

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Civil Revision No.469/2019.

Mst. Shahida Tabassum Gohar **Vs.** **WAPDA etc.**

Petitioner by: Mr. Ishtiaq Ahmed Cheema, Advocate.

Respondents by: Muhammad Khalid Zaman, Advocate.

Date of Decision: **11.02.2020.**

MOHSIN AKHTAR KAYANI, J:- Through this civil revision petition, the petitioner has assailed the judgment & decree dated 30.09.2019, passed by learned Civil Judge 1st Class, West-Islamabad as well as judgment & decree dated 19.10.2019, passed by learned Additional District Judge, Islamabad (West), Islamabad, whereby suit filed by the petitioner for declaration and permanent injunction regarding official accommodation i.e. Flat No.C-4, WAPDA Staff College Colony, Sector I-8/1, Islamabad has been dismissed concurrently.

2. Brief facts are that the petitioner's husband Ajaz Ahmed Gohar (late) was serving as Senior Instructor Finance, WAPDA, Administrative Staff College, Islamabad was allottee of Flat No.C-4, WAPDA Staff College Colony, Sector I-8/1, Islamabad, who died on 18.10.2015 at the age of 52 years during service. The petitioner being widow filed suit for declaration and permanent injunction with prayer that she be declared lawful allottee of the suit flat as she is entitled to retain possession of the suit flat till the age of superannuation of her deceased husband. The suit was contested by the respondent. Learned Trial Court after completing the trial, dismissed the suit vide impugned judgment & decree dated 30.09.2019, passed by learned Civil Judge 1st Class, West-Islamabad. The petitioner assailed the said judgment by filing appeal before the District Judge (West) Islamabad, however, the same was dismissed by learned Additional District Judge (West), Islamabad, vide impugned judgment & decree dated 19.10.2019, hence, this civil revision petition.

3. Learned counsel for the petitioner contends that the petitioner being widow of the deceased is entitled to retain suit flat for five years as per Prime Minister

Assistance Package dated 04.12.2015; that during pendency of the civil suit, the respondents authorities issued office order dated 21.06.2018 and allowed families and widow of deceased employees to retain official accommodation for five years and this aspect has not been considered by the Courts below; that Prime Minister Assistance Package is applicable to all civil servants; that deceased husband of the petitioner was civil servant, therefore, the petitioner cannot be deprived from the benefits of Prime Minister Assistance Package dated 04.12.2015.

4. Conversely, learned counsel for the respondents WAPDA contends that both the Courts below have appreciated the record and rightly concluded the matter as in the light of office order dated 21.06.2018, the benefits cannot be given to the families and widows of deceased employees retrospectively as husband of the petitioner died during service on 08.10.2015; that the respondents issued the office order for giving financial assistance package to the families of deceased employees on 21.06.2018, which was given effect from 16.01.2018 as such Prime Minister Assistance Package dated 04.12.2015 is not applicable to the WAPDA as the same was not adopted by WAPDA, who are independent U/S 17 of The Pakistan Water And Power Development Authority Act, 1958; that under the policy of WAPDA, the petitioner has already enjoyed two years period w.e.f. 08.10.2015 to 07.10.2017 in the suit flat and such period cannot be extended on the strength of subsequent office order; that the petitioner has not appended with instant petition complete record of Courts below as such instant petition is not maintainable in terms of section 115 CPC.

5. I have heard the arguments and gone through the record.

6. Perusal of the record reveals that petitioner's husband Ajaz Ahmed Gohar was Senior Instructor Finance, WAPDA, Administrative Staff College, Islamabad and was allotted Flat No.C-4, WAPDA Staff College Colony, Sector I-8/1, Islamabad by the respondent. The husband of the petitioner died during service on 18.10.2015 leaving behind a widow and minor children, who are residing in the suit flat. The respondents authorities allowed the petitioner to retain the accommodation vide letter dated 30.10.2015/Exh.D.4 for period of two years after death of her husband w.e.f. 08.10.2015 to 07.10.2017, however, before the expiry of the said

period the petitioner filed suit for declaration and permanent injunction with prayer that her case falls within ambit of Prime Minister Assistance Package vide O.M dated 04.12.2015, therefore, she is entitled to retain the accommodation till the age of superannuation of her deceased husband. The matter has been adjudicated by learned Civil Judge 1st Class, who after considering evidence of the petitioner and evidence of WAPDA authorities decided issue No.1 in the following manner:-

“As a matter of fact, admittedly, WAPDA is an authority under the statue i.e. The Pakistan Water and Power Development Authority Act 1958, which has its own rules and regulations and as such Government policies/packages/rules and regulations are not directly applicable on WAPDA, unless or until they are specifically adopted by WAPDA. While plaintiff side miserably failed to produce any letter to reflect that PM Package dated 04-12-2015 is applicable on the employees of defendant department/employees of WAPDA or that the same has been adopted by WAPDA. Thus the onus to prove this issue was on plaintiff, which remained undischarged, accordingly, plaintiff is not entitled to the relief claimed.

8. *For what has been discussed above, this issue is answered in negative.”*

7. The above referred findings of learned Trial Court were upheld by the Appellate Court vide its judgment & decree dated 19.10.2019. I have considered the entire matter from diverse angle and has also attended the proposition in terms of The Pakistan Water And Power Development Authority Act, 1958, which provides establishment of authority in terms of section 17. The Authority is competent to settle the terms and conditions of service of all the employees, therefore, appointments and other matters in terms of section 18 of the Act, WAPDA authorities issued order dated 30.10.2015/Exh.P.4, whereby the petitioner and other family members of the deceased were allowed to retain the official accommodation w.e.f. 08.10.2015 to 07.10.2017.

8. Besides the above referred position, the respondents authority has also passed the office order dated 21.06.2018 to accommodate the families of the employees, who die during service and official accommodation can be retained for five years. However, the effective date for implementation of the said officer order is 16.01.2018, which cannot be stretched to the case of the petitioner, which is earlier in time.

9. The core question raised in these proceedings is as to whether Prime Minister Assistance Package 2015 is applicable to petitioner as such WAPDA authorities have passed their independent order dated 21.06.2018, in which similar terms of Prime Minister Assistance Package has been adopted, however, the time frame w.e.f. the date of death of late husband of the petitioner Ajaz Ahmed Gohar has to be adjudicated in the light of two packages available on record and as such the WAPDA authorities are most competent authorities to decide such question in terms of section 17 & 18 of the Act. Even otherwise, the petitioner has already enjoyed the premises/suit flat from the date of death of her husband i.e. four years and four months and the only period left as per her own version is six months, which will expire on 08.10.2020, although no right exist in favour of the petitioner. Concurrent finding of facts have correctly been appreciated by Courts below, no illegality has been observed.

10. In view of the above reasons, the instant civil revision petition bears no merits, therefore, the same stands dismissed. However, respondents authorities are directed to consider the request of the petitioner for extension of time of six months for vacation of the suit flat on compassionate grounds.

(MOHSIN AKHTAR KAYAN)
JUDGE

R.Anjam