FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:
Justice AAMER FAROOQ
Justice ROZI KHAN BARRECH

C.P.L.A.760-P/2025
(Against judgment dated 17.06.2025, passed by the Peshawar High Court, Peshawar in W.P.No.4511-P/2021)

Mst. Salma Raza ***...Petitioner(s)***

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others ***...Respondent(s)***

For the Petitioner(s)	:	Mian Muhammad Imran, AHC (With permission of the Court)
For the Respondent(s)	:	N.R.
Assisted by	:	Barrister Zarrar Haider Bhatti, Law Clerk
Date of Hearing	:	09.02.2026

ORDER OF THE COURT

JUSTICE AAMER FAROOQ:

1. Leave to appeal is sought against the judgment of the Peshawar High Court, Peshawar, passed in Writ Petition No. 4511-P of 2021, wherein the Petitioner's writ petition was dismissed and her request for declaring the repatriation notification dated 27.07.2021 as unlawful, illegal and *void ab-initio* was rejected. (**'impugned judgment'**).

2. At the very outset, Mian Muhammad Imran, AHC, sought permission to argue the case on account of the fact that learned counsel, holding the brief on behalf of petitioner, namely Amir Sabir, ASC, is not available. We allowed the referred counsel to plead the instant petition.

3. Brief facts of the case that are necessary for the adjudication of the matter are that the Petitioner, a resident of the Province of Khyber Pakhtunkhwa, got appointed as a 'certified teacher' and later she married Mr. Zabihullah Khattak, an individual serving at the Ministry of Defence. After her marriage, on the basis of the wedlock policy she was

posted to serve on deputation at Federal Government Girls School, Tariqabad, Rawalpindi Cantt, which is within the purview of Federal Government Educational Institutions since 2011. The Petitioner was posted on deputation on 29.04.2011 and she continued to serve on deputation till 28.04.2021. The Petitioner made a request for further deputation before her repatriation and relevant No Objection Certificates ('**NOCs**') were issued by the borrowing department, but the same were rejected by her parent department and instead she was repatriated and placed at the disposal of the District Education Officer (Female), Lakki Marwat.

4. Learned counsel for the petitioner *inter alia* contended that NOCs has been issued by the concerned department but still deputation period of the petitioner was not extended. It was argued that under the wedlock policy of the KPK Government, the petitioner was entitled to continue serving on deputation in Directorate of Federal Educational Institutions, Rawalpindi. We have heard the learned counsel and perused the record available.

5. We firstly advert to the period of deputation that is permissible under the law. As per the law, a deputation can be for a period of three years and can further be extended for another two years, however, there is no provision in law for further extension of the deputation period after five years of service, See, Rule 20A of Civil Servants (Appointment, Promotion, Transfer) Rules, 1973 (exception to this maximum time period is proviso to sub-rule 3 to Rule 20A) and ESTACODE KPK[1]. "The deputation is a contract and if borrowing department does not need the services of a deputationist, he or she must go back to parent

[1] In the present case, the petitioners' parent department is from KPK. The learned counsel, in CPLA No. 760-P/2025, contends that the KPK ESTACODE permits an extension of deputation beyond five years. While it is correct that such an extension is contemplated under the ESTACODE, it is expressly discretionary and subject to the consent of both the parent department and the borrowing department. In this instant case, such consent has evidently not been granted.

department and thus no fundamental rights of the civil servants [are] infringed and no provisions of Constitution [are] violated", See *Asma Shaheen* v. *Federation of Pakistan,* 2013 PLC (C.S.) 391 (Per IQBAL HAMEED-UR-REHMAN, J.). Officers are usually sent on deputation to other departments or organizations to ensure that the right expertise is available where it is needed most, while maintaining flexibility within the administrative system. Rather than permanently transferring an officer, deputation allows governments to temporarily place experienced professionals in roles that require specialized skills and fresh perspectives. This becomes particularly important during major reforms, new policy initiatives, large-scale projects, or emergency situations, when certain departments may face shortages of trained personnel. At the same time, deputation allows sharing of knowledge and best practices across departments, strengthening coordination and improving policy implementation. Beyond administrative needs, deputation also benefits officers personally by broadening their exposure and enhancing their leadership skills which comes valuable in public service. Ultimately, deputation serves as a practical tool that supports efficient governance while fostering professional growth and institutional strength.

