

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No. D-707 of 2023
(Raja Rafique Ahmed v. Federation of Pakistan & others)

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro &
Mr. Justice Arbab Ali Hakro**

Mr. Qurban Ali Malano, Advocate along with Petitioner.
Mr. Muhammad Imran Khan, Advocate for Respondent No.4.
Mr. Dareshani Ali Haider 'Ada', D.A.G for Pakistan.

Abdul Hassain, Assistant Accounts Officer, Pakistan Railways, Sukkur and Irfan Ahmed Shaikh, incharge Science Caravan, Sindh Unit, Sukkur are present.

Date of Hearing : **26-09-2023**

Date of Decision : **19-10-2023**

ORDER

MUHAMMAD IQBAL KALHORO, J:- Petitioner was appointed as Assistant Accounts (BPS-14) in Pakistan Science Foundation, Islamabad in the year 2008. His post was upgraded to BPS-16 in the year 2010. After seven years, in the year 2014, his service was transferred on deputation basis to Pakistan Railways Accounts Department on a requisition letter dated 31.01.2014 for three years. He joined his new assignment on 04.06.2014 at headquarters, Lahore. After three years, his deputation was extended for two years more until 04.06.2019. Before expiry of the period, he applied for permanent absorption in Pakistan Railways. His request was accepted and necessary communique between his parent department and Pakistan Railways was set at motion.

2. His original service record and personal file along with No Objection Certificate (NOC) were duly received by Pakistan Railways from his parent department on 11.10.2019 and processed immediately. After a proper procedure, the Departmental Selection Committee (DSC) issued NOC for permanent absorption of the petitioner. As a result, when seniority list was issued, name of the petitioner was cited at serial No.467.

3. Subsequently, when rationalization of Pakistan Railways Accounts Department was undertaken, the petitioner, amongst other officials, was assigned to surplus pool. Then, after sometime, the petitioner was posted in Divisional Accounts Officer, Pakistan Railways vide letter dated 29.04.2022. After having completed ten years in service, the case of the petitioner for time-scale promotion along with other officials was sent to Lahore for approval vide letter dated 20.08.2022. But, when the final seniority list was issued on 27.12.2022, names of the petitioner and one Muhammad Ashraf, Senior Auditor, Sukkur Division were dropped/omitted. Against which, the petitioner filed a departmental appeal, but to no avail.

4. Hence, he filed a C.P.No.D-378 of 2023 before this Court at Sukkur Bench, in which notices were issued to Pakistan Railways. Upon which, seemingly piqued by such development, the petitioner was relieved from the service vide letters dated 17.03.2023 and 27.03.2023 with the direction to report to Pakistan Science Foundation, Islamabad, the parent department. The above said two letters, the petitioner has impugned in this petition with a plea to set aside the same and allow the petitioner to continue his duty at previous place i.e. Divisional Accounts Office Pakistan Railways, Sukkur as Senior Auditor (BPS-16).

5. The case of the petitioner to seek such relief is that after NOC in the year 2019 regarding his permanent absorption in Pakistan Railways, his parent department i.e. Pakistan Science Foundation, Islamabad, under the administrative control of Ministry of Science & Technology, Islamabad, allotted his seat/post, belonging to Sindh-Rural, to Punjab and filled it through an advertisement on regular basis. Said post/seat is no more vacant and the petitioner cannot be repatriated to the parent department as the recruited incumbent is working over there since then. Besides, he, having worked in borrowing department for a number of years, and his request for absorption acceded, may be deemed to have been absorbed in Pakistan Railways.

