

Order Sheet

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P No.D-702 & 1449 of 2019

Present:-

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Date of hearing:

& decision:

24.10.2019

Mr. Ayaz Ali Rajpar, Advocate for Petitioner in C.P No.D-702 of 2019.

Mr. Imamuddin Otho, Advocate for Petitioner in C.P No.D-1449 of 2019 and for respondent No.5 in C.P No.D-702 of 2019.

Mr. Allah Bachayo Soomro, Addl: Advocate General, Sindh along with Dr. Riffat Arif, Principal Public School, Hyderabad.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Both the above referred Constitutional Petitions are being disposed of by this common Judgment as the issue involved in both the petitions are similar in nature as both the petitioners have prayed for allotment of official Accommodation viz. Quarter No. D-II, Type-B situated at Public Health School Residential Colony, Hyderabad in their favour.

2. Case of the petitioner in C.P No.D-702 of 2019 is that she is doing job as Clinical Instructor in BPS-17 in School of Nursing, Liaquat University Hospital Hyderabad / Jamshoro and was allotted official accommodation viz. Quarter No. D-II, Type-B, vide office allotment order dated 30.7.2018 and her monthly house rent charges are being deducted from her salary. However on account of political interference, her official accommodation was cancelled vide letter dated 1.11.2018. Petitioner being aggrieved by and dissatisfied with the cancellation order filed C.P. No. D-3077 of 2018, whereby the impugned letter dated 1.11.2018 was suspended. Consequently, the aforesaid office letter was cancelled vide letter dated 20.11.2018; resultantly, she withdrew her above petition on 27.3.2019. However to utter surprise of the petitioner, the respondent-Principal did not sustain the political pressure and again cancelled her allotment order vide letter dated 13.4.2019 and allotted the subject Quarter to respondent

No.5 without hearing the petitioner. Petitioner, therefore, has filed the captioned petition on 23.4.2019.

3. The case of the petitioner in C.P No. D-1449 of 2019 is that she is working as Staff Nurse (BPS-16) at Shah Bhitai Hospital Latifabad, Hyderabad and is entitled for the aforesaid official accommodation, which is meant for the employees residing within the vicinity of Hyderabad; whereas the Respondent No.5 is working as Clinical Instructor (BPS-17) at Liaquat University Hospital Hyderabad / Jamshoro since 2011, therefore she is not entitled for the said official accommodation under the policy of Allotment of Residential Accommodation Hyderabad. It is also case of the petitioner that she was allotted the subject quarter vide letter dated 13.4.2019 but subsequently cancelled vide order dated 20.4.2019 and allotted to the Respondent No.5. Petitioner being aggrieved by and dissatisfied with the cancellation of her allotment has approached this Court on 8.5.2019.

4. Mr. Ayaz Ali Rajpar, learned Counsel representing the petitioner in C.P No.D-702 of 2019 has argued that the petitioner is serving as Clinical Instructor (BPS-17) and the subject quarter was initially allotted to her vide order dated 30.07.2018 and since then her House Rent Allowance is being deducted from her salary. He next argued that some mischief was committed by the official respondents in connivance with the private respondent on the basis of letters dated 07.08.2018 and 08.08.2018 issued by Section Officer (General) Government of Sindh Health Department, whereby her official accommodation was illegally and unlawfully allotted to respondent No.5 Mst. Nadia Naseem (Petitioner in CP. No. D- 1449 of 2019), who is serving as Staff Nurse (BPS-16) at Shah Bhitai Hospital Latifabad, Hyderabad. He further submitted that the act of respondent No.4 is against the law, equity and norms of justice as she without providing an opportunity of hearing to the petitioner has cancelled her allotment vide order dated 13.04.2019, thus is liable to be set-aside.

5. Conversely, Mr. Imamuddin Otho learned Counsel for the Petitioner in C.P No.D-1449 of 2019 has supported the action of Principal of the School inter-alia, on the ground that she is not qualified to hold the aforesaid official accommodation. Per learned Counsel, the aforesaid direction of Government of Sindh has not yet been implemented by the private Respondent; hence, the petitioner has approached this Court by filing the captioned petition No.D-1449 of 2019 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

6. We have queried from the learned Counsel for the petitioner to point out whether an official accommodation can be cancelled without providing an

opportunity of hearing and whether the Policy has provided the mechanism of resolution of dispute. Learned counsel for the Petitioner was also confronted with the issue of an alternate relief being available thereto; however he submitted that the petitioner exercised her right to institute the present petition instead; that official accommodation falls within the ambit of terms and conditions of service and can be cancelled in exigency of service thus cannot be impugned until and unless the official order is complied with.

