

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 1758/2019.

Arslan Mehmood

Versus

Federation of Pakistan, etc.

W.P. No. 2913/2019.

Fahad Khan Jadoon, etc.

Versus

Federation of Pakistan, etc.

W.P. No. 3581/2019.

Surraya Umar

Versus

Federation of Pakistan, etc.

W.P. No. 3127/2019.

Misbahullah

Versus

Federation of Pakistan, etc.

W.P. No. 4218/2019.

Muhammad Ejaz Butt, etc.

Versus

Federation of Pakistan, etc.

W.P. No. 3938/2019.

Muhammad Naveed Ehsan

Versus

Estate Office through Estate Officer, M/o Housing & Works, Islamabad, etc.

W.P. No. 532/2020.

Gohar Rahman

Versus

Federation of Pakistan, etc.

Petitioners by: Ch. M. Kashif Gujjar, Sardar Rafiq ur Rehman Sanjrani, Mr. Haroon ur Rasheed and Mr. Luqman Zafar Ch., Advocates in their respective petitions.

Respondents by: Barrister M. Mumtaz Ali, AAG.
Mr. Faisal Bin Khurshid, Advocate for IESCO.
Mr. Haroon ur Rasheed, Advocate
M. Mohsin Pasha, Joint Estate Officer.

Date of Hearing: 06.03.2020.

MOHSIN AKHTAR KAYANI, J: Through this judgment, I intend to decide all the captioned writ petitions as in all these writ petitions common questions of law and facts are involved.

2. In W.P No.1758/2019, the petitioner Arsalan Mehmood was appointed as Naib Qasid in Federal Public Service Commission (FPSC), Islamabad and submitted application under Rule 15(2)(b) of Accommodation Allocation Rules (AAR), 2002 and later on filed civil suit before the Civil Court at Islamabad, where-after respondent No.2/Estate Office issued allotment letter dated 01.01.2019 regarding House No.267-A, Sector G-7/3-1, Islamabad but the same was in illegal occupation of respondent No.4/Faisal Arif, Assistant Lineman, IESCO.

3. In W.P No.2913/2019, petitioners, who are civil servants have filed writ petition with the prayer that respondents No.4 to 8 are illegal occupants of House Nos.541-B, 510-B, 312-B, 500-B, Sector G-6/1-2, Islamabad, who are IESCO employees and belong to a non-entitled department under AAR, 2002.

4. In W.P No.3581/2019, petitioner Surraya Umar is serving as Head Nurse in Federal Government Services Hospital and Estate office has allotted quarter No.508-D, Sector G-6/2, Islamabad, which is in illegal occupation of respondent No.4/Mehmood, who is IESCO employee, which is non-entitled department and as such said accommodation to be handed over to the petitioner.

5. In W.P No.3127/2019, the petitioner Misbahullah Khan is serving in Federal Government, I.B department and is allotted flat No.314-B, Sector G-6/1-2, Islamabad vide allotment letter dated 20.12.2018 but the same is under illegal occupation of respondent No.5/Asif Wahab, who is IESCO employee, which is non-entitled department.

6. In W.P No.4218/2019, the petitioners contend that they are employees of IESCO and lawful allottees of the suit quarters by way of General Waiting List, therefore, respondents No.1 to 3 be directed to settle the dispute with Ministry of Housing & Works as Estate office is adamant to get those flats & houses vacated and in this eventuality respondents No.1 to 3 are under obligations to arrange alternate accommodation.

7. In W.P No.3938/2019, petitioner Muhammad Naveed Ehsan has prayed for issuance of direction to respondent No.1 for vacation of house No.305-B, Sector G-6/1-2, Islamabad, which is in occupation of respondent No.2, who is employee of IESCO, which is non-entitled department.

8. In W.P No.532/2020, petitioner Gohar Rahman contends that he is lawful allottee of quarter No.305, Sector G-6/1-2, Islamabad vide allotment letter dated 10.10.2009 with the approval of respondent and is entitled to retain the same or in case of vacation by the Ministry, IESCO authorities are under obligation to arrange alternate accommodation for the petitioner.

9. Conversely, learned counsel for IESCO alongwith learned counsel for private respondents contend that IESCO employees are originally employees of WAPDA, which is entitled department for allotment of accommodation and now Ministry of Energy is in process of reconciliation of issue of government accommodation with Ministry of Housing & Works.

10. Learned AAG alongwith Joint Estate Officer contends that suit quarters are in possession of IESCO employees who are not eligible to retain the same as IESCO is an independent company and is non-entitled department under AAR, 2002 and as such they have their own colony, therefore, they are not entitled to retain the houses of Ministry of Housing & Works and Estate office and as such matter has already been agitated before the Secretary Ministry of Housing & Works and Secretary Ministry of Energy, who have to decide the fate of different individuals on case to case basis and it is appropriate that all these cases may be transferred to the Secretary concerned for their appropriate policy decision under the law.

