

Judgment Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 1028 of 2020

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Date of hearing
& decision:

02.11.2021

Petitioner:

Kashif Hussain through Mr. Javed Ali
Buriro, Advocate.

Respondent:

HESCO through Mr. Muhammad Arshad S.
Pathan, Advocate

Mr. Ashfaq Nabi Qazi, Assistant Attorney
General

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the
petitioner has prayed as under:-

- a. To declare the impugned office letters No. CEO/HESCO/D.M(s)/a-8/13041-48 dated 06.09.2019, letter No. CEO / HESCO / D.M(s)/A-8/18389-91 dated 27.12.2019 & Minutes of meetings letter No. CEO / M-Civil/HESCO/HYD/379-85 is illegal, against the law, being discriminative, ultra virus to the constitution and the same is passed due to personal grudge as defined in the memo.
- b. Permanently restrain the respondents No. 4,5 & 6 from giving the effect the office letters No. CEO/HESCO/D.M(S)/A-8/13041-48 dated 6.9.2019, letter No.CEO/ HESCO / D.M(s)/A-8/18389-91 dated 27.12.2019 & Minutes of meetings letter No. CEO / M-Civil/HESCO/HYD/379-85 with direction to the respondents No. 4, 5 & 6 not to dispossess the petitioner and his family from the premises till the final decision of the petition.
- c. To direct the respondents No. 4 & 5 to transfer the allotment order of his father the then GSO of NTDC in

favour of the petitioner as the petitioner is ready to pay the standard charges of rent.

2. Brief facts of the case are that the petitioner is an employee of National Transmission and Dispatch Company (NTDC) as Assistant Sub-Station Attendant BPS- 7 (ASSA). Petitioner has averred that his father was an employee of NTDC; and, during his tenure of service, he was allotted official Quarter No.D-3 in 132 KV Grid Station Colony Qasimabad, Hyderabad. Petitioner further added that his father stood retired from Government service on attaining the age of superannuation in the year 2018, however, he continued to reside along with his family in the subject quarter for the reason that he also applied for allotment of the quarter, after the retirement of his father, but neither his request for allotment of government accommodation was entertained nor his father was / is being allowed to retain the possession of quarter allotted to him during service. The petitioner has further stated that several other government accommodations at present are being occupied by the retired employees / widows of employees but only the petitioner and his father is being targeted to vacate the premises and in this regard, special directions have been issued for disconnection of his utilities and further, a special watchman has been appointed to inform the concerned authorities if he gets the utilities restored, hence he has filed the instant petition with the above prayer.

3. We have heard learned counsel for the parties and have perused the material available on record with their assistance.

4. It also appears from the record that the petitioner is attempting to convince this Court about his entitlement to official accommodation as discussed supra, whereas the record explicitly shows that the aforesaid accommodation is only available to the employees of HESCO, Secretariat as per Policy Governing Allotment of Residential Accommodation.

5. Prima-facie the Petitioner is unable to demonstrate any vested/ fundamental right to occupy the official accommodation, which is meant for HESCO employees' secretariat side. The documents relied upon by him do not confer any right permitting him to ask for continuation of the allotment of subject premises.

6. Reverting to the point that the petitioner is not an unauthorized resident of official accommodation, suffice it to say that the basic purported permission / allotment in favor of his father is no more available to him after his retirement from service in the year 2018; besides we do not agree with the contention of the petitioner as he came into possession of the quarter admittedly after retirement of his father who was original allottee and after his retirement he is not entitled to retain the official accommodation ; his relationship with the Estate Department / Government is not that of landlord and tenant ; the amount paid from the pension of the father of the petitioner for occupying the quarter cannot be treated as rent as defined in the rent laws ; at best his possession could be deemed to be that of a licensee, which possession could be enjoyed by him subject to the terms and conditions of the license and at the will and pleasure of the licensor / Government ; and, admittedly the licensor/ Government has revoked his license after the retirement of his father by issuing him notices to vacate the quarter. This being the legal position, the petitioner, in our view, is not entitled to retain possession of the subject quarter and his possession in respect thereof is unauthorized.

7. Since the father of petitioner stood retired in the year 2018 petitioner is liable to vacate the subject quarter and the Estate Office of the respondents is liable to take over possession thereof from him. Accordingly, respondents are jointly and severally directed to take over possession of the subject quarter strictly under the law and the directions of Hon'ble Supreme Court vide orders dated 24.10.2018 and 08.01.2019 passed in HRC Nos.20746, 30827-P, 30588-S, and 30001-K of 2018.

8. In view of above, it may be observed that there are so many government official accommodations owned by the respondents which are under unlawful and unauthorized occupation. In our view, the Courts are duty-bound to uphold the constitutional mandate and to maintain 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 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 of the respondents not only implemented the illegal orders but acted thereupon for their benefits/gain.

9. The record reflects that the respondent department is not following the decisions of Honorable Supreme Court on the subject issue in its letter and spirit as well as accommodation policy in case of allotment of official accommodations and is indulged in illegal allotments, extensions, and waivers in favor of employees who are not entitled.

10. In our view, a more effective approach needs to be adopted and allotment must be made strictly under the law. It may be observed that because of such arbitrary and illegal exercise of discretion by the official respondents, official accommodation remains occupied by such employees who are not entitled thereto, and the employees who are legally entitled to official accommodation are deprived of such right/facility.

11. The petition stands disposed of in the above terms with no order as to costs.

JUDGE

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