred as Upper Division Clerk (B-7) to the office of Post Master General, Northern Circle, Rawalpindi, vide order dated 2-8-1978 against 25 % reserved quota. The appellant joined in the above said office on 4-8-1978 and on 1-1-1985 he was permanently absorbed in the office of Post Master General, Northern Circle, Rawalpindi.....

Rule 4 of The Civil Servants (Seniority) Rules, 1993, provides as under:-

4. Seniority on appointment by transfer. - Seniority in a service, cadre or post to which a civil servant is appointed by transfer shall take effect from the date of regular appointment to the service, cadre or post:

Provided that

- (a) persons belonging to the same service, cadre or post selected for appointment by transfer to a service, cadre or post in one batch shall, on their appointment, take inter se seniority in the order of their date of regular appointment in their previous service, cadre or post; and

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20. In the light of the above judgments and various rules of ESTACODE and other laws quoted in this judgment it has now to be seen whether the seniority of the appellant has to be reckoned from the date they were demoted/deputed to the then CRR now FRR or from the date of their absorption in the above organization with date was fixed by this Court in the appellants' earlier judgment quoted supra. Rule (a) which has already been reproduced, provides that if it is open to the person concerned to accept or refuse his appointment in another office then the seniority in that office shall be counted from the date of his transfer to that office. In paragraph 10 of the judgment reproduced from the case of Abdul Hameed Anjum quoted supra it has been stated that on the request of CRR the respective department thus invited options from their officers to be transferred/deputed to

12. The view taken in the above-referred judgment has also been used Jabal Hussain Sheikh and 2 others Vs. Chairman, Federal Board of Revenue and another (2013 SCIR 281), however, the conclusion of the judgment is given in para 20 thereof which is reproduced hereunder:-

For the foregoing reasons, we hold that the seniority of appellant would be reckoned from the date of his induction as UDC in the Office of Post Master General, Northern Circle, Rawalpindi through transfer on 4-8-1978. The objection relating to maintainability of appeal raised by the learned Deputy Attorney-General on the ground that the seniority list published in 1987 remained unchallenged would be of no consequence as on publication of subsequent seniority list in the year 1999, there would be a fresh cause of action in favour of appellant, therefore, the appeal before the Tribunal was maintainable. We accordingly, allow this appeal, set aside the judgment of Federal Service Tribunal. However, there will be no order as to costs.

(b) persons belonging to different service, cadre or posts selected for appointment by transfer in one batch shall take their seniority in the order of the date of their regular appointment to the post which they were holding before such appointment and, where such date is the same, the person older in age shall rank senior.

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3. We have called the AJO (HRM), NH&MP, and after hearing him and with the consent of the learned Counsel for the parties as

13. The respondent's side has relied upon un-reported judgment of the Hon'ble Supreme Court of Pakistan passed in Civil Appeals No. 709 to 717/2016 & C.M.A. No. 981 of 2016, dated 16.01.2017 with reference to judgment, dated 29.10.2016 of this Tribunal, passed in Appeals No. 804/CS/2008, 715/CS/2008, 1212/CS/2009, 1214/CS/2009 and 1889/CS/2010. The conclusion of judgment relates to para-3 which is reproduced as under for ease of reference:-

5. The import of paragraph 6(i)(a) above appears to be quite contrary to what respondent's counsel intend to advance before us. It clearly provides that where a person is transferred to another office in a situation where it was open to him to accept or refuse such transfer, the seniority was to be reckoned from the date of his transfer to the new office. The only exception to this rule is contained in paragraph 6(i)(b). It states that where a person is compulsorily transferred to another office then he is allowed to count his service in the previous office towards his seniority in his new office. In the case of transfer of four other officers of the department, examples of which have been quoted as precedent in the present case, their seniority may have been reckoned from the date of their initial appointment but nothing was brought on the record as to the circumstances in which such transfers had taken place. In the present case, one thing is clear that the respondent sought his transfer to his new office on his own volition on the basis of mutual consent with another officer of the same grade. He was not compulsorily transferred at the instance of the department, hence the recognized practice contained in paragraph 6(i)(a) of Section No. 30, Chapter III, Part II of Statutes (1989 edition) clearly disallows him to count his previous service towards seniority in the new office. When on a principle of law one upon his transfer is not entitled to seek seniority from the date of his initial appointment then if someone else has been granted seniority in violation of such principle, which too is not clear, the same cannot be made a ground to raise the plea of discrimination.

