

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

C. R. No.138/2017

Naveeda Jabeen

Versus

Government of Pakistan
through Ministry of Housing and Works through its Secretary
& 3 others

Petitioners by : Mr Khurram Mahmood Qureshi, Advocate.

Respondents by : Mr Israr Ul Haq, Assistant Attorney General.
Mr Mumtaz Khan, Joint Estate Officer.

Date of Hearing : 16-10-2017

ATHAR MINALLAH, J.- This Civil Revision is directed against judgments and decrees, dated 15-02-2017 and 10-03-2017, passed by the learned Civil Judge 1st Class (West), Islamabad and the learned Additional District Judge-VIII (West), Islamabad, respectively.

2. The facts, in brief, are that an official accommodation i.e. Quarter No.2/1-C, Street No.41, G-7/2, Islamabad (*hereinafter referred to as the 'Accommodation'*) was allotted to Ms Nusrat Jabeen. The latter retired from service on 27-04-2014 on attaining the age of superannuation. Mr. Atzaz Ahmed, son of the retired allottee of

the Accommodation had submitted an application for allotment of the Accommodation in his name under Rule 15(2) of the Accommodation Allocation Rules, 2002 (*hereinafter referred to as the 'Rules of 2002'*). His application was not entertained since he was neither eligible nor entitled. Mst. Naveeda Jabeen (*hereinafter referred to as the 'petitioner'*) is the daughter of the retired allottee. She had filed a suit for declaration, cancellation, mandatory and permanent injunction on 09-01-2015. Since the petitioner falls within the definition of Federal Government Servant for the purposes of the Rules of 2002, therefore, she had independently applied for allotment of accommodation and her name was included in the General Waiting List. However, she has not yet become entitled for allotment of an official accommodation under the Rules of 2002 in the light of the status as per the General Waiting List. She, however, asserts that she is entitled to allotment of the Accommodation under the proviso to sub rule (2) of Rule 15 of the Rules of 2002. The suit of the petitioner was dismissed vide judgment and decree, dated 16-03-2015. She preferred an appeal and the same was allowed by the learned Additional District Judge-VIII (West), Islamabad, vide order, dated 28-03-2015. The matter was remanded to the learned trial Court for decision afresh after recording of evidence for determining on the factual side whether or not the petitioner had been living with the retired allottee of the Accommodation. The learned trial Court had framed two issues vide order, dated 09-05-2015. After affording an opportunity of hearing to the parties, the suit of the petitioner was

dismissed vide judgment and decree, dated 15-02-2017. The petitioner filed an appeal and the same did not find favour with the learned Additional District Judge and was, therefore, dismissed vide judgment and decree, dated 10-03-2017.

3. The learned counsel appearing on behalf of the petitioner has contended that; both the Courts have misinterpreted the provisions of the Rules of 2002; the grounds raised on behalf of the petitioner were not taken into consideration; the learned trial Court erred in taking into consideration the evidence which was produced by DW-1; on the other hand the evidence produced by the petitioner was not taken into consideration; the right of cross-examination was struck off vide order, dated 20-07-2016 and, therefore, the statements recorded by the petitioner stood uncontroverted; it was admitted by DW-1 that the stance of the petitioner was correct; the petitioner is entitled to allotment of Accommodation under Rule 15(2) of the Rules of 2002; the respondents have extended the benefit under Rule 15(2) to other similarly placed persons while the same is being denied to the petitioner; reliance has been placed on the case of '*Federation of Pakistan through Secretary Ministry of Housing and Works, Islamabad and another v. Abrar Ahmed and others*' [2010 SCMR 1537]; '*Ahmed Yar v. Rajab Khan and 5 others*' [1999 YLR 698], '*Noor Elahi v. Chairman WAPDA and 6 others*' [1996 SCMR 1536].

4. The learned Assistant Attorney General has appeared alongwith Mr Mumtaz Khan, Joint Estate Officer, Estate Office. They have argued that the petitioner is not entitled for allotment of Accommodation under Rule 15(2); the petitioner is married and was not dependant on her mother; she could not have lived in the Accommodation with the allottee; the petitioner has not become entitled for allotment of the Accommodation as per the General Waiting List; there is no legal infirmity nor misreading or non-reading so as to interfere with the concurrent findings of two competent Courts.

5. The learned counsels have been heard and the record perused with their able assistance.

6. The petitioner is married and was not a dependant of her mother who had been allotted the Accommodation. The latter had retired from service on 27-04-2014 after attaining the age of superannuation. Admittedly, the petitioner has independently applied for allotment of an official accommodation under the Rules of 2002 and her name is included in the General Waiting List maintained by the respondents under the Rules of 2002. As per the General Waiting List, the petitioner is not yet entitled to allotment of official accommodation. It is the case of the petitioner that she had become eligible and entitled for allotment of the Accommodation under the proviso to sub rule (2) of Rule 15 of the Rules of 2002. On the factual

side both the Courts have concurrently held that the petitioner had not been living with her mother who was the allottee of the Accommodation. The adjudication of the instant petition essentially requires interpretation of the proviso to sub rule (2) of Rule 15 of the Rules of 2002. The relevant rules are, therefore, discussed as follows.

