

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-6733 of 2014

Present.

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Muhammad Anwar Petitioner

Versus

The Senior Superintendent of Pakistan

Railways Police & others

.....

Respondents

Date of Hearing: **15.11.2018**

Syed Ehsan Raza Advocate for the Petitioner.

Haji Aman-ul-Haq Advocate for the Respondents

Shaikh Liaquat Hussain, Assistant Attorney General

ORDER

ADNAN-UL-KARIM MEMON, J:- The Petitioner is an ex-employee of Pakistan Railways who has impugned the order dated 20.12.2014 passed by the Senior Superintendent, Pakistan Railways Police, Karachi, whereby the allotment of the Quarter No.1, Block No.17, Railway Colony, Karachi in his favor had been cancelled/withdrawn.

2. At the very outset, the learned counsel for the Petitioner was put on notice to satisfy this Court regarding maintainability of the instant petition on the ground that the allotment of the accommodation to the Petitioner falls within the ambit of the terms and conditions of his service and only the learned Federal Service Tribunal can decide the aforesaid controversy.

3. In reply to the said query, Syed Ahsan Raza, learned counsel for the Petitioner has argued that since the Petitioner has retired from service of Pakistan Railways on 07.06.2017, therefore the relief sought in this petition can be granted by this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973.

4. Mr. Aman-ul-Haq, learned counsel for the Respondents has refuted the claim of the Petitioner by referring to the comments filed on behalf of the Pakistan Railways and argued that the instant petition is not maintainable under the law, thus is liable to be dismissed.

5. We have considered the contentions of the learned counsel for the parties and have perused the material placed on record.

6. We have noticed that the Petitioner was allowed to retain the official quarter No. 1, Block No. 70, City Railway Colony, Karachi South for a period of 1 year after his retirement from service on 07.06.2017. Prima facie the period has expired on 06.06.2018. Learned counsel for the Petitioner has submitted that the aforesaid letter had been procured illegally by the Respondent No.4. Learned counsel in his abortive attempt has justified retaining the Official Quarter by referring the Rule 15 of the Accommodation, Allocation Rules 2002. The dispute regarding allotment of Government accommodation to the children of retired Government servant is dealt with under Rule 15 of AAR, 2002, therefore before we proceed further we considered it advantageous to reproduced said Rule as follows:-

“15. Retention of Accommodation.... (1) In case of death of allottee—

a) the family of the allottee shall be entitled to retain the accommodation under their occupation for a period not exceeding one year on payment of normal rent; and

b) his serving widow or serving legitimate children may be allotted the said accommodation provided he is eligible for the accommodation or becomes eligible for the said accommodation within one year of the event. In case the allottee expires within six months after retirement, his serving spouse or legitimate conditions are met. Where the accommodation is of a class or category higher than his entitlement, he shall be allotted the first available accommodation in that class or category as the case may be, and shall not be dislodged and shall be charged normal rent till such time as the alternative accommodation of his entitlement has been made available to him.

Provided that in no case the occupant shall be entitled to retain the accommodation of higher category for more than one year.

2) An allottee, on his retirement or expiry of contract period shall be entitled to retain the accommodation under his occupation for a period not exceeding six months, on payment of normal rent and this facility will be available to FGS once only:

Provided that the serving spouse or children living with FGS may be allotted the same accommodation, if he is eligible and otherwise entitled for accommodation within six months of the retirement of the FGS. If the accommodation allotted is higher than the entitlement of the spouse or children, he may apply in his eligibility, in lieu he occupies accommodation. The spouse or children shall not be eligible for allotment of accommodation of higher category.”

7. Learned counsel further argued that in case of retirement of the original allottee, the family of the allottee after his retirement or expiry of contract period is entitled to retain the accommodation under his occupation, with further assertion that the serving children living with the retired employee is also entitled for allotment of the said official accommodation after the retirement of the employee.

8. At this stage, we asked from the learned counsel, whether the Respondents have allotted the said quarter to the serving children of the Petitioner if any, he replied in negative. It was submitted that the notice of vacation was served upon the Petitioner is untenable in law as no violation of the terms of the allotment has been done by the Petitioner and no determination of the allotted rights has ever been undertaken by any Competent Authority.

9. Coming to the merits of the case, we are not satisfied with the assertion of the learned counsel for the Petitioner on the aforesaid pleas, since the Petitioner was not entitled to retain the official accommodation as it is only available to the officers, who are serving in Pakistan Railways, subject to certain terms and conditions set forth in the policy. The Petitioner is admittedly a retired Sub-Inspector of Pakistan Railways Police and is in illegal occupation of

the Government accommodation after expiry of the period of six months as provided under Rule 15(2) of AAR, 2002 and he does not enjoy any vested right to be provided accommodation which is manifest from the aforesaid clause as well as in the light of allotment policy. Record reflects that the same allotment order was withdrawn by the Respondents vide letter dated 20.12.2014. Petitioner opted to retain the possession of the Government property, notwithstanding the orders of the Competent Authority to vacate the same. No justification was provided for the retention of the aforesaid accommodation, since the Petitioner is admittedly bound by the Policy to vacate the premises, at this juncture, no case has been made out to justify for the retention of the official accommodation.

10. It is our considered opinion, merely on the basis that a serving child is residing with the retired official does not entitle the Petitioner to retain the official accommodation until and unless the same is allotted to the serving personal, even otherwise that does not create any vested right in favour of the Petitioner nor could it be made the basis for sustaining the occupation of the official accommodation by the Petitioner and his family members.

11. In view of the forgoing, it is the considered opinion of this Court that the Petitioner was unable to demonstrate any right, whereby his continued occupation of the Government owned residential accommodation was tenable. The documents relied by the Petitioner does not confer any right thereupon permitting him to remain in occupation of the premises. Nothing has been placed on record to demonstrate that the license/permission on the basis, whereof the Petitioner initially occupied the Government accommodation, stood novated into any other form by any event subsequent thereto. It would appear that the aforesaid petition is devoid of merit.

12. In our view, Petitioner cannot take shelter of Rule 15(2) of the Allocation Accommodation Rules 2002, even otherwise the said rule does not support the case of the Petitioner to claim entitlement of the said official accommodation after expiry of six months after retirement of the Petitioner, since the Petitioner retired from service of the Pakistan Railways in the month of June 2017 and the period cannot be extended further.

13. In view of such factual position of the case and keeping in view the legal position, as provided under the law, the Petitioner is not entitled to retain the Government accommodation, who is directed to vacate the same within 30 days from today. It is clarified that after the lapse of the period of 30 days Respondents would be fully entitled to adopt all the legal procedures for getting the said accommodation vacated from the Petitioner in accordance with law.

14. In the light of above facts and circumstances of the case, this petition is devoid of merit which stands dismissed.

Karachi

JUDGE

Dated:- 11.2018.

JUDGE