

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

RFA No.220/2020

Muhammad Adeel Zia

versus

FOP through Secretary, Ministry of Housing and Works, Islamabad, etc.

Appellant by: Raja Yasir Shakeel, Advocate.

Respondents by: Barrister Muhammad Mumtaz Ali, AAG.
Muhammad Mohsin Pasha, Joint Estate Officer.

Date of Hearing: 09.03.2021.

MOHSIN AKHTAR KAYANI, J: Through this regular first appeal, the appellant has called in question judgment and decree of the learned Civil Judge 1st Class (West), Islamabad, dated 22.09.2020, whereby suit filed by the appellant for declaration, mandatory and permanent injunction has been dismissed.

2. Succinctly, father of Muhammad Adeel Zia (*appellant*) had been allotted Government accommodation i.e. Quarter No.9/2-C, Street No.77, Sector G-7/1, Islamabad (*suit accommodation*), who stood retired on 01.03.2014, whereafter the appellant while serving as Assistant System Administrator (BPS-16) in the Academy of Educational Planning and Management (*AEPAM*), Ministry of Education and Professional Training, Islamabad claimed to be entitled for the suit accommodation under Rule 15(2)(b) of the Accommodation Allocation Rules, 2002, but, no such allotment letter has been issued in favour of appellant. This compelled the appellant to file a suit for declaration, mandatory and permanent injunction, which has been dismissed vide impugned judgment and decree, dated 22.09.2020. Hence, instant regular first appeal.

3. Learned counsel for appellant contended that learned trial Court has ignored the fact that appellant is a civil servant and is entitled for suit accommodation, as such, other similarly placed employees in subordinate offices have been allotted Government accommodation, therefore, the appellant could not be discriminated; that the AEPAM has been declared as part and parcel of the Ministry of Education and Professional Training, Islamabad under Schedule-II of the Rules of Business, 1973, but such fact has been overlooked by the learned trial Court while passing the impugned judgment and decree.

4. Conversely, learned AAG as well as Joint Estate Officer present before the Court contended that appellant is an employee of a subordinate department and not of a Ministry, Division or its attached department, therefore, appellant is not eligible for allotment of Government accommodation from the pool of the Estate Office, per se, the learned trial Court has rightly appreciated each and every aspect case and dismissed the suit of appellant in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that Muhammad Adeel Zia (appellant) has been appointed as Assistant System Administrator (BPS-16) in the Academy of Educational Planning and Management (AEPAM) vide notification, dated 11.01.2012 (Exh.P2). The status of appellant being a civil servant has further been confirmed through notification dated 02.10.2002 (Exh.P3), whereby all employees of AEPAM, Islamabad have been declared civil servants. Appellant being civil servant claimed the entitlement of allotment of Government accommodation i.e. Quarter No.9/2-C, Street No.77, Sector G-7/1, Islamabad under Rule 15(2)(b) of

Accommodation Allocation Rules, 2002 on the ground that the said quarter was previously allotted to his father, who has been retired from service on attaining the age of superannuation on 01.03.2014. In this regard, a request had been made to Ministry of Housing and Works vide letter (Exh.P8) along with recommendation by the appellant's department (Exh.P7), but the appellant had not received any response from the Estate Office, which compelled the appellant to file a writ petition before this Court, though same was dismissed by learned Single Judge in Chambers. Feeling aggrieved thereof, the appellant filed ICA No.287/2015, which was disposed of vide order dated 17.03.2016 by the Hon'ble Division Bench of this Court with the direction to the respondent department to decide the appellant's representation under Rule 29 of the Accommodation Allocation Rules, 2002. The representation was finally rejected by the respondent department as reflected from letter dated 09.09.2016, whereby appellant has been declared not entitled for allotment of Government accommodation under the law.

7. As per the appellant's stance, he filed a revision petition against the said order to the Joint Secretary Works but, same was not attended to, rather the appellant received letter dated 19.09.2016 concerning vacation of suit accommodation, as a result whereof, the appellant filed a civil suit seeking declaration, mandatory and permanent injunction.

