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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-5551-1999
DECIDED ON: 16.02.2026**

J.S. SALARIA**....PETITIONER(S)****VERSUS****UNION OF INDIA AND ORS****....RESPONDENT(S)****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Sumit Sinha, Advocate for the petitioner(s).

Mr. B.S. Bedi, Advocate for the respondent No. 2 to 4.

SANDEEP MOUDGIL, J (ORAL)

Prayer

1. The petitioner has approached this court by way of the present writ petition seeking a direction to the respondents to treat the period of his foreign assignment as deputation and not as Extra Ordinary Leave, to grant him notional increments for the said period, to refix his pay accordingly upon rejoining, and to release all consequential monetary and service benefits arising therefrom.

Brief Facts

2. The petitioner was a permanent employee of Sainik School, Kunjpura, functioning under the Sainik Schools Society governed by the Ministry of Defence. He joined service as Mathematics Master on 15.02.1973. In 1975, he applied for a foreign assignment through proper channel. Initially, he expressed

willingness to resign if selected, but later the Government of India sponsored his candidature and communicated that he should be treated as on deputation to the foreign government with lien retained on his post.

3. The petitioner was granted Extra Ordinary Leave (EOL) without pay for three years from the date of release in 1980 to take up the foreign assignment in Nigeria. His tenure abroad continued from October 1980 until February 1986, including extensions. During this period, communications from the Government of India and the Indian High Commission referred to his status as deputation. However, the School authorities treated the period as EOL under the Sainik Schools Society Rules.

4. Upon rejoining duty on 08.01.1986, a dispute arose regarding pay fixation. The respondents denied annual and notional increments for the period spent abroad on the ground that under the Society Rules, EOL does not count for increment or qualifying service. The petitioner submitted multiple representations relying on Government of India communications and Fundamental Rules applicable to foreign service, but his request was rejected in 1992 and reiterated in 1998.

Contentions of the Parties

5. The petitioner contends that his foreign assignment was sanctioned by the Government of India as deputation with lien retained, and therefore should count for notional increments under Fundamental Rule 26(d). He argues that the Society Rules do not specifically govern foreign deputation exceeding 18 months and that where the Rules are silent, Central Government Rules should apply.

6. He further submits that acceptance of pension contribution for the foreign period indicates recognition of lien and continuity of service while

contending that denial of notional increments, despite similarly placed government teachers receiving such benefit, is arbitrary and discriminatory.

7. *Per contra*, learned counsel for the respondents maintain that the petitioner was expressly granted EOL under the Sainik Schools Society Rules and that EOL does not count for increment. It is asserted that the Society Rules govern his service conditions exclusively.

8. It is further argued that the petitioner's claim was already rejected in the year 1992 and the present petition is barred by delay and is therefore, not maintainable. They also contend that the petitioner overstayed abroad beyond the sanctioned period and cannot claim benefits contrary to the applicable Rules.

9. Heard.

Analysis

10. Having heard the submissions raised by the counsel for both parties and perusing the material placed on record, this court is of the opinion that at the heart of the present lis, lies a simple issue:

whether the petitioner's foreign assignment constitutes deputation entitling him to notional increments, or Extra Ordinary Leave under the Society Rules disentitling him from such benefit?

11. The record unmistakably demonstrates that the petitioner's foreign assignment was sponsored by the Government of India and communicated with a specific stipulation that he be treated as on deputation to the foreign government in public interest with lien retained on his post. The concept of deputation is not ornamental phraseology but it carries substantive legal consequences.

12. Under Fundamental Rule, CHAPTER IV, Pay, the rule 26(d), foreign service counts for increment in the time-scale applicable to the post on which the government servant holds lien. The provision has been reproduced as below:

FR. 26. The following provisions prescribe the conditions on which service counts for increments in a time-scale:—

(d) Foreign service counts for increments in the time-scale applicable to—

(i) the post in Government service on which the Government servant concerned holds a lien as well as the post or posts, if any, on which he would hold lien had his lien not been suspended,

Therefore, lien is a vested right and the legal jurisprudence on lien has been authoritatively settled in “*State of Rajasthan v. S.N. Tiwari 2009 (4) SCC 700*”, where the Supreme Court held that lien represents a right to hold a substantive post and cannot be extinguished except in accordance with law., while observing that,

“14. The term "lien" comes from the Latin term "ligament" meaning "binding". The meaning of lien in Service Law is different from other meanings in the context of contract, common law, equity, etc. The lien of a Government employee in Service Law is the right of the Government employee to hold a permanent post substantively to which he has been permanently appointed.”

13. The respondents, while permitting the petitioner to proceed abroad, retained his lien and even accepted pension contribution for the entire period. These acts are legal acknowledgments of continuity of service.

