

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D-1312 of 2022**

*(Ghulam Sarwar v. Government of Sindh and 02 others)*

**C.P. No. D-1313 of 2022**

*(Muhammad Adnan v. Government of Sindh and 02 others)*

**C.P. No. D-1314 of 2022**

*(Khuwaja Yasir Uddin v. Government of Sindh and 02 others)*

**C.P. No. D-1315 of 2022**

*(Sher Nawaz v. Government of Sindh and 02 others)*

Ch. M. Saeed-uz-Zaman, advocate for the petitioners

Date of hearing  
& order :

**03.03.2022**

**ORDER**

By this common order, we intend to decide the captioned Constitution Petitions on the proposition whether the occupancy of Government residential accommodation held by the petitioners was/is sanctioned under the law.

After carefully going through the case file, we feel that the matter has been dealt with by the Government of Sindh, School Education, and Literacy Department, on the administrative level, after scrutinizing the allotment orders and verifying the occupation of genuine allottees passed a speaking order on 24.02.2022, as directed by this Court vide order dated 09.02.2022, in the earlier round of litigations.

The basic essence and the reasoning of the cancellation of allotment of official accommodation of the petitioners are that they breached conditions No.1 and 7 of allotment orders. The extract of the office orders, in each petitioner, is reproduced as under:-

**"Petitioner Ghulam Sarwar, C.P. No. D-1312 of 2022**

- i. *The Quarter No. C-1 situated within premises of Government Elementary College of Education (Women) Hussainabad Karachi was allotted to Mr. Ghulam Sarwar vide order No.GECE(W), while he was working as RCS (BPS-I) at this College. **Afterward, he was transferred from this college and posted at Government Elementary College of Education Darjano Chhano Karachi vide order No. SO(G-III)E&LD/T&P/3-1189/2020 dated. 15th October 2020.***
- ii. *He was asked to provide **documentary evidence about the deduction of house rent allowance plus 5%. But he failed to produce any documentary evidence.***
- iii. *As per the **salary slip issued by the Accountant General Sindh in the month of December 2021, the concerned employee is drawing house***

**rent allowance from the Government exchequer through his monthly salary.**

- iv. *It is quite ample to determine that he has **breached conditions No.1 and 7 as laid down in his allotment order. Besides, he has caused financial loss to the Government exchequer by drawing the house rent allowance and nonpayment of 5% service charges. It is pertinent to mention here that as per Rule 21 of Accommodation Allocation of Rules 2002, whereas an allottee is in arrears of rent for four consecutive months, the allotment of accommodation shall be liable to cancellation and allottee shall be evicted thereafter.***
- v. *It is added that **he has made structural changes in allotted accommodation by violating Rule 19 (1) of Accommodation Allocation of Rules 2002, whereby, an allottee shall not carry out or maintain any additions, alterations, or encroachment to the allotted premises or demolish any part thereof without the prior approval, but contrary to that it is found that he has made alterations /constructions in the premises by erecting/ constructing a wall at his own accord.***
- vi. *Therefore, by exercising the power conferred vide condition No. 8 of the said impugned allotment order, **his allotment was canceled vide this office Notice No.GECE(W) (996)/2021 Dated 12/11/2021 in the interest of the genuine employees of this college and to save the exchequer from financial loss. Despite the cancellation of the allotment order, he is not willing to vacate the said premises.***

**Petitioner Muhammad Adnan , C.P. No. D-1313 of 2022**

- i. *The Quarter No. C-04 situated within premises of Government Elementary College of Education (Women) Hussainabad Karachi was allotted to Mr. Muhammad Adnan vide order No. GECEWY 256 12018 dated. 26-03-2018. It is pertinent to mention here **that his allotment order was against the rule, as the said employee has never been posted in the aforesaid college, whereas, since the starting, he has been posted as Naib Qasid at Government Elementary College of Education Darjano Channo Malir Karachi.***
- ii. *Therefore, by exercising the power conferred vide condition No. 8 of the said impugned allotment order, the allotment was canceled vide Notice No.GECE(W)/(999)/2021 dated 12-11-2021, but he is not willing to vacate the said quarter which is a clear breach of the condition No. 01 & 07 allotment order.*

**Petitioner Khawaja Yasiruddin, C.P. No. D-1314 of 2022**

- i. *The Quarter No. C-5 situated within premises of Government Elementary College of Education (Women) Hussainabad Karachi was allotted to Mr. Khawaja Yasiruddin vide order No. GECE(W)/ 242 /2018 dated. 14-03 2018 while **he was working as Malhi at this College. Subsequently, he was transferred from this college and posted at Government Elementary College of Education Lyari Karachi vide order No. SO(G-III)E&LD/T&P/3 1189/2020 dated. 15th October 2020.***
- ii. *The Principal, Govt. Elementary College of Education (Men) Lyari Karachi issued a certificate that Mr. Khawaja Yasiruddin **has not been getting house rent deducted from his regular salary w.e.f. date of appointment i.e. 23.11.2017 till date.***
- iii. *It is quite ample to determine that **he has breached conditions No.1 and 7 as laid down in his allotment order. Besides, he has caused financial loss to the Government exchequer by drawing the house rent allowance and nonpayment of 5% service charges.** It is pertinent to mention here that according to Rule 21 of Accommodation Allocation of Rules 2002, Where an allottee is in arrears of rent for four consecutive months, the allotment of accommodation shall be liable to cancellation and the allottee shall be evicted thereafter. Therefore, the concerned Principal canceled the allotment vide No. GECE(W)/(1000)/2021 Dated 12/11/2021 by exercising the power conferred to him*

