

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-7234 of 2018.

Order with signature of Judge

1. *For orders on office objections*
2. *For hearing of Misc. No.31738 of 2018.*
3. *For hearing of main case*

24.12.2018

Mr. Johar Abid, Advocate for the petitioner.
Mr. Mohammad Arif, Advocate for respondents 2 and 3.
Mr. Nadeem Ahmed, Assistant Attorney General.
Mr. Abdul Jalil Zubedi, AAG Sindh.

Present petition has been filed stipulating that the petitioners, inter alia, are retired employees of the respondent No.2 and legal heirs of deceased retired employees of the respondent No.2. The said petitioners remain in possession of the official accommodation notwithstanding such retirement and / or demise. The petitioners were served vacation notices by the respondent No.2, which notices are under challenge in this petition.

2. Mr. Johar Abid, learned counsel for the petitioners, submits that the vacation notices are discrepant as they are mala fide, discriminatory and against the basic fundamental rights of the petitioners as guaranteed under the Constitution. It is also stated that the impugned vacation notices have not been signed by the proper person.

3. Mr. Nadeem Ahmed, learned Assistant Attorney General representing the respondent No.1, submits that it is demonstrated from the record that all the petitioners are retired or the legal heirs of retired employees and that not a single one of them is a present employee. It is further stated that in the absence of any demonstrable entitlement the present petition is prima facie misconceived.

4. Mr. Mohammad Arif, learned counsel for respondent No.2, adopted the arguments advanced by the learned Assistant Attorney General and in addition thereto stated that the petitioners No.1 till 12 are widows of retired employees and their right of retention of the

accommodation has already lapsed. Learned counsel submits that the remaining petitioners are either retired employees or legal heirs of retired employees. Learned counsel states that a sizeable amount is outstanding against the petitioners in respect of the official accommodations as they have refused to pay any charges in respect thereof. Learned counsel states that the petitioners are not entitled to remain in occupation of the official accommodation, hence, it is imperative that this petition may be dismissed forthwith.

5. We have considered the arguments of the respective learned counsel and it is seen from the record that not a single petitioner has been able to demonstrate their respective entitlement to remain in occupation of the official residences. The presence of substantial outstanding amounts against the respective petitioners has also not been denied or controverted by the learned counsel for the petitioners.

6. The issue of retention of official 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, maintained that persons seeking to remain in occupation of official 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 official 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 judgments in the cases of *Saqib Ali Shaikh vs. Government of Sindh and Others* being CP No. D-5329/2018 ("*Saqib Ali Shaikh*"), *Malik Muhammad Ibrahim vs. Federation of Pakistan and Others* being CP No. D-6877/2018 ("*Malik Muhammad Ibrahim*") and *Abdul Rauf Khan vs. Federation of Pakistan & Others* being CP D 7032 of 2018 ("*Abdul Rauf Khan*"). *Tariq Qasmi* was assailed before the honorable 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 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.

6. In the present facts and circumstances the learned counsel for the petitioners has been unable to demonstrate any subsisting right of the petitioners 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 petitioners is also depriving subsequent lawful allottees, of the said official accommodation, of their due entitlement. The present petition is covered by the earlier judgments in *Tariq Qasmi*, *Saqib Ali Shaikh*, *Malik Muhammad Ibrahim* and *Abdul Rauf Khan*, 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.

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