

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Civil Revision No.310 of 2016

Muhammad Hussain

**Versus**

Estate Office & others

**Date of Hearing:** 27.02.2017

**Petitioner by:** Mr. Khurram Mehmood Qureshi, Advocate.

**Respondents by:** Ms. Sitwat Jehangir, learned Assistant  
Attorney-General.

Mr. Mumtaz Khan, Joint Estate Officer.

Mr. Miraj Khan, Section Officer, Ministry of  
Housing and Works, Islamabad.

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**MIANGUL HASSAN AURANGZEB J:-** Through the instant civil revision petition, the petitioner, Muhammad Hussain, who is employed as a Naib Qasid (BPS-01) in the Capital Development Authority ("C.D.A."), impugns the judgment dated 12.05.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the order dated 29.04.2016, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order and decree dated 29.04.2016, the learned Civil Court rejected the plaint under Order VII, Rule 11 of the Code Civil Procedure, 1908 ("C.P.C.").

2. The record shows that on 19.04.2016, the petitioner instituted a suit for declaration, permanent and mandatory injunction against the Superintendent of Police, Islamabad, and the Estate Office before the Court of the learned Civil Judge, Islamabad. The petitioner's case was that House No.334/A, Sector G-7/3-1, Islamabad, ("the suit accommodation") was allotted on 28.04.1986 to the petitioner's mother, who was a lady Constable in the Islamabad Capital Territory Police. The petitioner's mother retired from service on 01.07.2015. Vide office order dated 14.03.2008, the petitioner was employed in the Maintenance Division of C.D.A. The petitioner, who has been residing with his mother in the suit accommodation, applied to the Estate Office for the allotment of the suit accommodation in

his favour. On 18.08.2015, the Administration Directorate of the C.D.A. informed the Estate Office that the C.D.A. would have no objection if the suit accommodation is placed in the pool of C.D.A for the allotment to the petitioner on family transfer basis. It was also conveyed that C.D.A. would provide accommodation of the same category on its availability.

3. Fearing eviction from the suit accommodation, the petitioner on 19.04.2016, filed a suit for declaration, permanent and mandatory injunction. Along with the said suit, the petitioner filed an application for interim relief. Vide ad-interim order dated 19.04.2016, the respondents were restrained from dispossessing the petitioner from the suit accommodation. Vide order and decree dated 29.04.2016, the learned Civil Court rejected the plaint under Order VII, Rule 11 C.P.C. It was *inter alia* held that the petitioner was not entitled for the allotment of the suit accommodation, which was in the pool of the Estate Office. Furthermore, it was held that the petitioner, who was an employee of the C.D.A. could not claim benefit under the proviso to Section 15(2) of the Accommodation Allocation Rules, 2002, ("the AAR, 2002"), and have the suit accommodation allotted in his favour. The learned Appellate Court, on 12.05.2016, dismissed the petitioner's appeal against the said order and decree dated 29.04.2016. The operative part of the said judgment of the learned Appellate Court is reproduced herein below:

*"Record reflects that the suit accommodation was initially allotted to mother of appellant, who was employed with ICT. The appellant's mother has been retired from her service. The appellant is appointed as Naib Qasid in BPS-1 in CDA. The appellant claims the allotment of suit accommodation under Rule 15(2) of the AAR 2002. No cavil to preposition that in order to seek benefit of Rule 15(2) of AAR, 2002 the serving children/spouse of an ex-allotee may be allotted same accommodation provided when he/she becomes eligible and otherwise entitled for allotment of same accommodation within six months after retirement of the ex-allotee. Admittedly, the appellant is an employee of the CDA which is non-entitled department for allotment of accommodation from the pool of Estate Office. The learned trial court has rightly rejected the plaint of appellant which sans any cause of action. The learned trial court has committed no illegality or irregularity, no misreading or non-reading of evidence and material on record.*

*Hence the appeal is hereby dismissed having no force/merits. File may be consigned to record room after due completion/compilation."*

4. The said order dated 29.04.2016, passed by the learned Civil Court, and the judgment dated 12.05.2016, passed by the learned Appellate Court have been impugned by the petitioner in the instant civil revision petition.

