

(REVISED FORM OF BLUE SLIP

. Titled Adnan Qureshi Vs CDA,

- (In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

Initial of the Judge.

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

FORM NO.HCJD/C

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO.: CIVIL REVISION NO.03/2012.

ADNAN QURESHI

VERSUS

CAPITAL DEVELOPMENT AUTHORITY

DATE OF HEARING : 31.01.2012.

PETITIONER BY : Mr. Muhammad Ishtiaq Ahmed Raja.
Advocate

RESPONDENT NO.1 BY: Mr. Muhammad Nazir Jawad, Advocate.

NOOR-UL-HAQ N. QURESHI J.- The

petitioner, Adnan Qureshi, through the present civil revision impugned the order passed by learned Senior Civil Judge, Islamabad dated 23.9.2011 and concurrently order dated 05.01.2012 passed by learned Additional District Judge, Islamabad, whereby an application for grant of temporary injunction under Order XXXIX Rules 1 & 2 CPC was dismissed.

2. That as per facts narrated in the petition, it is stated that petitioner after joining service of the respondent on 24.12.2009 as permanent

workman by the operation of law, his case covers under the provisions of Section 2(g) of Islamabad Rent Restriction Ordinance & Industrial and Commercial Employment Standing Order, therefore, does not require any formal order of regularization.

3. It is further stated that petitioner is entitled to get benefit of Rule 15(2) of Accommodation Allocation Rules, 2002 as he being successor in interest after retirement of his father for allotment of the same as per rule referred above. The petitioner on refusal of such request by the respondent preferred suit before the learned Senior Civil Judge, Islamabad coupled therewith prayer of temporary injunction. On dismissal of the said application moved for temporary injunction under Order XXXIX Rules 1 & 2 CPC, the petitioner preferred Civil appeal No.181/2011, which too was dismissed with same observation, therefore, he preferred instant civil revision assailing both the orders passed by the Courts below.

8. Learned counsel for the petitioner argued that flat No.62/5-B, Sector G-10/3, Islamabad in question was allotted to father of the petitioner vide allotment No.DA/794-62/5-B/G/10-3/2006-1348, dated 22.9.2006 and he

is residing in the same quarter/flat with his father. The petitioner was inducted in service on 24.12.2009 against an existence vacancy of regular post prior to the retirement of his father on 01.4.2010. He argued that under Accommodation Allocation Rules, 2002, Rule 15(i)(b) entitled the petitioner to retain possession after retirement of his father, also entitle him for allotment. He also emphasize that the petitioner was earlier on work charge against a regular post and subsequently regularized vide order dated 25.01.2012 w.e.f. 23.01.2012. He argued that vide Industrial and Commercial Employment (Standing Order) Ordinance VI of 1968 in a schedule respecting section 2(g) provides classification of workman, whereby while considering Rule 15(i)(b) of the schedule, he is deemed to be a permanent worker and since he was posted against an existing vacancy of a regular post, therefore, there was no need to issue regularization order and by virtue of said proposition is introduced by the Standing Order in the schedule, he is deemed to be a permanent workman. Therefore, he argued that not only the Trial Court have misconceived the law as well as facts on record, thereby dismissing the

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injunction application and appeal preferred by the petitioner.

9. As against the arguments referred above, learned counsel appearing for CDA argued that petitioner was not a permanent employee and he retained illegally, the said quarter allotted to his father for a longest period. His father retired on 01.4.2010, while he was regularized on 23.01.2012, therefore, said period after excluding the period of six months provides his occupation as illegal being trespasser defined at Rule-2(p) of the Accommodation Rules, 2002. He further argued that the case of the petitioner not falling within definition of Rule 15(b)(1) but it falls within ambit of Rule 15(b)(2) as well as Rule 15(b)(2), which disentitle the petitioner after a period of six months of the retirement of his father as Federal Government Servant that facility could only be availed once. He also referred Rule 2(g) of Accommodation Allocation Rules 2002 defines the Federal Government Servant, therefore, in view of said legal position, the petitioner was neither earlier entitled, as such, rightly the injunction application was dismissed in the suit as well as appeal preferred against the said order. He also emphasized that the petitioner in perspective of the classification

