

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... **MEMBER (Judicial)**
RASHIDA BANO ... **MEMBER (Judicial)**

Service Appeal No. 7961/2020

Date of presentation of Appeal.....09.07.2020
Date of Hearing.....23.09.2024
Date of Decision.....23.09.2024

Roman Ali Shah, Ex-Library Clerk, Government Degree College,
Lund Khwar, Mardan.....**Appellant**

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary, Higher Education Department, Civil Secretariat, Peshawar.
2. The Director, Higher Education Department, Civil Secretariat, Peshawar.
3. The Principal, Government Degree College, Lund Khwar, Mardan.
.....(**Respondents**)

Present:

Miss. Roeda Khan, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant initially joined the service as a Library Junior Clerk on August 27, 1999, at Government Degree College, Lund Khwar, Mardan, after fulfilling all necessary requirements. Subsequently, Abdul Wali Khan University, Mardan, advertised multiple posts, including that of Office Assistant (BPS-16). The appellant applied for the post of Office Assistant (BPS-16) through the proper channel, after receiving permission from his parent department (Higher Education) on August 22, 2016. After undergoing the selection process, the appellant was

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appointed as Office Assistant on November 17, 2016, and was relieved from his duties in the parent department (Higher Education) on November 30, 2016. However, on June 29, 2018, appointment of the appellant was terminated during the probationary period. Feeling aggrieved, the appellant, along with others, filed a writ petition before the Peshawar High Court, which ultimately upheld the termination. After facing difficulties in rejoining his duties in the parent department (Higher Education), the appellant filed a departmental representation, which was dismissed vide order dated June 9, 2020. The resignation submitted by the appellant for joining his new assignment at Abdul Wali Khan University, Mardan, was also accepted retroactively, prompting him to file this appeal for the redressal of his grievance.

2. The respondents were summoned and contested the appeal by filing their respective written replies/comments.

3. The learned counsel for the appellant contended that the respondents failed to uphold the lien rights of the appellant according to the law, specifically violating Article 4 of the Constitution of Pakistan. He next contended that there had been a clear infringement of Section 11 of the Khyber Pakhtunkhwa Civil Servants Act, which stipulated that a civil servant on probation should not have their service terminated if they held a lien against a former post. He further contended that, due to his longstanding service and the conditions set out in relevant statutes, the lien he held from the Library Junior Clerk post should have ensured his right to return after the termination from the Office Assistant post, as per established civil servants rules. He also

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contended that the respondents did not provide him with due process, failing to conduct a personal hearing before accepting his resignation and before denying his request to rejoin, which constituted a violation of his right to a fair hearing. He next argued that the acceptance of the appellant's resignation from a previous post with retrospective effect was void, as legal precedents suggested a resignation could not be accepted retroactively without confirmation against a new post, something the appellant had yet to receive. He further argued that the imposition of penalties without following the required procedures outlined in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules was unlawful. He also argued that, due to his extensive experience and previous satisfactory service with the parent department (Higher Education), this should favor granting his reinstatement, aligning with public policy interests in promoting stability and recognizing the contributions of long-serving civil servants. In conclusion, he argued that the impugned appellate order dated June 9, 2020, may be declared illegal to secure the rightful rejoining of the appellant in his former position within the parent department.

4. On the other hand, the learned District Attorney for the respondents opposed the contention of the learned counsel for the appellant and contended that a No Objection Certificate (NOC) was granted to the appellant through a letter dated August 22, 2016, which explicitly stated that the NOC was issued subject to the condition that the appellant must resign from his current position. He next contended

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that the appellant had submitted his resignation from the post of Junior Clerk but left the department before the resignation was formally accepted. He further contended that, according to the rules, an employee retained a connection to their post until the competent authority had formally accepted their resignation. He also contended that the appellant, having been appointed as Office Assistant (BPS-16) at Abdul Wali Khan University, Mardan, was terminated during his probationary period, which showed that the appellant was not able to meet the performance or suitability criteria expected during probation, thereby fortifying the university's decision to terminate the appointment. He also contended that subsequent legal actions, including the writ petition submitted by the appellant to the superior courts, were dismissed by the courts, illustrating that the courts found the termination lawful and justified based on the established facts. He next argued that once resignation was accepted by the competent authority, the employee lost his right to review or retract that resignation. In conclusion, he argued that under relevant laws and regulations, a lien could not be maintained if a government servant accepted a position within an autonomous or semi.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the case file reveals that the appellant was initially appointed as a Library Junior Clerk on August 27, 1999, at Government Degree College, Lund Khwar, Mardan, after duly fulfilling all requisite qualifications and serving the department for over a

