ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-2389 of 2025

[Asif Ali V. Federation of Pakistan and others]

Date	Order with signature of Judge(s)

Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing and Order: 10.08.2026

Mr. Muhammd Arif, Advocate for the Petitioners.
Ms. Wajiha Mehdi, DAG.
Mr. Abdul Jalil Zubedi, AAG along with Syed Israr Hussain, Law Officer for Respondent No.2.

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O R D E R

Adnan-ul-Karim Memon, J. – Petitioner, has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following relief:

> "i. Declare the impugned orders dated: 18-10-2024 and 11-04-2025 as illegal, issued in violation of the dicta laid down by the Hon'ble Supreme Court of Pakistan and set aside the same.
>
> ii. Direct the Respondent No.03 to issue order of lien/right of reversion to the substantive post of Audit Officer BS-18 in favour of the Petitioner.
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> iii. Direct the Respondents to conduct themselves strictly in accordance with law.
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> iv. Restrain the Respondents from taking any coercive action against the Petitioner in terms of his employment.
>
> D. Any other relief(s) this Hon'ble Court may deem fit in given circumstances and in the great interest of justice."

2. The Petitioner, a regular civil servant, was appointed as Assistant Audit Officer (BS-16) in 2005 on the recommendation of the Federal Public Service Commission and was subsequently promoted as Audit Officer (BS-17, now BS-18) in 2009. In 2024, Respondent No.2 advertised the post of Director (Finance) in public-sector universities of Sindh on a three-year contractual basis. After obtaining an NOC from his parent department, the Petitioner applied for the post and was selected and appointed as Director (Finance), University of Larkano, vide notification dated 20.09.2024. He thereafter sought to be relieved from his substantive post while retaining his lien/right of reversion to his regular post of Audit Officer (BS-18). The Petitioner was relieved, but Respondent No.3, vide order dated 18.10.2024, declined to retain his lien. His subsequent request/appeal was also rejected, culminating in the impugned order dated 11.04.2025.

3. Petitioner's counsel contends that, being a confirmed and long-serving civil servant who proceeded to the contractual post through proper channel and after obtaining NOC, he had a lawful right to retain lien on his substantive post. He alleges that denial of lien was arbitrary, discriminatory, without lawful authority and violative of Articles 4, 9, 18 and 25 of the Constitution. Reliance was also placed on Fundamental Rule 9(13), which defines lien, and on case law concerning fair, non-arbitrary and bona fide exercise of discretionary powers.

4. The learned DAG and AAG, however, contest the maintainability and merits of the petition. Their principal objection is that by voluntarily accepting a contractual appointment in the University of Larkano through selection, rather than transfer or deputation, the Petitioner changed his status from a civil servant to a contract employee and consequently lost his lien over the substantive post. They rely principally upon the Supreme Court judgment in *Muhammad Saleem v. Government of Balochistan* (2024 PLC (C.S.) 611), wherein it was held that a civil servant accepting an appointment through selection in an autonomous body, other than by transfer or deputation, forfeits his lien in the parent department. They further contend that the contractual appointment is governed by its own terms and does not attract the protections available under the Civil Servants Act, 1973. According to them, the NOC issued to the Petitioner merely permitted him to apply and did not create any obligation upon the parent department to preserve his civil-servant status or lien. They also point out that the Petitioner accepted the relieving order dated 18.10.2024 and cannot selectively challenge only the portion denying lien. The matter was subsequently referred to the competent authority, which clarified through an Office Memorandum dated 12.03.2025 that a civil servant appointed to a contract-based position loses his status as a civil servant and falls outside the purview of the Civil Servants Act, 1973. They therefore maintain that the Petitioner has no vested or statutory right to retention of lien after voluntarily accepting the contractual appointment. They further assert that the constitutional petition is not maintainable, particularly as matters relating to terms and conditions of service are governed by the relevant service law and, where applicable, the jurisdiction of the Service Tribunal. On these grounds, the Respondents seek dismissal of the petition, relying upon Rule 6(2) of the Civil Servants (Confirmation) Rules and the principle laid down in *Muhammad Saleem v. Government of Balochistan*.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. The starting point of the controversy is that lien is not an equitable or indefeasible right which continues irrespective of the subsequent career choice of a civil servant; rather, it is a statutory right whose acquisition, continuance and termination are regulated by the applicable service rules. The lien, in the context of service law, means the legal right of a civil servant to return to the post held substantively, subject to the conditions prescribed by the relevant rules. Thus, the existence of a permanent substantive post in the parent department, by itself, does not mean that the lien necessarily survives every subsequent appointment voluntarily accepted by the civil servant.