*vide condition No. 8 of the said impugned allotment order, despite Cancellation of the allotment order, he is not willing to vacate.*

**Petitioner Sher Nawaz, C.P. No. D-1315 of 2022**

- i. *The quarter No.2 is situated within the premises of Government Elementary College of Education (Women) Hussainabad Karachi which is specifically constructed to provide residential facility to the employees working in the same college, but contrary to the fact, **it was illegally allotted to Mr. Sher Nawaz. vide order GECE (W) 739/ 2005 dated, 15-11-2005, as the aforesaid petitioner has never been posted as Lecturer in the same College, whereas, presently, he is posted at Government Elementary College of Education (Women) Sanghar.***
- ii. *The Conditions No. 01 & 07 of the allotment order clearly speak that he will vacate the said premises without any demur immediately on cancelation of the allotment order **on his transfer from Govt. Elementary College of Education (Women) Hussainabad Karachi.***
- iii. *That you have been **transferred out of the station and posted at Government Elementary College of Education (Women) Sanghar vide notification NO.SO(G-III)SE&L/TT1/3-1220/2020 dated 10-11 2020** and your allotment order has been canceled in exercising the powers conformed to him vide condition No. 8 of the said allotment order by the Principal.*
- iv. *Therefore, by exercising the power conferred vide condition No. 8 of the said impugned allotment order, his allotment was canceled vide this office Notice No.GECE(W)/(995)/2021 dated 12-11-2021, in the interest of genuine employees of this college and to save the exchequer from financial loss. Despite the cancellation of the allotment order, he is not willing to vacate the said premises.*

*Keeping in view the aforesaid facts, I, Ghulam Akbar Laghari, Secretary to Government of Sindh, School Education & Literacy Department, hereby grant one week period to vacate the premises and hand over the vacant position of the said quarters the Principal of Government Elementary College of Education (Women), Hussainabad Karachi. In case of non compliance, this department reserves the right to vacate the quarters by using necessary force."*

The petitioners have assailed the vires of the aforesaid office orders dated 24.02.2022, whereby their residential quarters, situated at Government Elementary College of Education (Women) Hussainabad, have been canceled, inter-alia on the ground that the impugned orders dated 24.02.2022 are nonspeaking and totally against the norms of justice as well as against the terms and conditions of service of the petitioners.

Ch. M. Saeed-uz-Zaman, learned Counsel for the petitioners has forcefully argued that the petitioners are civil servants, and Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 are attracted to their case. Learned counsel submitted that eviction of the Petitioner from the subject accommodation would violate Article 10-A of the Constitution and Section 24-A of the General Clauses Act. He emphasized that admittedly, the Petitioners were accommodated by allotting the aforementioned flats under the rules of policy, which remained in vogue at the time of allotment so made by a competent authority in their favor and it was so done ostensibly looking to the requirements of the Petitioners and without any objection being raised at that time. The discretion so exercised in favor of the Petitioners cannot be said to be arbitrary and capricious. The Petitioners are residing in the said flats along with their family members and they cannot be asked to vacate the said flats without first providing them an alternate and suitable accommodation, accordingly, they may be allowed to retain the

said flats. He prayed for annulment of the impugned orders being unsustainable under the law.

We have duly considered the pleas raised before us by the learned Counsel for the petitioners, the competent authority was directed to issue a determination upon whether the Petitioners were in lawful occupation of the government premises or otherwise. Admittedly, the same has been done vide order dated 24.02.2022. The extract of the order is reproduced as under:-

“12. In view of the above facts and circumstances of the case, the competent authority of the respondent-college is directed to look into the matters of the petitioners and after scrutinizing their allotment orders and verifying the occupation of genuine allottees pass a speaking order and if the petitioners are found to be in illegal and unauthorized occupation of official accommodation, the legal method shall be adopted to dislodge them, however, that is subject to all just exceptions under the law. The aforesaid exercise shall be taken within two months of the date of receipt of this order. In the intervening period, the petitioners shall not be disturbed from their official accommodation subject to payment of their amenities. The petitions stand disposed of in the above terms with no order as to costs.”

The argument advanced by learned counsel for the petitioners that they are authorized, occupants or the allotment in their favor is absolute and is not liable to cancellation, hardly merits any serious consideration. It is well-settled that any breach of terms and conditions of allotment could lead to counteractive action under the accommodation policy. Principally, the Government is well within its rights to cancel the allotment on the aforesaid analogy, for the reason that such allotment is merely a matter of license, which is revocable, subject to the breach of terms of allotment orders.