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provided by Accommodation Allocation Rules, 2002, the petitioner comes within "A" Category, whereas he is in occupation of category "B", for which, under no circumstances, he can even moved an application for allotment being in eligible of the period of six months allowed by the Rules, which he has already availed, hence not entitled for any relief claimed in the present civil revision. In support of his contention, he relied upon case law reported as "**2010 SCMR 1537**" (***Federation of Pakistan through Secretary Ministry of Housing and Works and another Vs. Abrar Ahmed and others***) on the particular subject and with the similar circumstances, the Hon'ble Supreme Court has a very clear view, given a verdict that in case of serving spouse or children of retired government servant eligible otherwise become entitled for accommodation within a period of six months could retain same accommodation and in case of accommodation higher than his entitlement, they might apply in writing for allotment in accordance with his eligibility in lieu of occupied accommodation but not entitle to retain accommodation of higher category than their entitlement after six months of retirement of their predecessor. He also relied upon another

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case law reported in **"2010 PLC(C.S.) 608", (Imran Ahmad Khilji Vs. Federation of Pakistan and 2 others)**, declaring the retention of official residence in question was illegal and without lawful authority, those were directed to deliver the vacant possession of official residence.

10. Arguments heard. Record perused.

11. After hearing both the parties to evaluate and assess the contention raised, while going through the relevant record and authorities, as under:-

So far concern of appointment of the petitioner against an existing vacancy of regular post, which subsequently regularized does not mean that he on getting such employment on daily wages become eligible for allotment of the quarter/flat. However, classification of workman defined by the Standing Order in the schedule respecting Section 2(b), the permanent workman is defined as under:-

"A 'permanent workman' is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the

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industrial or commercial establishment, and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lockout or strike) or involuntary closure of the establishment and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months."

12. From the above classification of workman, it appears to have been divided in three categories

- (i) Workman engaged on permanent nature work, nine months has satisfactorily completed period of probation of three months in the same or another occupation in industrial or commercial establishment.
- (ii) A badli has been employed for three months or one hundred and eighty-three days during consecutive three months including different breaks due to sickness, accident, strike etc or

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involuntary closure of the establishment, and

- (iii) *A badli has been employed for continuous three months or one hundred and eighty-three days during twelve consecutive months.*

13. From the bare reading of above definition of permanent workman does not mean that the petitioner is deemed to be regularized as argued that there was no need to issue a formal order of regularization. Classifications of the workman are neither in conflict with Rule 2(g) nor provide any favour to the petitioner as a Federal Government Servant eligible for allotment of the accommodation. Therefore, Rule 2(g) of the Accommodation Allocation Rules, 2002 is reproduced hereunder:-

“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.”

14. It is crystal clear and there remain no ambiguity in the mind that while referring both

above enactments, the petitioner cannot claim his right falling within parameters of 2(g) ibid referred above. It is also explicitly clear that the post filled on daily wages work-charge basis or hired from contingencies or ad-hoc basis are excluded being federal Government servant eligible for allotment of the Accommodation. As such, the arguments advanced by the learned counsel for the respondents' carries weight that after expiry of six months period, the petitioner become trespasser as defined Rule 2(p) of the Accommodation Allocation Rules, 2002, which is reproduced as under:-

"Trespasser means an individual or group and individuals who occupy Government or hired accommodation without valid allotment letter issued by the Estate Office for its occupations.

15. While assessing the entire record and orders passed by both the Courts below as well as scheme of Accommodation allocation Rules, 2002, particularly Rule 15, which having two aspects, first favouring the case as an alternate accommodation of his entitlement, who shall not be dislodged by charging nominal rent but again condition of six months after retirement comes

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in his way, whereas the other portion of 15(2) is absolutely clear that such facility available to Federal Government Servant once only for a period of not exceeding six months and only in case as is eligible for the same accommodation is made out, it may be allotted, if he is entitled for accommodation.

16. That the category of his service and eligibility in classification "A" has not been denied or opposed but the case of petitioner is only based upon the reason of his retention in continuation after retirement of his father, which legal proposition in my humble view is not correct.

17. On the contrary, the legal proposition set forth by the learned counsel for the CDA is inconsonance with the case law referred in support of arguments, hence, I am fully convinced that present civil revision application having no merits to succeed, as such, the same is hereby dismissed with no order as to costs.


(NOOR-UL-HAQ N. QURESHI)
JUDGE

*AR-ANSARI/

APPROVED FOR REPORTING.

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