7. The governing provisions are contained in Rules 5 and 6 of the Civil Servants (Confirmation) Rules, 1993. Rule 5(1) recognizes that upon confirmation in a permanent post a civil servant acquires lien thereon and may retain it in specified circumstances, including while holding a temporary post other than a post in the service or cadre against which he was originally appointed. However, this provision cannot be read in isolation from Rule 6, which specifically regulates termination of lien. Rule 6(2) expressly provides that a civil servant shall cease to hold lien against a post if he takes up an appointment on selection in an autonomous body under the control of the Federal Government, Provincial Government, local authority or private organization. Rule 6(4), on the other hand, creates a limited right of reversion where a confirmed civil servant, of his own accord, joins another service, post or cadre on a regular basis after selection through a regular selection process; even in that situation the lien is preserved only during the period of probation in the new service, post or cadre. The statutory scheme, therefore, does not support the proposition that every temporary or contractual appointment automatically preserves lien.

8. Of particular significance is the judgment of this in Asif Ali v. Federation of Pakistan, C.P. No. D-5722 of 2020, decided on 22.12.2022. In that case, the petitioner challenged an order whereby he was relieved from his parent department without retention of lien and argued that Rule 6(2) applied only where the subsequent appointment was in an autonomous body. The Division Bench rejected that interpretation and held, on a plain reading of Rule 6(2), that the provision operates disjunctively and extends to an appointment taken up in a Provincial Government, local authority or private organization as well. The Court specifically observed that appointment in an autonomous body under the control of the Federal Government constitutes only one of the disjunctive situations contemplated by the rule. The petition was consequently dismissed because the petitioner could not bring his case outside the operation of Rule 6(2).

9. The above judgment assumes even greater significance in the present matter because the petitioner admittedly did not proceed to the post of Director

Finance by way of transfer or deputation. He obtained an NOC from his parent department, applied against a publicly advertised post, participated in the prescribed selection process, was selected and thereafter accepted a fresh contractual appointment as Director Finance. The NOC merely removed the administrative impediment to his application; it cannot, in the absence of an express statutory or competent-authority order preserving lien, enlarge the legal consequences of the subsequent appointment. Permission to apply for another post is fundamentally different from an order of deputation or transfer preserving the civil servant's substantive status in the parent department.

10. The distinction between a transfer/deputation and a fresh appointment through selection is firmly recognized in the catena of cases where protected the lien of employees who had moved to another government department through temporary arrangements, transfer or deputation and had not been permanently absorbed in the borrowing department. In those cases, the crucial circumstance was that the movement did not constitute a voluntary abandonment of the original civil-service post in favour of an independently obtained appointment carrying a distinct employment status.

11. The contentions of the petitioner is that when the employee had proceeded through proper channel and that the borrowing department's own record had treated his placement as temporary his lien in the parent department could not be terminated merely because the subsequent appointment was described as temporary or contractual. However, the decisive feature was/is the continued legal character of the relationship as temporary placement and the absence of permanent absorption. The present petitioner, by contrast, was/is not sent to the University of Larkano on deputation by his parent department; he independently applied for an advertised post, was selected and accepted a separate contractual appointment. The factual and legal foundation as narrated is therefore absent. Besides the present case stands on an entirely different footing because the petitioner was selected for a separately advertised post and entered into a new contractual relationship rather than remaining in the service of his parent department on deputation or transfer.

