SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:
Mohammad Azam Khan, C. J.
Raja Saeed Akram Khan, J.

1. Civil Appeal No.321 of 2015
(PLA filed on 04.05.2015)

WAPDA Pakistan through General Manager, Neelum Jehlum Hydro Electric Project, Muzaffarabad, Office House No.D-117, Upper Chatter, Muzaffarabad.

….APPELLANT

VERSUS

1. Abdul Rasheed (Junior), Inspector,
2. Muhammad Aftab, Sub Inspector,
3. Hakim Ali, Sub Inspector,
4. Muhammad Asif, ASI,
5. Javed Iqbal, ASI,
6. Muhammad Khurshid, ASI,
7. Muhammad Riaz, Head Constable No.515,
8. Abdul Aziz, Head constable No. 1107,
9. Abdul Rasheed, Head constable No.1116,
10. Muhammad Jamil, Head constable No.1359,
11. Muhammad Nazir, Head Constable No.1390,

12. Ruslam, Head constable No.1444,
13. Malik Tanvir,Head constable No.1786,
14. Muhammad Munir, Driver Head Constable No.1411,
15. Muhammad Asghar, Driver Head Constable No.1816,
16. Muhammad Asif, Head Constable No.1419,
17. Muhammad Liaquat, Head Constable No.1097,
18. Saraj Din, Head Constable No.1814,
19. Muhammad Miskeen, Head Constable No.1154,
20. Shafa al Hussain, Constable No.33,
21. Ejaz Ahmed, Constable No.49,
22. Imtiaz Ahmed, Constable No.92,
23. Muhammad Asif, Constable No.106,
24. Zaheer Ahmed, Constable No.134,
25. Asim Alyas, Constable No.187,
26. Muhammad Basharat, Constable No.207,
27. Muhammad Yasir, Constable No.245,
28. Mudassar Khalil, Constable No.256,
29. Muhammad Tahir, Constable No.335,
30. Javed Qamar, Constable No.339,
31. Muhammad Tariq, Constable No.365,
32. Dilwazir, Constable No.367,
33. Waheed Gillani, Constable No.389,

34. Muhammad Ayyaz, Constable No.556,
35. Munawar Kazmi, Constable No.586,
36. Muhammad Farid, Constable No.746,
37. Abdul, Rahim, Constable No.748,
38. Rizwan Saeed, Constable No.893,
39. Ghulam Mushtaq, Constable No.952,
40. Abdul Waheed, Constable No.1019,
41. Ashiq Hussain, Constable No.1060,
42. Muhammad Banaris, Constable No.1075,
43. Zaheer Abbas, Constable No.1280,
44. Aqeel Ahmed, V 1328,
45. Umair Mustafa, Constable No.1358,
46. Pervaiz Akhtar, Constable No.1421,
47. Muhammad Pervaiz, Constable No.1445,
48. Abdul Rasheed, Constable No.1464,
49. Rashid Mehmood, Constable No.1537,
50. Iftikhar Ahmed, Constable No.1595,
51. Tahir Memoood, Constable No.1608,
52. Ashfaq Abbasi, Constable No.1640,
53. Imran Ahmed, Constable No.1706,
54. Saboor Ahmed, Constable No.1718,
55. Abdul Waheed, Constable No.1747,
56. Munir Ahmed, Constable No.1794,
57. Ashiq Hussain Constable No.1832,
58. Ansar Mehmood, Constable No.1858,
59. Muhammad Arshaad, Constable No.2078,
60. Sakhawat Hussain, Constable No.2104,

