

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D - 7032 of 2018

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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Priority Case:

1. For orders on Misc. No. 37850/18
2. For orders on office objection
3. For hearing of Misc. No.30882/18.
4. For hearing of main case.

17.12.2018.

Mr. Abdul Wahab Baloch Advocate for Petitioner.

Mr. Muhammad Ashraf Ali Butt, Advocate for Respondent Nos. 2 and 3.

1. Urgency granted with the consent of all parties present.

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& 4. The matter was listed for hearing of office objection; hearing of interlocutory application and hearing of main case; and it was consensually determined to hear the main case in its entirety and pass appropriate orders to put the controversy at rest.

Mr. Abdul Wahab Baloch, learned counsel for the petitioner, demonstrated from the record that official accommodation was allowed to the petitioner vide allotment letter dated 15.11.2017. It was argued that the said allotment order was unconditional and hence amounted to conferring permanent rights of occupancy upon the petitioner, so long as he remained in service with the respondents No.2 and 3. Learned counsel drew attention to the vacation notice dated 27.09.2018, wherein it was stated that since the petitioner was transferred from Cantonment Malir (Karachi) to Cantonment Cherat (Khyber Pukhtunkhwa), therefore, the petitioner was required to vacate the

official accommodation and handover the possession to the respondent No.3. Learned counsel stated that the transfer of the petitioner was already under challenge in other proceedings and in any event such a transfer could not be made the basis of eviction as the rights of the petitioner to reside in the official accommodation were not predicated upon the petitioner being posted at the current station, or any other station whatsoever. Learned counsel argued that the eviction notice was even otherwise mala fide, hence, may be set-aside by this Court and further directions may be issued to restrain the respondents from ejecting the petitioner from the official accommodation under occupation.

Mr. Ashraf Ali Butt, learned counsel representing the respondent Nos. 1 to 3, submitted that the petitioner was transferred to Cherat (Khyber Pukhtunkhwa) vide order dated 18.04.2018, copy whereof is available at page 53 of the Court file. It was demonstrated that the name of the petitioner is appearing at serial No.9 in the said order. Learned counsel stated that the respondents, without being obligated, strive to provide accommodation to employees posted at the station and deduct the appropriate rent from the respective salaries for the tenure that an employee enjoys the benefit of such accommodation. Learned counsel submitted that the petitioner was relieved from duty with effect from the date of his transfer, being 18.04.2018, and from such time no deduction of rent has been made from the emoluments of the petitioner. With respect to the proceedings filed by the petitioner challenging his transfer, it was submitted that no notice in the said petition was issued with respect to the transfer of the petitioner and that notice was issued for the limited purpose of considering the vires of Rule 5(i) of the Pakistan Cantonment Services Rules 1954. Learned

counsel drew attention to the order dated 07.08.2018 passed in C.P. No. D- 3597 of 2018 and quoted the following passage therefrom in order to corroborate his statement:

“ The petitioner has impugned his transfer letter bearing No. 92/1904/ADG (Est)/ ML&C/2014 dated 18.04.2018, as well as, seeking declaration that Rules 5(1) of the Pakistan Cantonment Servant’s Rules, 1954 be declare as ultra-vires the Cantonment Act, 1924. At the very outset, we directed the learned counsel to satisfy this Court on the point of maintainability of this petition in view of the judgment passed by the Hon’ble Supreme Court of Pakistan in Civil Petitions No.382-K to 385-K of 2017 dated 23.11.2017, reported as 2018 SCMR 335 and review application, which was also dismissed by the Hon’ble Supreme Court of Pakistan. Learned counsel in reply to the aforesaid query has submitted that he has simply called in question the vires of the law as discussed supra, as such this petition can be entertained.”

Learned counsel for respondent also drew attention to the para-wise comments filed by the respondents and in view thereof prayed that this petition may be dismissed forthwith.

We have considered the arguments of the respective learned counsel and have also reviewed the documentation arrayed before us. The petitioner’s entitlement to occupy the official accommodation stemmed from the allotment letter granted thereto and the same does not confer any permanency of such rights in favour of the petitioner. The occupation of Government accommodation has at best been adjudged to be a license, which is determinable. In the present facts and circumstances the occupancy rights in the official accommodation stood determined vide respondents’ letter dated 27.09.2018.

The issue of retention of Government accommodation has been deliberated upon in considerable detail by an earlier Division Bench of this Court in the case of Muhammad Tariq Qasmi vs. Federation of Pakistan & Others being C.P. No. D- 2110 of 2009 (“**Tariq Qasmi**”). *Tariq Qasmi*, inter-alia, elucidated that persons seeking to remain in occupation of government accommodation were required to demonstrate the tenability of their subsisting rights in such regard. It is clear from the said judgment that the writ jurisdiction of this Court could not be invoked to sustain occupation of government accommodation in the absence of any demonstrable right to be able to do so. The said ratio was followed in several successive Division Bench judgments of this Court including the judgments in *Saqib Ali Shaikh vs. Government of Sindh and Others* being CP No. D-5329/2018 (“**Saqib Ali Shaikh**”) and *Malik Muhammad Ibrahim vs. Federation of Pakistan and Others* being CP No. D-6877/2018 (“**Malik Muhammad Ibrahim**”).

Tariq Qasmi was assailed before the Hon’ble Supreme Court of Pakistan in *Pak Distressed Employees & Others vs. Federation of Pakistan & Others* (Civil Petition No. 893-K of 2018) and *Faqirullah vs. Director General Pakistan Public Works Department & Others* (Civil Petition No. 947-K of 2018) successively. The honorable Supreme Court, vide its judgment dated 30th August 2018 (“**Pak Distressed Employees**”), maintained the decision of *Tariq Qasmi* and was pleased to observe that since a large number of other Government employees are awaiting official accommodation, it is imperative that the same be vacated by those with no longer any subsisting rights in respect of such accommodation.

In the present facts and circumstances the learned counsel for the petitioner has been unable to demonstrate any subsisting right of the petitioner with respect to the official accommodation under occupation. It is thus our considered view that in the absence of any such rights the continual retention of the official accommodation by the petitioner is also depriving a subsequent lawful allottee, of the said official accommodation, of his due entitlement. The case of the present petitioner also appears covered by the earlier judgments in *Tariq Qasmi*, *Saqib Ali Shaikh* and *Malik Muhammad Ibrahim*, as maintained by the honorable Supreme Court in *Pak Distressed Employees* and in mutatis mutandis application of the ratio enunciated therein, the present petition, being devoid of merit, is hereby dismissed, along with pending application/s, with no order as to costs.

Judge

Judge

AbRzk