The above view has also been endorsed by the Hon'ble Supreme Court of Pakistan in Syed Arshad Ali Versus Secretary Ministry of Housing and Works, Islamabad and others (2022 SCMR 729) while upon in the cases of Tirko Khan and others v. Muzaffar Hussain Shah and others (2018 SCMR 332) and Secretary Revenue Division/Chairman, FBR and another v. Muhammad Athab Haid (2019 SCMR 980) while considering the implication of Rule 6 of The Civil Servants (Seniority) Rules, 1993:-

CIR which means that the officers to whom these options were given had right to either refuse or accept the option of being transferred/deputed to CIR. Therefore the seniority of such officers who opted to be inducted in CIR has to be reckoned in accordance with Rule 6-A which provides that the seniority in the new office shall be counted from the date of transfer of officer to that office. This date according to the actual facts is 26 March, 1994. We are, therefore, of the considered opinion that the seniority of the appellant vis-à-vis the other officers for all purposes shall be reckoned from 26 March, 1994 and not from 1st January, 2001 which has been declared to be the date of absorption/induction in the Income Tax Group by the court in its earlier judgment.

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13. We have cautiously and minutely gone through the pros and cons of the judgments of the Honble Supreme Court of Pakistan referred to in para-3 of the above un-reported judgment and observed that the proposition in all the judgments relate to different subject matter and none of the judgment is not directly applicable to the issue of seniority of the deputationalist involved in the subject appeals, as such, with due respect cannot be relied upon. Here, so, it is settled law that the latest judgment will prevail over the old law. We have also noted that the judgment of the Honble Supreme Court of Pakistan, dated 16.01.2017, referred to above was passed and rendered with the consent of the parties which can be given the status of a judgment in personam at the most and not judgment in rem applicable in all cases. Furthermore, the judgment of the Honble Supreme Court of Pakistan passed in Muhammad-Arshad Sultan, Section Officer, Cabinet Division, Islamabad and another versus Prime Minister of Pakistan, Islamabad and others (PLD 1996 Supreme Court 771) and Bin Muhammad versus Director-General, Pakistan Post Office, Islamabad and 20 others (2003 SCMR 333) supra have not been brought in the notice of the Honble Supreme Court of Pakistan wherein the issue of seniority of deputationalist was specifically decided. In a recent judgment of the Honble Supreme Court of Pakistan reported as Basfir Ahmed Badini, DASS, Para Allah Yar and others versus Honble Chairman and Member of Administration Committee and Promotion Committee of Honble High Court of Balochistan and others

4. The process of fixation of the seniority shall be completed within one month from today, as suggested by the A.T.O (HRM), NHAAP. These Appeals are disposed of with the modification in the impugned judgment in the terms contained in paragraph 3 of this order.

The seniority of the Police Officials in the NHAAP shall be fixed. The deputationalists (Police Officials) who were inducted in NHAAP by extending the benefit of one step higher than their substantive rank in the parent department, shall be assigned seniority from the date they were permanently absorbed in the department by the notification issued by the competent authority and their seniority shall be placed at the bottom. The one step promotion cannot be equated as cut of turn promotion in terms of judgments of this Court reported as Government Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch Vs. Province of Sindh (2015 SCMR 450). In fact the principles which this Court has enunciated in the case of Dr. Muhammad Akram vs. The Registrar, Islamabad (PLD 2016 SC 961), would be attracted in the case in hand where the issue of the nature was dealt with by this Court. The seniority of all the Police Officials shall be finalized in the above terms from the date when they were permanently absorbed in the department, placing them at the bottom of the seniority as concluded heretofore.

well as the learned Additional Attorney General for Pakistan, intend to dispose of the Appeals in the following terms:-

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Judgment in rem. An adjudication pronounced upon the status of some particular thing or subject-matter, by a Tribunal having competent authority. Booth v. Copley, 238 Ky. 23, 140 S.W. 2d, 67, 666. It is founded on a proceeding instituted against or on something of subject-matter whose status or condition is to be determined. Eureka Building and Loan Assn v. Shultz, 139E Kan.