61. Jamil Ahmed, Constable No.2120,

62. Muhammad Shoaib Constable No.2178.

63. Shahid Anwar, Constable No.1044.

64. Muhammad Arif S/o Ghulam Hussain, Folwar,

65. Muhammad Arshaad S/o Muhammad Younus, Folwar,

66. Muhammad Yasir S/o Muhammad Yaqoob, Folwar,

67. Fazal-ur-Rehman, s/o Alam Din, Folwar,

68. Bashir Ahmed Raza, Inspector,

69. Muhammad Basharat, SI,

70. Yaqoob Hussain Shah, ASI,

71. Muhammad Ashraf, Head Constable No.385,

72. Muhammad Farooq, Head Constable No.479,

73. Muhammad Azam, Head Constable No.1100,

74. Muhammad Arshad, Head Constable No.698,

75. Muhammad Razaq, DHC No.410,

76. Muhammad Ashraf, DHC,

77. Ejaz Mehmood, SG No.826,

78. Muhammad Ishtiaq SG No.551,

79. Tahir Hussain Shah, SG No.466,

80. Sher Afzal, FC No.678, Ex-Serviceman,

81. Shabir Ahmed, FC No.1142, Ex-Serviceman,

82. Muhammad Afzal, FC No.448, Ex-Serviceman,

83. Muhammad Saleem, FC No.65, Ex-Serviceman,

84. Muhammad Naseer, FC No.629, Ex-Serviceman,
85. Tazeem Hussain Shah, FC No.959, Ex-Serviceman,
86. Qalam Din, FC No.1143,
87. Ali Asghar, FC No.1231,
88. Muhammad Ishtiaq, FC No.398,
89. Muhammad Kabeer, FC No.781,
90. Muhammad Arif, FC No.666,
91. Yasir Sikandar, FC No. 469,
92. Mushtaq Hussain Shah, FC No.702,
93. Muhammad Iqbal, FC No.471,
94. Muhammad Mumtaz, FC No.96,
95. Muhammad Pervaiz, FC No.1170,
96. Muhammad Naeem, FC No.242,
97. Muhammad Yasir, Cook, Folwar,
98. Abdul Qadeer, Cook, Folwar,
99. Ajmal, Constable Operator No.123,
100. Muhammad Riaz, Constable Operator No.105,
101. Pervaiz Akbar, Constable Operator No.15,
102. Inspector General of Police, Azad Government of the State of Jammu & Kashmir, Muzaffarabad.
103. Deputy Inspector General of Police, Azad Government of the state of Jammu & Kashmir, Muzaffarabad.

All employees deployed with Chinese Staff, Neelum Hjelum Hydro Project,

Muzaffarabad at present Reserve Police Line, Muzaffarabad.

…. RESPONDENTS

104. Azad Government of the State of Jammu & Kashmir through its Chief Secretary, having his office at new Secretariat, Muzaffarabad.

…. PROFORMA-RESPONDENT

(On appeal from the judgment of the High Court dated 07.03.2015 in Writ Petitions No.562 of 2008 and 835 of 2012)

FOR THE APPELLANTS: Ch. Shabbir Ahmed, Advocate.

FOR THE RESPONDNETS: M/s Muhammad Yaqoob Khan Mughal, Advocate & Akhlaq Hussain Kiani, Additional Advocate-General.

2. Civil Appeal No.322 of 2015
(PLA filed on 04.05.2015)

WAPDA Pakistan through General Manager, Neelum Jehlum Hydro Electric Project, Muzaffarabad, Office House No.D-117, Upper Chatter, Muzaffarabad.

….APPELLANTS

VERSUS

1. Muhammad Musa Khan, Superintendent of Police,

2. Shajah Sawar Gillani, Deputy Superintendent of Police,
3. Muneer Hussain, Inspector,
4. Muhammad Hussain, Sub Inspector,
5. Israil Shakar, Sub Inspector,
6. Noor Hussain, Sub-Inspector ,
7. Abdul Rasheed,
8. Faqeer Muhammad,
9. Zulfiqaur Hussain, Assistant Sub-Inspector,
10. Fazal-ur-Rehman, Head Constable, No.59,
11. Muhammad Parvez, Head Constable No.530,
12. Abdul MatEen, head constable, No.589
13. Syed Fahad Hussain Shah, Head Constable No.696,
14. Gulzar Ahmed, Head Constable, No.732,
15. Sajjad Hussain, Head Constable, No.72,
16. Muhammad Salah, Head Constable, No.504,
17. Shabir Hussain, Head Constable, No.619,
18. Muhammad Niaz, Head Constable, No.715,
19. Zia-ud-Din, Head Constable, No.785,
20. Muhammad Qayyum, Head Constable, No.901,
21. Roshan Din, Head Constable, No.907,

