

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.268 of 2017
Madiha Ishaq and another
Versus

Estate Officer, Estate Office, Islamabad and another

| S. No. of order / proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
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27.10.2017

Mr. Ashraf Ali Awan, Advocate for the petitioners, Ms. Sitwat Jehangir, learned Assistant Attorney-General with Mr. Mumtaz Khan, Joint Estate Officer.

Through the instant civil revision petition, Madiha Ishaq (petitioner No.1) and her father, Muhammad Ishaq (petitioner No.2), impugn the judgment and decree 16.06.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioners' appeal against the judgment and decree dated 20.05.2017, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said judgment and decree dated 20.05.2017, the learned civil Court dismissed the petitioners' suit for declaration, mandatory and permanent injunction.

2. Learned counsel for the petitioners submitted that the petitioner No.1 was initially appointed on 30.05.2011 as a Junior Lady Teacher (BPS-16) on daily wages employee in the Islamabad Model College for Girls; that the sub-Committee of the Cabinet, in its meeting held on 13.12.2012, regularized petitioner No.1's services; that the Ministry of Capital Administration and Development issued notification dated 08.02.2013 regarding petitioner No.1's regularization; that petitioner No.'1s father, who was a federal government servant, had been allotted the suit accommodation in the 1985; that petitioner No.1's

father superannuated on 10.11.2014; that petitioner No.1 was entitled to be allotted the suit accommodation in terms of Rule 15(2)(b) of the Accommodation Allocation Rules, 2002 ("AAR, 2002"); that since petitioner No.1's applications to the respondents for the allotment of the suit accommodation were not responded to, the petitioners filed a civil suit praying for a declaration to the effect that petitioner No.1 was entitled to be allotted the suit accommodation under the Rule 15(2)(b) *ibid*; and that the learned Courts below concurrently dismissed the petitioners' suit.

3. Learned counsel for the petitioners further submitted that the learned Courts below concurrently erred by not appreciating that the petitioner No.1's services had been regularized with effect from the date of the notification dated 08.02.2013; that the suit accommodation is of the same category for which petitioner No.1 was entitled; that petitioner No.1 submitted applications for the allotment of the suit accommodation within a period of six months from her father's retirement; and that the judgments of the lower Courts below suffer from misreading and non-reading of evidence, and are based on an incorrect appreciation of the law. Learned counsel prayed for the judgments of the learned Courts below to be set-aside and for her civil suit to be decreed.

4. On the other hand, the learned Assistant Attorney-General assisted by Mr. Mumtaz Khan, Joint Estate Officer, submitted that till date a notification has not been issued by the Federal Directorate of Education regarding the regularization of petitioner No.1's services; that

the allotment of suit accommodation in favour of petitioner No.1's father has already been cancelled; and that the judgments of the learned Courts below do not suffer from any jurisdictional infirmity. Learned Assistant Attorney-General prayed for the revision petition to be dismissed.

5. I have heard the contentions of the learned counsel for the petitioners as well as the learned Assistant Attorney General, and perused the record with their able assistance.

6. The record shows that petitioner No.2 was a Federal Government servant, and was allotted government accommodation (i.e. Quarter No.496-C, Street No.99, Sector G-6/1-4, Islamabad) (suit accommodation) vide allotment letter dated 28.07.1985. On 10.11.2014, petitioner No.2 retired on attaining the age of superannuation.

7. On 30.05.2011, petitioner No.1 was appointed as Junior Lady Teacher (BPS-16) on daily wages basis in the Islamabad Model College for Girls, Street 25, F-6/2, Islamabad, which comes under the Federal Directorate of Education, Islamabad. The Sub-Committee of the Cabinet on Regularization of contract/daily wages employees of the Federal Government Departments/ Organizations, in its meeting held on 13.12.2012, regularized with immediate effect a number of daily wagers employees of various educational institutions under the Federal Directorate of Education. Petitioner No.1 was one of such regularized employees. Notification dated 08.02.2013 regarding the regularization of daily wages employees in the educational intuitions under the Federal Directorate of Education, was issued by the Ministry of Capital Administration and

Development, Government of Pakistan. In the said notification, petitioner No.1's name appears at serial No.142 of the list of the regularized employees. This notification has not been withdrawn or recalled at any material stage.

