

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 5722 of 2020 : Asif Ali vs.
Federation of Pakistan & Others

For the Petitioner : Mr. Abdul Salam Memon, Advocate

For the Respondents : Mr. Syed Yasir Ahmed Shah
Assistant Attorney General

Date/s of hearing : 22.12.2022

Date of announcement : 22.12.2022

ORDER

Agha Faisal, J. The petitioner has impugned notification dated 28.09.2020 issued by the Government of Pakistan Directorate General Immigration & Passports (“Impugned Notification”) to the extent that while the petitioner has been relieved of duty, per his request, however, the same has been done without giving him any right of lien. It is the petitioner’s case that he is entitled to lien notwithstanding Rule 6(2) of the Civil Servants (Confirmation) Rules 1993. However, the learned Assistant Attorney General controverts the assertion and submits that the aforesaid provision of law disentitles the petitioner to the relief claimed.

2. It is considered illustrative to reproduce the relevant provision of law crucial to the determination herein:

“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.

(Emphasis added).

(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.”

3. It is the case of the petitioner’s counsel that the disentitlement manifested vide Rule 6(2) is only applicable if a civil servant takes up appointment in an autonomous body, *being under the control of Federal Government, Provincial Government, local authority or private organization*. Per the learned Assistant Attorney General, the interpretation of the petitioner’s counsel is misconceived and the provision has to be given its literal disjunctive meaning, discernible from plain reading thereof.

4. We are constrained to observe that the interpretation of Rule 6(2) as enunciated by the petitioner’s counsel is *prima facie* misconceived. If the suggested interpretation is accepted then it would mean that the disentitlement would only occur upon appointment in an autonomous body; whereas, the plain reading of the provision provides for the crystallization of the provision in case of appointment having been taken up in a Provincial Government, local authority or private organization also.

Appointment in an autonomous body (under the control of the Federal Government) is only one of the four disjunctive scenarios contemplated and reading the provision otherwise would lead to an absurdity; since we have not been assisted with any instances of autonomous bodies being under the control of private organizations.

5. The petitioner’s counsel has not endeavored to set forth a case befalling the petitioner in Rule 5¹ of the Civil Servants (Confirmation) Rules 1993 and has remained unable to dispel the applicability of Rule 6(2) thereto. Therefore, no case meriting indulgence in the discretionary writ jurisdiction of this Court is made out, hence, this petition is hereby dismissed.

JUDGE

JUDGE

¹ 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.