12. The petitioner's reliance upon Rule 5(1)(a) is also misconceived. The provision recognizes retention of lien while a civil servant holds a temporary post, but that right is expressly subject to the remaining provisions of the Rules. Rule 5 cannot be employed to nullify Rule 6(2). Where a subsequent appointment falls within the specific statutory circumstances in which lien ceases, the general provision concerning retention during a temporary posting cannot be invoked to defeat the specific provision dealing with termination. The principle of statutory interpretation that a specific provision prevails over a general provision is

attracted with full force. Consequently, the mere fact that the appointment of Director Finance was for three years cannot, by itself, revive or preserve a lien which the Rules otherwise terminate upon acceptance of the new appointment.

13. Similarly, Rule 6(4) does not assist the petitioner. The language of Rule 6(4) is materially different from the facts of the present case. It applies where a confirmed civil servant, of his own accord, joins another service, post or cadre on a regular basis after selection through a regular selection process, and permits retention of lien only during the probationary period of the new service, post or cadre. The petitioner's appointment as Director Finance was expressly contractual for a fixed period of three years. It was neither a regular appointment in a civil-service cadre nor an appointment carrying a statutory probationary period contemplated by Rule 6(4). To read the expression "contractual" as synonymous with "probationary" would amount to adding words to the rule which the legislature/rule-making authority has not employed. A fixed-term contractual appointment is not converted into a regular civil-service appointment merely because it is temporary in duration.

14. The petitioner's argument that denial of lien would cause hardship after expiry of the three-year contract, though understandable from a personal and career perspective, cannot furnish a legal basis for granting relief contrary to the statutory rules. Primarily the Court exercising constitutional jurisdiction cannot create a right of lien on the basis of hardship, legitimate expectation or perceived fairness where the governing service rules expressly regulate the circumstances in which such right survives or ceases. The lien has a statutory character and that its continuance depends upon fulfilment of the conditions prescribed by law.

15. The petitioner's reliance upon Fundamental Rule 9(13) is similarly insufficient. The definition of lien contained in the Fundamental Rules explains the nature of the right; it does not independently determine the circumstances in which that right is acquired, retained or extinguished. Where specific rules governing civil servants prescribe the consequences of accepting another appointment, those rules must govern the controversy. Thus, even assuming that the petitioner had acquired a valid lien upon his substantive post of Audit Officer (BS-18), the subsequent question is whether that lien survived his voluntary acceptance of the new appointment. That question has to be answered by reference to Rules 5 and 6 of the Civil Servants (Confirmation) Rules, 1993 and not merely by relying upon the general definition of lien in Fundamental Rule 9(13).

16. It is well settled that where a confirmed government employee left his parent department and joined after selection, in such circumstances under Rule

6(2) of the Rules of 1993 the employee ceased to hold lien against his former post. Moving voluntarily through selection to an organization falling within the scope of Rule 6(2) changes the employee's employment status and results in relinquishment of the right to return to the former civil-service post. Even an earlier departmental order purporting to preserve lien could not prevail where it was inconsistent with the statutory rules.

17. A transfer or deputation ordinarily preserves the underlying relationship with the parent department because the civil servant has not voluntarily abandoned his substantive post. Conversely, where an officer responds to an advertisement, competes for a new position, is selected and accepts a separate appointment, the legal character of the transaction is materially different. The employee is not merely serving the same employer at another station or on deputation; he is entering a new employment relationship. The statutory consequence prescribed by Rule 6(2) must therefore be given effect.

18. Even if the petitioner's appointment is characterized as an appointment made by or under the Government of Sindh rather than as employment in the University as an autonomous public-sector entity, the statutory objection remains substantial: a civil servant who voluntarily takes up a new appointment through selection falls within the statutory consequences prescribed by Rule 6(2), subject to the precise legal status of the appointing institution and the instrument of appointment. It is also material that the petitioner accepted the relieving order dated 18.10.2024 and thereafter pursued the matter administratively. Acceptance of the relieving order does not, by itself, create a statutory right of lien where none exists; nor can a representation or appeal confer a substantive service right contrary to the governing rules. The competent authority's subsequent decision dated 11.04.2025 therefore has to be tested not against an assumed entitlement of the petitioner, but against the statutory framework governing lien. If the appointment was indeed a fresh contractual appointment obtained through selection and not deputation or transfer, the competent authority was justified in refusing to preserve the lien.