22. Muhammad Naseer, Head Constable, No.985,

23. Muhammad Younis, Head Constable, No.998,

24. Muhammad Manzoor, Head Constable, No.1071,

25. Muhammad Arif, Head Constable, No.1118,

26. Naseer Ahmed, Head Constable, No.1489,

27. Maqsood Ahmed, Head Constable, No.1720,

28. Muhammad Siddique, Head Constable, No.1721,

29. Muhammad Saleem, Head Constable, No.1773,

30. Zaheer Ahmed, Head Constable, No.1887,

31. Sanoor Hussain, Head Constable, No.2173,

32. Abdul Rahsheed, DHC, No.123,

33. Muhammad Banaras, DHC, No.396,

34. Muhammad Anwar, DHC, No.401,

35. Muhammad Khurshid, DHC, No.405,

36. Gohar Rehman, DHC , No.417,

37. Muhammad Shafi, DHC, No.692,

38. Muhammad Yousaf, DHC, No.1096,

39. Irshad Ahmed, DHC, No.1408,

40. Muhammad Imtiaz, SPG,

41. Muhammad Bashir, DHC, No.1798,

42. Muhammad Nazir, DHC, No.1799,
43. Khurshid, ADHC, No.1801,
44. Muhammad Irshad, DHC, No.1808,
45. Abdul Razaq, DHC , No.1811
46. Muhammad Farooq, DHC, No.1816,
47. Muhammad Asghar, DHC, No.1906,
48. Muhammad Khurshid, SPG,
49. Shamas-uz-Zaman, F.C No.39,
50. Farzaman, F.C No.62,
51. Mubasher Younas, F.C No.70,
52. Iftikhar Ali, F.C No.92,
53. Muhammad Farooq, F.C No.104,
54. Zafar Iqbal, F.C No.535,
55. Alamgir, F.C No.236,
56. Hakim Ali, F.C No.246,
57. Muhammad Idrees, F.C No.259,
58. Syed Farhat, F.C No.329,
59. Sadaqat Ali, F.C No.331,
60. Syed Mujtaba Kazmi, F.C No.346,
61. Asif Gillani, F.C No. 357,
62. Shahbaz Badar, F.C No.371,
63. Najeeb Alam, F.C No.378,
64. Qaisar Rasheed, F.C No.381,
65. Safeer Khan, F.C No.394,
66. Abdul Raof, F.C, No.349,
67. Khadam Hussain, F.C No.453,
68. Irfan Ahmed, F.C No.470,

69. Nazakat Kazmi, F.C No.476,
70. Muhammad Maroof, F.C No.512,
71. Muhammad Shafique, F.C No.516,
72. Naseer Mughal, F.C No.531,
73. Zaffar Iqbal, F.C No.535,
74. Abdul Rasheed, F.C No.566,
75. Muhammad Shabir, F.C No.587,
76. Gulzaman, F.C No.599,
77. Iqbal Ahmed, F.C No.609,
78. Muhammad Arshad, F.C No.614,
79. Wazeer Khan, F.C No.713,
80. Sadaqat Hussain, F.C No.715,
81. Muhammad Ilyas, F.C No.804,
82. Manzoor Ahmed, F.C No.810,
83. Muhammad Nawaz, F.C No.811,
84. Raja Zulqarnain, F.C No.814,
85. Syed Mubashar, F.C No.841,
86. Muhammad Kashif, F.C No.852,
87. Zahoor Ahmed, F.C No.879,
88. Muhammad Arif, F.C No.905,
89. Naseer Ahmed, F.C No.913,
90. Muhammad Javed, F.C No.942,
91. Abdul Razzaq, F.C No.965,
92. Abdul Qayyum, F.C No.980,
93. Sajjad Awan, F.C No.986,
94. Muhammad Asif, F.C No.1044,
95. Muhammad Rafique, F.C No.995,

