

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Irfan Saadat Khan, J.**  
**Agha Faisal, J.**

CP D 5506 of 2020 : Muhammad Asif Hashim Mughal vs.  
Dawood University of Engineering &  
Technology & Others

For the Petitioner : Mr. M. Arshad Khan Tanoli, Advocate

For the Respondents : Mr. Ali Safdar Depar  
Assistant Advocate General Sindh

Mr. Kamaluddin, Advocate  
(Respondent No. 3 - Quest)

Mr. Blosch Ahmed Junejo, Advocate  
(Respondent Nos. 1 & 2 - Duet)

Date/s of hearing : 01.12.2021 & 09.12.2021

Date of announcement : 09.12.2021

## JUDGMENT

**Agha Faisal, J.** The petitioner, ostensibly a regular employee of the Dawood University of Engineering and Technology (“Duet”), has assailed the order dated 10.12.2019, whereby he was relieved from service, upon belated consideration of being on deputation<sup>1</sup>, and the subsequent order dated 07.10.2020, whereby the earlier order was upheld by the Vice Chancellor of Duet (hereby collectively referred to as the “Impugned Orders”). It is considered illustrative to reproduce the Impugned Orders in seriatim:

“Mr. Mohammad Asif Mughal, Superintendent (BPS-17), Quaid-e-Awan University of Engineering, Science and Technology, Nawabshah was posted at Dawood University of Engineering and Technology, Karachi, vide Notification No.SO(U)CMS/QUEST-Transfer/14, dated 12<sup>th</sup> August 2014, issued by Chief Minister’s Secretariat, Government of Sindh, till further orders. (Annex-A).

2. Consequent upon expiry of his lien and completion of five (5) years, his lien was terminated by QUEST with effect from 25<sup>th</sup> November 2017 (Annex-B).

3. Therefore, Mr. Mohammad Asif Mughal, Procurement Officer (BPS-17) on lien at DUEST, Karachi, is hereby repatriated to his parent institution and his service stands relieved from DUET, with immediate effect. He is further advised to submit clearance before relieving the charge.

4. His services rendered to DUET is highly appreciated.

This issues with the approval of the Competent Authority.”

“This is with reference to your audience before the Vice Chancellor/Chairman Syndicate, DUET on 6<sup>th</sup> October 2020 at Vice Chancellor’s Secretariat, DUET, Karachi, in compliance with the Orders of Honorable High Court of Sindh, Karachi vide Petition No. No.D-4309 of 2020.

2. After thoroughly going through your case, the Vice Chancellor/ Chairman Syndicate decided that your plea for continuation of service at DUET cannot be acceded with and your service can not be continued without following proper recruitment process. Further, you are advised to approach the Competent Authority of Quaid-e-Awan University of Engineering, Science and Technology, Nawabshah for joining your duty.

This issues with the approval of the Vice Chancellor.”

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<sup>1</sup> As enunciated by Duet’s learned counsel in reliance upon paragraph 3 of Reply filed by Duet.

*Pertinent facts in chronological order*

2. The petitioner was recommended by the selection committee of Quaid e Awam University of Engineering Science & Technology (“Quest”) for appointment, post completion of the entire selection process, vide their resolution dated 31.03.2011. The order communicated in such regard to the petitioner was issued on 05.04.2011 and the petitioner submitted his joining report on 05.04.2011. While the recruitment of the petitioner had taken place in BPS-16, however, vide order dated 07.08.2013, the relevant post was upgraded, along with twenty five others, to BPS-17 by Quest.

3. The services of the petitioner were transferred, in BPS-17, to Duet, in respect whereof Duet duly executed a no objection certificate dated 10.07.2014. The transfer notification was issued with respect to the aforesaid on 12.08.2014 and Quest relieved the petitioner, as a consequence thereof, vide order dated 20.08.2014. Vide notification dated 21.08.2014, Duet accepted the transfer of the petitioner and posted him accordingly.

4. The petitioner rendered services at Duet and appeared to have been considered as a regular / transferred employee. This observation is rested *inter alia* on the constituents of the respective payment slips placed on record; the office order for transfer dated 24.09.2014; the office order dated 14.09.2018 allowing accommodation to the petitioner while expressly treating him as a confirmed employee; and the Budget Books for the periods 2017-18, 2018-19 and 2019-20 wherein, at serial numbers 8, 18 and 23 respectively, the petitioner is shown as a regular employee.

5. In the year 2019, notwithstanding the fact that its budget book for the said period recognized the petitioner as a regular employee, Duet decided to treat the petitioner as having been on deputation and relieved him of service. It is pertinent to note that by this time any lien that the petitioner may have enjoyed at Quest had also lapsed. This petition seeks to have the Impugned Orders set aside and have the petitioner restored to service at Duet along with all accrued back benefits.

*Respective Arguments*

6. Per Mr. Arshad Tanoli, the Impugned Orders were without sanction in law as there was never any question of the petitioner having been on deputation. It was argued that there had never been any request for the

services of the petitioner by Duet, therefore, the question of deputation or absorption never arose. Learned counsel amplified from the record that Duet had always accepted and treated the petitioner as a regular employee and that the belated volte face was *prima facie* incongruent with Duet's own admitted record.