8. The respondent department contested the suit while declaring status of appellant as not entitled for Government accommodation on the ground that AEPAM, Islamabad is a subordinate office and, as such, its employees are not entitled for Government accommodation despite the fact that they are civil servants.

9. The learned Trial Court while considering the pleadings has framed a single issue qua eligibility of the appellant, which is as under:

“Whether the plaintiff is eligible for allotment of accommodation under Accommodation Allocation Rules, 2002?”

10. The perusal of appellant’s evidence clearly manifests that he is a civil servant working in AEPAM, Islamabad and same is a subordinate office as reflected from Exh.P4, Exh.P5 & Exh.P6, as such, the appellant has also acknowledged that his department has been declared ineligible by the Government, which in turn makes him ineligible for allotment of Government accommodation.

11. In order to resolve the controversy, I have gone through the definition of “eligibility” provided in Rule 3(1) of the Accommodation Allocation Rules, 2002, which reads that, *“All married FGSs in the Ministries or Divisions and their Attached Departments except those maintaining their own pool of accommodation or funds for hiring of houses, shall be eligible for accommodation from the Estate Office.”* This aspect has further been read in conjunction with the definition clause of Federal Government Servant, referred in Section 2(g) of the Accommodation Allocation Rules, 2002, which enunciates that, *“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.”*

12. Despite the above referred definitions, the status of subordinate office and AEPAM, Islamabad is to be ascertained. In this regard, this Court has gone through Schedule-II of the Rules of Business, 1973 and observed that the name of “Academy of Educational Planning and Management” has been referred under the heading of “Federal Education

and Professional Training Division". This aspect has to be seen in the light of allocation of businesses in terms of Rule 3(3) of the Rules of Business, 1973, whereby the businesses of the Government shall be distributed amongst the divisions in the manner indicated in Schedule-II. Hence, the learned counsel for appellant has argued that AEPAM, Islamabad being the part of Federal Education and Professional Training Division is considered to be an entitled department, however such argument on the strength of Rules of Business, 1973 is not worth reliance, especially when it is admitted position that the Division in terms of Rule 2(vi) of Rules of Business, 1973 means "*a self-contained administrative unit responsible for the conduct of business of the Federal Government in a distinct and specified sphere and declared as such by the Federal Government*". Whereas, the "Attached Department" as defined in Rule 2(ii) of Rules of Business, 1973 means "*a Department which has direct relation with a Division and has been declared as such by the Federal Government*". Hence, this Court is convinced that AEPAM, Islamabad is neither a Division nor an Attached Department, rather a subordinate office, as also admitted by the appellant, which has further been strengthened by the definition of Subordinate Office under Rule 2(xx) of the Rules of Business, 1973, which reads that, "*a Federal Government office other than a Ministry, Division or an Attached Department*".

13. This Court has also gone through other subordinate offices referred under the heading of "Federal Education and Professional Training Division", which includes National Vocational and Technical Education Commission (NAVTEC), Federal Board of Intermediate and Secondary Education (FBISE), Islamabad, National Education Assessment Centre, Islamabad, National Talent Pool, Islamabad, Youth Centres, All matters

relating to National Commission for Human Development (NCHD) and National Education Foundation (NEF), Pakistan National Commission for UNESCO (PNCU), Higher Education Commission, etc. Manifestly, the Rules of Business, 1973 are meant for allocation and transaction of Federal Government businesses, whereby the rules have been settled in terms of Article 99 (3) read with Article 90 of the Constitution of the Islamic Republic of Pakistan, 1973. This entire scheme of law in the Rules of Business, 1973 read with Accommodation Allocation Rules, 2002, AEPAM, Islamabad, though falls within the division as subordinate office of Federal Education and Professional Training Division but, it does not support the case of appellant, who is admittedly a civil servant but, working in a non entitled department under the Accommodation Allocation Rules, 2002.

14. In view of above, this Court is confident to hold that the judgment rendered by the learned Trial Court is within four corners of law and no illegality has been observed in the findings given on Issue No.1, therefore, instant regular first appeal is not made out and the same is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 16th March, 2021.

JUDGE

Khalid Z.