

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-322 of 2022

(Sher Nawaz v. Government of Sindh and 03 others)

C.P. No. D-323 of 2022

(Khuwaja Yasir Uddin v. Government of Sindh and 03 others)

C.P. No. D-324 of 2022

(Mst. Mukhtiar Begum v. Government of Sindh and 03 others)

C.P. No. D-325 of 2022

(Ghulam Sarwar v. Government of Sindh and 03 others)

C.P. No. D-326 of 2022

(Muhammad Adnan v. Government of Sindh and 03 others)

Ch. M. Saeed-uz-Zaman, advocate for the petitioners

Mr. Salman Talibuddin, Advocate General Sindh along with Mr. Haroon Leghari, Additional Director, JIS, Sindh Hyderabad and Ms. Fozia Shahid, Principal, GECE (W) Hussainabad Karachi.

Date of hearing
& order : **09.02.2022**

ORDER

The petitioners are seeking a declaration to the effect that the letter dated 12.11.2021 issued by the respondent-Government Elementary College of Education (Women) Hussainabad, Karachi, for cancellation of subject allotment of the residential quarters duly allotted to them, is illegal and without lawful justification, inter alia, on the ground, the petitioners have every right to avail the benefit of official accommodation allotted to them in 1988, 1993, 2005 & 2018 and they have been paying the rent and other ancillary dues to the respondent-college, thus the respondents cannot invoke clause (7) of the terms of allotment orders as discussed supra, without assigning any justiciable reason. An excerpt of one of the allotment orders is reproduced as under:

"ALLOTMENT ORDER:

The principal, Government Elementary College of Education (Women) Hussainabad Karachi is pleased to allot a Quarter No.B-2 in premises of this college to Mr. Sher Nawaz, Lecturer Government Elementary College of Education, (Women) Hussainabad, Karachi, on the following terms and conditions:

- 1) *That she/he will remain in occupation of the same so long as he is in services at Government Elementary College of Education, (Women) Hussainabad, Karachi*
- 2) *That the Quarter will be occupied by him/her with the members of his family only.*
- 3) *That he shall not subject or permit the accommodation or any part thereof to be occupied by any person other than her family.*
- 4) *That he will pay the rent of the accommodation as per rules enforce from time to time by deduction through monthly pay bill.*
- 5) *That he is responsible for payment of water charges and sewerage charges levied by the PWD and Electric charges by the WAPDA/KEESC or any other concerned.*
- 6) *That he will make good any damage that may occur in the quarter by fire if occasioned any action on his part or on the part of any member of his family or relative or servant.*
- 7) **That he will vacate the above premises without any demur immediately on cancellation of this allotment order or on his transfer from the Government Elementary**

College of Education, (Women) Hussainabad, Karachi, or proceeding on leave more than four months; or within one month or retirement or within three months; on proceeding on LPR and will deliver the vacant possession to the Principal, Government Elementary College of Education, (Women) Hussainabad, Karachi after settling all arrears; and obtain the clearance certificate from the concerned authorities.

- 8) *That this allotment order is liable to be cancelled at any time at the discretion of allotting authority without assigning any reason*
- 9) *That when He/she vacates the Quarter she/he should also arrange to give due notice to this Bureau of PWD which are being informed of his tenancy. Any change in his pay may also be reported at once to all the concerned.*

WARNING

If any time anybody found failure of the condition the allotment order is liable to be cancelled any the unauthorized occupation be rejected at his cost, and he will also render himself to disciplinary action."

2. Ch. M. Saeed-uz-Zaman, learned counsel for the petitioners, has submitted that the order dated 25.11.2021 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.1605-K/2021 is not applicable in the cases of the petitioners for the reasons that they are authorized occupants of the subject official accommodation; that the respondents are not putting up the justiciable reasons to cancel the subject allotment of the quarters under the lawful occupation of the petitioners. Per learned counsel, there is no default in payment of rent; petitioners are not unauthorized occupants as portrayed by the respondents. He further argued that the petitioners were allotted the subject accommodation under the law and the rent from their salaries has been deducted accordingly. Learned counsel admitted that the official accommodation falls within the ambit of terms and conditions of service of the petitioners, however, the respondents have no jurisdiction to issue cancellation notice without resorting to the legal procedure as provided under the law. An excerpt of one of the cancellations of allotment orders is reproduced as under:-

"Subject: NOTICE OF CANCELLATION OF RESIDENTIAL QUARTER ALLOTMENT

Reference: No GECE(W)419/2018 Date 18-12-2018.

The residential quarters of GECE(W) Hussainabad Karachi and purely for the usage of staff of the institution. The quarter B-2 was allotted to you on temporary basis however you failed to leave the quarter.