96. Muhammad Altaf, F.C No.1073,
97. Toseef Ahmed, F.C No.1073,
98. Muhammad Muneer, F.C No.1121,
99. Muhammad Fareed, F.C No.1165,
100. Waqar Azam, F.C No.1183,
101. Muhammad Akbar, F.C No.1226,
102. Wakeel Hussain, F.C No.1391,
103. Muhammad Shabir, F.C No.1459,
104. Muhammad Aamir, F.C No.1522,
105. Khaleeq Ahmed, F.C No.1600,
106. Abdul Qayyum, F.C No.1734,
107. Muhammad Nadeem, F.C No.1752,
108. Ahsan Parvez, F.C No.18326,
109. Muhammad Akbar, F.C No.1860,
110. Abdul Rasheed, F.C No.1890,
111. Noor Alam, F.C No.1982,
112. Abdul Waheed, F.C No. 2004,
113. Altaf Hussain, F.C No.2096,
114. Tahir Hussain, F.C No.2109,
115. Alam Din, F.C No.2182,
116. Shahzad Ahmed, F.C No.2248,
117. Rafaqat Ahmed, F.C No.2321,
118. Muhammad Shabir, F.C No.2406,
119. Nazir Hussain, F.C No.2423,
120. Zahid Hussain, F.C No.2442,
121. Muhammad Rafi, F.C No.2452,
122. Muhammad Sadaqat F.C No.2498,
123. Raja Muhammad Sajjad, Folwar,

124. Muhammad Saleem, Folwar
125. Roshan Din, Folwar
126. Muhammad Farooq, Folwar,
127. Muhammad Suleman, F.C No.
128. Muhammad Tanveer, F.C. No.
129. Muhammad Sadheer, F.C No.629,
130. Muhammad Zahid, F.C No.659,
131. Altaf Hussain, F.C No.2096,
132. Muhammad Arshad, F.C No.04,
133. Sajid Iqbal, F.C No.05
134. Naeem Shahzad, F.C No.06,
135. Syed Qaim Shah, F.C No.07,
136. Amjid Hussain, F.C No.08
137. Azhar Sharif Naz, F.C No.09,
138. Muhammad Rashid, F.C No.10,
139. Zahir-ud-Din, F.C No.11,
140. Kamran Tiaz, F.C No.12,
141. Syed Saqlain, F.C No.13,
142. Muhammad Afaq, F.C No.14,
143. Syed Kazim Shah, F.C No.15,
144. Majid Muneer, Deceased, F.C No.16, represented by;
    (i) Neshat bibi ,mother,
    (ii) Yasir Munir,
    (iii) Wajid Muner, brothers.
145. Waheed Raheem, F.C No.17,
146. Parvez Ahmed, F.C No.18,
147. Raja Faizan, F.C No.19,
148. Ahsan Qureshi, F.C No.20,