5. Learned counsel for the petitioner submitted that the petitioner was entitled to be given benefit under the proviso to Rule 15(2) of the AAR, 2002; that on account of being an employee of the C.D.A., the petitioner can be treated as a federal Government servant; that the petitioner's mother, who retired from service on 01.07.2015 had been duly allotted the suit accommodation; that the petitioner has been residing with his mother; that the C.D.A. had already issued a No Objection Certificate for the suit accommodation to be placed in the pool of the C.D.A.; that whenever, an accommodation of the same category is available, it shall be given by the C.D.A. to the Estate Office in exchange for the suit accommodation; that until such an exchange takes place, the petitioner is entitled to remain in occupation of the suit accommodation; and that the Ministry of Housing and Works, vide notification dated 14.12.2015, has, in exercise of the powers conferred by Rule 28 of the AAR, 2002, directed that while dealing with cases for transfer of allotment under Rule 15(1)(2) of the AAR, 2002, the Competent Authority could condone the gap period up to one year from the date of the expiry of the admissible time period, on payment by the outgoing occupant of monthly rent equivalent to one monthly rental for the condoned period. The learned counsel for the petitioner prayed for the concurrent orders passed by the learned Courts below to be set aside.

6. On the other hand, the position taken by the learned Assistant Attorney-General on behalf of respondents No.1 and 2 (i.e. the Estate Office and the Ministry of Housing and Works) was that the suit accommodation belonged to the Estate Office only, and that the same was allotted to the petitioner's mother, who retired from service on 01.07.2015. Furthermore, it was

submitted that the allotment of the suit accommodation in the petitioner's mother's name was cancelled on 31.12.2015 (i.e. six months after her retirement); that the petitioner's mother was under an obligation to hand over the vacant possession of the suit accommodation under Rule 11 of the AAR, 2002, but she failed to do so; that the petitioner's possession of the suit accommodation is without lawful authority; that the petitioner has continued to remain in occupation of the suit accommodation on the basis of interim orders passed by the learned Courts below as well as this Court; that the employees of the C.D.A. are not eligible for the allotment of accommodation from the pool of the Estate Office; that the C.D.A. has its own pool of accommodation for its employees; that as per Government policy, government accommodation cannot be exchanged with C.D.A. unless and until accommodation of the same category is placed in the Estate Office pool and possession of such accommodation is also handed over; that the petitioner is an unlawful occupant of the suit accommodation, and is liable to be evicted therefrom under Rule 25(1) of the AAR, 2002 read with Sections 4 and 5 of the Land and Building (Recovery of Possession) Ordinance, 1965; and that the petitioner is also liable to pay penal rent under Rule 25(4) of the AAR, 2002.

7. Furthermore, the Assistant Attorney-General submitted that since the petitioner, who is an employee of the C.D.A., cannot be allotted accommodation from the pool of the Estate Office, he is not eligible for the allotment of the suit accommodation; that the C.D.A. has not made accommodation of the same category available to the Estate Office for an exchange; that the petitioner cannot continue to occupy the suit accommodation until the C.D.A. gives possession of accommodation of the same category to the Estate Office in exchange of the suit accommodation; and that since the petitioner is an employee of the C.D.A., he can apply to the C.D.A. for the allotment of suitable accommodation from the pool of the C.D.A.

8. Respondent No.4 (the Superintendent of Islamabad Police), also filed written comments to the civil revision petition. In the said written comments, respondent No.4 took the position that the petitioner's mother retired from service on 01.07.2015, on attaining the age of superannuation. Furthermore, it was pleaded that the suit accommodation is on the police pool; that the suit accommodation cannot be allotted to the petitioner, who is an employee of the CDA; that quarters placed in the police pool are allotted to the officers whose names appear in the General Waiting List; and that the suit accommodation has already been allotted to Assistant Sub-Inspector, Abid Hussain of the Islamabad Capital Territory Police, vide allotment letter dated 02.09.2016. Respondent No.4 prayed for the dismissal of the civil revision petition.

9. I have heard the contentions of the learned counsel for the petitioner as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

10. The facts leading to the filing of this civil revision petition have been mentioned in sufficient details in paragraphs No.02 to 03 above, and the same need not be recapitulated.

11. It is an admitted position that the petitioner's mother, who was a lady constable in the Islamabad Capital Territory police retired from service on 01.07.2015. As per the information furnished by respondent No.4, the petitioner's mother was allotted the suit accommodation on 28.04.1986. Vide office order dated 14.03.2008, the petitioner was employed in the Maintenance Division of C.D.A. The petitioner lives with his mother, and therefore, is still in occupation of the suit accommodation. The suit accommodation is not in the pool of the C.D.A., but in the pool of the Estate Office. On 18.08.2015, the Administration Directorate of the C.D.A. informed the Estate Office that the C.D.A. would have no objection if the suit accommodation is placed on the C.D.A pool for the allotment to the petitioner on family transfer basis. Till date, the Estate Office has not exchanged the suit accommodation with any accommodation provided by the C.D.A. The learned Assistant

Attorney-General submitted that respondents No.1 and 2 have no intention of exchanging the suit accommodation with C.D.A. The petitioner seeks the benefit of the proviso to Rule 15(2) of the AAR, 2002 to be extended to the petitioner and for the suit accommodation to be allotted to him. These are the admitted facts.