6. Respondent No.3 i.e. Accounts Officer/Admn. Pakistan Railways in his comments has admitted the facts, as reiterated by the petitioner, but has taken a plea that vide letter dated 08.06.2017, a copy of which is available in the file, the petitioner after expiry of three years of deputation was repatriated to join his parent department after

availing joining time, maximum up-to 08.06.2017, with a warning, that else his absence would be treated as service break. Nonetheless, when learned counsel for Pakistan Railways was quizzed, he admitted that on a verbal request of the petitioner, he was allowed to continue to serve in Pakistan Railways and that that letter dated 08.06.2017 was not enforced. And on 06.05.2019, DAO, Sukkur after necessary formalities including receiving petitioner's personal file of service from his parent department had forwarded his application for permanent absorption in Pakistan Railways. And that his case was processed and sent to the competent authority i.e. the Controller General of Accounts, Islamabad for such purpose, but without any response. Finally, under the orders of the aforesaid office, the petitioner was repatriated to report to his parent department vide letter dated 17.03.2023 and notification dated 27.03.2023. Further, the petitioner was a deputationist and not a permanent employee, his name was erroneously enlisted in the seniority list. He had no right under the law to continue in Pakistan Railways after completion of deputation period, as it is settled principle of law that a deputationist cannot overstay in the borrowing department after expiry of deputation period.

7. Comments filed by respondents No.1&2 viz. Pakistan Science Foundation, Islamabad and Pakistan Science and Technology Department, Islamabad depict express admission of the facts, as narrated above. But, over his joining in the department after repatriation, it has been claimed that Pakistan Science Foundation is a body corporate established under the Pakistan Science Foundation Act, 1973. The post, previously occupied by the petitioner viz. Assistant Accounts (BPS-16), has been filled through a direct recruitment and occupied by another incumbent. The department had received a letter dated 27.03.2023 regarding repatriation of the petitioner and the petitioner also reported his joining on 29.03.2023. But his joining was not accepted due to unavailability of the seat, about which, the petitioner and the Pakistan Railways were duly informed vide letter dated 31.03.2023 with a request that he may not be repatriated in view of such position. Because, meanwhile, upon completion of maximum period of deputation i.e. five years, his lien on the post was terminated and the post was filled through an open advertisement, as it was not

possible for the department to retain lien of a deputationist for an unlimited period.

8. Learned counsel for the petitioner citing the background as above in his arguments has prayed for setting aside the impugned letters and direction to the Pakistan Railways to let him stay with it in the same capacity; or in alternate, the respondents No.1&2 to accept joining of the petitioner and issue salaries to him. To support his contentions, he has relied upon the case law as reported in **2018 SCMR 54, 2020 SCMR 251, 2004 SCMR 67, 2009 SCMR 1472, 2005 SCMR 716, 2005 SCMR 716, PLD 1990 SC 998, 2009 SCMR 194, 2011 SCMR 442, 2005 SCMR 1212, 2014 PLC (C.S.) 1077, 2023 PLC (C.S.) 711, 2020 PLC (C.S.) 905, 2018 PLC (C.S.) 1129, 2018 PLC (C.S.) 1161, 2009 PLC (C.S.) 539, and 2009 PLC (C.S.) 936.**

9. Learned counsel for Pakistan Railways in his arguments has shown inability of Pakistan Railways to accept the petitioner back in the ranks against the said post, on the ground that his request for permanent absorption was never conceded and finally he was repatriated to join his parent department.

10. Learned DAG has argued that it is the parent department, which in this case has not acted legally in that without receiving a requisite notification from Pakistan Railways permanently absorbing the petitioner, the seat/post left by the petitioner was filled by it, although the petitioner had a lien over it. He further submits that it is vague and not clear as to how the seat was filled, by whom, or by which notification and by what process and by which authority. He, therefore, has requested that petition may be allowed in the terms whereby respondents No.1&2 may be directed to accept joining of duty of the petitioner with effect from 29.03.2023, when for the first time, he after being relieved from Pakistan Railways had reported his duty to parent department. He however has conceded that the petitioner has no constitutional right to remain continuously on deputation with Pakistan Railways.

11. We have heard learned counsel for the parties and perused material available on record including the case law cited at bar. Petitioner's transfer from his parent department and posting on

deputation for three years in Pakistan Railways in the year 2014 is an undisputed fact. Issuance of a letter dated 08.06.2017, on expiry of deputation period, by the Pakistan Railways directing the petitioner to report to his parent department is also a part of acknowledged record. Why the petitioner did not abide by it and why the Pakistan Railways let him leeway not abide by it and continue gratuitous working with it is covered under a thick cloud that neither of the counsel for the parties, despite our queries, were able to disperse. A serious effort by the petitioner to get himself absorbed within the ranks of Pakistan Railways in the year 2019, after 5 year of deputation, seemingly bulwarked by the latter, proved futile, as the competent authority: the Controller General of Accounts, Islamabad apparently refused to concede to it. The petitioner therefore, by citing some vain official communique pursued by Pakistan Railways with his parent department for his absorption, is out of ambit to lead a convincing case, at least on this ground, for seeking declaration of his absorption in Pakistan Railways by this court.