19. The constitutional grounds under Articles 4, 9, 18 and 25 also do not alter the position. Article 4 requires that an individual be dealt with in accordance with law; it does not confer a right contrary to the applicable service rules. Article 18 protects the freedom to enter a lawful profession or occupation, but it does not guarantee simultaneous preservation of every benefit attached to a former government post after voluntarily accepting a different appointment. Article 25 prohibits discriminatory treatment, but the petitioner has not demonstrated any similarly placed civil servant who was lawfully granted retention of lien in circumstances identical to his own. A discretionary or administrative departure

from statutory rules in favour of another employee, even if established, cannot ordinarily create an enforceable right to perpetuate an illegality.

20. The plea of mala fide or arbitrary exercise of power is likewise unsupported unless the petitioner can establish that the impugned decisions were actuated by an extraneous purpose, discriminatory consideration or were contrary to the governing rules. On the contrary, the record, as presently described, indicates that the competent authority considered the petitioner's request and declined it by reference to Rule 6(4) of the Civil Servants (Confirmation) Rules, 1993 and the applicable service framework. The mere fact that the decision is adverse to the petitioner does not make it mala fide or arbitrary.

21. Accordingly, the legal position that emerges from the statutory scheme and the surveyed authorities is that a confirmed civil servant undoubtedly acquires a lien upon his substantive permanent post, but the right is not absolute or perpetual. Its continuance is regulated by the Civil Servants (Confirmation) Rules, 1993. Where the officer is merely transferred or deputed to another government department without permanent absorption, the authorities relied upon by the petitioner support retention of lien. However, where the officer voluntarily responds to an advertisement, participates in an independent selection process and accepts a separate appointment outside his original service arrangement, the principle in Muhammad Saleem v. Government of Baluchistan (2024 SCMR 614), becomes applicable.

22. In the circumstances of the present case, the petitioner's three-year contractual appointment as Director Finance cannot be treated as deputation merely because he obtained an NOC before applying for the post. Nor can its fixed duration convert it into the probationary arrangement contemplated by Rule 6(4). The NOC authorized the petitioner to compete for the advertised post; it did not amount to a statutory undertaking by the parent department to preserve his lien. Once the petitioner voluntarily accepted the fresh appointment through selection, the legal consequences prescribed by Rule 6(2) followed, unless the competent authority had lawful statutory power to place him on deputation or expressly preserve his lien under an applicable provision which, on the facts supplied, has not been demonstrated.

23. We therefore find that the petitioner's claim for a direction to Respondent No.3 to issue an order retaining lien/right of reversion against the substantive post of Audit Officer (BS-18) is not supported by the governing statutory rules. The petitioner's previous confirmation and long service establish the existence of the original lien; they do not, however, establish its perpetual continuation after he voluntarily accepted a fresh contractual appointment through selection. The

temporary or fixed-term nature of the new appointment may explain the petitioner's apprehension regarding his future employment, but it does not override the statutory consequences attached to the manner in which the new appointment was obtained.

24. Consequently, the impugned orders dated 18.10.2024 and 11.04.2025 cannot be characterized as illegal merely because they declined retention of lien. Rather, on the facts presently available, those orders are consistent with Rule 6(2) of the Civil Servants (Confirmation) Rules, 1993. The relief seeking restoration or preservation of lien is therefore liable to be declined. The petitioner's prayer for protection against coercive action would also not survive independently once the principal claim of lien fails, unless an independent illegality in the respondents' proposed action is specifically demonstrated.

25. This petition fails and dismissed along with pending application(s).

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