

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

**Mr. Justice Sh. AzmatSaeed**

**Mr. Justice Faisal Arab**

**Mr. Justice IjazulAhsan**

**CIVIL PETITIONS NO.2108, CMA NO.4937 OF 2018  
IN CP NO.2108 OF 2018, CP NO.2299, CMA NO.5180  
OF 2018 IN CP NO.2299 OF 2018, CP NO.3749 OF  
2018 AND CPs NO.3785 TO 3790 OF 2018.**

*(On appeal from the judgments dated 02.5.2018, 13.9.2018 of the Peshawar High Court, Peshawar passed in WPsNos.1715-P/2015, 1714-P/2015, 2345-P/2018, 2909-P/2018 , 2910-P/2018, 2911-P/2018, 3776-P/2018, 3777-P/2018 and 3778-P/2018, respectively)*

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|---------------------------|--------------------|
| <b>1. Dr. Tariq Iqbal</b> | (in CP No.2108/18) |
| <b>2. RiazulHaq</b>       | (in CP No.2299/18) |
| <b>3. Attaullah Jan</b>   | (in CP No.3749/18) |
| <b>4. Muhammad Iqbal</b>  | (in CP No.3785/18) |
| <b>5. M. Amir Khan</b>    | (in CP No.3786/18) |
| <b>6. JamshedAkhtar</b>   | (in CP No.3787/18) |
| <b>7. Fayyaz Ahmed</b>    | (in CP No.3788/18) |
| <b>8. Dr. Aftab Ahmed</b> | (in CP No.3789/18) |
| <b>9. Adnan Malook</b>    | (in CP No.3790/18) |

... Petitioner (s)

Versus

**The Govt. of KPK thr. Secy.  
Administration Peshawar &  
others**

... Respondent (s)

For the Petitioner (s) : Mr. NaveedAkhtar, ASC  
Mr. M.S. Khattak, AOR  
(in CP No.2108/18)  
Mr. M. YounisThaheem, ASC  
(in CP No.2299/18)

Malik ManzoorHussain, ASC  
Mr. M. S. Khattak, AOR  
(In CPs Nos.3749, 3785-3790/18 )

For the Applicant(s) Mr. M. Shahid Kamal, ASC  
(in CMA No.10119/18 in CP  
3749/18 & CMA 10133/18 in CP  
3785/18)

For the Respondents : Barrister QasimWadood, Addl.  
AG KPK  
Mr. TaimoorKhattak, DS, KPK  
Mr. Noor Rehman, Estate  
Officer  
(in all cases)

Date of Hearing : 27.02.2019

### **JUDGMENT**

**Sh. AzmatSaeed,J.**-Through this judgment, it is proposed to dispose of the above titled cases, which involve common questions of law.

2. The *lis* before us entails the interpretation and legal effect of various provisions of the Khyber Pakhtunkhwa Provincial Buildings (Management, Control and Allotment) Act, 2018, hereinafter referred to as "the Act of 2018" and the Rules framed thereunder i.e.

Residential Accommodation at Peshawar  
Procedure for Allotment Rules, 2018, hereinafter  
called as " the Rules of 2018"

3. Some of the Petitioners before us claimed to have secured the allotment of Government Accommodation under the legal dispensation that existed prior to the promulgation of the Act of 2018 and seek protection thereof. Reference, in this behalf, has been made to Section 16 of the Act of 2018, which reads as under:-

**"16. Saving.---** Subject to the provisions of this Act, any order passed or action taken or arrangement made in relation to the Provincial buildings before the commencement of this Act and not inconsistent with the provisions of this Act, shall be deemed to have been taken under this Act."

4. A bare reading of the aforesaid provision makes it clear and obvious that previous allotments are only safe if they are not inconsistent with the provisions of the Act of 2018 and are subject thereto. Therefore, it appears that such allottees/occupants must establish

their right under the new law in order to protect their allotments/occupations.

5. Some of the Petitioners are the offspring of retired or deceased employees, who were allotted residential accommodation under the previous dispensation. The relevant provision applicable to such allottees/occupants is Section 7(5) of the Rules of 2018, which is reproduced herein below for ease of reference.

**"7. Management and Allotment of residential accommodation.---**

(5) Government may reserve a special quota of residential accommodation for allotment to the son, daughter or spouse, as the case may be, of the public office holder, who has been died or retired from service, as the case may be. Allotment under this sub-section shall be made in a manner as may be prescribed."

6. A plain reading of the aforesaid provision reveals that the Government is authorized to reserve quota of residential accommodation for allotment to the offspring and spouses of retired or deceased employees, if they are otherwise eligible under the Act of 2018. What needs to be established from the record is whether the

Petitioners before us, who claim allotment under the aforesaid provisions are, in fact, in occupation of residential accommodation of the quota reserved in terms of Section 7(5) of the Act of 2018. This factual position has not been established on record one way or the other and remains to be ascertained, thus, an exercise must necessarily be carried out by the Secretary, Administration, Government of KPK, which has been impleaded as one of the Respondents.