Judgment in personam or inter partes. A judgment against a particular person, as distinguished from a judgment against a thing or a status.

**Black's Law Dictionary (6th Edition)**

Judgment, in rem. A judgment in rem may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing (as distinct from the particular interest in it of a party to the litigation). Apart from the application of the term to persons, it must affect the res in the way of condemnation, forfeiture, declaration of status or title, or order for sale or transfer.

A judgment in personam determines the rights of the parties inter se or in the subject-matter in dispute, whether it be corporate property of any kind whatever or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property, or the sale or determine any interest in it except as between the parties litigant. Judgments in personam include all judgments which are not judgments in rem, but as many judgments in the latter class deal with the status of persons and not of things, the description "judgment inter partes" is preferable to "judgment in personam".

Judgment, in personam. A judgment in personam or inter partes are those which determine the rights of parties inter se or in the subject-matter in dispute, whether it be corporate property of any kind whatever or a liquidated or unliquidated demand, but do not affect the status of either persons or things, or make any disposition of property or declare or determine any interest in it except as between the parties litigant. They include all judgments which are not judgments in rem.

**Words and Phrases Legally Defined (Vol. 2-17)**

**Rem, Judgment in.** A judgment which gives to the successful party possession or declaration of some definite right which right is available against the whole world.

**K. J. Allyn's Judicial Dictionary (10th Edition 1985)**

**Rem, Judgment in.** A legal determination binding not only the parties but all persons. It applies particularly to judgments in Admiralty, declaring the status of a ship, matrimonial causes, grants of probate and administration and condemnation of goods by a competent Court.

Judgment in personam. A judgment determining the rights of persons inter se or to any money or property in dispute, but not affecting the status of persons or things or determining any interest in property except between the parties. They include all judgments for money.

The Oxford Companion to Law by David M. Walker

derived from different law dictionaries in the following manner:-

(2022 SCMR 448), the doctrine of judgment in rem and personam. While discussing the excludeds and philosophy, also quoted the meaning

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This dictum was later endorsed by the Court in *Muhammad Sohail v. Government of M.W.F.F.* (1996 SCMR 218) at para 7. Likewise, in *Kashid Ahmed Shaikh v. State* (2000 SCMR 814) the Court held:  
(emphasis supplied)

...in a controversy raising a dispute inter partes, the thing adjudged is conclusive as between the parties both on questions of fact and law but as to what the Court decides generally is the ratio decidendi or rule of law for which it is the authority. It is this ratio decidendi which is operative in subsequent cases presenting the same problem between third parties not involved in the original case.

That the ratio decidendi of a case is the binding precedent was also affirmed by the Court in *Dr. Baksh v. Chairman Allama Iqbal Open University* (PLD 1987 SC 145):

(emphasis supplied)  
...The foundation of the reason or principle upon which a question before a court has been decided is alone binding as precedent. This underlying principle is called the ratio decidendi, namely the general reasons given for the decision or the general grounds upon which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision. What constitutes binding precedent is the ratio decidendi, and this is almost always to be ascertained by an analysis of the material facts of the case, for a judicial decision is often reached by a process of reasoning involving a major premise consisting of a principle of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration.

22. To assess the above contention of learned counsel for the respondents and the interveners, the first step is to determine whether the view expressed by Justice Sheikh Asmat Saeed in paragraph 112 of his opinion constitutes binding precedent. That will only be the case if paragraph 112 is the ratio decidendi of the case. Lordship's opinion and two of the District Bar Association case (supra). This is because it is only the ratio decidendi of a judgment which forms the binding precedent. Halbury's Law of England (Volume 11, 2020) explains the correlation between ratio decidendi and binding precedent as follows:-

**A. Ratio Decidendi**

14. We have also noted that the unreported judgment of the Hon'ble Supreme Court of Pakistan, dated 16.01.2017, supra, referred by the respondents' side does not come in the scope of ratio decidendi rather covers under the doctrine of obiter dicta, as such, is not binding on the Court in terms of Article 189 of the Constitution and this concept is elaborately discussed in *Claudhery Parvez Bhatti Versus Deputy Speaker, Provincial Assembly of Punjab, Lahore and others* (PLD 2023 Supreme Court 539):

135. 32 P.2d 477, 480; or one brought to enforce a right in the thing itself. Federal Land Bank of Canada v. Jafferson, 229 Iowa 1054, 295 N.W. 855, 857. It operates upon the property, Guild v. Wolfe, 150 Or. 69, 40 P. 2nd 747, 742. It is a solemn declaration for the status of some person or thing. Jones v. Tex. Tax Appellant, 57 S.W. 2d 617, 620. It is binding upon all persons in so far as their interests in the property are concerned.