149. Bilawal Ali, F.C No.21,

150. Sohail Shakoor, F.C.22,

151. Muhammad Asif, F.C No.23,

152. Rafaqat-ul-Islam , F.C No.24,

153. Muhammad Ilyas, F.C No.25,

154. Arslan Zahoor, F.C No.26,

155. Nadeem Ahmed , F.C No.27,

156. Saghar Hussain, F.C No.65,

157. Raja Shoaib, F.C No.66,

158. Wazir Khan,F.C No.67,

159. Nadeem Ahmed, F.C No.68,

160. Zia-ur-Rehman, F.C No.71,

161. Iftikhar Hussain, F.C No.149,

162. Muhammad Hafeez, F.C No.150,

163. Muhammad Naveed, F.C No.151,

164. Hussan Subhani, F.C No.152,

165. Wajid Muzaffar, F.C No.153,

166. Yasir Hussain, F.C No.154,

167. Zameer Khan , F.C No.155,

168. Muhammad Azeem, F.C No.156,

169. Muhammad Adeel, F.C No.157,

170. Muhammad Kabir, F.C No.159,

171. Arshad Mehmood, F.C No.160,

172. Asghar Mehmood, F.C No.161,

173. Ansir Ayub, F.C No.51,

174. Mirza Maroof, F.C No.52,

175. Muhammad Kamran, F.C No.53,

176. Mehtab Anjum, F.C No.54,

177. Saqib Ayub, F.C No.55,

178. Zaheer Khalid, F.C No.56,

179. Maqsood Shah, F.C No.57,

180. Sami-ul-Haq, F.C No.58

181. Muhammad Mubeen, F.C No.59,

182. Saddam Hussain, F.C No.60,

183. Syed Mustanser, F.C No.61.

184. Sarfraz Saleem, F.C No.62,

185. Usman Khaliq, F.C No.65,

186. Abdul Jalil, F.C No.619,

187. Tanveer Hussain, F.C No.695,

188. Misbah Akhtar, F.C No.1793,

189. Muhammad Asad, F.C No.2393,

190. Anjum Iqbal, F.C No.163,

191. Syed Safeer, F.C No.142,

192. Sohail Rehman, F.C No.166,

193. Shafqat Hussain, F.C No.67,

194. Waqas Abbas, F.C No.338,

195. Khurshid Ahmed, F.C No.355,

196. Riaz Husain Shah, F.C No.441,

197. Mirza Tahir Bashir, F.C No.457,

198. Abdul Waheed, F.C No.731,

199. Muhammad Kabeer, F.C No.881,

200. Muhammad Gulfaraz, F.C No.1070,

201. Kamran Murtaza, F.C No.74,

202. Syed Nazim Hussain, F.C No.111,

203. Muneer Hussain kazmi, F.C No.1354,

204. Shoukat Hussain, F.C No.1784,

205. Abbass Shah, F.C No.2292,

206. Mubashar Kazmi, F.C, No.841,

207. Israr Malik, F.C No.572,

208. Muhammad Mumtaz, Folwer,

209. Muhammad Banaras Awan, Folwer,

210. Shoukat Ali, Folwer,

211. Zahid Khan, Abbasi, Folwer,

212. Muhammad Rafique, Folwer,

213. Habibullah Khan, Inspector,

214. Muhammad Munir Khan, Assistant sub-Inspector.

Employees of Reserve Police deployed with the Secretary of Chinese Neelum Jehlum Project, Muzaffarabad.

215. Inspector General of Police, Azad Government of the State of Jammu & Kashmir, Muzaffarabad.

216. Deputy inspector General of Police (Reserve/ Rangers), Azad Government of the State of Jammu & Kashmir, Muzaffarabad.

.... RESPONDENTS

217. Azad Government of the State of Jammu & Kashmir through its Chief Secretary having his office at new Secretariat, Muzaffarabad.

....PROFORMA-RESPONDENT

[On appeal from the judgment of the High Court dated 07.03.2015 in Writ Petitions No.562 of 2008 and 835 of 2012]

FOR THE APPELLANTS: Ch. Shabbir Ahmed, Advocate.

FOR THE RESPONDNETS: M/s Muhammad Yaqoob Khan Mughal, Advocate and Akhlaq Hussain Kiani, Additional Advocate-General

Date of hearing: 10.11.2016

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeals by leave of the Court have been directed against the judgment of the High Court dated 7th March, 2015, whereby the writ petitions filed by the respondents, herein, have been accepted. Since, both the appeals arise out of the same judgment; therefore, these are being disposed of through this single judgment.

2. The summary of the case is that the respondents, herein, filed separate writ petitions in the High Court, alleging therein, that they are permanent employees of the Police Department and performing their duties against the various posts. After the devastating earthquake of 8th October, 2005, the services of Chinese Engineers/Workers were hired by the Azad Jammu & Kashmir Government through State Earthquake Rehabilitation and Reconstruction Agency (SERRA) for reconstruction and

rehabilitation of earthquake affected areas of the State of Azad Jammu & Kashmir. A memorandum was signed between the Government of Pakistan and the Government of People's Republic of China in Islamabad, wherein, it was agreed that the security to the Chinese Engineers and other Workers shall be provided. The respondents were appointed by transfer on the security of the Chinese Engineers and workers vide order book No. 109 dated 10.04.2008. The terms and conditions of the services of the respondents were also settled by the Inspector General of Police through order dated 17.4.2008. It was further alleged in the writ petitions that the Government of Pakistan approved and enforced the policy regarding appointment of the Government officials against development of foreign funded projects with reference to their package of salaries and allowances admissible to them during deputation

period. The respondents, herein, were deputed against development projects on contract for a period of 3 years, hence, they claimed, all perks and privileges as are admissible to other employees of Neelum Jhelum Hydro Electric Power Project (NJHEP). A learned single Judge in the High Court vide impugned judgment dated 07.03.2015, while accepting the writ petitions directed the respondents, therein, to pay the deputation allowance to the respondents, herein, as per rules, for the period they performed their duties on security of Chinese Engineers and other Workers. Hence, these appeals by leave of the Court.