6. In Pakistan, civil servants are usually placed on deputation to advance the above stated objectives and also pursuant to the wedlock policy, a policy devised by the Federal and Provincial Governments. This facilitates spouses being posted at the same station, ensuring they are not separated from one another, and enables both, while remaining in public service, to continue their marital relationship without distance coming in the way. The policy has come through in the field by way of different Memorandums issued by the Federal as well as provincial Governments. The policy is not *per se* part of Civil Service parent

statutes in Pakistan but has been recognised by way of proviso to sub-rule 3 of Rule 20-A of Civil Servants (Appointment, Promotion, Transfer) Rules, 1973 by stating that time cap of total five years of deputation period shall not be applicable where a spouse is posted by way of deputation to a station where his/her spouse is stationed. Indeed, the policy is an ideal initiative but at the end of the day it is a "policy". It is settled that it is "sine qua non for an officer to continue serving as a deputationist [provided there] is the consent of the parent department [to do so]". See, *e.g., Mrs. Nusrat Rasheed* v. *Federation of Pakistan,* 2021 PLC (C.S.) 777 (Per MIANGUL HASSAN AURANGZEB, J.) which (consent) has been duly denied by the parent department in the case before us.

7. Seeking extension, by an officer, in deputation period for indefinite time, under the garb of wedlock policy, is not permissible inasmuch as policy cannot override Civil Servant Rules framed for transfer and posting of a civil servant, including the deputationist. Any policy consideration, even the wedlock policy, cannot be used as a tool for seeking permanent station, where spouse of the civil servant is located[2];See, *e.g., Mst. Saman Naz* v. *Federation of Pakistan,* 2020 PLC (C.S.) 905 (Per MIANGUL HASSAN AURANGZEB, J.). It would defeat the very purpose of deputation, as highlighted above, unless the law is amended.

8. Seeking perpetual deputation on the basis of a wedlock policy can create administrative and legal complications because deputation is intended to be temporary, not permanent. "*Deputation* is an administrative arrangement between borrowing and lending Authorities

[2] "This position has not been changed by the amendment introduced in Rule 20A of the Civil Servants Act vide SRO No. 375-(I)/2012 and as such the Appellants' reliance thereupon is misconceived. The said amendment has simply created an exemption from the normal period of deputation for, *inter alia*, those who may fall under the wedlock policy. Such exemption neither creates a vested right for one on deputation to seek absorption on the basis of the wedlock policy nor takes away the borrowing department's right to refuse absorption". See *Saira Yousuf* v. *Federation of Pakistan,* I.C.A. No. 179 of 2021 at para 7 (Per SAMAN RAFAT IMTIAZ, J.). The "position" referred to herein pertains to that "a civil servant on deputation has no vested right to stay on deputation or to seek absorption", See *Saira Yousuf*, supra, p.6.

for utilizing the services of an employee in the public interest and exigency of services against a particular post against which the deputationists cannot claim any right of permanent absorption", see, *e.g., Mst. Robia Ayub* v. *Federation of Pakistan,* 2013 PLC (C.S.) 915 (per MUHAMMAD ANWAR KHAN KASI, J.). It is settled law that a deputationist may not necessarily complete the tenure for which he/she was sent on deputation, and power is vested with the competent authority to repatriate a deputationist without assigning any reason. In case of transfer on deputation, no vested right accrues to a deputationist to continue for the period of deputation. "The competent authority [is] empowered to repatriate a deputationist as and when the exigencies of service [require], see *Mrs. Nusrat Rasheed* v. *Federation of Pakistan,* 2021 PLC (C.S.) 777 (Per MIANGUL HASSAN AURANGZEB, J.). Herein, as we have already noted above that the petitioner has been on deputation for around 11 years is alarming and yet now relief is sought under the garb of wedlock policy, which is a severe abuse of the process and the law.

