

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 417 of 2014

Mrs. Farzana Farrukh ----- Plaintiff

Versus

**Administrator, PDOHA,
& others----- Defendants**

Suit No. 521 of 2014

Mrs. Naila Arshad ----- Plaintiff

Versus

**PDOHA, through its Administrator,
& others----- Defendants**

Suit No. 522 of 2014

Mrs. Shazia Nadeem----- Plaintiff

Versus

**PDOHA, through its Administrator,
& others----- Defendants**

Suit No. 199 of 2014

Mrs. Seema Afridi ----- Plaintiff

Versus

**Administrator PDOHA,
& others----- Defendants**

Suit No. 242 of 2014

Asif Seemab Sindhu----- Plaintiff

Versus

**Administrator PDOHA,
& others----- Defendants**

Date of hearing: 05.10.2016.

Date of Order: 29.11.2016.

Plaintiffs in all Suits: Through Mr. Aziz-ur-Rehman Akhund, Advocate.

Defendants: Through Mr. Malik Naeem Iqbal, Advocate in Suit Nos. 521 and 522 of 2014

Defendants: Through Mr. Nazar Hussain Dhoon, Advocate in Suit Nos.199, 242 and 417 of 2014

ORDER

Muhammad Junaid Ghaffar, J. In all these connected matters an objection was raised by this Court on 16.05.2014 as to maintainability of these Suits as on that date the Counsel for defendants had placed on record Judgment dated 8.8.2012 passed by of a Division Bench of this Court in HCA Nos.127, 128, 129 and 137 of 2011 and 57 of 2012. Through this order, the question of maintainability of these Suits is being decided.

2. Precisely the facts as stated on behalf of the plaintiffs are (in Suit No.417/2014 which is the leading Suit) that they are employees of defendants as Professors in Defence Authority College(s) pursuant to their respective appointment letters initially as Lecturers and thereafter as Assistant Professors and then Professors and so forth. It is the case of the plaintiffs that they had been allotted staff accommodation pursuant to Letters dated 02.09.1999 and 23.12.2010 and the grievance of the plaintiffs is that the defendants issued an Inter-Office Note dated 24.12.2013, whereby, the plaintiffs have been directed to vacate the accommodation by 30.04.2014 as

some Policy Directives dated 09.12.2013 has been issued by the defendants, whereby, all such employees, who have completed prescribed period of 10 years in service are no more entitled to continue and retain accommodation. The said Inter Office Note dated 24.12.2013 and the Policy Directive dated 09.12.2013 have been impugned through all these Suits for Declaration and Permanent Injunction.

3. Learned Counsel for the plaintiffs had contended that the Policy Directive dated 09.12.2013 is prospective in nature and not applicable to the plaintiffs and it applies to the fresh Allottees of the accommodation. Per Learned Counsel the judgment as referred to in Order dated 16.05.2014 is not relevant so far as the plaintiffs are concerned, whereas, in respect of terms and conditions of service, Civil Suits are maintainable before this Court. He has further submitted that there are no statutory rules of the defendant's Organization and in view of the dicta laid down by the Hon'ble Supreme Court in various cases including **2013 SCMR 1707 (Pakistan Defence Officer's Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed)**, petition is not maintainable, hence instant Suits have been filed for seeking the aforesaid declaration(s). Learned Counsel has also referred to various provisions of the Services Rules for the employees of the defendants issued in 1992 and has contended that though these rules have been superseded by 2008 Rules, however, the plaintiffs would be governed by the 1992 Rules. Learned Counsel in view of such submissions has contended that instant Suits are very much competent before this Court and the injunction already granted to the plaintiffs may be confirmed on the same terms and the matter be listed for evidence of the parties.

4. On the other hand, Mr. Malik Naeem Iabql, Counsel for defendants in Suit Nos.521 and 522 of 2014 has contended that there are no Statutory Rules of the defendants and the plaintiffs cannot seek enforcement of the terms and conditions of their employment, hence instant Suits are not competent before this Court. He has further contended that without prejudice the plaintiffs can only claim damages for any alleged violation of the terms and conditions of service and are not entitled for any injunctive relief as is being claimed by them. Learned Counsel has further contended that the terms and conditions of the service do not provide for any accommodation compulsorily, and it is only a gesture on the part of the defendants, that they have arranged for the accommodation of the employees in lieu of house rent allowance, therefore, the claim for retaining the accommodation is not a right of the employee as alternative allowance is always paid. He has further contended that there is no force in the arguments that the Policy Directive dated 09.12.2013 is being applied retrospectively; as firstly the employees after rendering a service of a considerable period are also allotted plots as a service benefit, and therefore, they cannot retain the accommodation anymore; and secondly since the number of employees is increasing day by day as against the available accommodation, therefore, as a Policy Decision this condition for vacating accommodation after 10 years of retention has been introduced. He has further contended that sufficient notice period was given to the plaintiffs on their request on humanitarian grounds, whereas, during such period they have obtained interim orders, which are still operating. Per Learned Counsel only five out of more than 134 employees have come before this Court, whereas, the others have vacated the accommodation.