7. The Rules of 2002 were made and notified vide S.R.O. 749(I)/2002, dated 30-10-2002 in exercise of powers conferred under section 25(1) of the Civil Servants Act, 1973 read with Fundamental Rules 45 and 45A. The rules have been framed by the competent authority for the purposes of allotment of official accommodation to the Federal Government servants. Rule 2 defines various expressions. The expression "entitlement" is defined under Rule 2(2) as meaning entitlement to accommodation as specified in rules 5, 8 and 9. Rule 2(f) defines "family" as meaning spouse, legitimate children and step children of a Government servant residing with him and who are wholly dependent upon him. The expression also includes parents, real unmarried sisters and minor brothers, if residing with the allottee and who are dependent upon him or her. Clause (i) of Rule 2 defines "GWL" as meaning the General Waiting List maintained under rule 6. "Occupant" is defined under Rule 2(k) as meaning an individual or group of individuals occupying wholly or partially an accommodation. Rule 3 describes the conditions for being eligible for the purposes of allotment of an official accommodation. Rule 5 describes the entitlement of a Federal Government Servant in relation to class and

category of accommodation. Rule 6 and 7 prescribes the conditions for registration and allotment. Rule 13 explicitly provides that the official accommodation shall not be used by the Federal Government servant or his family for a purpose other than that for which it has been allotted. Rule 14 prescribes that an allottee may allow a friend or relative to share accommodation without the permission of the Estate Office for a period of one month. Rule 15 prescribes the conditions for retention of an official accommodation. Sub rule (1) of Rule 15 deals with the eventuality in case of death of an allottee. Sub rule (2) of Rule 15 provides that an allottee upon his or her retirement or expiry of contract period shall be entitled to retain the accommodation under his or her occupation for a period not exceeding six months and that such facility will be available to a Federal Government Servant once only. The proviso to sub rule (2) of Rule 15 is an exception and provides that a serving spouse or children living with Federal Government Servant may be allotted the same accommodation, if he or she is eligible and otherwise entitled for accommodation within six months of the retirement of the Federal Government servant. It further provides that 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, however, are not eligible for allotment of accommodation of higher category.

8. A combined reading of the Rules of 2002 unambiguously shows that an official accommodation allotted to an allottee defined in Rule 2(b) can only be occupied by the latter and his family. The expression family is defined in Rule 2(f). The relationships which are acknowledged in the definition can only reside in the allotted accommodation if they are 'wholly' dependent upon the allottee. This is further affirmed when Rule 13 and 14 are read together. The official accommodation allotted under the Rules of 2002 has to be exclusively used for the purpose for which it has been allotted by the allottee and his or her family. Any relative who does not fall within the ambit of the definition 'family' is not allowed to share the allotted accommodation for more than one month. While interpreting the proviso to sub rule (2) of Rule 15 or clause (b) of sub rule (1) *ibid*, as the case may be, Rule 2(f), 13 and 14 have to be read therewith. The proviso to sub rule (2) of Rule 15 explicitly restricts the allotment to a serving spouse or children living with the allottee. It is, therefore, obvious that a relative, including a son or daughter, who does not fall within the definition of 'family' will be excluded from being allotted the accommodation under the proviso to Rule 15(2). Moreover, when Rules 15(1)(b) and Rule 15(2) are read together it is unambiguously affirmed that a person claiming a right thereunder is required to fulfill all the conditions prescribed for allotment of an official accommodation under the Rules of 2002 which, *inter alia*, includes the law expounded in the judgment of the august Supreme Court in the case of '*Muhammad Afsar v. Muhammad Farooq*' [2012 SCMR 274]. The language of the Rules 15(1)(b) and 15(2) is explicit in this regard. Rule 15(1)(b) clearly states that allotment may be considered provided all other conditions are met. The expression "all other conditions" definitely includes being entitled on the basis of the General Waiting List. Any interpretation otherwise would

give rise to an anomaly or an absurd situation. The rule framing authority obviously had not intended that the conditions required to be fulfilled in case of death of an allottee in the context of Rule 15(1)(b) be less favourable than those attracted in case of Rule 15(2). The expression 'eligible or otherwise entitled' used in the proviso to Rule 15(2), therefore, has to be interpreted harmoniously and in consonance with Rule 15(1)(b). The person claiming a right under the proviso to Rule 15(2) has to show that all the conditions have been fulfilled, inter alia, having become entitled on the basis of the General Waiting List. In the instant case neither the petitioner was wholly dependent on the allottee i.e. her mother nor had become entitled for allotment on the basis of the General Waiting List. No legal infirmity has been pointed out so as to warrant interference with the concurrent findings.

9. For what has been discussed above, the instant petition is without merit and is, therefore, accordingly dismissed.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on 16-01-2018/1

JUDGE

Approved for reporting.