The legal position is that the finding of fact reached by the competent authority via impugned orders, prima facie, is not at variance, and is in line with the order passed by this court and interference at this stage is not called for the reason that the respondents have breached the terms of allotment orders as substantiated by the evidence brought on the record with logical reasoning, duly taking note of the reasons recorded by the competent authority.

On being confronted with the above-stated situation, as well as to the proposition whether the petitioners are paying the rent of the official accommodation, learned counsel forcefully argued that the respondents have to deduct rent from the salaries of the petitioners and the petitioners are not at fault if the rent amount is not deducted from their respective salaries. On the issue of transfer from the present college, he submitted that petitioners are not employees of a particular college and are employees of the Government of Sindh, therefore, respondents cannot take a resort of this issue and non-suit the petitioners. He lastly suggested that by setting aside the impugned office orders, the matters be remitted to respondents for fresh decision under the law.

We are not inclined to accede to this suggestion. Prima facie, there is no perversion of procedure adopted by the respondent department as the terms of allotment orders are clear. An excerpt of one of the allotment orders of the petitioners is reproduced as under:

**“ALLOTMENT ORDER:**

*The principal, Government Elementary College of Education (Women) Hussainabad Karachi is pleased to allot a Quarter No.B-2 in premises of this college to Mr. Sher Nawaz, Lecturer Government Elementary College of Education, (Women) Hussainabad, Karachi, on the following terms and conditions:*

- 1) *That she/he will remain in occupation of the same so long as he is in services at Government Elementary College of Education, (Women) Hussainabad, Karachi*
- 2) *That the Quarter will be occupied by him/her with the members of his family only.*
- 3) *That he shall not subject or permit the accommodation or any part thereof to be occupied by any person other than her family.*
- 4) *That he will pay the rent of the accommodation as per rules enforce from time to time by deduction through monthly pay bill.*
- 5) *That he is responsible for payment of water charges and server age charges levied by the PWD and Electric charges by the WAPDA/KE5C or any other concerned.*
- 6) *That he will make good any damage that may occur in the quarter by fire if occasioned any action on his part of on the part of any member of his family or relative or servant.*
- 7) **That he will vacate the above premises without any demur immediately on cancellation of this allotment order or on his transfer from the Government Elementary College of Education, (Women) Hussainabad, Karachi, or proceeding on leave more than four months; or within one month or retirement or within three months; on proceeding on LPR and will deliver the vacant possession to the Principal, Government Elementary College of Education, (Women) Hussainabad, Karachi after settling all arrears; and obtain the clearance certificate from the concerned authorities.**
- 8) *That this allotment order is liable to be canceled at any time at the discretion of allotting authority without assigning any reason*
- 9) *That when He/she vacates the Quarter she/he should also arrange to give due notice to this Bureau of PWD which are being informed of his tenancy. Any change in his pay may also be reported at once to all the concerned.*

**WARNING**

*If any time anybody found failure of the condition the allotment order is liable to be canceled any the unauthorized occupation be rejected at his cost, and he will also render himself to disciplinary action.”*

Before parting with this order, it may be observed that there are so many government official accommodations owned by the Provincial Government which are under unlawful and unauthorized occupation.

In our view, the Courts are duty-bound to uphold the constitutional mandate and to keep up the salutary principles of rule of law. To uphold such principles, it has been stated time and again by the superior Courts that all acts should be transparently done by the public functionaries after applying judicious mind and after fulfilling all requirements. The public functionaries are supposed to adhere to the principle of transparency in the performance of their duties and are not bound to carry out / implement any order which is not under the law and they are only obliged to carry out the lawful orders of their superiors and if they are being pressurized to implement an illegal order, they should stay out and record their dissenting notes. But unfortunately, the officers in the Estate Office not only implemented the illegal orders but acted for their benefits/gain.

For the reasons discussed in the preceding paragraph, in our considered view there is no illegality or irregularity, or misconstruction of law in the impugned office orders, which are based on the principles laid down by the Honorable Supreme Court in its

various pronouncements on the subject issue. Besides, petitioners were given a meaningful hearing to prove their allotment orders and on the subject, they were properly heard as directed by this Court vide order dated 09.02.2022; and the speaking order was passed, therefore, at this juncture no further indulgence is required on our part. In this scenario of the matter, we are guided by the decision of the Honorable Supreme Court that persons who are occupying the property unauthorizedly and do not have any stay order or order by the Competent Authority to retain the possession, the authorities competent were directed to obtain the possession from them with the help of law enforcing agencies.

In the foregoing circumstances, we are left with no option but to observe that the petitioners would be liable to vacate the subject premises on the following conditions:

- i) transfer from the Subject College / Karachi.
- ii) retirement from Government service.
- iii) breach of the terms of the allotment order.
- iv) cancellation of allotment order.

In view of the above facts and circumstances of the case, the respondent Department is directed to follow the accommodation policy in its letter and spirit and allot the official accommodation to the employees who are legally entitled and not otherwise.

The petitions are dismissed in *limine*, however, with no order as to costs.

**J U D G E**

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