3. Ch. Shabbir Ahmed, Advocate, the learned counsel for the appellant, argued that the judgment passed by the learned High Court is based on miss-interpretation of law and the record of the case which is not sustainable in the eye of law. He added that the learned High

Court has not taken into consideration the Memo of Understanding (hereinafter to be referred as MOU) which was executed between the Government of Pakistan and the Government of People's Republic of China in Islamabad, through which the Government of Azad Jammu & Kashmir was under obligation to provide security to the Chinese Engineers and other Workers engaged in the development projects without getting any additional allowances except the salaries. He further added that the learned High Court also failed to appreciate the letters dated 06.09.2008 and 25.04.2008 issued by the Chief Engineer/Project Director, NJHEP, Muzaffarabad through which the respondents were not entitled to get any sort of allowances. He argued that an undue benefit has been extended to the respondents without taking into consideration the letters dated 06.09.2008 and 25.04.2008. He further added that the learned High Court

while overlooking the fact that beyond the terms and conditions of MOU, no relief can be granted to the respondents. He argued that according to MOU, the respondents were bound to get only the salaries as admissible to them. Even otherwise, it is paramount duty of the respondents to provide security and maintain law and order. In this way, the appellant is not under obligation to pay the deputation allowance to the respondents.

4. On the other hand, Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for the respondents, while supporting the judgment passed by the learned High Court, submitted that the same is perfect and legal and in accordance with law. He drew the attention of this Court towards page 43 of the paper-book and submitted that the deputation allowance is not part of salary which has to be paid under the deputation policy. He added that the deployment

of the respondents was made on the request/demand of the Chinese company and in this regard an MOU was signed, therefore, MOU has no concern with the terms and conditions of the deputation policy. He further added that there is no other mode available to transfer the services of the Government employees to the other departments except by way of deputation. He contended that the order dated 17.04.2008, through which the terms and conditions of the services of the staff deputed on the Chinese Engineers and other Workers were settled, has not been challenged. The learned counsel referred to condition No.4 of the order dated 17.4.2008 in which it has categorically been mentioned that the deputed officers/officials will be entitled to the deputation allowance.

5. Mr. Akhlaq Hussain Kiani, the learned Additional Advocate-General, has supported the judgment of the High Court while submitting

that the same is in accordance with law and no interference is required by this Court.

6. We have heard the arguments of the learned counsel for the parties and perused the impugned judgment along with the record made available. The controversy involved in the matter is regarding the payment of the deputation allowance. Before going into the merits of the case, it may be observed here that the term 'deputation' has not been defined either in the Act or Rules. In other words, it is a transfer outside the service, cadre or the functional unit. The civil servants can only be transferred to other department/agency by way of deputation and no other name can be given to it. Here, we intend to examine the term deputation. The term 'deputation' is an arrangement whereby, Government, any section of Governmental authority or statutory body agrees to lend an employee of such Department,

Institution or Organization to another Department on mutually acceptable conditions between lending and borrowing authorities. It can, however, be defined as the administrative arrangement between borrowing and lending authorities for utilizing the services of an employee in the public interest and exigency of services against a particular post. The word 'deputation' has been interpreted in a case reported as *Abdul Karim vs. Speaker Baluchistan Provincial Assembly Secretariat, Quetta and 3 others* [1996 PLC (CS) 564], wherein it has been observed as under:—

> "..... It is quite apparent that petitioner was on deputation from Provincial Assembly Secretariat to Government Department. Obviously 'deputation' is an arrangement whereby Government, any section of Governmental authority, statutory body agrees to lend an employee of such Department, Institution or Organization to another

> Department on mutually acceptable conditions between lending and borrowing authorities. There is no cavil to the principle of law that a Government employee who is sent on deputation to serve the borrowing authority, continues to hold his basic service cadre with parent department till his permanent absorption in the borrowing department, pursuant upon his conscious consent. Lending department does not enjoy any power or authority under the law to arbitrarily revoke or terminate lien of his employee temporarily serving in some other institution, statutory body or Government Department as deputationist.....”