12. Learned counsel for the petitioner has annexed at Page 15 of this petition notification dated 14.12.2015, issued by the Ministry of Housing and Works in exercise of the powers conferred by Rule 28 of the AAR, 2002. This notification conveys the direction of the Federal Government to the effect that while dealing with the cases of transfer of allotment under Rules 15(1) and (2) of the AAR, 2002, the competent authority may condone the period up to one year from the date of the expiry of the admissible time period on payment by the outgoing occupant of monthly rent equivalent to one month's rent for the condoned period.

13. Various time periods in Rule 15(1) and (2) of the AAR, 2002, have been stipulated. Rule 15(1) of the AAR, 2002 provides that in case of the death of an allottee, the family of the allottee shall be entitled to retain the accommodation under their occupation for a period not exceeding one year on payment of nominal rent. Furthermore, it is provided that the serving widow or serving children of the expired allottee may be allotted the government accommodation provided any of them become eligible for the allotment of the accommodation within one year of the death of the allottee. In case the allottee expires within six months after retirement, his serving spouse or children can be considered for allotment provided all other conditions are met. As regards Rule the 15(2) of the AAR, 2002, it provides *inter alia* that an allottee, on his retirement shall be entitled to retain the accommodation under his occupation for a period not exceeding six months, on payment of nominal rent, and this facility is available to a federal government servant only once. The proviso to Rule 15(2) of the AAR, 2002, provides that the serving spouse or children living with a federal government servant/allottee may be allotted the

same accommodation if he is eligible and otherwise entitled for accommodation within six months of the retirement of the federal government servant/allottee.

14. The AAR, 2002, have been made in exercise of the powers conferred by Section 25(1) of the Civil Servants Act, 1973, which provides that the President or any person authorized by the President in this behalf may make such Rules as appears to him to be necessary or expedient for carrying out the purposes of the said Act. Rule 15 of the AAR, 2002, has been amended earlier. That amendment was brought about through S.R.O.668(I)/2004 dated 4-8-2004, which was issued in exercise of the powers conferred by Section 25 (1) of the Civil Servants Act, 1973. This is well explained in the case of Federation of Pakistan through Secretary Ministry of Housing and Works and another Vs. Abrar Ahmed and others (2010 SCMR 1537). If the Ministry of Housing and Works is too eager to extend or relax the time periods fixed in Rule 15 (1) and (2) of AAR, 2002, it may consider moving a summary to the President for amending the relevant provisions of the AAR, 2002. An amendment in the AAR, 2002 can be brought about by the President by exercising powers conferred under Section 25 (1) of the Civil Servants Act, 1973. Without such an amendment, the time periods fixed in Rule 15 (1) and (2) of the AAR, 2002, cannot be “condoned” by the “competent authority”, whoever that is, in the garb of powers available to the Federal Government under Rule 28 of the AAR, 2002.

15. Rule 28 *ibid* empowers the Federal Government to issue directions as it may deem necessary for carrying out the purposes of AAR, 2002. In issuing such directions, directions or clarifications may be given to supplement the provisions of AAR, 2002. The Federal Government in purported exercise of powers under Rule 28 of the AAR, 2002, cannot issue directions which have the effect of amending, varying, undoing, relaxing, altering, modifying, or changing the substantive provisions of the AAR, 2002. The said notification dated 14.12.2015, which has the effect of giving the “competent authority” the power to “condone” a gap periods stipulated in Rule 15(1) and (2) of the

AAR, 2002 up to one year, and, therefore, altering the time periods fixed in Rule 15(1) and (2) of the AAR, 2002, is on the face of it, void.

16. The contention of the learned counsel for the petitioner that the C.D.A. had issued a no objection certificate of the suit accommodation to be placed in the pool of the C.D.A. so that the same could be allotted to the petitioner, has not impressed me. Rule 4(1) of the AAR, 2002, *inter-alia*, provides that the Estate Office shall not place its accommodation at the pool of any other department except the Ministry of Foreign Affairs and ISI. Now, the vital question that needs to be answered is whether the petitioner can continue to remain in occupation of the suit accommodation in the hope that someday the Estate Office will exchange the suit accommodation with an accommodation that may be made available by the CDA. I would say, No. The petitioner cannot be extended the benefits of the proviso to Rule 15(2) of the AAR, 2002, for the simple reason that the suit accommodation has at no material stage, been placed in the pool of the CDA. The petitioner being an employee of the CDA is not entitled to government accommodation from the pool of the Estate Office. The petitioner cannot deprive the persons, who have been waiting for years in the General Waiting List maintained by the Estate Office under Rule 6 of the AAR, 2002. The petitioner is at liberty to apply to the CDA for the allotment of accommodation from its own pool. The argument of the learned counsel for the petitioner that regardless of Rule 4(1) of the AAR, 2002, in the recent past, employees of the CDA had been allotted government accommodation from the pool of the Estate Office by placing such accommodation in pool of the CDA, suffice it to say that such an allotment in derogation of Rule 4(1) of the AAR, 2002, would not have any legal foundation. Even otherwise, two wrongs do not make a right. The language of Rule 4(1) is couched in negative terms, and the placement of the Estate Office's accommodation on the pool of any other department (other than the Ministry of Foreign Affairs and ISI), is not permissible by law i.e. AAR, 2002.