7. The other aspect of the matter in the instant cases involves the interpretation of Section 7(3) of the Act of 2018. The said provision is reproduced hereunder for ready reference:-

**"7. Management and Allotment of residential accommodation.---**

- (3) Where Government provides resources to any Government Department, office or agency, as the case may be, for construction of its own pool of residential accommodation or where such Government Department, office or Government agency already has such a pool, its employees shall cease to be eligible for residential accommodation under this Act:"

8. Before embarking upon the exercise for attempting to interpret the aforesaid provision, it may be appropriate to restate the cardinal and well settled principle of interpretation, which requires that a purposive rather than a literal approach of interpretation be adopted as has been held by this Court *inter alia*, in the judgment reported as Federation of Pakistan through Ministry of Finance and others v. M/s. Noori Trading Corporation (Private) Limited and 14 others (1992 SCMR 710), Hudabiya Engineering (Pvt) Limited v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan and 6 others (PLD 1998 Lahore 90) and Saif-ur-Rehman v. Additional District Judge, Toba Tek Singh and two others (2018 SCMR 1885).

9. Furthermore, an overview of the Act of 2018 would suggest that it confers the benefit of residential accommodation to those, who hold public offices and are eligible in terms thereof. The tone and tenor of the Statute is clearly beneficial in nature, therefore, its provisions must

necessarily be interpreted liberally so as to advance the benefit rather than curtail it. Such is the law, as laid down by this Court in the judgments reported as Lahore Development Authority through D.G., Lahore and another v. Abdul Shafique and others (PLD 2000 SC 207), Pakistan Engineering Co. Limited, Lahore through Managing Director v. Fazal Beg and 2 others (1992 SCMR 2166) and Saif-ur-Rehman (Supra)

10. It appears that certain Government departments, offices and agencies in the KPK have their own pool of residential accommodation or such accommodation is provided to them by the Government of KPK. A bare reading of the afore-quoted provision would reveal that a person otherwise eligible under the Act of 2018, who is employed in such Government department, office or agency with its own pool of accommodation, is not eligible for residential accommodation in the general pool. Such an interpretation would be reasonable, fair and beneficial, as a person cannot

be entitled to residential accommodation, of both the office/department and that of the general pool thereby gaining an unfair advantage over other public office holders. Every eligible person must stand in either one queue or the other to wait for his turn for allotment of residential accommodation. The problem has arisen in the instant cases where there is indeed a pool of accommodation of a department, office or agency but such residential accommodation is designated for a particular officer only and all employees of the said department, office or agency are not entitled to be considered for such allotment. Such residential accommodation in case of Health Institutions is for those required in emergency, while the other accommodation is reserved for the Chowkidarsetc. only.

11. It is in the above backdrop, the contention of the learned Additional Advocate General, KPK that a person employed by any department, office or agency that has its own pool of residential accommodation is not entitled or



eligible for allotment of accommodation in the general pool even though he is also not entitled to be considered for allotment of residential accommodation in the department, office or agency where he is currently employed cannot be occupied. Such an interpretation would disentitle such persons from residential accommodation both in the department, office or agency as well as in the general pool. Such interpretation could not be considered to be either logical, purposive or beneficial. When viewed in its true perspective, it is clear and obvious that Section 7(3) of the Act of 2018 merely provides that a public office holder can either be entitled to or eligible for allotment in the general pool or in the pool of his own department, office or agency if it has such a pool but a public office holder not eligible for allotment under the pool of his department, office or agency, is obviously, eligible for allotment in the general pool, as it cannot be the intention of the legislature to totally exclude such public office

holder from any and all official residential accommodations.

12. The learned Additional Advocate General, KPK has alluded to the possibility that a person, who is currently not entitled to a residential accommodation of his department may by transfer or promotion attain such right. This possibility, of course, cannot be ruled out but it has been catered for under Rule 18 of the Rules of 2018, which provides conditions of retention of such accommodation and reiterates the obvious bar to occupation of more than one accommodation.

13. In view of the above, it is clear and obvious that true and faithful interpretation of the Act of 2018, more particularly, Sections 16, 7(5) and 7(3) respectively and Rule 18 of the Rules of 2018 is that:-

- (a) All allotments of residential accommodation made prior to the promulgation of the Act of 2018 must pass the test of being consistent and subject to the provisions of Act of 2018, as the saving provision i.e. Section 16 of the Rules of 2018 is of such limited amplitude.

- (b) The offspring and spouses of the retired or deceased public office holders, if otherwise, eligible may be allotted or retain official residential accommodation in such capacity, if the residential accommodation in question is part of the quota reserved, in this behalf, in terms of Section 7(5) of the Act of 2018.
- (c) That a person i.e. the public office holder will only loose entitlement of residential accommodation in the general pool if he is employed in a department, office or agency with its own pool of residential accommodation and such public office holder is entitled to be considered for such allotment. In case of such residential accommodation in the pool of the department, office, agency is designated and the person does not hold such designation, he is entitled to be allotted and can retain allotment of residential accommodation in the general pool. In case of subsequent transfer or promotion to a designation, entitling him to the official residential accommodation in the pool of the said department, office or agency, his rights would be governed obviously by Rule 18 of the Rules of 2018.

14. The entire body of necessary facts in each and every case is not available before us, hence,

we are handicapped from deciding and adjudicating upon each of these petitions.

15. In this view of the matter, the consolidated impugned judgments dated 02.5.2018& 13.9.2018 of the learned Peshawar High Court and the orders of the department in question are set aside. The entire matter of allotment or retention of such allotments, as the case may be, is remanded to the Secretary, Administration, Government of KPK, who shall decide individual cases after hearing all the concerned parties in accordance with the law and in terms of the observations made herein above. The Petitioners may retain their residential accommodations in the meanwhile subject to the decision by the Secretary concerned in terms of this judgment.

16. These Civil Petitions as well as Civil Misc. Applications are disposed of, in the above terms.

Judge

Judge

Islamabad, the  
27<sup>th</sup> February, 2019  
**Approved for Reporting**  
*Safdar/\**

Judge