

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Sardar Tariq Masood
Mr. Justice Syed Mansoor Ali Shah

Civil Appeal No.227-L of 2010.

(on appeal from the judgment of Federal Service Tribunal, Lahore dated 27.03.2010, passed in Appeal No.952(L)CS/2004)

Secretary Revenue Division, Islamabad

...*Appellant*

versus

Iftikhar Ahmed Tabassam, etc

...*Respondents*

For the appellants: Mr. Izharul Haque, ASC.

For respondent No.1: Hafiz Tariq Nasim, ASC.

Date of hearing: 21.03.2019

JUDGMENT

Syed Mansoor Ali Shah, J.- The question before us is whether respondent No.1 is liable to pay *standard rent* (with penal charges) as opposed to normal rent, for unauthorized retention of Government accommodation i.e., House No.C-1, Customs Officers Colony, Gulberg-III, Lahore, for a period of more than six months of his retirement in terms of Accommodation Allocation Rules, 2002 ("**Rules**").

2. Brief background to this case is that respondent No.1 filed Miscellaneous Petition No.569/2006 in Appeal No.952(L)CS of 2004 before the Federal Service Tribunal ("**Tribunal**") on 10.07.2006 before his retirement on 09.10.2006 praying that he be allowed to retain the official accommodation after his retirement. He submitted that as his pension, GP Fund and other dues had not been paid, he was not in a position to rent a new house and,

therefore, requested to retain the official accommodation in question for a period of six months. Interim relief was granted to respondent No.1 on 10.07.2006 but the main appeal came up for hearing on 06.01.2010 i.e., after three and a half years, when the appeal was withdrawn by respondent No.1 while the Tribunal observed in the said order that as respondent No.1 has retained official accommodation on the basis of a stay order he was not liable to pay any penal rent and was only liable to pay normal rent under the Rules.

3. Subsequently, respondent No.3 vide letter dated 24.01.2010 demanded respondent No.1 to pay accrued *standard rent* in the sum of Rs.626,551/- as per rule 25(4)(b) of the Rules. Respondent No.1, according to the said letter, was entitled to retain the official accommodation under rule 15(2) only for a period of six months, after his retirement, on payment of normal rent and thereafter was liable to pay standard rent (with penal charges) such penal rent as is provided under rule 25(4)(b) of the Rules, as the house had been retained beyond the said period without any authorization and in this case for over 3 years.

4. Respondent No.1 once again approached the Tribunal against demand raised through letter 24.01.2010 by making an application in an appeal which stood already withdrawn on 06.01.2010, complaining that inspite of earlier direction of the Tribunal he has been charged rent under rule 25(4)(b) of the Rules. The Tribunal while disposing of the application of respondent No.1 vide impugned order dated 27.03.2010 reiterated that the occupation of the official accommodation by respondent No.1 was

due to the judicial order passed by the Tribunal and, therefore, respondent No.1 was not liable to pay the said amount. Hence this appeal with leave of the Court granted on 22.06.2010.

5. Learned counsel for the appellant Department submits that there is a clear abuse of power and process in the present case. The appeal filed by respondent No.1 had been withdrawn on 06.01.2010 and, therefore, the question whether respondent No.1 was liable to pay standard rent (with penal charges) over and above the normal rent remained undetermined. The stay order was contingent on the final determination of the question in the appeal but as the appeal stood withdrawn so was the stay order. The appeal having been withdrawn by respondent No.1, his application could not have been entertained and no direction could have been issued vide impugned order dated 27.03.2010 to the Department. Learned counsel on behalf of respondent No.1 has no convincing argument and keeps hiding behind the stay order granted by the Tribunal. He also submitted that the instant petition is not maintainable in terms of Article 212(3) of the Constitution as it does not raise any substantial question of law of public importance.

6. We have heard the learned counsel for the parties and have gone through the record of the case. As per Rules 15(2) and 25(4)(b) of the Rules, respondent No.1 could have retained official accommodation after his retirement only for a period of six months and thereafter he was liable to pay standard rent for the remaining period. The stay order granted by the Tribunal is insignificant in the instant case as appeal was not decided on merits and was

finally withdrawn by respondent No.1, resulting in the withdrawal of the stay order, as if it never existed. After the withdrawal of the appeal respondent No.1 had no justification not to pay the penal rent in accordance with the Rules. The entertainment of application filed by respondent No.1 by the Tribunal in an appeal which was no more pending before the Tribunal in itself amounts to abuse of the process. The legal position under the Rules is absolutely clear and there is no factual dispute regarding retention of official accommodation by respondent No.1.

7. As regards submission of learned counsel for respondent No.1 that no substantial question of law of public importance is raised in this case, it is necessary to examine the scope of Article 212(3) of the Constitution which is reproduced hereunder for reference:-

"212(3). An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal."

8. Jurisdiction of this Court can be invoked only if the Court is satisfied that the case involves a substantial question of law of public importance. In order to fully understand the import of this article, a good starting point is the parliamentary debate on Article 212(3) of the Constitution before the promulgation of the Constitution of the Islamic Republic of Pakistan, 1973.

