

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench

Mr. Justice Yahya Afridi

Mr. Justice Jamal Khan Mandokhail

CMA No.145-Q/2022 in Civil Petition No. 61-Q of 2018

(For restoration of CP 61-Q of 2018 against the judgment dated 13.12.2017 of the Service Tribunal Balochistan, Quetta passed in S.A. No. 273/2016)

Muhammad Saleem

...Applicant(s)

Versus

Govt. of Balochistan through Chief Secretary and another **...Respondent(s)**

For the Applicant(s): Mr. Muhammad Usman Yousafzai, ASC
Mr. Gohar Yaqoob Yousafzai, AOR

For the Respondent(s): Mr. Amir Zaman Jogazai, Addl. AG
Mr. Noor Hussain Baloch, Addl. Secretary

Date of hearing: 21.12.2023

ORDER

Yahya Afridi, J. Through the instant application, the applicant seeks restoration of Civil Petition No. 61-Q of 2018 dismissed for non-prosecution by this Court *vide* order dated 26.07.2022. For the reasons mentioned in the application, the same is allowed, and Civil Petition No. 61-Q of 2018 is restored to its original number.

Facts

2. The petitioner in essence seeks to challenge the judgment of the Balochistan Service Tribunal (“**the Tribunal**”) dated 13.12.2017, whereby his request for accepting his *lien* against the post of Junior Scale Stenographer (B-12) in S&GAD, Government of Balochistan, was rejected. The brief facts leading to the present petition, as mentioned in the petition, are as under:

“The petitioner was appointed as Junior Scale Stenographer (B-12) by the competent authority i.e. respondent No. 2 through a common office order dated 3rd February, 1993 Order No.S.V(S&GAD) 1(1)/90/349-05 thereafter the petitioner was performing duty very honestly, diligently and punctually with the kind satisfaction of his superior till 15/04/2004. That the petitioner with the permission of competent authority joined the National Registration Authority hereinafter referred NADRA as an Assistant Manager vide order No.S.V(S&GAD)/23-241/93/1207-13 dated 15/04/2004 subject to the confirmation of the services of petitioner by the NADRA, and the petitioner joined the NADRA and he started his function/services on contract basis and the contract was extended time to time but unfortunately lastly when the contract period was expired on 15/02/2016 the said contract was not further extended. That the petitioner after passing order by the NADRA dated 15/02/2016 by not extending the contract thereafter the petitioner immediately approached the respondent No.2 for re-joining his parent department that is S&GAD, Government of Balochistan, and thereafter filed application before Chief Minister Balochistan, who referred the matter to the respondents for redressal of grievance of petitioner but the respondents failed to pass any order. The petitioner filed departmental Appeal on 27/05/2016 before the respondent No.2 and the same was not decided till 22/08/2016, then the petitioner filed an application before the respondent No.1 for re-joining his parent department but the respondent No. 1 did not entertain the said application and the respondent No.2 badly failed to decide the departmental appeal/representation within the stipulated period of 90 days.”

3. Given the above events leading to the present petition, we note that the main relief sought by the petitioner was reflected in his representation of 27.05.2016, requesting that he may be allowed to rejoin and serve in the S&GAD, Government of Balochistan (**“the parent Department”**), as per order dated 15.04.2004, which reads as under:

“GOVERNMENT OF BALOCHISTAN
SERVICES AND GENERAL ADMN: DEPARTMENT
(SECTION-V)

Dated Quetta the 15th April, 2004

NO. S.V(S&GAD)/23-241/93/1207-13/Consequent upon appointment as Assistant Manager in NADRA Quetta, Mr. Muhammad Saleem, Junior Scale Stenographer of this Department is hereby relieved of his duties to join his new assignments in NADRA Quetta.

He is allowed to retain his lien against the post of Junior Scale Stenographer in S&GAD till his confirmation in NADRA.”

Another application with the same relief was filed by the petitioner on 23.08.2016. Having received no positive response, the petitioner approached the Tribunal for redressal of his grievance. After hearing the petitioner, the Tribunal dismissed his appeal, as being barred by time. Hence, the present petition filed by the petitioner.

4. On careful reading of the impugned judgment of the Tribunal, it is noted that though the Tribunal has dilated upon the merits of the case, however, no final findings were recorded thereon, and the claim of the petitioner was rejected, essentially, on the ground of limitation. But to consider, whether the contention of the petitioner, despite expiry of the period of limitation, deserves any positive consideration, notices were served upon the respondents, who have filed their concise statements opposing the claim of the petitioner.