9. While wedlock or spouse-posting policies are designed to support family unity by posting spouses in the same location as far as possible, converting this accommodation into an indefinite deputation also defeats the purpose and structure of service rules. It disrupts cadre management and creates imbalance in staffing. Moreover, perpetual deputation blurs the distinction between deputation and permanent transfer, leading to questions about policy misuse, and administrative inefficiency. We agree that although wedlock policies aim to promote work-life balance and humanitarian considerations, but we hold that using them to justify endless deputation can conflict with the temporary and need-based nature of deputation itself.

10. While deciding this case, our attention is drawn to the judgment of Supreme Court of Pakistan in *Mubashir Iqbal Zafar* v. *Ministry of Defence,* PLJ 2026 SC 16 (Per AYESHA A. MALIK, J.). We fail to bring ourselves in agreement of the same. In *Mubashir Iqbal,* Supreme Court set aside a judgment of the Federal Service Tribunal, and Mr. Mubashir Iqbal Zafar was allowed to serve on the basis of wedlock policy at Khanewal, where his wife was working as government school teacher and the transfer order was also consequently set aside. Reference is made in the cited judgment to various provisions of the Constitution, and attempt is made to state that a civil servant who wishes to be posted at the same station as their spouse may seek consideration under the wedlock policy; we again note that this does not constitute an absolute right. The judgment in question provides that wedlock policy could be invoked where the spouse of the civil servant is working in some private sector; we again note that in such eventuality it might be desirable for the marital partners to be together at one place but again no vested right accrues in favour of a civil servant, to be posted at the station of his/her spouse. Undoubtedly proviso to sub-rule 3 of Rule 20-A *ibid* removes the limit of maximum time period of five years for a civil servant for posting, on deputation, at the place of his/her spouse but it is not an absolute rule and the wedlock policy or desirability of the marital partners to live at the same station have to give way to the exigencies of civil service administration.

11. The judgment in *Mubashir Iqbal* though refers to the relevant memoranda on the wedlock policy but do not take into account the judgments on the same handed down by the Islamabad High Court (cited hereinabove). The said judgments of the High Court though were not binding on the Supreme Court but carried persuasive value and ought to have been considered as we are of the opinion that they depict

the correct position of law by holding that a civil servant does not have a vested right to be posted on deputation or otherwise at the place of his/her spouse for indefinite period of time. A judgment of Supreme Court is binding on all courts and authorities subordinate to it. The Constitution (Twenty Seventh Amendment) Act, 2025, not only created this Court but also by way amendment in Article 189 of the Constitution, made the decisions of this Court binding on all the Courts including the Supreme Court. Superior Courts, including this Court and Supreme Court have to be very meticulous in laying down the law because of the binding nature of their judgments. The Superior Courts while interpreting statutory instruments can err and later in time such errors can/ought to be corrected. A judgment of the Superior Courts may be overruled either expressly or impliedly. Nevertheless, any later judgment undertaking such an exercise (of overruling/reviewing a judgment) must proceed with considerable caution, as it entails departing from an earlier exposition of the law. We emphasize that certain factors must guide the exercise of such power (judgment of this court can only be overruled either expressly by this court itself or via constitutional amendment, and if done by us, the factors that follow are to be expressly dealt with), including the *nature of judgments' error*, *quality of the reasoning*, the *workability of the rules imposed by the precedent*, and their *disruptive effect on law,* See, *Dobbs* v. *Jackson Women's Health Organization* (Per ALITO, J.). Commencing from the *nature of the Court's error*, we believe that at times there is no "right" answer to a case and at times judgments are not like last piece of puzzle that would fit and show us the picture. At times it is important to "decide" the issue one way or the other, where we believe law may provide two or more answers. But *Mubashir Iqbal* case to us was a case that did not present two answers. The interpretation one makes of the