17. Rule 15 (2) of AAR, 2002, provides that an allottee, on his retirement or expiry of contract period shall be entitled to retain the accommodation 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.” It is an admitted position that a period of six months from the date of the petitioner’s mother’s retirement, has long expired. Till date, an allotment letter has not been issued in the petitioner’s favour. The petitioner has not even brought on record his application seeking the allotment of the suit accommodation in his favour under the proviso to Rule 15(2) of the AAR, 2002. Rule 2 (p) of the AAR, 2002, defines a “trespasser” as an individual or group of individuals who occupy Government or hired accommodation without valid allotment letter issued by the Estate Office for its occupation. In the case of Adnan Qureshi Vs. Capital Development Authority (2015 PLC (CS) 1030), it has been held *inter alia* that after the expiry of a period of six month from the date of the retirement of the petitioner’s father (federal government servant), the petitioner becomes a trespasser as defined in Rule 2(p) of the AAR, 2002.

18. The petitioner ought to think of the adverse consequences to his career as an employee of the CDA which may flow from his unauthorized occupation of the suit accommodation. Rule 25 of the AAR, 2002, authorizes the Estate Office to eject unauthorized occupants from government owned accommodation under the Federal Government Land and Buildings (Recovery of Possession) Ordinance, 1965 (Ordinance LVI of 1965). Furthermore, Rule 25(4)(c) provides that a federal government servant against whom action is taken under Rule 25 *ibid* shall be liable to disciplinary proceedings under the relevant rules and laws. Additionally, Rule 25(4)(d) provides that a person other than a federal government servant shall be liable to criminal proceedings for being in illegal occupation of the government accommodation. The petitioner in order to insulate himself from the penal consequences envisaged in Rule 25 *ibid* ought to hand over vacant possession of the suit accommodation to the Estate Office at the earliest.

19. It has become commonplace for federal government employees or their family members to continue to occupy government accommodation/quarters unauthorizedly after the transfer and or retirement of the allottee. As a direct consequence of this, the employees who are eligible to get the government accommodation are deprived of the housing facility, causing lot of inconvenience and harm. They are required to hire residential accommodation at an extra-ordinary cost. To require a retired or a transferred Government Servant to pay rent at the market rates or at a rate which is more than the house rent allowance but less than the market rate, would amount to adding a premium to a wrong. The Court has to keep this in mind. The innocent hopeful government servants who are bidding their time having entered their names in the General Waiting List maintained by the Estate Office under Rule 6 of the AAR, 2002, are not before the Court and their interest is also required to be protected.

20. The Hon'ble Supreme Court of Pakistan in the case of Muhammad Afsar Vs. Malik Muhammad Farooq (2012 SCMR 274), has given the following directions to the Ministry of Housing and Works, and the Estate Office as regards allotments made under Rule 29A of the AAR, 2002:-

- "i. that in future all the allotments will be made strictly on merits on the basis of General Waiting List; and*
- ii. Relaxation of rules under Rule 29A of the Accommodation Allocation Rules, 2002, will not be often exercised, except in the cases of hardship and that too by recording justifiable reasons for the same, after hearing the likely affected employees in the General Waiting List."*

21. The Estate Office as well as the C.D.A. are under an obligation to act strictly in accordance with the judgments of the Hon'ble Supreme Court, which are binding on each and every organ of the State by virtue of Articles 189 and 190 of the Constitution. The said respondents are duty bound to take emergent steps to evict the unauthorized occupants from government accommodation. Laxity or inertia on the part of public functionaries serving in the Ministry of Housing and Works, Estate Office and the Capital Development Authority in

evicting the unauthorized occupants from government accommodation would render them liable to be proceeded against in accordance with the law.

22. In view of the above, I do not find any jurisdictional infirmity in the concurrent orders passed by the learned Courts below. Resultantly, this revision petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017**

**(JUDGE)**

**APPROVED FOR REPORTING**

\*Sanaullah\*

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