"Mr. Abdul Hafeez Pirzada: ...I would like to submit that we are establishing the supremacy of the Supreme Court over the Special Tribunals and Administrative Courts which are being set up; but in order to prevent flooding petitions before the Supreme Court on trivial matters and no questions of fact or on matters concluded by administrative

tribunal on questions of fact and appraisal of evidence. We have provided these safeguards so that the Supreme Court shall not be flooded with petitions from judgments of administrative courts and thus destroy the object of creating Administrative CourtsSo while recognizing the principle that safety valve should be provided inasmuch as if there are any errors of law committed by Administrative Courts remedy should be available if special leave is granted by the Supreme Court. We also want to prevent frivolous and vexatious petitions from going to the Supreme Court and thus impeding the task of Supreme Court in adjudicating upon its normal cases, usual exercise of its normal jurisdiction. Therefore, what has been said is this that from the judgment, decree, etc. of an Administrative Court an appeal may lie to the Supreme Court, only if the Supreme Court grants special leave, after being satisfied that there is a substantive question of law of general public importance involved in the petition. This will be a sufficient safeguard to the Government servants and also this will be recognition of the principle of the supremacy of the Supreme Court as far as judicature is concerned¹."

9. The purpose of this limited jurisdiction assessed from the parliamentary debate was to restrict the jurisdiction of the Court in order to avoid flooding of Supreme Court with matters which do not raise any substantial question of public importance and recognizing that Tribunal is the final forum for the determination of facts. Under Order XXIV of the Supreme Court Rules, 1980 a petition for leave to appeal from the judgment, decree or order of an Administrative Court or Service Tribunal shall specify succinctly in separate paragraphs, the substantial questions of law of public importance upon which leave is sought. What then is a question of public importance? In the case of *Manzoor Elahi v. Federation of Pakistan* (PLD 1975 SC 66), this Court held that "the term 'public' is invariably employed in contradistinction to the terms private or individual, and connotes, as an adjective, something pertaining to, or belonging to, the

¹ Assembly Debates. National Assembly of Pakistan. Saturday , April 7, 1973. p.2233.

people; relating to a nation, state, or community. In other words, it refers to something which is to be shared or participated in or enjoyed by the public at large, and is not limited or restricted to any particular class of the community." The judgment goes ahead to explain that "whatever else it may mean must include a purpose, that is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned." In *Suo motu case No.13 of 2007* (PLD 2009 SC 217) this Court held that "public importance of a case is determined... on question affecting the legal rights and liberties of the people at large, even though the individual who may have brought the matter before the Court is of no significance". In *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416), it was held that public importance should be viewed with reference to the freedom and liberties granted under the Constitution, their protection and invasion of these rights in a manner, which raises a serious question regarding their enforcement, irrespective of the fact whether such infringement of right, freedom or liberty is alleged by an individual or a group of individuals. In *Sohail Butt v. Deputy Inspector General of Police* (2011 SCMR 698) it was held that "public importance must include a purpose or aim in which general interest of the community as opposed to the particular interest of the individuals is directly and vitally concerned." In *Watan Party v. Federation of Pakistan* (PLD 2012 SC 292), this Court held that "it is settled that public importance must include a purpose or aim in which the general interest of the community as opposed to the particular interest of

the individuals is directly and vitally concerned". Finally in *Suo Moto Action regarding Islamabad – Rawalpindi Sit-in/Dharna case* (PLJ 2019 SC Criminal Cases 190) this Court held that public importance must involve the rights of the public.

10. To constitute "public importance," the matter must go substantially beyond the facts of the case. It is not sufficient that a question of law arises in the case, but whether the question of law transcends the facts of the individual case and is substantial enough to have a significant bearing on the public interest.

11. In the context of service laws a substantial question of law of public importance is a question that may arise out of a case but then surpasses the parties, to the case, and has an overarching effect on the public or a community or a class of civil servants. To determine what might constitute a substantial question of law of public importance under Article 212(3), a good test is to determine whether any decision by this Court in the matter will have a bearing on the public or on the rights of a community or segment of civil servants and will not be restricted to the parties to the case. The remedy under Article 212(3) is, therefore, not an appeal in the ordinary sense of the word but is a unique constitutional jurisdiction that is to be exercised if the question of law raised before the Court impinges on the rights of the public or a segment of public or a community of civil servants. Thus any question of law (i) that involves interpretation of the law, rules, instructions, notifications or governmental policy; (ii) that has not been finally settled by the Supreme Court or is not free

from difficulty or ambiguity or calls for discussion of alternative views² (iv) that highlights a state of uncertainty in the law, arising from a contradictory precedent or (v) that points out blatant abuse of due process, may pass for a substantial question of law of public importance. On the other hand a mere factual inter-party dispute, devoid of the nature of questions of law, mentioned above, will not attract the jurisdiction of this Court under article 212(3) of the Constitution.

12. The framers of our Constitution by giving exclusivity to the constitutional jurisdiction under Article 212(3) also underlined that the Tribunal is the final forum of fact and the law (other than a substantial question of law of public importance, as discussed above). As a matter of background it is useful to remember that a civil servant has a remedial structure of in-house appeal or representation before the concerned authority and then the facility of appeal before the Service Tribunal. This adjudicatory or dispute resolution process reaches finality at the Tribunal unless the aggrieved party can invoke the constitutional jurisdiction under Article 212(3) by raising substantial question of public importance.

13. In this case the question is whether a civil servant can unauthorizedly retain official accommodation beyond a period of six months without paying penal rent. Hence, the case requires interpretation of the Rules. This constitutes a substantial question of law of public importance because the decision by this Court would affect all those civil servants who are subject to the Accommodation Allocation Rules, 2002. This case also highlights

² see AIR 1962 SC 1314 or Sarkar on Civil Procedure Code, vol 1, 11th edition. p.665.

abuse of process and jurisdiction of the Tribunal, which is also a question of public importance and attracts the jurisdiction of this Court.

14. For the above reasons this appeal is allowed and impugned order dated 27.03.2010 passed by the Tribunal is set aside. Appellant Department is entitled to recover Standard Rent as per letter dated 24.01.2010 from respondent No.1.

Judge

Lahore,
21st March, 2019.
Approved for reporting.
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Judge

Judge