

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.R. No.15 of 2016
Tahir Taj Abbasi
Versus.

FOP, through Secretary M/o Housing & Works & others

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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02.02.2016	Sardar Rafiq R. Sanjrani, Advocate for the petitioner, Khawaja Imtiaz Ahmad, learned Standing Counsel.	
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Through this Civil Revision Petition, the petitioner, Tahir Taj Abbasi, impugns the Orders dated 15.12.2015 and 29.10.2015, passed by the Court of learned Additional District & Sessions Judge, Islamabad, and the Court of learned Civil Judge, Islamabad, respectively.

2. The petitioner had filed a suit for declaration and mandatory injunction before the Learned Civil Court, praying for *inter alia* a declaration to the effect that the petitioner was entitled to be allotted government accommodation under Rule 15 (2) of the Accommodation Allocation Rules, 2002 ("AAR, 2002"), and that the petitioner was entitled to retain possession of the government accommodation allotted to his father. Furthermore, the petitioner had prayed for an injunction restraining the Respondents from dispossessing the petitioner from the accommodation allotted to his father.

3. Vide Order dated 29.10.2015, the Learned Civil Court rejected the plaint under Order VII, Rule 11, of the Code of Civil

Procedure, 1908 ("C.P.C."). The petitioner's appeal against the said order was dismissed vide order dated 15.12.2015 passed by the Court of learned Addl. District Judge, Islamabad.

4. Learned counsel for the petitioner submitted that the petitioner's father, who retired from government service on 13.01.2010, had been allotted government accommodation (i.e. Quarter No.6/5, Cat-V, I-9/4, Islamabad) vide allotment letter dated 06-04-1991; that when the petitioner's father retired, the petitioner was serving as Junior Auditor (BPS-04) on contingency basis since 01.6.2005 in Project to Improve Financial Reporting and Auditing ("PIFRA"); that the petitioner's services were formally regularized vide notification dated 19.12.2014. The learned counsel for the petitioner claims that the petitioner was nonetheless entitled to retain the government accommodation on the strength of Rule 15 (2) of the AAR, 2002 (SRO.749(I)/2002, dated 30.10.2002), which reads as follows:-

"15 (2) 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.” (Emphasis added).

5. The learned counsel for the petitioner referred to the Office Order dated 15.12.2008, which shows that the petitioner’s father, Mr. Taj Muhammad Abbasi, retired from service with effect from 13.01.2010, after availing of leave preparatory to retirement from 13.01.2009 to 12.01.2010.

6. The learned counsel for the petitioner drew the attention of this court to letter dated 12.03.2015 from the office of Auditor General of Pakistan, wherein it has been confirmed that the office of the Auditor General of Pakistan is an attached department of the Ministry of Finance and that the petitioner was eligible for allotment of accommodation from the Estate Office Pool. Furthermore, in the said letter it is stated that the petitioner had been appointed on 01.06.2005 as a Junior Auditor (BPS-04) in PIFRA on contingency basis, and his services had been regularized vide notification No.1193/Estt/C/46-2011-II, dated 19.12.2014. In the said letter dated 12.03.2015, it was also certified that Mr. Tahir Taj Abbasi was a regular employee (BPS-01) at the office of Auditor General of Pakistan.

7. The letter dated 12.3.2015 from the office of the Auditor General of Pakistan, and the Office Order dated 15.12.2008 have been annexed by the petitioner to the civil revision petition as Annex "E" and "I" respectively.

8. The petitioner's application for the allotment of the government accommodation (i.e. Quarter No.6/5, Cat-V, I-9/4, Islamabad) under Rule 15(2) of the Accommodation Allocation Rules, 2002, was processed by the Estate Office, Government of Pakistan, which vide letter dated 25.02.2015 sought information regarding the petitioner from the office of the Auditor General of Pakistan. The office of the Auditor General of Pakistan, vide letter dated 12.3.2015 (reference to which has been made hereinabove) provided the required information to the Estate Office. Having received no positive response from the Estate Office, the petitioner instituted a suit for declaration and mandatory injunction, wherein it has been admitted in Paragraph 5 thereof that the petitioner had been initially appointed on contract basis which was extended from time to time without any gap until the regularization of his services.

9. In the written statement filed by the Estate Office before the Learned Civil Court, it has been pleaded that the allotment of the accommodation in question in favour of the petitioner's father was cancelled with effect from 11.07.2012 and that since then the status of the petitioner is that of an "un-authorized occupant". Furthermore, it has been pleaded

that the petitioner's father was also granted a grace period of six months beyond his retirement date to stay in the said accommodation. It was also pleaded that the plaint was liable to be rejected under the provisions of Order VII, Rule 11 C.P.C.