Per Learned Counsel the declaration as is being sought by the plaintiffs cannot be granted under the Specific Relief Act, as it is only a policy matter of the defendants by which the plaintiffs are aggrieved. In support of his contention, learned Counsel has relied upon the cases reported as **PLD 1984 SC 170** (*The Principal, Cadet College, Kohat and another v. Muhammad Shoab Qureshi*), **1991 SCMR 2434** (*Messrs Friend Engineering Corporation, the Mali, Lahore v. Government of Punjab and 4 others*), **2012 SCMR 1681** (*Shoua Junejo & others v. PIA and others*), **(PLD 1962 (W.P.) 899** (*Gulf Steamship Co. Ltd. v. Delwash Baloch*), **2013 SCMR 1707** (*Pakistan Defence Officer's Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed*), **2013 SCMR 1383** (*Abdul Wahab and others v. HBL and others*), **2014 SCMR 941** (*Muhammad Hanif v. Tariq Mehmood and others*), **2012 SCMR 455** (*Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others*), **2015 SCMR 445** (*Government College University, Lahore through Vice-Chancellor and others v. Syeda Fiza Abbas and another*), **2012 CLC 1223** (*Mrs. Yasmin Razi-ud-din and another v. Mst. Tehmina*), **2001 PLC (C.S.) 919** (*Dr. Khursheed Bhutto v. Civil Aviation Authority*) and **PLD 2005 Karachi 240** (*Ghulam Yahya through Attorney and Legal Representative v. Ali Muhammad Jamal Maternity Homes*).

5. M/s. Nazar Hussain Dhoon Advocate for the defendants in the remaining Suits has adopted the arguments of Mr. Malik Naeem Iqbal, Advocate.

6. I have heard all the learned Counsel and perused the record. Insofar as the objection as to maintainability of these Suits vis-à-vis the judgment relied upon by the learned Counsel for defendants in HCA Nos.127, 128, 129 and 137 of 2011 and 57 of 2012 is concerned, I am of the view that the facts in those cases

were different inasmuch as the issue before the Court was the act of termination of such employees, whereas, in the instant matter it is not so. Even otherwise the order under challenge in these appeals was on an injunction application and has not touched the maintainability of Suits. Notwithstanding this observation, it is always the duty of the Court to see and examine the maintainability of the Suits as to whether they are barred in law or for that matter the relief being sought cannot be granted by the Court. It is a settled proposition of law that a still born Suit must be buried at its inception and it is the primary duty of the Court to examine and see that whether the Suit is maintainable and the relief(s) being sought can be granted by the Court or not. Rather the Court is under an obligation to reject the plaint in such Suit without any formal application from the party. Reliance in this regard may be placed on the case of ***Raja Ali Shan v. Essem Hotel Limited* (2007 SCMR 741)**, ***Haji Abdul Karim and Others v. Messrs Florida Builders (Pvt.) Limited* (PLD 2012 SC 247)**, ***Haji Abdul Mateen Akhunzada & another v. District Co-ordination Officer / Deputy Commissioner, Quetta & 5 others* (PLD 2012 Baluchistan 154)**. It is in this context that I intend to decide the objection of maintainability of these Suits. Again notwithstanding the above observation it is not that the defendants are immune from scrutiny of their actions if they are found to be against the basic principles of law as they have their service rules and regulations (though not statutory in nature) as the defendants are not a private concern *stricto sensu*. The exercise of discretion by any public authority is subject to interference by the Court if the same has been exercised with malafide intent or against the law and the dicta laid down by the Courts.

7. The case as setup on behalf of the plaintiffs is twofold. Firstly, they seek a Declaration to the effect that the Policy Directive dated 09.12.2013 and the Office Note dated 24.12.2013 are illegal, unlawful, hence null and void ab-initio; and secondly on the ground that such Policy Directives cannot be made retrospectively applicable to the plaintiffs and at the most is a directive which is applicable on the fresh allottees. Though in Suit Nos. 242, 521 & 522 of 2014, there are other grounds raised in the plaint as well as prayers to that effect, however, the learned Counsel for the plaintiff has not made any submissions to that effect and has only confined his arguments in respect of the accommodation policy and its retention by the plaintiffs till retirement. It is not disputed before this Court that the employment letters issued to all the plaintiffs provide the details of the salary and the allowances and none of the plaintiff was ever offered in the employment letter that any official accommodation would be given to the plaintiffs. In fact there is no promise on the part of the defendants to that effect. It is only the house rent allowance, which was committed to the plaintiffs during the period of their service, therefore, it can be safely concluded that the plaintiffs through instant Suits are seeking enforcement of terms and conditions of their employment. Before dilating upon the question that whether the Policy directive dated 09.12.2013 is being applied retrospectively, and whether the same is also applicable to the plaintiffs or only on fresh allottees, it would be pertinent to discuss the basic issue as to maintainability of these Suits vis-à-vis the enforcement of the employment contract and the terms and conditions of service. The Hon'ble Supreme Court in the case of ***Amin-ur-Rehman Khan and others v. Pakistan through Secretary Ministry of Works and another (1989 SCMR 1948)*** had the occasion