7. Mr. Allah Bachayo Soomro, learned Additional Advocate General, Sindh has supported the stance taken by the learned Counsel for the petitioner in C.P No.D-702 of 2019 and argued that the presently the subject Quarter No. D-II, Type-B is in occupation of petitioner namely Tasleem Akhtar as per her entitlement under the policy. We queried him as to how the subject accommodation has been allotted and cancelled within short span of time; he replied that respondent-Principal is in better position to reply the query of this court.

8. We are not satisfied with this assertion and unable to digest the way they deal with the official accommodation matters and become susceptible to the pressure being incurred upon them and accommodate their favourites and thereafter leave the parties to resort the litigation on the issue, which action on their part is not appreciated.

9. After hearing both the parties to evaluate and assess the contention raised, while going through the relevant record as well as the Policy Governing Allotment of Residential Accommodation at Hyderabad, as amended from time to time, it is absolutely clear that government accommodation is available to the employees of Sindh Government only. This court has already decided the issue involved in the present proceedings, in Constitutional Petition D-2110 of 2009 and other connected petitions vide common judgment dated 16th July, 2018. The Honourable Supreme Court has recently passed an order in Human Rights Case No.30588-S of 2018 dated 09.06.2018:

“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 are directed to obtain the possession from them within a period of six weeks from today with the help of law enforcing agencies.”

10. During the course of arguments, we have been informed that Quarter No. D-II, Type-B is currently occupied by the petitioner in C.P No.D-702 of 2019. Respondent No.5 has admitted that she has not occupied the subject premises yet.

11. The Respondent No.5 is admittedly not in occupation of the subject premises and her purported allotment had already been cancelled vide letter dated 20.4.2019, thus she was not entitled to re-allotment of the official accommodation.

12. Prima-facie petitioner in C.P No.D-702 of 2019 is in BPS-17 whereas the Respondent No.5 is in BPS-16. It also appears from the record that both the parties in their abortive attempt convinced this Court with regard to their entitlement for official accommodation as discussed supra, whereas record explicitly shows that the aforesaid accommodation is only available to the officers of the respondent- Public Health School Hyderabad holding valid and subsisting allotment order as per the terms and conditions set forth in the official accommodation policy.

13. The Respondent No.5 was unable to demonstrate any right, whereby her claim for occupation / allotment of official accommodation was tenable. The documents relied upon by her in C.P No.D-1449 of 2019 do not confer any right thereupon permitting her to ask for the allotment of subject premises. Nothing has been placed on record to demonstrate that the license / permission on the basis, whereof she was initially allotted the official accommodation, is still in her name. She cannot take shelter of allotment order dated 13.4.2019, even otherwise the said allotment order stood cancelled vide letter dated 20.4.2019 and the subject quarter in question was allotted to prior allottee viz. petitioner Tasleem Akhtar vide allotment order dated 20.4.2019 and who is in occupation.

14. If this being the position of the case, the Principal Public Health School Hyderabad is directed to intact Quarter No. D-II Type-B in the name of petitioner in C.P No.D-702 of 2019 as per her entitlement under the law and policy. Official Respondents are further directed that all allotments shall be made strictly on merit.

15. 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. In order to uphold such principles, it has been stated time and again by the superior Courts that all acts should be done by the public functionaries in a transparent manner after applying judicious mind and after fulfilling all requirements. The public functionaries are supposed to adhere to the principle of transparency in performance of their duties and are not bound to carry out / implement any order which is not in accordance with 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 apparently acted for their own personal benefits / gain. It appears from the record that respondent Department is not following the accommodation policy in case of allotment of Government Accommodations and are indulged in illegal allotments on some consideration and allot the same to the employees who are not entitled. More effective approach needs to be adopted and allot the same to the employees who are legally entitled.

16. In the light of above facts and circumstances, C.P No.D-702 of 2019 is allowed in the above terms. Consequently C.P No.D-1449 of 2019 is dismissed along with pending application(s) with no order as to cost.

JUDGE

JUDGE

Fahad Memon