

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
AURANGZEB KHATTAK ... **MEMBER (Judicial)**

Service Appeal No. 2490/2023

Date of presentation of Appeal.....29.11.2023
Date of Hearing.....25.07.2024
Date of Decision.....25.07.2024

Saif Ur Rehman S/o Zar Ali Khan, Assistant Director (BPS-17),
Directorate of Labour, Khyber Pakhtunkhwa.....**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Peshawar.
2. Secretary Government of Khyber Pakhtunkhwa, Food Department Peshawar.
3. Secretary Government of Khyber Pakhtunkhwa, Labour Department Peshawar.
4. Director Food, Khyber Pakhtunkhwa, Directorate of Food, Peshawar.
.....**(Respondents)**

Present:

Mr. Muhammad Zafar Khan Tahirkheli, Advocate.....For appellant
Mr. Muhammad Jan, District AttorneyFor respondents
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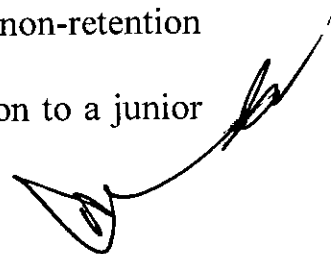
JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: According to the facts gathered from the record are that the appellant was initially appointed as Assistant Food Controller (BPS-16) vide appointment order dated 18-03-20219. On 09-09-2021, he applied for the post of Assistant Director Labour (BPS-17) through proper channel from the Food Department. Following a successful application process, he was appointed as Assistant Director Labour (BPS-17) on the recommendation of Khyber Pakhtunkhwa Public Service Commission vide appointment notification dated 19-07-2022. Subsequently, he was relieved from his duties in the Food Department on 25-07-2022.

Later, on 13-02-2023, the appellant requested to be relieved from his duties in the Labour Department to rejoin the Food Department as an Assistant Food Controller, which spurred a series of communications culminating in a regrettable rejection by the Labour Department on 07-07-2023. Feeling aggrieved, the appellant filed departmental appeal, which was not responded, leading him to approach this Service Tribunal.

2. On receipt of the appeal and its admission to regular hearing, the respondents were summoned. Respondents put appearance through their respective representative and contested the appeal by way of filing para-wise reply, raising therein numerous legal as well as factual objections.

3. The learned counsel for the appellant argued that the appellant was duly qualified and appointed as an Assistant Food Controller based on merit and was subsequently appointed as Assistant Director Labour through proper channel and official recommendations. He next argued that despite being relieved from the Food Department, the appellant's lien was retained as per the corrigendum dated 07-06-2023, which stated he was relieved on a lien basis. He further argued that the rejection by the Labour Department was arbitrary and disregarded the lien rules as the appellant held a substantive post of Assistant Food Controller, therefore, his request to return was legally supported by the documents and the retained lien. He next contended that the appellant obtained no objection certificate from the Labour Department and complied with all procedural requirements, therefore, their subsequent refusal contradicts the principles of equity, justice, and proper procedure. He further contended that the reasons cited for rejection, including non-retention of lien in the initial relieving order and the appellant's reversion to a junior



post, were addressed and corrected vide corrigendum dated 07-06-2023, thus invalidating the grounds for rejection. In the last he requested that the respondents may be directed to relieve the appellant from the post of Assistant Director Labour (BPS-17) and permit him to rejoin as Assistant Food Controller (BPS-16) based on lien retention.

4. Conversely, learned District Attorney for the respondents contended that the appellant applied for the post of Assistant Director Labour through proper channels and was duly appointed after clearing the Public Service Commission examination process. He next contended that the appellant was relieved from the Food Department without a mention of lien retention, therefore, the Labour Department processed his repatriation request in accordance with relevant rules and referred it to the Chief Secretary, whose rejection was based on procedural deficiencies. He further contended that the request of the appellant was seen as a reversion from a higher to a lower post, which raised procedural and hierarchical concerns leading to its rejection. He next argued that although a corrigendum was issued modifying the initial relieving order to include lien retention, the appellant neither assumed his duties as Assistant Food Controller nor was he relieved by the Labour Department after the issuance of the corrigendum. In the last he requested that the appeal in hand might be dismissed with cost.

5. We have heard the arguments of learned counsel for the appellant and learned District Attorney for the respondents and have perused the record.

6. Perusal of the record would show that initially the appellant served as Assistant Food Controller (BPS-16) in Food Department and later on applied for the post of Assistant Director Labour (BPS-17) with proper permission

and procedures. The record further shows that vide Notification dated 19.07.2022, the appellant was appointed as Assistant Director Labour (BPS-17) on the recommendation of Khyber Pakhtunkhwa Public Service Commission. Upon acceptance of the new position in Labour Department, the appellant made a request on 21-07-2022 for his relieving from the Food Department, which was accepted on 25-07-2022, thus showing procedural correctness. On 13-02-2023, the appellant requested the Labour Department to relieve him to rejoin the Food Department. The Labour Department expressed no objection on 27-02-2023 and 06-03-2023. Following this, on 06-03-2023, the Food Department instructed the appellant to apply formally for repatriation, which he did on 09-03-2023. The Food Department, later on vide letters dated 28-03-2023 and 04-04-2023, allowed the appellant to rejoin based on lien retained rules. A corrigendum dated 07-06-2023 issued by Director Food Khyber Pakhtunkhwa, Peshawar had clarified that the appellant was relieved on lien basis as per lien rules. This indicates a formal transition from the previous role before assuming the new position, which is in line with standard procedures. However, the Labour Department later on regretted the request of the appellant on 07-07-2023, citing non-retention of lien and the appellant reversion request from a senior to a junior post. In absence of any formal order from the Chief Secretary denying the right of the appellant of lien further supports the claim of the appellant. The letter addressed to the Labour Department expressing no objection to the appellant rejoining the Directorate of Food as Assistant Food Controller after fulfilling necessary formalities suggests a level of agreement and acceptance of the appellant's return to the previous department. The respondents have not

denied the existence of orders and no-objection letters on file, which create a right in favor of the appellant. The existence of orders and no objections in writing on file strengthens the position of the appellant, indicating that there is documented support for the rights of the appellant. Furthermore, that lien is provided for 3 years under government instructions and policy underscores the entitlement of the appellant to certain rights regarding his position and transition between departments. The latter summons by the department amounts to malafide and after-thought action.

7. As a sequel of the above, the appeal in hand is accepted by setting-aside the impugned order dated 07.07.2023 and the respondents are directed to relieve the appellant from the post of Assistant Director Labour (BPS-17) and permit him to rejoin as Assistant Food Controller (BPS-16) on the basis of the lien retained at the Food Department. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25 day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



AURANGZEB KHATTAK
Member (Judicial)