

IN THE HIGH COURT OF SINDH, AT KARACHI

Present: Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6357 of 2018

Imdad Hussain MiraniPetitioner

Versus

Federation of Pakistan and othersRespondents

Petitioner: Through Muhammad Ramzan Advocate.

Date of hearing: 05.09.2018

ORDER

ADNAN-UL-KARIM MEMON,J:- Through the instant petition, petitioner has impugned the notice dated 01.09.2018 issued by the Deputy General Manager (HR) Pakistan Security Printing Corporation (Pvt) Ltd. with direction to the Petitioner to vacate the premises viz Flat No. C-2 (ground floor).

2. The gist of the case of the Petitioner is that he was appointed as an un-skilled worker in Pakistan Security Printing Corporation (PSPC) vide appointment letter dated 27.05.1982, thereafter he was promoted and presently performing his duty as Deputy Manager, Officer Grade-1. Petitioner has submitted he was allotted official accommodation viz Flat No. C-2 (ground floor) of PSPC vide letter dated 12.12.2012, which was occupied by him on 22.01.2013. Petitioner has submitted that upon recommendation of the Board of National Security Printing Company, the service of the Petitioner was transferred from Pakistan Security Printing Corporation at (NSPC) with effect from 01.04.2017 and the

Petitioner accepted the terms and conditions of his service and joined his duty accordingly. Petitioner has submitted that Respondent No.4 issued impugned notice to vacate the Flat No. C-2 (ground floor) vide letter dated 03.11.2017, which was impugned before this Court by filing C.P. D-8582 of 2017, however the same petition was dismissed by this Court vide order dated 30.08.2018 along with other connected petitions. The Respondents in compliance of the order passed by this Court in the aforesaid petitions has issued the impugned notice dated 01.09.2018. Petitioner being aggrieved by and dissatisfied with the impugned notice has filed the instant Petition on 05.09.2018.

3. Muhammad Ramzan, learned counsel for the Petitioner has argued that the case of the Petitioner is quite distinguishable from the petitions decided by this Court vide order dated 30.08.2018; that the Petitioner's petition bearing No. D-8582 of 2017 was dismissed on technical ground for want of misjoinder of necessary party which was a bonafide mistake as such Petitioner should not suffer on this account; that the Petitioner is lawful allottee and in physical possession of the subject premises; that the impugned notice dated 01.09.2018 for vacation of the residential accommodation of the Petitioner on the ground of dismissal of C.P. No. D-8582 of 2017 is not justified under the law; that the retirement of the Petitioner from service of the Respondent company is due on 27.12.2019 and he undertakes to vacate the subject premises in accordance with rules and regulation of the Respondents after his retirement; that the Respondent No.4 has completely ignored the Rules & Regulations and issued the

impugned notice dated 01.09.2018 which is based on malafide intention.

4. We have considered the contentions of the learned counsel for the Petitioner and perused the material available on record.

5. A query was raised by this Court as to how the instant petition is maintainable against the order dated 30.08.2018 passed by this Court in C.P. No. D-8582 of 2017 and other connected petitions as the Respondent's Corporation has issued the impugned notice dated 01.09.2018 in compliance of the order passed by this Court in the aforesaid Petitions. In reply to that query, the learned counsel for the Petitioner has argued that the impugned notice has caused great hardship to the Petitioner and his family as his retirement is due in the month of December 2019, as such the impugned notice is nullity in the eyes of law and liable to be quashed. He further stated that the Respondents have misinterpreted the order dated 30.08.2018 passed by this Court. He lastly prayed for suspension of the impugned notice dated 01.09.2018.

6. Before dilating upon the factual position of the case, at the first instance we would like to consider whether the Petitioner can challenge the impugned notice in the constitution petition.

7. We have gone through the order dated 30.08.2018 passed by this Court in C.P.No.D-4179 of 2016 and other connected petitions. The contention of the Petitioner in C.P. No. D-8582 of 2017 was recorded by this Court and finally this Court reached at the conclusion as under:-

“21. In view of the reasoning and rational delineated herein the Petitions under review are determined in seriatim as follows:

i. C.P. No. D-5651 of 2017, C.P. No. D-8582 of 2017, C.P. No. D-5329 of 2018 and C.P. No. 5282 of 2018 are hereby dismissed, along with all interim applications, with no orders as to costs.

ii. C.P. No. D-4179 of 2016 is hereby disposed of in mutatis mutandis application of the directions prescribed in paragraph 54 of Tariq Qasmi.

22. The petitions under consideration stand determined in the above terms.”

8. In the light of forgoing, we are clear in our mind that once a constitution petition of the Petitioner was dismissed on merit, therefore, similar relief cannot be claimed by filing subsequent legal proceedings as it would fall within mischief of constructive res-judicata. Reliance is placed on the case of State Bank of Pakistan through Governor and others vs. Imtiaz Ali Khan and others (2012 SCMR 280). We, in the above circumstances of the case, are of the considered view that instant petition is not maintainable under Article 199 of the Constitution; consequently the instant petition is dismissed in limine along with the listed application(s). Petitioner has specifically pleaded that his superannuation is due on 27.12.2019; therefore he may be allowed to possess the subject premises till the aforesaid date upon payment of all charges as admissible under the law. Be that as it may, it is for the Respondent Department to consider his request in accordance with law or to reject the same, no action in this behalf is warranted from this Court.

JUDGE

JUDGE