17-year span. An advertisement seeking candidates for various posts, including Office Assistant (BPS-16), was issued by Abdul Wali Khan University, Mardan. The appellant applied through proper channel and received approval to participate in the selection process, which he completed successfully. As a result, the appellant was appointed as Office Assistant (BPS-16) on November 17, 2016. The parent department (Higher Education) relieved him on November 30, 2016, allowing him to commence his duties with Abdul Wali Khan University, Mardan. However, on June 29, 2018, during his probationary period in the new position, the services of the appellant were terminated. Dissatisfied with this decision, the appellant, along with others, pursued relief through the Peshawar High Court and subsequently the Apex Court, with both avenues ultimately affirming the initial decision. The appellant submitted an application to retain his lien on the post of Library Clerk in the parent department (Higher Education), as provided under Rule-16 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules; 1989 and Section-7(3) of the Civil Servants Act, 1973. That substantive appointment, as defined under the applicable rules, indicated that a civil servant's lien preserved until confirmed against a permanent post. The designations of posts under FR-9 (22) and FR-9 (30) identified both permanent and temporary positions, however, posts on SNE were inherently classified as temporary from a practical perspective. Legal principles affirmed that a civil servant who was on probation and had not yet been confirmed in a new post retained the right of lien in the

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parent department. The failure of the respondents to acknowledge this fundamental principle constituted a significant contravention of the appellant's rights. Therefore, the appellant is entitled to reinstatement in his post as Library Clerk in the parent department (Higher Education). The impugned appellate order dated June 9, 2020, which had denied the request of the appellant to retain his lien and to rejoin his previous post, deemed contrary to the principles of fair procedural conduct and established legal standards.

7. Furthermore, Supreme Court of Pakistan in its judgment reported as 1992 PLC (C.S) 411 has held as below:-

(C) ---Lien---Termination---Lien of permanent civil servant, could not be terminated even with his consent; same could, however, be terminated only where he was confirmed against some other permanent post--- Civil servant having been transferred from Provincial Government to Federal Government, nothing on record indicated that he was confirmed on any post by the Federal Government---Civil servant's lien in absence of such material or evidence. Would be retained with the Provincial Government and notwithstanding non-specification of terms and conditions of his deputation, he would be deemed to be on deputation with the Federal Government."

8. The perusal of the above-mentioned reported judgment reveals that the lien of a permanent civil servant could not be terminated, even with the individual's consent. The termination of a lien is permissible only if the civil servant had been confirmed against another permanent post. In the case in hand, the appellant was appointed as Office Assistant on November 17, 2016, at Abdul Wali Khan University, Mardan. However, there is no evidence presented that indicates the appellant had been confirmed by Abdul Wali Khan University, Mardan.

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In the absence of confirmation in a permanent post at Abdul Wali Khan University, the lien of the appellant was retained in the Higher Education department. The above mentioned judgment of Supreme Court clarified the protections afforded to permanent civil servants regarding their lien and the specific conditions under which it could be transferred or terminated. It underscored the importance of confirmation in preserving the rights associated with a lien. This ruling had significant implications for civil servants and administrative practices surrounding transfers, confirmations and the maintenance of employment rights across various governmental jurisdictions. By establishing a clear guideline regarding the treatment of liens, the judgment aimed to protect civil servants from arbitrary termination of their employment rights and to ensure that due process was followed in matters of appointment and confirmation. Moreover, the judgment of Supreme Court of Pakistan emphasized the necessity for institutions to adhere to legal standards when managing civil servant appointments, affirming that rights linked to a civil servant's lien should not be disregarded without proper procedures being observed. Hence, the ruling served as a firm reminder of the legal safeguards in place for civil servants, promoting fair treatment and consistency in administrative practices.

9. Consequently, the impugned appellate order dated 09.06.2020 is set-aside. The Respondents are directed to allow the appellant to rejoin his duties from the date of his termination (only for the purpose of bridging up his service gape) in the parent department (Higher

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Education) as a Library Junior Clerk forthwith. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of September, 2024.*


AURANGZEB KHATTAK 23⁰⁹ 2024.
Member (Judicial)


RASHIDA BANO
Member (Judicial)


Naeem Amin

ORDER
23rd Sept, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Sohrab, Lecturer alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned appellate order dated 09.06.2020 is set-aside. The Respondents are directed to allow the appellant to rejoin his duties from the date of his termination (only for the purpose of bridging up his service gape) in the parent department (Higher Education) as a Library Junior Clerk forthwith. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of September, 2024.*



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak) 23/09
Member (Judicial) 2024.