

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED.
MR. JUSTICE FAISAL ARAB.
MR. JUSTICE IJAZ UL AHSAN.

CIVIL APPEAL NO.1459 OF 2018.

Against judgment dated 13.09.2018 of Peshawar High Court, Peshawar, passed in Writ Petition No.4125-P of 2017.

Riffat Shaheen.

...Appellant(s)

Versus

The Government of KPK through
Chief Secretary, Peshawar and others.

...Respondent(s)

For the appellant(s): Mr. Nasir Mehmood, ASC
Mr. M. S. Khattak, AOR

For the respondent(s): Barrister Qasim Wadood, Addl.AG, KP

Date of Hearing: 07.03.2019.

O R D E R

Ijaz ul Ahsan, J-. The petitioner seeks leave to appeal against a judgment of the Peshawar High Court, Peshawar, dated 13.09.2018. Through the impugned judgment, a constitutional petition filed by the petitioner was dismissed.

2. The brief facts necessary for decision of this *lis* are that the petitioner was appointed as a PTC Teacher on 04.10.1985 and has been residing with her husband in a government accommodation (*Quarter No.26-B, Officers Block, GRC, Kohat Road, Peshawar*). He was working as an Assistant Director, KPK TEVTA. He retired on 01.04.2017. After expiry of

six months' grace period, the Respondents issued a vacation notice dated 29.09.2017. The petitioner applied for transfer of the quarter in her name on 01.08.2017 under Rule 4 of the KPK Residential Accommodation at Peshawar (Procedure for Allotment) Rules, 1980 (***'the Rules, 1980'***). Her request was not acceded to. In the meantime, Khyber Pakhtunkhwa Buildings (Management, Control and Allotment) Act, 2018 (***'the Act'***) was promulgated which repealed and substituted the previous Rules. Consequently, the petitioner's application was not accepted which prompted her to approach the High Court in its constitutional jurisdiction. However her constitutional petition also did not succeed. Hence, this petition.

3. The learned counsel for the petitioner submits that under the Rules, 1980 a vested right had accrued in her favour which could not be taken away through a subsequent change in law/rules. He further maintains that the Act, 2018 and the Rules framed thereunder were promulgated on 22.01.2018 and the same could not be given retrospective effect. He maintains that the High Court has erred in law in applying and interpreting the relevant laws and has exercised jurisdiction in a perverse and erroneous manner.

4. The learned Additional Advocate General, Khyber Pakhtunkhwa has defended the impugned judgment. He submits that the case of the petitioner was governed under the

Rules, 2015 which were struck down by the learned High Court. It had been observed by the High Court that out of turn allotments were required to be prohibited by the law and the Rules. He maintains that the Act, 2018 was promulgated in light of the judgment of the High Court and gave effect to the same. He further submits that a special quota for children and spouses of the deceased/retired employees has been provided in the new law. At present, the petitioner appears at Sr.No.13 of the waiting list under the said quota. As soon as accommodation becomes available she would be entitled to the same in accordance with her seniority under the said quota.

5. Having heard the learned counsel for the petitioner and the learned Law Officer, we find that the Rules, 1980 as well as the Rules, 2015 were repealed by the Act and Rules of 2018, which specifically provided that the Rules of 1980 and 2015 stood repealed except to the extent as were not in consistent or in conflict with the Act and Rules of 2018. It is also an admitted fact that the Rules of 2015 did not provide for out of turn allotment to the spouse of a retired civil servant. Further, the Act and Rules of 2018 do not provide an automatic benefit to the spouse or children of a deceased or retired civil servant to retain the government accommodation on retirement/demise of the original allottee. However, their rights have been safeguarded by providing a special quota in the available government housing which is based on seniority of applications. A list of eligible children and spouses of

retired/deceased employees is accordingly maintained by the concerned department. That being the case, the petitioner would be entitled to allotment of an official accommodation at her own turn and she cannot rely upon the Rules of 1980 and or of 2015 in order to advance her claim. Further, she has already retained the government accommodation for a grace period of six months whereafter she and her husband are obliged to vacate the government accommodation and utilise house rent allowance which is paid by the government.

6. The learned Law Officer has also pointed out that the petitioner's name appears at Sr.No.13 of the waiting list maintained by the Respondents for allotment of government accommodation. We are therefore not persuaded by the argument of the learned counsel for the petitioner that she has a legitimate right to retain the government accommodation originally allotted to her husband on the basis of 1980 Rules because the same have been repealed. Her case is governed by the Act, 2018 and the Rules framed thereunder and no legally enforceable vested right exists in her favour. The judgment of the High Court is well reasoned and does not suffer from any legal, procedural or jurisdictional defect, error or flaw that may require interference by this Court.

7. Above are the reasons for our short order dated 07.03.2019. The same for ease of reference is reproduced below:-

"Having heard the learned ASC for the appellant as well as the learned Additional Advocate General, Khyber Pakhtunkhwa and for reasons to be recorded later, this appeal is dismissed."

JUDGE

JUDGE

JUDGE

ISLAMABAD.

07.03.2019.

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'Not Approved For Reporting'