12. Additionally, it may be pointed out that while discussing points of deputation and absorption of service of a civil servant in other department, the Supreme Court in the case, reported as 2013 SCMR 1752, has observed that term absorption has not been defined in the law. Further, ESTACODE requires that a person who is transferred and appointed on deputation must be a government servant and such transfer should be made through the process of selection. The borrowing government has to establish the exigency in the first place and then the civil servant who is sought to be transferred on deputation must have matching qualification, expertise in the field with required experience. The deputationists, not having matching skill, qualification etc. are liable to be repatriated. Elaborating further, it has been laid down, neither a non-civil servant nor a civil servant from non-cadre post could be transferred to a cadre post in government by way of deputation as the same would affect rights of civil servants already serving in the department and create a sense of insecurity among them.

13. In the case of *Ali Azhar Khan Baloch and others Vs. Province of Sindh and others* (**2015 SCMR 456**), the Supreme Court has insisted that the law does not confer permanent status on a civil servant on his appointment by transfer nor it contemplates his absorption in the

transferee department as a consequence of his appointment. No discretion lies with any government to appoint a person in the civil service against a civil post in the manner other than prescribed by the relevant law. Neither any procedure nor any mechanism is provided in the law to treat appointment of a civil servant by way of transfer as absorption in the transferee department. Neither a person could be absorbed nor could a civil servant/non-civil servant/deputationist be allowed to travel horizontally outside his cadre to penetrate into a different cadre, service or post through an appointment by way of transfer. Such transfer, if any, however, has to be for a fixed term and on expiry of such term the civil servant has to join back his parent department. Further, concept of absorption of a civil servant or a government servant into another department is alien to law. These authoritative pronouncements by the Apex Court of the country are sufficient to frustrate any remaining attempt/contention of the petitioner to get relief of absorption in the Pakistan Railways, as prayed by him, from this court in the constitutional jurisdiction.

14. The left over question to decide nonetheless would be to determine fate of the petitioner in his parent department after having been repatriated by Pakistan Railways. His regular appointment after fulfillment of all codal formalities there is undisputed. His transfer to Pakistan Railways on deputation on completion of due formalities by both the departments is but an admitted fact. In the comments, the parent department of the petitioner i.e. Pakistan Science Foundation has taken a plea that when initial deputation period of 3 years of petitioner lapsed, upon the request of Pakistan Railways, it was extended for 2 years more vide letter dated 28.08.2017. Later on, Pakistan Railways asked for NOC for permanent absorption of the petitioner along with his entire service record on 07.05.2019, which it obliged in letter and spirit. In the year 2021 it advertised the post of Assistant Accounts (BS-16) left vacant by the petitioner and filled it on a regular basis considering that the petitioner had been absorbed.

15. It may be stated here in the above backdrop that the law provides for lien for a civil servant who by way of transfer is posted on deputation in the borrowing department until the period of deputation expires. Section 2 (b) of the Civil Servants (Confirmation) Rules, 1993

defines lien as the title of a civil servant to hold substantively a post on which he has been confirmed. Regulation 31 of the Civil Service Regulations (C.S.R) explains, when an officer is said to have a lien on any appointment, it is meant that the right of such an officer to resume, on return to duty, a substantive or an acting appointment on which he has a lien is subject to the same condition of conformity, with the interest of the public service, as the tenure of the appointment is. An officer may have a lien on an appointment without having actually joined it. Elaborating the above proposition, the Supreme Court in the case of *Secretary Education, Ministry of Education Vs. Viqar Ul Haq (2000 SCMR 1780)* has observed that lien of a permanent civil servant could not be terminated even with his consent and that the same could be terminated only when he is confirmed against some other permanent post.