Deputation versus Extra Ordinary Leave

14. The argument raised by the respondents seeking refuge in the Sainik Schools Society Rules to contend that the petitioner was on ExtraOrdinary Leave and therefore disentitled to increments. This argument collapses on closer scrutiny as EOL under the Rules is intended for contingencies such as absence where no other leave is admissible. It is neither conceptually nor legally equivalent to deputation sponsored in public interest by the Government of India.

15. The Supreme Court in ***“Union of India v. V. Ramakrishnan 2005 INSC 503”*** held that,

“25. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well.”

16. Therefore, where an employee proceeds on deputation with lien retained, the relationship subsists and the incidents of service including increments unless specifically excluded must ordinarily follow and the service cannot be treated as a break. The respondents’ attempt to convert deputation into EOL is not merely semantic, it is substantive dilution of rights.

17. Though it is not disputed that the Society Rules exclusively govern the petitioner, these Rules are conspicuously silent regarding long-term foreign deputation sponsored by the Government of India. Where service rules are silent, courts have consistently held that recourse may be taken to general principles governing public service. It is trite law that service rules must be interpreted in a manner consistent with constitutional guarantees and not in derogation of them.

18. Otherwise also, the respondents are barred by the well-settled doctrine that a party cannot approbate and reprobate. The acceptance of pension contribution to the petitioner for the period spent abroad is a tacit acknowledgment that the service counted for qualifying purposes. The State cannot approbate and reprobate at the same time. This doctrine, rooted in the equitable maxim *qui approbat non reprobat*, squarely applies. As held by the Supreme Court in ***“Joint Action Committee of Airline Pilots’ Association of India v. DGCA (2011) 5 SCC 435”***, a party cannot accept part of its conduct while rejecting what is inconvenient under the same transaction or set of facts. Relevant extract of the same is as under:

12. *The doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.*”

19. Similarly, in ***Rajasthan State Industrial Development & Investment Corporation v. Diamond & Gem Development Corporation (2013) 5 SCC 470***, the Apex Court condemned such conduct as impermissible “blowing hot and cold.” while observing that,

9. *A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience.*

Doctrine of Legitimate Expectation

20. The petitioner embarked on foreign service on the strength of official communication that he would be treated as on deputation with lien retained. That representation gave rise to a legitimate expectation that the incidents of deputation would follow. The doctrine, expounded in ***“Navjyoti Co-operative Group Housing Society v. Union of India 1992(4) SCC 477”*** and reiterated in ***“Union of India v. Hindustan Development Corporation 1998 (9) SCC 576”***, protects expectations founded on consistent representations of the State. To defeat that expectation without overriding public interest is to invite the wrath of Article 14 of the Constitution.

21. The respondents concede that similarly situated teachers under Central Government have been granted notional increments for foreign deputation. The petitioner stands on indistinguishable footing, serving an institution under the superintendence of the Ministry of Defence. The refusal to grant increments while simultaneously retaining lien and accepting pension contribution is internally contradictory and constitutionally infirm.

22. Another argument of the respondents that the rejection in the year 1992 attained finality, overlooks that denial of increment is a recurring cause of action. In “***M.R. Gupta v. Union of India 1995 INSC 482***”, the Supreme Court held that incorrect pay fixation gives rise to a continuing wrong. The petitioner’s claim cannot be defeated on technicalities when the wrong persists month after month in pay computation. Relevant extract of the same is as under:

Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc to disentitle him to those reliefs. the pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind.

23. The petitioner’s foreign assignment bore all the legal attributes of deputation, them being, sponsorship by the Government of India, retention of lien, acceptance of pension contribution, and continuity of service. The respondents’ unilateral description of the period as ExtraOrdinary Leave cannot efface the legal reality. The denial of notional increments is contrary to Fundamental Rule 26(d), inconsistent with established principles governing deputation, violative of legitimate expectation.

Conclusion

24. In view of the discussion made herein above, this Court finds that the circumstances surrounding the petitioner’s foreign posting unmistakably establish that his service remained continuous, and he is therefore entitled to all consequential benefits flowing therefrom, including notional increments.

25. Accordingly, the writ petition is allowed. The respondents are directed to treat the petitioner’s period of foreign assignment as deputation and thereby grant notional increments for the said period, refix his pay accordingly, and disburse consequential arrears within a period of 6 weeks from the date of receipt of a certified copy of the order.

26. Pending applications, if any, stand disposed.

27. Ordered accordingly.

16.02.2026
anuradha

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>:Yes/No</i>
<i>Whether reportable</i>	<i>:Yes/No</i>