7. Mr. Kamaluddin articulated the case for Quest and supported the petitioner's case. Learned counsel articulated that the legal provision for transfers are consistent between the parent statutes of the two institutions and the petitioner was duly transferred and accepted in pursuance thereof. It was demonstrated that the transfer took place university to university, within the same cadre and to the same post.

8. The learned Additional Advocate General unequivocally supported the order of the competent authority, whereby the petitioner was transferred, and submitted that no cavil had been pleaded in such regard by Duet, as demonstrated from its reply available on file.

9. Mr. Blosch Ahmed Junejo appeared on behalf of Duet and argued that the petitioner had been on deputation and since the law precluded his absorption, therefore, his services were relieved. However, on the subsequent date of hearing the learned counsel raised an additional plea, alien to Duet's reply on record, that the initial transfer, of the petitioner, itself was illegal.

#### *Scope of determination*

10. Heard and perused. The record of Duet, demonstrating the petitioner to be a regular employee, is admitted before us. The only issue to be determined is whether the relieving of the petitioner was merited vide the rationale employed in the Impugned Orders.

#### *Issue of deputation*

11. The law with respect to deputation has been illumined in *Re: Contempt Proceedings against Chief Secretary Sindh*<sup>2</sup>. The basic principle stated is that deputation involves appointment / transfer to a department or service different from the one to which a person originally belongs. This is admittedly not the case here as the petitioner's transfer took place university to university, stated to be in the same cadre and at the same post. While eschewing a voluminous

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<sup>2</sup> 2013 SCMR 1752; relevant at page 1844.

repetition<sup>3</sup> of the principles enunciated by the august Court, it would suffice to observe that Duet's counsel never endeavored to befall the petitioner's transfer within the ambit of a deputation and no cause to draw any such inference is available to us.

#### *Issue of absorption*

12. The issue was absorption was also deliberated at length in *Re: Contempt Proceedings against Chief Secretary Sindh*<sup>4</sup> and the law was succinctly laid out. The basic premise was that a non-civil servant cannot be absorbed into posts meant to be filled through the competitive process and no person of a non-cadre post can be transferred and absorbed out of cadre. In the present case there is no issue before us of eligibility or cadre as the transfer is admittedly university to university, as sanctioned by their respective parent statutes. Once again it is observed that Duet's counsel never endeavored to befall the petitioner's service within the ambit of an absorption and no cause to draw any such inference is available to us.

#### *Transfer*

13. The record demonstrates that the respective parent statutes of Duet and Quest contemplate transfers, as employed in the case of the petitioner. The record further shows that Duet had expressly accorded its consent / no objection and acceptance to the transfer of the petitioner thereto. The record further demonstrates that all material times thereafter the petitioner had been treated as a regular employee by Duet.

14. The cause for Duet's volte face is stated to be some internal correspondence between Duet and Quest. While Quest's learned counsel categorically denied that such correspondence had any implication upon the petitioner's status as a regular employee at Duet, the same was treated as the basis by Duet to relieve the petitioner.

15. The relationship between the petitioner and Duet is governed by their terms of such employment<sup>5</sup> and there is no suggestion therein of the relationship ever having been that of a deputation. While Duet's interpretation of the relevant correspondence has been controverted by Quest's counsel and

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<sup>3</sup> Per *Mansoor Ali Shah J.* in the yet unreported judgment dated 18.08.2020 in *Farooq Hussain vs. Shaikh Aftab Ahmed (CRP 104-L of 2019 & connected matters)*.

<sup>4</sup> 2013 SCMR 1752; relevant at page 1833.

<sup>5</sup> And the applicable law.

the learned Additional Advocate General, it would suffice to observe that no third party communication could alter any vested rights of the petitioner.

16. The determination of any such rights ought to be made upon the day that the same crystalized, which in the present circumstances would be the time when the petitioner was transferred to Duet. The admitted record speaks that it was a university to university transfer, permissible under the respective parent statutes, to which Duet expressly accorded it approval. Thereafter, the record of Duet demonstrates that the petitioner was always treated as a regular employee and no unilateral interpretation of third party correspondence, five years later, could be demonstrated to deprive the petitioner of any right accrued thereto.

17. Duet's learned counsel sought a last minute reprieve by suggesting that the transfer order itself was illegal. However, this argument is at complete variance to Duet's position expressly taken before us. This argument also finds no mention in the grounds articulated for relieving the petitioner in the Impugned Orders. Notwithstanding the foregoing, the counsel remained unable to place anything before us to bulwark the bare allegation that the transfer order available on record had not been accorded approval by the competent authority. Learned counsel was specifically queried that if Duet considered the transfer order to be illegal then whether the same had been assailed at any forum and the said query was answered in the negative.

### *Conclusion*

18. The transfer of the petitioner appears to be valid from the record and the admitted documents of Duet demonstrate that at all material times the petitioner was considered as a regular employee. Learned counsel for Duet has remained unable to substantiate Duet's defense of deputation and absorption. No case has been made out to consider the status of the petitioner altered, based on Duet's unilateral interpretation of some third party communication.

19. In view of the reasoning and rationale herein contained, we are of the considered view that the Impugned Orders, dated 10.12.2019 and 07.10.2020 respectively, cannot be sustained, hence, the same are set aside. The petitioner is restored to service at Dawood University of Engineering and Technology, along with all back benefits accrued thereto.

20. This petition was allowed vide our short order dated 09.12.2021 announced in Court. These are the reasons for our short order.

JUDGE

JUDGE