8. Vide letters dated 09.03.2015 and 19.05.2015, petitioner No.1 applied to the Estate Officer (respondent No.1) and the Ministry of Housing and Works (respondent No.2) for the allotment of the suit accommodation. Having not received any response from the respondents, the petitioners, on 09.05.2015 instituted a suit for declaration, mandatory and permanent injunction against the respondents before the Court of the learned Civil Judge, Islamabad. In the said suit, it was *inter alia* pleaded that the petitioner No.1 was entitled to the allotment of the suit accommodation in terms of Rule 15(2)(b) of the AAR, 2002. The respondents contested the said suit by filing a written statement. The position taken by the respondents was that since petitioner No.1 had not applied for allotment of the suit accommodation, the allotment made in petitioner No.2's favour was cancelled on 09.04.2015. From the divergent pleadings of the contesting parties, the learned civil Court framed the following issues:-

- “1. *Whether the plaintiff is entitled to get a decree for declaration, mandatory and permanent injunction as prayed for? OPP*
2. *Whether the plaintiff has no locus standi to file the instant suit? OPD*
3. *Whether the suit of the plaintiff is not maintainable in its present form? OPD*
4. *Relief.”*

9. Vide judgment and decree dated 20.05.2017, the learned civil Court dismissed the suit. Against the said judgment and decree, the petitioners preferred an appeal before the Court of the learned Additional District Judge, Islamabad. Vide

judgment and decree dated 16.06.2017, the learned appellate Court dismissed the appeal. The said concurrent judgments and decrees have been impugned by the petitioners in the instant civil revision petition.

10. The primary reason why the learned Courts below non-suited the petitioners' suit was that the notification dated 08.02.2013 had been set-aside by this Court. True, the said notification was set-aside by the learned Single Judge-in-Chambers vide judgment dated 29.05.2014, passed in writ petition No.1863/2013 and connected matters, but the said judgment was set aside by the Division Bench of this Court, vide judgment dated 09.04.2015, passed in Intra Court Appeal No.325/2014 and connected matters. Therefore, the learned Courts below erred by holding that the notification dated 08.02.2013 (whereby petitioner No.1's services stood regularized) had been set-aside. The legality or the validity of the said notification dated 08.02.2013 is not within the scope of the proceedings at hand.

11. As per the said notification dated 08.02.2013, petitioner No.1's services were regularized "subject to availability of posts". It has not been denied that petitioner No.1 is presently serving as a regular Junior Lady Teacher in the Islamabad Model College for Girls. When petitioner No.1's father retired (i.e. on 10.11.2014), petitioner No.1's services had already been regularized. Rule 2(g) of the AAR, 2002 defines a federal government servant as follows:-

"Federal Government Servant (FGS) means a person who is appointed in a Ministry, Division or an Attached Department against a regular post and certified as such by the concerned Ministry, Division or Department excluding incumbents of posts filled on daily wages, work charged basis or hired from contingencies, and ad-hoc basis."

12. It has not been denied that the Federal Directorate of Education is an attached department of the Ministry of Capital Administration and Development, Government of Pakistan. Notification dated 08.02.2013 regarding the regularization of petitioner No.1's services was issued by the said Ministry. Therefore, petitioner No.1 can be termed as a Federal Government Servant within the meaning of Rule 2(g) of the AAR, 2002. As regards the contention of the learned Assistant Attorney-General that the petitioner does not have a notification regarding her regularization from the Federal Directorate of Education, suffice it to say that under the Rules of Business, 1973, the Federal Directorate of Education comes within the administrative control of Ministry of Capital Administration and Development Division. As mentioned above, notification dated 08.02.2013, issued by the Ministry of Capital Administrative and Development Division, shows that the petitioner was regularized. Till date, the said notification has not been withdrawn or rescinded.

13. The question that needs to be determined is whether petition No.1 was entitled to be allotted the suit accommodation which had earlier been allotted to her father. In this regard, Rule 15(2) of the AAR, 2002 is reproduced herein below:-

"An allottee, on his retirement or expiry of contract period shall be entitled to retain the accommodations under his occupation for a period not exceeding six months, on payment of normal rent and this facility will be available to FGS once only.

Provided that the serving spouse or children living with FGS may be allotted the same accommodation, if he is eligible and otherwise entitled for accommodation within six months of the retirement of the FGS. If the accommodation allotted is higher than the entitlement of the spouse or children, he may apply in writing for the allotment of accommodation in accordance

with his eligibility, in lieu of the occupied accommodation. The spouse or children shall not be eligible for allotment of accommodation of higher category.”

14. Since the evidence on the record shows that petitioner No.1 was living at the suit accommodation with her father (petitioner No.2) at the time of his retirement, and since petitioner No.1 had applied for the allotment of the suit accommodation to the respondents within a period of six months from the date of petitioner No.2's retirement, it is my view that she was entitled to be given the benefit of Rule 15(2) of the AAR, 2002.

15. In view of the above, I find that the judgments and decrees of the learned Courts below are not based on the correct appreciation of the law (i.e. Rule 15(2) of the AAR, 2002), as well as the evidence on the record (i.e. notification dated 08.02.2013, issued by the Ministry of Capital Administration and Development). Since the said notification had not been withdrawn at any material stage, the learned Courts below erred by holding that petitioner No.1 had not been regularized. Resultantly, this petition is allowed, and the impugned judgments and decrees dated 16.06.2017, and 20.05.2017, are set-aside. Furthermore, it is declared that petitioner No.1 is entitled to the allotment of the suit accommodation in terms of the proviso of the Rule 15(2) of the AAR, 2002. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

APPROVED FOR REPORTING

Ahtesham*