

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

Civil Petitions No.2297 & 2298 of 2018

(Against the judgment dated 02.05.2018 passed by the Peshawar High Court, Peshawar in Writ Petitions No. 1712-P and 1585-P of 2018).

Tanveer Musharraf.
Shaukat Ali.

Petitioner *(in CP.2297/18)*
Petitioner *(in CP.2298/18)*

versus

Government of Khyber Pakhtunkhwa through Chief
Secretary, Civil Secretariat, Peshawar and others. ...*Respondent(s)*
(in both cases)

For the petitioner(s): Mr. Muhammad Younis Thaheem, ASC.
(in both cases)

For the respondent(s): Barrister Qasim Wadood, Addl. A.G. K.P.
Mr. Taimur Khattak, D.S. Judicial.
Mr. Nur Rehman, Establishment Officer, K.P.
(in both cases)

Date of hearing: 27.02.2019.

O R D E R

IJAZ UL AHSAN, J.- Through this single order, we propose to decide Civil Petition No.2297 of 2018 and Civil Petition No.2298 of 2018, which are directed against the same judgment and common questions of law and fact are involved in both petitions.

2. Tanvir Musharraf, the petitioner in Civil Petition No.2297 of 2018 is the son of Jahangir Khan, who was serving as Superintendent in the Establishment Admin Department, Civil Secretariat, Khyber Pakhtunkhwa,

Peshawar. He was allotted a government accommodation bearing House No.E-5, Civil Colony, Warsak Road, Peshawar. On his retirement from service, the said accommodation was allotted to his son (the petitioner, Tanvir Musharraf) under retired son quota because at the relevant time he was serving as Superintendent in KP Public Service Commission.

3. Shaukat Ali, the petitioner in Civil Petition No.2298 of 2018 is the son of Mian Sahib Jan, who was serving as Secretary/Member, KP Public Service Commission. He was allotted House No.B-5, Civil Colony, Warsak Road, Peshawar. On his retirement, the aforesaid house was allotted to the petitioner, who was working as Social Security Officer in the Employees Social Security Institution, Peshawar.

4. Pursuant to a judgment of the Peshawar High Court, Peshawar, dated 20.09.2017, passed in Writ Petition No.1503-P of 2011, out of turn/unauthorized allotments were cancelled and notices were issued to the allottees. Similar notices were issued to the petitioners calling upon them to vacate the government accommodations under their occupation. They filed representations before the competent authority. The same were not decided. Consequently, they approached the Peshawar High Court in its constitutional jurisdiction. Their writ petitions were dismissed, vide impugned judgment dated 02.05.2018. Hence, these petitions.

5. The learned counsel for the petitioners has argued that the High Court did not comprehend the real controversy and misinterpreted the provisions of Khyber Pakhtunkhwa Buildings (Management, Control and Allotment) Act, 2018 (***“the Act”***) and rules framed thereunder. He further maintained that allotments made under the previous law had specifically been saved under Section 16 of the Act and Rule 37(2) framed thereunder. However, this aspect of the matter was ignored by the High Court. It is further maintained that there has been an illegal exercise of jurisdiction by the High Court which has erred in law in holding that the impugned notices for cancellation and vacation of accommodations occupied by the petitioners was just and legal.

6. The learned Additional Advocate General, Khyber Pakhtunkhwa, has defended the impugned judgment and argued that this is not a fit case for grant of leave to appeal.

7. We have heard the learned counsel for the petitioners as well as the learned Law Officer and have gone through the record. We have at the very outset noticed that under the provisions of the Act, government accommodation can only be allotted to public office holders. Section 2(n) of the Act defines the *“public office holders”* as follows:-

“2(n).- “public office holder means”

(i) a civil servant, appointed under the Khyber Pakhtunkhwa, Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), including such civil servants of the Federal Government, posted and working at Peshawar under the Government, as may be prescribed;

(ii) a Provincial Minister, an Advisor and Special Assistant to the Chief Minister;

(iii) Judges of the Peshawar High Court including its employees; and

iv) employees of the Provincial Assembly of the Khyber Pakhtunkhwa".

8. We have specifically asked the learned counsel for the petitioners to show us that the petitioners meet the eligibility criteria of being "*public office holders*" as per definition given in the Act. It may be noted that the petitioner in Civil Petition No.2297 of 2018 is an employee of KP Public Service Commission while the petitioner in Civil Petition No.2298 is an employee of Employees Social Security Institution. The learned counsel for the petitioners has not seriously contested the fact that the said persons are not civil servants having not been appointed under KP Civil Servants Act, 1973 nor did they fall in the category of Civil Servants of the Federal Government posted and working in Peshawar, under the Government, as provided in Section 2(n) of the Act.

9. It is clear and obvious to us that notwithstanding the definition or status of "*civil servant*" given or conferred upon any employee of the Federal or Provincial Government under any law or judgment, the benefit of the provision of the Act is available only to a special class of civil servants namely those who have been appointed under KP Civil Servants Act, 1973 and Civil Servants of the Federal Government posted and working in Peshawar under the Government. In order to avail the benefit of the Act, an employee must be a civil

servant as defined in the Act. The petitioners do not fulfill this criterion. The above being the situation, neither of the petitioners is governed by the Act nor can they claim benefit of the same. Even otherwise, the High Court has held that the petitioner in Civil Petition No.2298 of 2018 had also been allotted a house out of turn which is an additional ground supporting the stance of the respondent-Government that the said petitioner is not entitled for allotment of government accommodation.

10. We find that there is no error either of fact or law in the impugned judgment of the High Court. The learned counsel for the petitioners has also not been able to point out any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment that may persuade us to interfere therein in exercise of our jurisdiction under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

11. For reasons recorded above, we do not find any merit in these petitions. The same are accordingly dismissed. Leave to appeal is refused.

JUDGE

JUDGE

JUDGE

ISLAMABAD.

27.02.2019

Not Approved For Reporting

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