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

17. In the case of *Engineer Hafeezullah Vs. CEO (PTCL) and others (2011 SCMR 442)*, the Supreme Court has laid down that an employee under Fundamental Rule, 12-A, on substantive appointment to any permanent post acquires a lien on that post and ceased to hold any lien previously acquired on any other post. For a termination of lien of a permanent civil servant from his original department, three prerequisites have to be satisfied: the civil servant concerned has joined

other department on regular basis; that the joining to other department was result of his selection; and that the selection was through a regular selection process. Only on satisfaction of these conditions, the civil servant will have no claim about his lien in the previous department.

18. From foregoing quotations, the following conclusions emerge:

(i) lien means the title of a civil servant to hold substantively a post on which he has been confirmed.

(ii) there is lien for a civil servant who by way of transfer is posted on deputation in the borrowing department until the period of deputation expires.

(iii) when an officer is said to have a lien on any appointment, it is meant that the right of such an officer to resume, on return to duty, a substantive or an acting appointment on which he has a lien is subject to the same condition of conformity, with the interest of the public service, as the tenure of the appointment is.

(iv) Lien of a permanent civil servant cannot be terminated even with his consent and that the same would be terminated only when he was confirmed against some other permanent post.

(v) Services of a deputationist cannot be terminated as he has a right to retain his lien in parent department for not having been confirmed in borrowing department.

(vi) A civil servant can claim his lien on his original post when he has not been permanently absorbed in borrowing department.

(vii) Lien of a civil servant would not be terminated unless he has been confirmed against some other permanent post.

(viii) 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 continue and would not be terminated.

(ix) An employee on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

(x) For a termination of lien of a permanent civil servant from his original department, three prerequisites have to be satisfied: the civil servant concerned has joined other department on regular basis; the joining to other department was result of his selection; and that the selection was through a regular selection process. And only on satisfaction of these conditions, the civil servant will have no claim about his lien in the previous department.

These conclusions imply that petitioner in law had interminable lien -- the title to hold substantively the post on which he was confirmed in the parent department -- up until the period he was to be confirmed in Pakistan Railways. That his lien was not terminable even with his consent and that it could have only be done on his confirmation against some other permanent post in Pakistan Railways. Further, he, being deputationist, cannot be terminated from the service in his parent department either and his left over seat cannot be filled by his parent department as he has a right to retain his lien, for not having been confirmed in borrowing department i.e. Pakistan Railways. And that he has a right to claim his lien on his original post when admittedly he has not been permanently absorbed in borrowing department, despite an attempt aimed at it. Since he was not absorbed in Pakistan Railways, admittedly his lien was not up for termination even with his consent and the parent department had no authority to fill the seat left vacant by him on his transfer to Pakistan Railways on deputation unless petitioner's absorption was confirmed to it officially through a requisite notification.

19. Next, although he had shown willingness for absorption in Pakistan Railways which also made an attempt in this regard. However, there is nothing on record that such effort had materialized and any order of appointment settling terms and conditions of his appointment was passed. Hence, his lien in his parent department would be deemed to have continued and never terminated leaving the post vacant for filling by his parent department. For termination of his lien from his original department, the prerequisites -- he had joined Pakistan Railways on regular basis; his joining was a result of selection and his selection was through a regular selection process -- were never fulfilled, as there is no record to vouch for the same, nor it has been even claimed by any of the parties. The parent department, admittedly without receiving any confirmation through any document or any information about absorption of petitioner in Pakistan Railways, advertised the post merely on presumption of the petitioner having been absorbed and appointed another person, not realizing that his lien in the department was intact and had never been terminated, which act in view of above legal position propositions sanctioned by the Apex Court

is illegal and void ab initio, done without a legal sanction and having no consequence whatsoever.

20. We, therefore, hold that the petitioner has a right to be posted in his parent department against the post, which he had left in the year 2014 on his appointment in Pakistan Railways on deputation, with effect from 29.03.2023 with all the benefits, when, he after being repatriated from borrowing department, had for the first time reported joining his duty in his parent department: Pakistan Science Foundation, Islamabad.

The petition is accordingly **disposed of** in the above terms.

JUDGE

JUDGE

Ahmad