to examine such question, wherein, a Civil Servant had challenged the State Officer's refusal to allot him the house, which had been in the occupation of Civil Servant's father, also a Civil Servant, but retired and such appeal was dismissed by the Services Tribunal against which the Civil Servant had approached the Hon'ble Supreme Court and the Hon'ble Supreme Court while upholding the order of the Services Tribunal was pleased to observe that the allotment of quarters/houses is not included in the terms and conditions of the Civil Servants. Therefore, the primary question before this Court is that whether the allotment of the Official accommodation is included in the terms and conditions of the service or not, as discussed hereinabove, and if yes, then can the employee seek enforcement of such employment contract. It is not the case of the plaintiffs that the allotment of accommodation was provided in the Employment Contracts. In fact it has only been provided to the plaintiffs for the reasons that the defendants are an Authority working as a developers of Real Estate for the benefits of the retired personnel of Arm Forces, and therefore, as compared to any other employer is in a much better position to cater to such need of the employees as against any other ordinary employer. The aforesaid judgment of the Hon'ble Supreme Court has been followed in another case reported as **2000 SCMR 928 (Maqsood Ahmed Toor and 4 others v. Federation of Pakistan through the Secretary to the Government of Pakistan, Ministry of Housing and Works, Islamabad and others)**, wherein, it has been observed as follows:-

“12. Alternatively, it may be observed that assuming for the sake of argument that the petitioners be treated as civil servants as defined under the Civil Servants Act, on the crucial date, obviously they do not have a right guaranteed under the law or the Constitution in relation to their terms and conditions of the service which may be enforced in the Constitutional jurisdiction of the High Court. Surely, there is no right to allotment of a plot or Government accommodation in a scheme floated under any policy decision of the Government or a statutory corporation. Reference in this

behalf may be made to the view expressed in *Amin-ur-Rehman Khan v. Pakistan through Secretary, Ministry of Works (1989 SCMR 1948)*” (Emphasis supplied)

8. Therefore, to summarize, it may be observed that insofar as the terms and conditions of the employment of the plaintiffs is concerned, the same does not stipulate or guarantees the provision of any official accommodation of which any violation can be alleged against the defendants. This is the primary question, which needs to be addressed, and as discussed hereinabove leads to the conclusion that the plaintiffs in all these cases have no right to seek any enforcement of the terms and conditions of their service vis-à-vis the provision for official accommodation. Once it is held that the provision of accommodation is not part of the terms and conditions of their employment then the question of enforcement of these terms and as to the application of the policy decision dated 09.12.2013 retrospectively remains only academic in nature. The plaintiffs are being provided the house rent allowance as per the terms and conditions of their employment, therefore, they do not seem to have any case so as to claim the retention of the accommodation as an entitlement and benefit arising from the terms and conditions of the service.

9. It may also be noted that even otherwise the status of the plaintiffs is of a mere licensee or tenancy at will, insofar as the accommodation provided to them is concerned. They do not have a vested right in any manner to retain the same against the will of the employer. Reliance in this regard may be placed on the case of ***Saeed Ahmad Malik v. Naval Estate Officer (1989 CLC 1204)***. In the case of ***Dr. Munir Ahmed, M.B., B.S., Medical Officer V Chairman, House Allotment Committee, Government Of Baluchistan, Quetta And***

Another-Respondents (1983 C L C 1783) a learned Single Judge of the Baluchistan High Court has been pleased to observe as under:

The occupation by a Government servant of Government premises, even if allotted, can be no more than a tenancy at will which may be terminated by the Government at any time without any show-cause notice whereas in this particular case the occupation of Dr. Munir Ahmad's family was only that of licensee. Whether the case be a case of one tenancy at will or mere licence, there can be no question but that the Government has full authority to terminate the occupation of the premises. Estate Officer Government of Pakistan v. Syed Tahir Hussain (P L D 1962 S C 75) may be referred

Similar view has been expressed in the case of ***Imtiaz Hussain V Government Of Pakistan Through Secretary, Ministry Of Works, Estate, Islamabad And 2 Others (1992 CLC 1122)***

In all the aforesaid cases the plaints were rejected in the Suits by holding that the same were barred in terms of Section 42 and 56 of the Specific Relief Act, and I am in full agreement with the observations of the learned Judges insofar as instant Suits are concerned.

10. In view of hereinabove facts and circumstances of this case, I am of the view that no relief as well as declaration being sought can be granted to the plaintiffs as being barred in law; hence instant Suits are incompetent before this Court. Accordingly, plaints in all the Suits are rejected under Order 7 Rule 11 CPC. As a consequence, all pending applications are dismissed as having become infructuous.

Dated: 29.11.2016

JUDGE

Ayaz