Under clause No.7 of aforementioned allotment order you are immediately required to vacate the said quarter within seven (7) dys of issuance of this letter."

3. Mr. Salman Talibuddin, learned Advocate General Sindh, has raised the question of maintainability of the instant petitions on the plea that the petitioners have been issued a notice of cancelation of residential quarter allotment in terms of clauses (i) and (vii). He lastly prayed for the dismissal of the instant petitions. Learned Advocate General Sindh has relied upon the orders dated 09.06.2018, 06.07.2018, and 31.7.2018, passed by the Hon'ble Supreme Court in HRC Nos.20746, 30827-P, 30588-S, and 30001-K of 2018. He also relied upon the allotment orders dated 19.7.2004, 01.12.1993, 14.3.2018, 26.3.2018, 27.04.1988.

4. In rebuttal, learned counsel for the petitioners has submitted that the above-referred orders of the Hon'ble Supreme Court also do not support the case of the respondent-Government as the perusal of the said orders show that the Government accommodations were in illegal/unauthorized possession, were ordered to be vacated; and, vide order dated 24.10.2018, the aforesaid order was held in abeyance only for two

(02) months with the direction to Government to take over possession of the said accommodations peacefully and appropriately without creating any law and order situation. Whereas, a specific order was passed by the Hon'ble Supreme Court on 31.07.2018 and order dated 21.6.2020 in the above matters concerning unauthorized occupants, were allowed thirty (30) days to make alternate arrangements and to vacate the property and to hand over its possession to the Estate Office, whereas petitioners are bonafide allottees of the official accommodations as discussed supra and admitted by the respondent-college, thus their case does not fall within the ambit of unauthorized occupants as such they could not be thrown out without due process of law. So far as invoking clause (vii) is concerned, the respondent-college has taken the plea that on transfer from the Government Elementary College of Education (women) Hussainabad, Karachi, the petitioners could vacate the official accommodation. Primarily, the assertion of the respondent-college is misconceived and this clause cannot be invoked for the simple reason that one of the petitioners was appointed through Sindh Public Service Commission and others through a competitive process in Schools Education & Literacy Department, Government of Sindh, and one petitioner on a regional basis in Government Elementary College of Education (Women) Hussainabad Karachi, therefore, the petitioners cannot be dislodged on the purported plea taken by the respondent-college. Per learned counsel, the petitioners are still in Government service and are working on their respective positions with a further assertion that on mere transfer from one place to another place of posting does not debar the petitioners from the occupation of official accommodation.

5. We have heard learned counsel for the parties, perused the material available on record and case-law cited at the bar.

6. Comments have not been filed by the official respondents, however, learned AG has submitted that the subject quarters were allotted to the petitioners as per the Accommodation Allocation Rules. However, he insisted that they are not entitled to keep the same after invoking clauses of cancellation notice in the light of the ratio of the orders passed by the Hon'ble Supreme Court of Pakistan.

7. Prima-facie the respondents are unable to demonstrate to cancel the allotment of official accommodation, which is meant for the officers of the Government of Sindh. The documents relied upon by the petitioners do confer right thereupon permitting them to ask for the continuation of the allotment of subject premises. Prima facie, we do not see any concrete documentary evidence to show that the petitioners have breached the terms of allotment orders.

8. We have gone through the orders passed by the Hon'ble Supreme Court of Pakistan on the issue of irregularities in the allotment of official residence by different government departments including the Government of Sindh. The ratio of the orders of the Hon'ble Supreme Court of Pakistan is that the Chief Secretary Sindh was directed to get vacated all the Government-owned houses which are in illegal and unauthorized occupation in Karachi. In the present matter, we have not been provided any

documentary proof that petitioners are in illegal and unauthorized occupation of the official accommodation, therefore, in absence of the aforesaid factum we are not in a position to non-suit the petitioners based on pleas taken by the respondent-college.

9. 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 the 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 Government of Sindh not only implemented the illegal orders but acted thereupon for their benefits/gain.

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

11. 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.

12. In view of the above facts and circumstances of the case, the competent authority of the respondent-college is directed to look into the matters of the petitioners and after scrutinizing their allotment orders and verifying the occupation of genuine allottees pass a speaking order and if the petitioners are found to be in illegal and unauthorized occupation of official accommodation, the legal method shall be adopted to dislodge them, however, that is subject to all just exceptions under the law. The aforesaid exercise shall be taken within two months of the date of receipt of this order. In the intervening period, the petitioners shall not be disturbed from their official accommodation subject to payment of their amenities.

The petitions stand disposed of in the above terms with no order as to costs.

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