

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-6238 of 2015

(*Abdul Majeed v Federation of Pakistan & others*)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul-Karim Memon

**Date of hearing and Order: 07.04.2025**

Mr. Ali Asadullah Bullo advocate for the Petitioner.  
Ms. Wajiha Mehdi, Assistant Attorney General.

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**ORDER**

**Adnan-ul-Karim Memon:** The petitioner, Abdul Majeed, seeks a court order compelling Respondent No. 4 to permit his return to work after repatriation and to grant him back wages and consequential benefits.

2. Abdul Majeed, previously a Superintendent (BS-16) at the Board of Intermediate and Secondary Education Sukkur (Respondent No. 4), was initially deputed to Respondent No. 3 for three years starting in 2008, with a no-objection certificate from his parent department. In 2009, Respondent No. 3 posted him as Assistant Director for three years, contingent on an NOC. Subsequently, in 2010, Respondent No. 3 permanently absorbed Abdul Majeed into EOBI, requiring him to resign from his position at BISE Sukkur as per deputation rules.

3. Learned counsel for the petitioner has contended that the petitioner, after absorption, performed his duties with full zeal and furor, and there was nothing adverse against him. Further, his previous service record was also considered satisfactory. He has further contended that respondent No. 3, without following the judgment passed by the Supreme Court of Pakistan in letter and spirit, terminated the services of all employees, including the petitioner, vide office order. 77 of 2014 dated 17.03.2014 in which the name of the petitioner appears at Serial No. 189. He has further contended that since the order of termination of the petitioner was not in accordance with law because of the reason he was absorbed regularly, as such, the respondent No.3 was required to repatriate the petitioner with direction to join the parent department. He has further contended that the petitioner was a permanent employee of the Board of Intermediate and Secondary Education Sukkur, and he served there with full devotion and dedication, and subsequently, he was absorbed in the EOBI; he is entitled to continue his services in the parent department. He requested that this court allow this petition.

4. The Assistant Attorney General stated that Abdul Majeed worked as an Assistant (BS-11) at the Board of Intermediate & Secondary Education Sukkur (BISE Sukkur) from May 1995 to March 2009. Upon his deputation and subsequent permanent absorption as Assistant Director at the Employees' Old-Age Benefits Institution (EOBI) in 2010 (following an initial NOC from BISC Sukkur), he was relieved from his original post. However, this NOC was later revoked by the Sindh Boards' Controlling Authority, with requests made to Respondent No. 2 to direct the petitioner back to BISE Sukkur. Instead, Abdul Majeed resigned from BISE Sukkur in January 2012. Consequently, his services with EOBI were terminated in March 2014 as the absorption was deemed illegal following a Supreme Court judgment. The Assistant Attorney General, therefore, requested that the petition be dismissed.

5. We have heard learned counsel for the parties on the maintainability of the petition and have perused the material available on record with their assistance.

6. The record indicates that the petitioner in Supreme Court (Constitutional Petition No. 6/2011) withdrew his petition. This was done to pursue reinstatement through the appropriate departmental avenues, following legal procedures. The petition was subsequently disposed of by order dated July 7, 2014. Subsequently, he filed the instant petition to allow him to join his services in the respondent BISE Sukkur, who already accepted his resignation in January 2012; however, he intends to assail the order dated 17.3.2014 and the appeal order dated 8.7.2015 passed by the respondent-EOBI.

7. The Appellate Committee of EOBI, on January 15, 2015, recommended that petitioner's parent department reconsider reinstating him to his original position, effective March 17, 2014. This recommendation followed appeals from petitioner and another former EOBI Assistant Director.

8. Subsequently, the Advocate General of Sindh reviewed the petitioner's case and advised the Government of Sindh based on the reasoning that the petitioner was a permanent Superintendent at the Board of Intermediate & Secondary Education, Sukkur (BISE Sukkur). With BISC Sukkur's consent, he joined the Employees Old-age Benefits Institution (EOBI), where he was permanently absorbed through mutual agreement. As per federal deputation rules, he resigned from BISE Sukkur. However, the Supreme Court of Pakistan later declared all EOBI appointments since 2009, including absorptions like petitioner's, illegal, effective March 17, 2014. Petitioner and others withdrew their review

petition to pursue departmental reinstatement. Considering these circumstances, the Advocate General opined that the petitioner's resignation was not voluntary, as a valid resignation requires a clear and intentional relinquishment of office. Furthermore, because BISC Sukkur consented to his absorption, his permanent employee lien should have been retained, effectively placing him on deputation until the Supreme Court's ruling. Therefore, the Learned Advocate General suggested reinstating the petitioner by recognizing his continued employment with BISC Sukkur and treating his absence period as leave without pay.

9. The Chairman of the Board of Intermediate & Secondary Education, Sukkur, had accepted the petitioner's resignation (while on deputation at EOBI) pending formal Board approval, effective immediately due to his EOBI absorption as Assistant Director on March 30, 2010. However, the Supreme Court later declared all EOBI appointments since 2009, including this absorption, illegal as of March 17, 2014. Consequently, according to Supreme Court precedent (**2013 SCMR 1752** and **2015 SCMR 456**), the petitioner's original status as being on deputation from the Board remained unchanged, as the absorption was deemed invalid.

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

11. In line with the opinion of the Advocate General Sindh, as detailed in the preceding paragraph, the petitioner's resignation from the Board, submitted as a consequence of his absorption, is considered invalid. In a landmark judgment as discussed supra, the Supreme Court of Pakistan declared all absorptions in different cadres as illegal, ordering employees to revert to their parent departments, while ensuring their seniority is retained.

12. This petition is hereby disposed of with the direction that the respondent, BISE Sukkur, must fully implement the Supreme Court's judgments (2013 SCMR 1752 and 2015 SCMR 456) by ordering the petitioner's return to his parent department while protecting his seniority, if he has not superannuated yet. The aforesaid exercise shall be undertaken within three months.

JUDGE

Head of Const. Benches