

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT KARACHI
Constitution Petition No. D-183 of 2022
(Saddam Hussain Khoso Vs. Federation of Pakistan & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before:
Muhammad Karim Khan Agha, J;
Adnan-ul-Karim Memon, J

Date of hearing and order 11-08-2024

Mr. Ali Asadullah Bullo, advocate for the petitioner.
Ms. Wajiha Mehdi, Assistant Attorney General

ORDER

Adnan-ul-Karim Memon J:- Through the captioned Constitutional petition, the petitioner requests this Court to:

1. Declare the impugned order dated 02.12.2019 & Appellate order dated 19.10.2020 as illegal against the law of lien and provisions of the Civil Servants Act & Rules made thereunder, violative of Article 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973, and set aside the same;
 2. To direct the respondent No.2 to issue notification of creation of lien/right of reversion if favor of the petitioner from the date of relieving until his confirmation on the subsequent post of Senior Data Entry Operator by operation of the proviso to Rule 21 of the guaranteed fundamental rights, per Establishment Division directives dated 09.08.2018;
 3. To direct the respondents to conduct themselves strictly in accordance with law and not to take any coercive action against the petitioner.
2. The main prayer (request) of the petitioner is to have his lien, or right of reversion, to his former position as a Lower Division Clerk (LDC) reinstated.
3. The petitioner's counsel's core argument is that as a permanent government employee, he has a right to a lien on his old post, and the denial of this right was illegal, unjust, and against established legal principles. He next submitted that the petitioner, a former Lower Division Clerk (LDC) appointed in 2016, was granted an NOC in 2019 to apply for a Senior Data Entry Operator (SDEO) position with the Sindh Police. The petitioner is now challenging the decision of his former employer (Respondent No. 2) to deny him the right of lien on his old post. He added that the employer failed to follow legal procedures and committed misconduct by refusing the petitioner's right of lien, which is protected under Fundamental Rule 9(13). He emphasized that this denial violates the petitioner's

fundamental rights, including the right to choose a profession, as he is currently his probation has been terminated in the new role. He argues that his right to his previous permanent post should be protected until employ is confirmed in his new position. The petitioner's counsel is requesting that this court grant the petition and provide the requested relief for all time to come.

4. The Assistant Attorney General (AAG) has opposed the petition, arguing that it is no longer relevant. The AAG contends that since the petitioner has already been confirmed in his current position, the issue of a "lien" on his old job is now an academic matter and the petition may be dismissed.

5. We have heard learned counsel for the parties on the subject issue and perused the record with their assistance.

6 Rule 5 of the Civil Servants (Confirmation) Rules 1993. Provides that acquiring of lien (1) On confirmation in a permanent post, a civil servant shall acquire a lien in that post and shall retain it during the period when he (a) holds a temporary post other than a post in a service or cadre against which he was originally appointed; (b) holds a post on deputation with a foreign government, an international organization, a multinational corporation or any other organization outside Pakistan; (c) holds a post in Foreign Service in Pakistan; (d) is on leave; (e) is called for duty in the Armed Forces as reservist of Armed Forces of Pakistan; (f) is under suspension; and (g) is on joining time on transfer to another post. (2) A civil servant acquiring a lien as referred in sub-rule (1) shall cease to hold the lien acquired previously on any other post. Rule 6(1) of the Civil Servants (Confirmation) Rules 1993 provides that A civil servant who is demoted or reverted for disciplinary reasons will lose their lien on the higher post but gain one on the lower post. Rule 6(2): A civil servant loses their lien if they are selected for a job in an autonomous body, provincial government, or a private organization. Rule 6(3) further provides that a civil servant's lien on a post under the Federal Government cannot be terminated, even with their consent, until they have a lien on another post. Rule 6(4) provides that a confirmed civil servant who voluntarily joins a new, regular position through a formal selection process can hold a lien on their previous post, but only during the probationary period of their new job.

7. In the case of Muhammad Israrullah Vs Assistant Director, Manpower and others (2005 SCMR 716), the Supreme Court has held that the services of a deputationist could not be terminated as he retains his lien in the parent department for not having been confirmed in the borrowing department. A civil servant can claim his lien on his original post when he has not been permanently absorbed in the borrowing department. The Supreme Court in the case of Chief Secretary,

Government of NWFP Vs Syed Zafarmand Ali (2005 SCMR 1212) has expounded that lien of a civil servant could not be terminated even with his consent, unless he had been confirmed against some other permanent post. It is further held that even in a case of willingness shown by the civil servant to be absorbed in borrowing department, in absence of any order of appointment by transfer and settlement of terms and conditions of such appointment, lien of the civil servant in his parent department would not be terminated.

8. This petition stands disposed of in the aforesaid judgments of the Supreme Court.

JUDGE

HEAD OF COST. BENCHES