said judgment is that a civil servant perhaps has an absolute right to be posted where his/her spouse is living. We again reiterate that a civil servant has no vested right to claim posting and transfer to any particular place of choice nor can he/she continue to hold a particular post at a particular place indefinitely; that transfer and posting is at the pleasure of the authority. Respectfully, *Mubashir Iqbal* imposed such a rule that did not give us a way forward with *workability* i.e., we believe it cannot be applied in a consistent and predictable manner and has the tendency to be misused; we cannot understand that to what extent we can stretch and facilitate wedlock policy "to alleviate the hardship faced by married government employees", see *Mubashir Iqbal, supra,* p.5. Are we then to pave way for a civil servant to serve on various stations depending on his will and happiness to pave way for the happy married life at the cost of public service? The answer obviously has to be in the negative. The precedent creates an imbalance in civil bureaucratic structure, *affecting other areas of law*, in cases like one at hand, where the petitioner has already served above permissible time period of 5 years, and the reasoning of pro-wedlock policy stance imposing a duty on the departments not to disturb the couple and keep extending their deputations despite the very temporary nature of the same for a limited time period.

12. *Mubashir Iqbal, supra,* advances a line of reasoning that is constitutionally unsound. It relies upon Articles 35 and 36 of the Constitution of 1973. Article 35 provides that "the State shall protect the marriage, the family, the mother and the child," while Article 36 requires that "steps shall be taken to ensure full participation of women in all spheres of national life." However, it is essential to note that both provisions form part of the Principles of Policy rather than enforceable fundamental rights. In this context, Article 29(2) assumes central

importance, yet it is overlooked by *Mubashir Iqbal*. Article 29(2) provides that "in so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the principle shall be regarded as being subject to the availability of resources." Thus, the Principles of Policy operate primarily as a substantial interpretive guideline reflecting the aspirations and objectives of the State, aimed at realizing the ideals envisioned by the framers of the Constitution and our Founder, Mr. Jinnah. They articulate constitutional goals rather than impose rigid, enforceable obligations. Article 29(2) of the Constitution effectively qualifies all Principles of Policy by making their implementation contingent upon the availability of state resources. Any measure undertaken to realize these principles must therefore remain subject to practical constraints and administrative feasibility. *Mubashir Iqbal*, however, departs from this constitutional framework by transforming the Wedlock Policy into what is effectively treated as a "binding directive" on the State, See, *e.g.*, *Naeema Khan* v. *Federation of Pakistan*, C.P. No. D-1334 of 2024, where the Court observed that, "in light of the Supreme Court's judgment in *Mubashir Iqbal Zafar* v. *Ministry of Defence* (CPLA No. 4701 of 2024), the Wedlock Policy is now considered a binding directive intended to protect family life and prioritize the welfare of married government employees"[3]. Such an approach raises serious constitutional concerns.

[3] Following the passage of the Supreme Court's judgment in *Mubashir Iqbal*, two particular judgments of the Sindh High Court, i.e., *Naeema Khan, supra*, and *Sania Rasool Bhutto* v. *Federation of Pakistan*, C.P. No. D-4157 of 2025 (Per MUHAMMAD SALEEM JESSAR, J.), appear to reflect a trend whereby the wedlock policy was invoked to manage direct transfers and postings accordingly by the Court. We examine both judgments.
In *Naeema Khan*, Ms. Naeema Khan, the petitioner, was serving as a civil servant in BPS-17 and was married to another civil servant, Mr. Salahuddin Shaikh, BPS-17. On several occasions, Ms. Naeema Khan had been sent on deputation to Sindh, Mirpurkhas, where her husband was performing his duties. Although she was a federal civil servant, she was repeatedly deputed to the Province of Sindh and ultimately sought absorption in Sindh on the basis of wedlock policy. Her request, however, was declined. She challenged this rejection before the Sindh High Court which, relying on wedlock policy, described it as a "binding directive" and, drawing support from *Mubashir Iqbal*, held that; "Applying the principles of this judgment [*Mubashir Iqbal*] to the petitioner's case, the petitioner, married to a government employee in Mirpurkhas, with three minor children, is entitled to permanent transfer/absorption under the Wedlock Policy to the same station where her husband is posted. Routine or administrative reasons alone cannot

