

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-550 of 2017

Present:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Adnan-ul-Karim Memon

Amad Hussain Khaskheli ----- Petitioner

VERSUS

Federation of Pakistan & others ----- Respondents

Date of hearing & Decision: 03.09.2020

Mr. Muhammad Arshad S. Pathan advocate for petitioner.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.
Syed Shafique Ahmed Shah advocate for respondents No.2 to 6.

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant petition, the petitioner impugns the validity of letters No.R-01-07/1274/270 dated 20.2.2017 and No.R/01-07/1274/270 dated 09.1.2017 issued by respondent / OGDCL, whereby the petitioner has been called upon by the respondent-company to submit resignation from last employer i.e. Quaid-e Awam University of Engineering, Science and Technology Nawabshah else training will be terminated. Per petitioner the same was contrary to law and the rights of the petitioner were abridged through discrimination by the respondents.

2. Mr. Muhammad Arshad S. Pathan learned counsel for the petitioner has argued that confirmed public servant acquires lien against the substantive post held by him when he is relieved as a consequence of his selection against some other post, cadre or service, and he shall retain his lien in the relieving department until he is confirmed in the said other post, cadre or service or for a maximum period of three years whichever is earlier; According to learned counsel the lien of permanent public servants cannot be terminated, even with their consent; that it can be terminated only when the public servant is confirmed against some other permanent post;

that petitioner has not been confirmed on any post under the respondent-company, therefore asking the Petitioner for resignation from his previous employment is not called for though he has already been relieved from his earlier employment, until and unless petitioner is confirmed against the substantive post, therefore the action of respondent-company to direct the petitioner to provide either his resignation from his previous employment or face termination of his service on the aforesaid plea.

3. Conversely, learned counsel representing the respondent-company has argued that the instant petition is not maintainable on the premise that petitioner has failed to resign from Quaid-i-Awam University Nawabshah, therefore, he cannot retain two parallel posts. He next argued that since petitioner has failed to provide resignation from his parent department/ QUEST, therefore, he cannot be allowed to perform duties in OGDCL while being employee of QUEST. He lastly prayed for dismissal of instant petition.

4. We have heard learned counsel for the parties and perused the material available on record.

5. In determining the question whether the petitioner held a substantive appointment with the respondent-company or not? The law applicable to such an admitted position on facts finds mention in the Fundamental Rules 13, 14 and 14-A. According to these Rules, the lien of permanent Government servant cannot be terminated, even with his consent. It can be terminated only when the civil / government servant is confirmed against some other permanent post. There is nothing on the record to suggest nor any indication or plea that the respondent-company had confirmed the petitioner on any post in the company. In the absence of such material or evidence, prima-facie his lien, if any cannot be ordered to be terminated with the last employer i.e. Quad-e Awam University of Engineering, Science and Technology Nawabshah.

6. In the light of above the facts and circumstances of the case, the instant Petition is disposed along with pending application(s) with no order as to costs, in the terms whereby the Competent Authority of respondent-company is directed to reconsider their decision asking for resignation of the petitioner from his last employment, however if the respondent-company considers the case of the petitioner for any substantive post then they are well within their right to take action strictly in accordance with law.

JUDGE

JUDGE