11. Arguments heard, record perused.

12. Perusal of record reveals that majority of the writ petitions have been filed by Federal Government employees who are now the allottees of quarters in question which were allotted to them on the basis of their eligibility under AAR, 2002 by the Estate office but despite the allotment the quarters in question are in occupation of IESCO employees who have also placed their allotment letters on record which were issued to them by the IESCO through different orders.

13. The record further reflects that quarters and houses established in ICT by the Ministry of Housing & Works as well as by the Estate office which were given to the WAPDA employees more than three decades ago being civil servants, however, after the creation of DISCOs in terms of Section 8(2)(vii) of WAPDA Act, 1958 established for the restructuring of WAPDA operations and all these companies have been registered and incorporated under Companies Ordinance, 1984, although majority shares have been maintained by the Government of Pakistan. The total quarters of different categories which were allocated to WAPDA now IESCO are 68 but the same were decreased with the passage of time and presently the due rent have been paid to the Ministry of Housing & Works regarding those quarters which are on the pool of IESCO. The dispute qua the eligibility and entitlement of the quarters has to be considered under AAR, 2002 and as such only employees of those departments and ministries who fall within the definition of Section 2(g) and their eligibility comes U/S 3 of the AAR, 2002 are entitled to allotment of Government accommodation.

14. Similarly, pool accommodation has been separately defined in the rules and as such IESCO employees are not eligible to be considered for the purpose of allotment as they are not civil servants in terms of Section 2(g) of rules *ibid*, nor the companies are considered to be attached department under Rules of Business, 1973. The Ministry of Housing & Works has already considered the fate of non-entitled department, however, at this stage learned counsel for the IESCO has heavily relied upon minutes of meeting held on 26.07.2019 regarding issue of transfer of 155 Government accommodation from the pool of IESCO to the pool of Estate office in which following decision has been made:-

A meeting has been held under the chairmanship of Joint Secretary (Estate) with the officials of IESCO along with Joint Secretary (Power) of Energy Division on 26th July, 2019 at 11:30 a.m regarding issues of transfer of 155 Government owned accommodation on the pool of IESCO. List of participants is at F/A.

2. *Joint Secretary (Power) explained that despite hand-some revenue generated by IESCO, the DISCO is cash strapped and not in a position to construct houses in bulk for its employees, due to hefty payments of circular debt.*

3. *The accommodation at their pool is housed by officials of line staff who perform some emergency duties at very short notice and dislocating them may not be affordable for operational point of view, IESCO offered to pay house rent ceiling for quarters occupied by their officers. The chair requested the officials of IESCO to provide following:-*

- i. *Budget position on account of house hiring/rental ceiling of IESCO staff.*
- ii. *Data of accommodation available to IESCO staff.*
- iii. *List of employees who retired from service from 2010 to date.*

4. *IESCO will explore the possibilities of construction of accommodation with in land available with them.*

5. *IESCO will cooperate with Ministry of Housing & Works for vacation of houses where courts had issued clear order.*

6. *IESCO to consider gradual handing over of Ministry of Housing & Works quarters to Estate Office in phased manner.*

7. *It has been agreed with consensus that next meeting would be held on 26 August, 2019 to proceed further.*

8. *The meeting ended with a vote of thanks to and from the chair.*

15. The Joint Estate Officer in attendance states that matter may be referred to the Secretary Ministry of Energy and Secretary Ministry of Housing & Works to decide the question of eligibility and entitlement to retain the Government accommodation by the IESCO employees under AAR, 2002, which is primary law to regulate such buildings.

16. While considering the eligibility and entitlement of Government accommodation under AAR, 2002 only Federal Government Employees are eligible for allotment of all houses in question, even IESCO has no authority under AAR, 2002 to issue any allotment letter to its employees, neither IESCO employees are entitled to retain any Government accommodation which exclusively falls under the command of Ministry of Housing and Works through Estate office, hence all IESCO employees who are claiming their allotment of houses of Ministry of Housing & Works are declared to be in illegal occupation and their allotments are declared to be cancelled. It is important to mention here that IESCO is also declared to be non-

entitled department, even it is not an attached department under Rules of Business, 1973, therefore, their status could not be considered under AAR, 2002 under any circumstances.

17. In view of above, writ petition Nos.1758/2019, 2913/2019, 3581/2019, 3127/2019, 3938/2019 are allowed and writ petition Nos.4218/2019, 532/2020 are dismissed.

18. Before parting with this judgment, Secretary, Ministry of Housing & Works as well as Secretary, Ministry of Energy are directed to devise a mechanism to get vacated the subject houses from IESCO employees within period of 06 months from the date of announcement of this judgment and all IESCO employees who are in occupation of Government accommodation shall be settled in alternate accommodation of IESCO other than accommodation of Ministry of Housing & Works as well as Estate Office.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 17th March 2020

JUDGE

Zahid