By elevating the Wedlock Policy to the status of a binding directive, the reasoning effectively enables civil servants and their spouses to claim transfer or posting together as a matter of right. This would operate in disregard of the resource-based limitation expressly recognized in Article 29(2). In practical terms, it could allow public servants to challenge administrative postings solely on the basis of spousal co-location, even in circumstances where urgent institutional needs require their presence at a particular station. If reliance is placed on Articles 35 and 36, it cannot occur in isolation from Article 29(2), which explicitly subjects the implementation of policy principles to the availability of resources. By overlooking this constitutional limitation and treating the Wedlock Policy as a binding directive derived from aspirational constitutional goals, *Mubashir Iqbal* effectively converts non-justiciable Principles of Policy into enforceable entitlements, an approach that risks undermining administrative discretion and the operational needs of the State. The Principles of Policy serve several important functions, particularly for the courts. They assist in interpreting the Constitution, understanding the scope and content of fundamental rights, and, in appropriate cases, even in deriving rights implicit within the constitutional framework. They also help illuminate

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justify ignoring the policy, especially where separation causes genuine hardship to the family and children. Respondents are obliged to implement the policy fairly, reasonably, and in accordance with its objectives, ensuring the welfare of the petitioner and her family. Consequently, the petitioner's application for permanent absorption/transfer to Mirpurkhas needs to be allowed, and she should continue to serve at her current station until such transfer/absorption is formalized by the Sindh Government as per policy and law discussed supra".

Similarly, in *Sania Rasool*, *supra,* Ms. Sania Rasool, a civil servant married to another civil servant, Mr. Syed Abdul Rehman, sought posting at the same station on the basis of wedlock policy when she was transferred to Islamabad by the competent authority. The Court relied on *Mubashir Iqbal*, and set aside the transfer notification of Ms. Sania Rasool, and directed her repatriation.

In our view, both these judgments although correctly relied on *Mubashir Iqbal*, as the Sindh High Court was bound to follow the judgment of the Supreme Court. Nevertheless, these cases demonstrate the practical impact and consequences of *Mubashir Iqbal*. The decision appears to place the Courts in the position of arbiters regarding whether transfers and postings should occur, and if so, when and where. In doing so, it effectively converts a policy into law, which, in our respectful view, does not represent the correct legal position and reveals the *nature of the error involved.*

the broader constitutional scheme and the aspirations of the State. However, while these principles may guide constitutional interpretation, they cannot be employed to transform a policy directive into a rule having the force of law.

13. Wedlock policy, is a state initiative that closely corresponds with the States responsibilities, obligations and aspirations to "protect marriage, family, mother and child" and to ensure "participation of women in all spheres of life". At no point does this Court take the view that wedlock policy should not be observed. Every state institution is expected to keep wedlock policy under consideration and to take positive measures to secure compliance with the same. But this Court remains mindful that policy must not be conflated with law. Similar to Pakistan's wedlock policy, India has a spouse posting policy, also known as the "couple case," which requires that married civil servants be transferred or posted to the same station. Yet, despite the existence of such a policy the Courts therein maintain the view that "who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated of by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee as a legally enforceable right" (quoting *Union of India* v. *S.L. Abbas*, 1993 4 SCC 357 at p.7); See, e.g., *Gurjit Singh* v. *Union of India*, CWP-26844/2025.

ORDER OF THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

14. We believe that the authorities laid down by the Islamabad High Court in *Mst. Saman Naz* v. *Federation of Pakistan, supra,* and *Mrs. Nusrat Rasheed* v. *Federation of Pakistan, supra,* capture the true essence of the law that wedlock policy cannot be made a ground for indefinite posting and it does not create a vested right. Wedlock policy does not create a vested right whatsoever; instead, it is a policy, a guiding principle not one that is to be adjudicated upon strictly by the Courts. Ideally, the institutions and departments are to move in line with this policy and not derogate from it on whimsical grounds, but the same cannot be relied upon to disturb our civil bureaucratic structure or the settled jurisprudence on the service laws of our country.

15. For the above reasons, the instant petition is without merit and is accordingly dismissed. Leave is refused.

The order is hereby made.

JUDGE

JUDGE

Islamabad
09.02.2026
Zawar/
APPROVED FOR REPORTING