Similarly, the term “Deputationist” is defined 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 his status so long as he holds the new

post in an officiating or temporary capacity but ceases to be regulated as such either on confirmation against the new post or on reversion to his substantive post as laid down in a case reported as *Muhammad Arshad Sultan, Section Officer, Cabinet Division Islamabad and another vs. Prime Minister of Pakistan, Islamabad and others* [PLD 1996 SC 771], that:—

> "The Federal Service Tribunal has referred to the Establishment Manual, Volume I, 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 be 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....”

After going through the meanings of terms *‘deputation’* and ‘Deputationist*’,* it can preferably be summarized for deputation as an agreement whereby one department of the same Government or another Government or autonomous or other body or institution agrees to borrow the services of the employee concerned on certain conditions mutually acceptable to both the lending and borrowing authorities.

7. In the case in hand, the services of the respondents were hired by WAPDA for the purpose of security of Chinese Engineers and the other staff engaged for (NJHEP). In this regard, an MOU was signed between the parties. So far as the argument of the counsel for the respondent that the Azad Government was

under obligation to provide the security in compliance of MOU and the police officials assigned with the duties are not entitled to get any sort of allowance except salaries is concerned, it may be stated that under law, no other mode is provided to transfer the services of the civil servants from one department to the other department except the deputation policy. To reach the right conclusion, it would be advantageous to reproduce here the relevant portion of MOU, which reads as under:—

"Article II

> The ministry assured the safety and security of the Chinese citizens and their property including those of the Chinese Companies involved in the Economic- cum- Development Projects in Pakistan through the Provincial Governments and the Governments of AJ&K and Northern Areas by initiating all possible measures. The Ministry shall be assisted by the Task Force to ensure their safety and security."

In pursuance of MOU, the services of the respondents were hired for the purpose of security of the Chinese Engineers and other Workers and the terms and conditions of the services of the respondents were settled through order/letter dated 17.04.2008, which reads as under:-

After going through condition No. 4 of the order dated 17.4.2008, it is crystal clear that the

police officials who were deputed for the security of Chinese Engineers and other Workers were declared entitled to the deputation allowance. It appears that after settling down the terms and conditions of the services of the deputed employees mutually, the appellant-company tried to take u-turn to refuse the grant of deputation allowance to the respondents, herein, in the garb of MOU which has nothing to do with the terms and conditions of the services of the officers/officials serving on deputation. There is no other mode available to transfer the services of the Government employees to the other department except by way of deputation.

8. It may be observed here that there is no cavil with the proposition that the services of the respondents were hired by the company while making the request and in pursuance of that the whole exercise was done, i.e., signing of MOU and the settlement of terms and

conditions of the services of the security staff. The case of the respondents was fully covered under the provisions of deputation policy and the allowances admissible to them under law cannot be denied on the ground that no such condition was available in MOU and it was the duty of the AJ&K Government to provide the security to the Chinese Engineers/Workers. We would like to observe here that the AJ&K Government has not deviated from any condition mentioned in the order dated 17.4.2008 through which the services of the police officials were provided for the purpose of security of the Chinese staff. In the garb of MOU, the appellant cannot escape its legal duty to make the payment of deputation allowance to the respondents. The respondents are performing/have performed, as the case may be, their duties with the entire satisfaction of the agency. In this regard, the observations made

by the learned High Court are well reasoned and we fully endorse the same. Moreover, the order dated 17.4.2008 through which the terms and conditions of the services of the respondents were settled, has not been challenged at any forum, therefore, at this stage the appellant cannot be allowed to take the stance in deviation of the conditions mentioned in the order dated 17.4.2008. In this regard, the law referred to by the learned counsel for the appellant in support of appeals has no bearing on the case in hand, therefore, need not be discussed.

In the light of what has been discussed above, both the appeals having no force are hereby dismissed. No order as to costs.

Mirpur
.11.2016 **JUDGE** **CHIEF JUSTICE**