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(emphasis supplied)

The legal basis for a judicial decision, which is usually (but not necessarily) made explicit in the judgment, is usually (but not necessarily) made explicit in the judgment. It includes only those statements of legal rules or principles that are the essential basis for reaching the decision, as opposed to other observations on the law (known as obiter dicta (o.d.)) which the judgment may contain. The ratio decidendi is important in the doctrine of precedent (r.v.) since it is only that part of the judgment of a superior court that constitutes a precedent.

A succinct but comprehensive synopsis of ratio decidendi can also be found in Dornie's Dictionary of English Law (5th Edn):

(emphasis supplied)

Any judgment of any Court is authoritative only as to that part of it called the ratio decidendi, which is distinguished from the dicta. It is for the Court of whatever degree, which is called upon to consider the precedent to determine what the true ratio decidendi is. —

4. Similarly, Professor C.K. Allen, in his law in the making says (at p.241),

It must be observed that (in) common law not every opinion expressed by a judge forms a judicial precedent. Two things must occur: it must be, in the first place, an opinion given by a judge, and, in the second place, it must be an opinion of which it is necessary for the decision of a particular case; in other words, it must not be obiter dictum.

3. So also Professor Chipman Gray says in his book 'Nature and the sources of Law' about a judicial precedent (p.201),

A precedent, therefore, is a judicial decision which contains in itself a principle. The underlying principle which forms its authoritative element is often termed the ratio decidendi. The abstract ratio decidendi is distinguished from the concrete decision to which it is applied. The ratio decidendi is the force of the principle which forms the world of law.

2. Sir John Salmond in his jurisprudence says (at p. 191):

17. ... The underlying principle of a judicial decision, says Salmond in his commentaries on the Law of England, Vol. 1, p. 11, which forms its authoritative element for the future, is termed Ratio Decidendi. It is contrasted with an Obiter Dictum, or that part of a judgment which consists in the expression of the judge's opinion on a point of law which is not directly raised by the issue between the litigants. Obiter dicta are often valuable though not binding, statement of the law.

23. The constituent elements of ratio decidendi that distinguish it from the other parts of a judgment have been elaborated in the case-law of the Court. For instance, in *All Pakistan Newspapers Society v. Federation of Pakistan* (PLD 2004 SC 600) the Court referred the principles set out in the book 'Fundamental Law of Pakistan' authored by A.K. Brohi for determining the ratio decidendi of a case:-

(emphasis supplied)

Now, every case is an authority, to the extent the same decides the legal controversy concerned in it. In other words, the declaration of law has to be confined to the four corners of the dispute agitated before the Court.

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ASSISTANT REGISTRAR  
Federal Service Tribunal  
Laborers

Approved for Reporting  
MEMBER  
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15 January, 2024  
MEMBER

MEMBER  
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MEMBER  
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17. Parties be informed accordingly. Files be consigned to record after  
codal formalities under Rule-21 of The Service Tribunals (Procedure)  
Rules, 1974.

and other (2022 SCNR 595). No order as to costs.  
948); and Siadh Indegon and Binahge Authority v. Government of Siadh  
Versus Binahge Coordination Officer, Lodhnan and others [2014 PLC (C.S.)  
Government of Puntland and other (2013 SCNR 544); Shama Khan Zafar  
and others (PLD 2010 S.C. 857), Khalid Ahmed Versus Chief Secretary,  
Pakistan v. Abdul Hameed Anjum and others v. Federation of Pakistan  
consideration and as per law laid down by the Honble Supreme Court of  
issue of determination of seniority through meaningful  
14.01.2013 respectively and the respondents are directed to consider the  
03.07.2008, 13.08.2009, 01.04.2010, 11.11.2011, 07.01.2013 &  
the date of their transfer/induction in the Department with effect from  
seniority of the deputationists is concerned that will be considered from  
08.02.2016 & 08.02.2016 respectively and so far as the determination of  
the date of NOC, dated 20.07.2013, 14.10.2013 04.09.2014, 17.09.2014,  
(NHAMF) will be with immediate effect' viz., '19.07.2019' and not from  
absorption/induction of the appellants in the borrowing Department  
impugned order is modified with the observation that the permanent  
26.05.2022 is not sustainable and maintainable in its entirety, as such,  
Tribunal is required in the matter being the impugned order dated  
16. The upshot of the above discussion is that interference of this

18. Now it is settled that each case has to be decided on its own  
merits and facts and in this respect the Honble Supreme Court of  
Pakistan has recently ruled in All Bux Shauk Versus The Chief Secretary,  
Government of Siadh, Karachi and others (2023 PLC (C.S.) 531).

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Form No: HCJD/C-121  
**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

37

I.C.A. No.319/2020

Ms.Najmul Sadain, etc  
Vs.

Federation of Pakistan, etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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09	18.02.2021	Mr. Muhammad Asif Gujjar, Advocate for the appellants. Raja Saad Sultan learned A.A-G for the respondents with Mr.Sohil Aijaz, Dy. Director FE&PT, Mr. Muhammad Azam Gakhar, Director (Legal)FDE.
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Learned counsel for the appellants submitted that this Court In Writ Petition No.186/2021 has granted Interim relief as the respondents have misconstrued the Judgment of this Court dated 11.12.2020 in Writ Petition No.194/2020. It was contended that till such time that the matter is finally resolved the repatriation of the appellants may kindly be stayed.

In view of the submissions made by learned counsel for the appellants, the respondents are restrained from repatriating the appellants.

Relist on 17.03.2021.

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Qanoon-e-Sherhadat Order 1984  
Islamabad High Court  
Islamabad

  
(TARIQ MEHMOOD JAHANGIRI)  
JUDGE

  
(AAMER FAROOQ)  
JUDGE

M.A.Sak.



IN THE ISLAMABAD HIGH COURT,  
ISLAMABAD

38

Intra Court Appeal No. 319 / 2020  
in

Writ Petition Nos. 1800, 1317, 1383, 226A to 1427 of 2020

In the matter of:

1. MS. NAJMUL SADAIN wife of Syed Anjad Ali Shah, MTT, serving at Islamabad Model School (I-V), No.1, I-10/1, Islamabad.
2. MS. SIUMAILA wife of Afraz Ahmed Khan, MTT BPS-09, serving at Islamabad Model College for Girls, Quaid-e-Azam University, G-5, Islamabad.
3. MS. NUSRAT SHAHEEN wife of Muhammad Azhar, MTT BPS-09, serving at Islamabad Model School for Girls (I-VIII), I-10/4, Islamabad.
4. MS. SHIAHER BANO wife of Jamal, MTT BPS-09, serving at Islamabad Model College for Girls, Thanda Pani, Islamabad.
5. MS. FARHAT BIBI wife of Muhammad Arshad, MTT BPS-14 serving at Islamabad Model School (I-V), Sector I-8/1, Islamabad.
6. MS. TABASSUM BEGUM wife of Yasir Mustafa, TUGT BPS-14 serving at Islamabad Model School for Girls Mura Noor, Islamabad.
7. MS. NAGHMA SHIREEN wife of Din Muhammad, Senior Lady Teacher, Islamabad Model College For Girls G-10/2, Islamabad.
8. MS. SHAHIDA JABEEN wife of Himatullah, EST BPS-14, serving at Islamabad Model School for Girls (I-V), Bhakha Syedan, Islamabad.

For Private

26 FEB 2021

Examiner  
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Islamabad High Court  
Islamabad



... Appellants

Versus

1. Federation of Pakistan through Secretary M/O Education & Professional Training, Pak-Secretariat, Islamabad.
2. Director General, Federal Directorate of Education (FDE), G-9/4 Islamabad.
3. Secretary, Establishment Division, Cabinet Secretariat, Islamabad.
4. Accountant General Pakistan Revenues, Awan-e-Sanat-o-Tijarat, Mauve Area, G-8/4, Islamabad.

132-17  
126/10/20

... Respondents

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