10. The learned trial court and the learned appellate court concurrently non-suited the petitioner under the provisions of Order VII, Rule 11 C.P.C. primarily on the ground that the petitioner had not become eligible for the allotment of government accommodation within a period of six months from the date of his father's retirement. Hence, the benefit of Rule 15(2) of the AAR, 2002, could not be extended to the petitioner.

11. Now, there is no denying the fact that the petitioner was employed on contingency basis from 01.06.2005 to 19.12.2014, when his services were regularized. The documents filed with the suit also confirm that the petitioner's father retired from government service with effect from 13.01.2010. The essential question that needs to be determined is whether an employee working on contingency basis at the office of the Auditor General of Pakistan, is entitled to take the benefit of Rule 15(2) of the AAR, 2002. During the six-month period after the petitioner's father's retirement on 13.01.2010, the petitioner was employed on contingency basis. It is my view that the petitioner could not call himself a "Federal Government Servant" during this six-month. This is because during

this period, the petitioner was not appointed as a Federal Government Servant as defined in Rule 2(g) of the AAR, 2002, as under:-

2(g) "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. Hence, during the six-month period after his father's retirement, the petitioner was not eligible for government accommodation under Rule 3 of AAR, 2002. The benefit of the proviso to Rule 15(2) extends only to serving spouse or children living with FGS who may be allotted the same accommodation, if they are eligible and otherwise entitled for accommodation.

13. Furthermore, as the services of the petitioner were regularized vide notification dated 19.12.2014, which is about a month short of five years after his father's retirement, he was not entitled to seek any benefit under Rule 15(2) of the AAR, 2002. In the case of Adnan Qureshi Vs. Capital Development Authority reported as 2015 PLC (CS) 1030, it has been held by this Court that "the post filled on daily wages, work-charge basis or hired from contingencies or ad-hoc basis are excluded from being Federal Government Servants eligible for allotment of accommodation." It was further held that after the expiry of a period of six month from the

date of the retirement of the petitioner's father, the petitioner becomes a trespasser as defined in Rule 2(p) of the AAR, 2002.

14. As the petitioner's services have been regularized since 19.12.2014, there is nothing preventing him from applying for government accommodation and getting into a queue/general waiting list maintained under Rule 6 of the AAR, 2002. But he cannot hold on to the government accommodation that had been allotted to his father.

15. It is settled law that the High Court has very limited jurisdiction to interfere in the concurrent findings of the courts below while exercising revisional jurisdiction under Section 115 C.P.C. unless and until the judgments of the courts below were the outcome of misreading or non-reading of evidence or the decision of the case was in violation of the parameters prescribed by the superior courts. As this is a case where the concurrent findings of the fora below are in accordance with the law laid down by this Court, there is no occasion to interfere in such findings.

16. The learned courts below exercised their jurisdiction correctly by rejecting the plaint under Order VII, Rule 11 C.P.C. after hearing the parties and going through the documents annexed with the plaint. These documents show clearly that the petitioner was not a Federal Government Servant at the time, or within six months, of his father's retirement. Therefore, the petitioner could not invoke Rule

15(2) of the AAR, 2002, and insist on staying in the government accommodation that had been allotted to his father. On account of these facts, as there was an impossibility to grant any relief to the petitioner in the suit, the learned Civil Court correctly exercised its jurisdiction by rejecting the plaint under Order VII, Rule 11 C.P.C, and not subjecting the defendants to the rigors of an unnecessary lengthy trial.

17. The documents (i.e. letter dated 12.3.2015 from the office of the Auditor General of Pakistan, and the Office Order dated 15.12.2008) demolished the petitioner's own case. It is also well settled that a court can look into the averments contained in the plaint as well as its supporting documents for the purpose of deciding whether or not to reject the plaint under Order VII, Rule 11 C.P.C. Besides this, a Court can also consider the pleadings of the other side, the documents brought on record along with the written statement while deciding an application under Order VII, Rule 11 C.P.C. Reference in this regard may be made to the following cases:-

- i) S.M. Sham Ahmad Zaidi Vs. Malik Hassan Ali Khan reported as 2002 SCMR 338;
- ii) Muhammad Saleem Ullah Vs. Addl. District Judge, Gujranwala reported as PLD 2005 Supreme Court 511;
- iii) Muhammad Ashraf Vs. Mst. Kokab Benazir Fatima reported as 2008 CLC 1398;

- iv) Mst. Mazhar Khanam Vs. Sheikh Saleem Ali reported as 2004 CLC 799;
- v) Mst. Bano alias Gul Bano Vs. Begum Dilshad Alam reported as 2011 CLC 88;
- vi) Muhammad Sharif Vs. Aziz Bibi reported as 2011 CLC 1319

18. By reason of the aforementioned, I do not find any jurisdictional error or material irregularity in the concurrent orders of the learned courts below. Hence, the petition is dismissed with no orders as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan*