

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No.455/2019

Khalid Mehmood
Vs.
Federation of Pakistan and another

Petitioner By: Rana Ghulam Rasool, Advocate
Respondents By: Ch. Abdul Jabbar, Assistant Attorney General
Mohsin Pasha, Joint Estate Officer
Ministry of Housing & Works.

Date of Hearing: 15.01.2020.

GHULAM AZAM OAMBRANI, J: Through instant Civil Revision, the petitioner has challenged the order dated 04.09.2019 passed by the learned Civil Judge (West), Islamabad, and judgment dated 14.11.2019, passed by the learned Additional District Judge-(West), Islamabad, whereby suit and appeal of the petitioner was dismissed.

2. Precisely, the facts are that the petitioner filed a suit for declaration, mandatory and permanent injunction against the respondents claiming therein that he has right to get allotted the suit quarter in his own name being a Federal Government employee as well as being the real son of the Ex-allottee of the suit quarter i.e. house No.7, Block No.65-B, Sector G-10/3, Islamabad under Rule 15(2) of AAR-2002. The plaint of the petitioner was rejected U/O VII Rule 11 CPC vide order dated 04.09.2019. Being aggrieved, the petitioner preferred an appeal before the learned Additional District Judge-West, Islamabad, which was also dismissed vide order dated 14.11.2019, hence this civil revision petition.

3. Learned counsel for the petitioner has, *inter alia*, argued that the impugned order and judgment dated 04.09.2019 & 14.11.2019, passed by the Courts below are

not sustainable in the eye of law and liable to be set-aside; that written statement was submitted by the respondents before the learned Civil Judge and the case was fixed for arguments on application Under Order XXXIX Rule 1&2 CPC but the plaint of the petitioner/plaintiff was rejected; that the petitioner is entitled for the Government accommodation Under Rule 15 (2) (B) as petitioner is in service before the retirement of his father; That the petitioner has submitted various applications for allotment of Government accommodation as per his entitlement but the respondent did not pay any heed to his request; that the Court below did not apply their judicial mind while passing the impugned order and judgment.

4. Conversely, learned Assistant Attorney General vehemently denied the version of the petitioner contending that the petitioner has failed to place on record order for his regularization, whereas the other candidates who met the requisite criteria at that time, had been regularized; therefore, the instant petition is not maintainable and is liable to be dismissed.

5. Arguments heard, available material perused.

6. Perusal of the record transpires that the petitioner was appointed as LDC under the Federal Directorate of Education on Daily Wages and presently posted at Islamabad Model School for Boys(I-VIII) Mohra Noor, Islamabad, and as per record, till date his services have not been regularized. His father was a Federal Government employee and allotted suit accommodation i.e. House No.7, Block No.65-B, Sector G-10/3, Islamabad. Father of the petitioner had retired and grace period for retaining the government accommodation has also been expired; that the petitioner is in illegal possession of the suit accommodation. The petitioner filed suit for declaration, mandatory and permanent injunction on 22.01.2019. The learned Civil Judge vide order dated 29.07.2019 directed the petitioner to produce his appointment letter whereby he had been inducted in service failing which it was

to be considered that the plaintiff/petitioner was not eligible to be allotted the suit accommodation under section 15(2) (6) of AAR, 2002 and it was made clear to him that the Court shall pass an order for recovery of rent at penal rate from the date of retirement/expiry of grace period of his father, the original allottee and the case was adjourned for 04.09.2019. On the said date, the petitioner/plaintiff failed to produce any appointment notification in his favor and also failed to appear before the Court, as a result of which, the plaint was rejected U/O VII Rule 11 CPC vide order dated 04.09.2019. Against the said order, an appeal was preferred by the petitioner, which was also dismissed. The learned Additional District Judge-West Islamabad held in Paras 4 and 6 of the judgment as under:-

“4.The Court just to ascertain the status of appellant/plaintiff issued notice to the Principal Islamabad Model School for Boys (I-VIII) Mohra Noor, Islamabad for 26.09.2019. However, the appellant/plaintiff got submitted letter through Raja Muhammad Nisar DDO representative of the principal. However, on next date, which was 03.10.2019 principal appeared in person and stated that the letter produced on his behalf on 29.09.2019 was not issued by him and the same was a fake letter. He in a very categorical manner stated that appellant/plaintiff Khaolid Mahmood was serving as LDC in the school since 28.12.2012, upon which a show cause notice was issued to Raja Nisar DDO, who while appearing before the Court on 10.10.2019, besides tendering the apology, submitted that since appellant/plaintiff Khalid Mahmood was to visit different officers in connection with his official duty, therefore, for his identification, he had prepared a letter of a same pattern so that, it might be issued as and when required. The letter produced by him in the Court was also issued in this regard, but cause of having blind faith upon Khalid Mahmood appellant/plaintiff, he put his signatures upon the same. He had been serving in the school for the last 33 years and he could not even think of putting his service at stake by making misrepresentation in the Court.”

6. Undeniably even till date services of the appellant/plaintiff have not been regularized, therefore, in no way he can claim himself to be the regular government employee making him eligible to the allotment of the suit accommodation U/R 15(2)(B) of AAR 2002, therefore, learned Trial Court has rightly held that the appellant/plaintiff has no cause of action”

7. Learned counsel for the petitioner vide order dated 23.12.2019 was directed to produce copy of order for regularization of the petitioner, but he has failed to do so and no plausible explanation has been put forth for this failure. A careful perusal of the impugned order and judgment dated 04.09.2019 & 14.11.2019, passed by the Courts below reveals that both the Courts below have passed the order against the petitioner after examining all the aspects of the case, other material available on the record and have rightly come to the conclusion that the petitioner is not entitled to any relief.

8. In view of the above learned counsel for the petitioner has failed to point out any irregularity or illegality or jurisdictional infirmity calling for interference by this Court under section 115 CPC.

9. In view of above, the instant Civil Revision is devoid of merits and is dismissed.

(GHULAM AZAM QAMBRANI)
JUDGE

ANNOUNCED IN OPEN COURT ON 17-1/2020

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JUDGE