Contentions of the Petitioner

5. The main thrust of the learned counsel for the petitioner was that the *lien* of the petitioner was rooted in the order dated 15.04.2004, whereby he was allowed to relinquish his post in the parent Department and join NADRA. To support his case, the learned counsel for the petitioner has relied on the judgments of this Court in Sajjad Hussain v. Secretary, Establishment Division (1996 SCMR 284), Anoud Power Generation Ltd v. Federation of Pakistan (PLD 2001 SC 340), Muhammad Israrullah v. Assistant Director, Manpower (2005 SCMR 716) and Government of N.W.F.P. v. Zafarmand Ali (2005 SCMR 1212).

Meaning of Lien

6. The ordinary dictionary meaning of the word “*lien*”, is stated to be “a right to keep possession of property belonging to another person until a debt owed by that person is discharged”¹ or “a right to retain possession of another’s property pending discharge of a debt”.² While, according to Black’s Law Dictionary³, the said term is defined as “[a] legal right or interest that a creditor has in another’s property, lasting usually until a debt or duty that it secures is satisfied”. However, the above definitions of the term “*lien*” cannot be strictly applied to a civil servant

¹ Oxford English Dictionary (12th Edition)

² Collin’s English Dictionary (13th Edition)

³ 8th Edition

under the service law of our country. In the context of service law, the term "*lien*" has a statutory connotation and refers to a legal right of a civil servant to hold a particular post, typically a higher one, to which they have been promoted or transferred, while still retaining a right on their original post, based on provisions provided for the same under the rules or regulations framed by the appropriate Government. Hence, simply put, *lien* in service law is a right of a civil servant to return to his original position, based on the fulfilment of the conditions set out in the rules or regulations framed by the appropriate Government.

Statutory Rules – Appropriate Governments

7. We have been informed that until 2012, when the Balochistan Civil Servants (Confirmation) Rules ("**the Rules of 2012**") were framed, the Government of Balochistan had not framed any rules governing *lien* of a civil servant, and it had instead adopted the rules of the Federal Government on *lien*, namely, the Civil Servants (Confirmation) Rules, 1993 ("**the Rules of 1993**").

8. When the learned counsel for the petitioner was confronted with Rule 7(2)⁴ of the Rules of 2012, which explicitly extinguishes *lien* of a civil servant serving in Government of Balochistan upon securing an appointment in an Autonomous Body such as NADRA, he responded by contending that the said rules would not apply to the petitioner, as at the time of relinquishing his post in the parent Department and joining NADRA in 2004, the Rules of 2012 were not framed. This contention of the learned counsel, when considered, led our attention to the then applicable Federal Government rules on *lien* adopted by the Government of Balochistan - Rules of 1993.

⁴ **Rule 7(2):** A civil servant shall cease to hold *lien* against a post under Government if he takes up an appointment on selection in an Autonomous Body, Semi-Autonomous Body, Corporation etc and private Organization, under the control of Federal Government, Provincial Government, local authority or a private organization, must on accepting it, resign his appointment under Government.

9. Upon examining the Rules of 1993, particularly in relation to provisions governing acquiring and termination of the right to *lien*, it would be pertinent to refer to rules 5 and 6 (*supra*), which reads:

5. 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 organisation, a multinational corporation or any other organisation 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 lien as referred in sub-rule (1), shall cease to hold lien acquired previously on any other post.

6. Termination of lien.- (1) The lien of a civil servant who is reduced in rank or reverted to a lower post as a consequence of action taken against him under the Government Servants (Efficiency and Discipline) Rules, 1973**, shall be terminated against the post from which he is reduced in rank or, as the case may be, reverted to a lower post:

Provided that such civil servant shall acquire a lien against the lower post.

(2) 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 Federal Government, Provincial Government, local authority or private organisation.

(3) Notwithstanding the consent of a civil servant, his lien on a post under the Federal Government shall not be terminated until he acquires lien on any other post.

(4) A confirmed civil servant who, of his own accord, joins some other service, post or cadre on regular basis shall have, after being selected through a regular selection process, the right of reversion to the previous post against which he shall hold lien only during the period of his probation on his new service, post or cadre."

(Emphasis provided)

A careful reading of the above provisions, in particular, Rule 6(2), clearly stipulates that a civil servant shall forfeit his *lien* against a post, when accepting an appointment in an autonomous body under the control of Federal Government, as is the situation with the petitioner in the present case.

Legal Analysis

10. As to the office order dated 15.04.2004, wherein the petitioner was to retain his *lien* against the post of Junior Scale Stenographer in S&GAD till his confirmation in NADRA is concerned, we find the same to be blatantly in violation to the then applicable Rules of 1993, and in particular, the provisions of Rule 6(2) (*supra*). Given the order of 15.04.2004 being devoid of any legal sanction, it could not be made an anchor sheet for the petitioner to claim his *lien* against the post in the parent Department.

11. Moving on to the case law cited by the learned counsel for the petitioner, we have reviewed the same and find it distinguishable to the facts and circumstances of the present case. In **Sajjad Hussain v. Secretary, Establishment Division (1996 SCMR 284)**, the case centered on a confirmed civil servant from the Post Office in the Federal Government, who worked temporarily in various other Federal Government departments, his request to claim his *lien* against the post in his parent department was rejected. The denial of his claim of *lien* by his parent department was challenged. Finally, this Court ruled that for a civil servant to be ineligible to reclaim confirmed service, it is imperative to demonstrate confirmation of appointment in any subsequent government department. As the services of this civil servant were not confirmed in any later roles, his *lien* against the post in the parent department was upheld. Similarly, in **Muhammad Israrullah v. Assistant Director, Manpower (2005 SCMR 716)**, the Court observed that the *lien* of a regular employee, transferred through proper channels or on deputation to another department and not confirmed in that department, could not be terminated. In **Government of N.W.F.P v. Syed Zafarmand Ali (2005 SCMR 1212)**, the respondent, initially an Information

Officer in the Information Department, was later transferred to the Directorate of Civil Defence N.W.F.P. Despite a subsequent transfer to the Home Department, the Court held that, due to the absence of an order for his permanent induction into the Civil Defence Directorate, the termination of his *lien* from the Information Department was unjustified. Hence, he was repatriated to his original position in the Information Department, his parent department.

12. A careful review of the *ratio* of the above cases cited by the learned counsel for the petitioner, clearly distinguishes the present case, as the said cited cases deal with transfers within Government departments, while petitioner claims his right of *lien* against a post in the Provincial Government department on his moving to an autonomous entity under the Federal Government, namely, NADRA. This key difference sets the present case apart from the scenarios addressed in the aforementioned precedents.

13. This Court has previously undertaken an examination of the provisions of Rule 6(2) of the Rules of 1993, in the case of **Farid Muhammad v. Secretary, Ministry of Food (1996 SCMR 818)** where it closely scrutinized the said rule and rejected a similar claim by holding that:

“on selection of and/or confirmation on another post in another organization in the Federal Government, the Provincial Government, local authority or private organization, a civil servant shall cease to hold lien against a post in his parent department or authority or organization.”

14. As per Rule 6(2) of the Rules of 1993, a civil servant who takes up an appointment on selection, other than by way of transfer on deputation⁵, to a position in an autonomous body under the control of Federal Government, Provincial Government, local authority or a private organisation, effectively undergoes a change of status from that of a civil

⁵ Section 10 of the Balochistan Civil Servants Act 1974 and Section 10 of the Civil Servants Act, 1973.

servant to a different employment category. Crucially, this transition results in the forfeiture of his *lien* against the post in his parent department or authority. The *lien*, representing the legal right to return to his former position within the civil service, is thus relinquished when he moves, on his own accord, to a non-governmental body and accepts an appointment therein on selection. It may be underlined that while transfers within various Government departments (whether Federal or Provincial) do not alter the fundamental status of a civil servant, a move to an autonomous body under the control of Government, except by way of transfer on deputation⁶, signifies a substantive change in the nature of employment. This change is of such a magnitude that it necessitates the relinquishment of specific rights and privileges inherent to his previous civil service position, including the *lien*. The rationale behind this is to uphold the structural integrity and systematic functioning of the civil service, by ensuring that civil servants do not retain indefinite claims to their original positions, while engaged in employment outside the traditional government framework. It serves to bring clarity and efficiency to the administration of civil service rules and forestalls any ambiguity concerning the employment status of a civil servant, who opts to transition from government service to employment in non-governmental sectors.

Conclusion

15. The petitioner in this case was appointed in NADRA, an autonomous body under the control of Federal Government, and therefore, this would lead to the cessation of any *lien* against a previously held position in the S&GAD, Government of Balochistan. This conclusion aligns with the stipulations of Rule 6(2) of the Rules of 1993 and Rule 7(2) of the Rules of 2012.

⁶ Ibid.

16. Consequently, the petition is bereft of merit, and hereby dismissed.

Judge

Judge

Quetta,
21stDecember, 2023
Approved for reporting
Rizwan