

Present: Muhammad Ameer Bhatti, J.

**KH. UMAR MEHDI, COLLECTOR MODEL CUSTOMS COLLECTORATE, LAHORE--
Petitioner**

versus

FEDERAL BOARD OF REVENUE through its Chairman Islamabad and 2 others--Respondents

W.P. No. 3341 of 2011, heard on 28.10.2011.

Accommodation Allocation Rules, 2002--

---R. 2--Civil Servants Act, 1973, S. 25(1)--No statutory implication--Lost right of seniority--Repatriated to his parent department--Allotment to residential accommodation--Challenged on ground of malafide and violation of list of accommodation--Question of--Whether accommodation allocation rules were statutory or not--Even if rules were not applicable, no officer can be permitted to apply for accommodation--Validity--Petitioner applied for accommodation in year 1998 and his name was at Serial No. 1 but thereafter, he joined other department on deputation and possessed other accommodation in year 1999 and remained there till 2009--So, till 2009, he had accommodation could not be considered for preferential allotment of any accommodation and by that time, he could not be allotted another accommodation. [P. 58] B

Constitution of Pakistan, 1973--

---Art. 199--Accommodation Allocation Rules, 2002, R. 2--Civil Servants Act, 1973, S. 25(1)--No statutory implication--Having statutory status were fully applicable to allotment of accommodation--Question of--Whether rules were statutory or not--Maintainability of Constitutional petition--F.B.R. by applying these rules declared petitioner at bottom of list, was against fundamental rights, was not tenable hence he could not avail remedy of constitutional petition, as there was no violation of any statutory rules or regulations framed under law where no statutory right had been infringed on by any authority, then constitutional petition was not maintainable. [P. 57] A

Accommodation Allocation Rules, 2002--

---S. 2--Civil Servants Act, 1973--S. 25(1)--Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Accommodation under new posting--Applicability of rules--Joining department on deputation--Lost right of seniority--Repatriated to parent department--Allotment of residential accommodation--Validity the moment obtained another accommodation under new posting--Deleted the name from list of applicants--Validity--Name of the petitioner would had been deleted from list of applicants after obtaining accommodation under new posting--Accommodation Allocation Rules, even if not applicable, but natural justice demanded that he could not be considered after availing choice of one accommodation as one officer was entitled to and can retain single accommodation at a time--Violation of rules or passing any order on basis of their own settled principle cannot be challenged through a writ petition, as question of fact cannot be resolved through constitutional petition. [P. 58] C & D

Accommodation Allocation Rules, 2002--

---R. 2--Delay of six months--No cause of action or locus standi--Maintainability of C.M. filed by collector--Accommodations were meant only for families and not for singles--Validity--Being a single, her case was not worth consideration--Application had been moved by applicant after an inordinate delay of six months during pendency of the instant writ petition and she had not challenged orders of allotment--Neither a cause of action or locus standi to be impleaded. [P. 59] E

Ch. Muhammad Iqbal, Advocate for Petitioner.

Mr. Akhtar Javed, Advocate for Respondent.

Mr. Sarfraz Ahmad Cheema, Advocate for Respondents No. 1 and 2.

Malik Abdullah Raza, Advocate in C.M. No. 1905-11.

Date of hearing: 28.10.2011.

Judgment

Through this constitutional petition, the minutes of meeting dated 13.12.2010 and subsequent orders/decisions dated 27.12.2010 and 08.02.2011 passed by the Respondent No. 1 have been called in question being illegal, void ab initio, mala fide having no legal effects in the eye of law and against the principle of natural justice.

2. The brief facts of the case gathered from the pro and contra averments of the parties are that the present petitioner was earlier serving on deputation in BPS-19 in the Civil Services Academy, Lahore. After his promotion in BPS-20, he was repatriated to his parent department. The claim of the petitioner is that he is at the top of seniority list (at Serial No. 1) prepared for the allotment of residential accommodation and instead of making the allotment to the petitioner, Respondent No. 3 (at Serial No. 5 in this list) has been allotment committee, which maintained the same vide order dated 13.12.2010, however, referred the matter to the Board/Respondent No. 1, where the petitioner made another representation on 30.12.2010, however, the Board upheld the decision of the Committee vide order dated 08.02.2011. It will not be out of place to mention here that earlier the Board on the advice sought by the Committee also delivered the guidelines to the Committee vide his letter dated 27.12.2010. These all acts and decisions have been challenged through this writ petition on the ground of mala fide and violation of the list of accommodation prepared by the respondents themselves.

3. The learned counsel for the petitioner contends that the accommodation rules have neither been prepared by the department nor these are applicable in the case of the petitioner, hence the application of these rules in the case of accommodation of the petitioner is unjustified and without any lawful authority. Since the petitioner has been discriminated on the basis of liking and disliking, the act of the respondents has breached the fundamental rights of the petitioner. Further contends that since the rules of accommodation having no relevancy, the posting on deputation does not make any difference. The moment he rejoined the department, he attained the same seniority as it was before the deputation. Further contends that neither the accommodation rules having the statutory status nor the allotment of accommodation falls within the ambit of terms and conditions of the service rules. Respondents No. 1 & 2 took the stand in their report and parawise comments for allotment of official residential accommodation of MPR, Accommodation Allocation Rules 2002 of Ministry of Housing are being applied by the allotment committee of field formation. Further in reply to the paras it has been admitted that the name of the petitioner was on the top of the general waiting list, however added that since the petitioner was working in BPS-19, was posted to Civil Services Academy, Lahore on deputation where he was allotted

Government accommodation, hence has lost the seniority on the general waiting list and was not found eligible at the time of allotment of the vacant accommodation. They fully supported their orders/decisions which have been challenged through this constitutional petition with the prayer that the petition is not maintainable and may be dismissed.

4. Learned counsel for the Respondent No. 3 contends that the petitioner after joining the department on deputation, lost the right of, seniority (his place in queue) according to the Accommodation Allocation Rules, 2002. Learned counsel further contends that on the one hand the petitioner laid his claim on the basis of list which has been prepared according to the Accommodation Allocation Rules, 2002 but on the other hand, the other rules which take away the right of the person joining any department on deputation and obtain the accommodation in that borrowing department. Learned counsel for the respondent contends that the rules have been framed in exercise of the powers conferred by sub-section (1) of Section 25 of Civil Servants Act, 1973, hence having statutory status, are fully applicable to the allotment of the accommodation in the case of the petitioner and the respondent.

5. I have heard the learned counsel for the parties at length.

6. Without disputing and declaring whether the rules are statutory or not, one thing is clear that the rules referred by the respondents "Accommodation Allocation Rules 2002" in view of Section 2:

(a) "accommodation" means residential accommodation including a house or flat owned, hired or requisitioned by Government and placed on the pool of the Estate Office.

In view of this definition, it is not deniable on behalf of the parties that neither the accommodation in dispute is on the pool of the Estate Officer nor these rules have been adopted, hence the said Accommodation Allocation Rules, 2002 apparently having no implication. Except these rules, no other rules have been referred by any of the parties so it is clear that these rules may have been used by the department for seeking guidance but it has no statutory implication. So far as the case of the petitioner is concerned, that the respondents by applying these rules declared the petitioner at the bottom of the list, is against his fundamental rights, is not tenable, hence he cannot avail the remedy of the constitutional petition, as there is no violation of any statutory rules or regulations framed under the law where no statutory right has been infringed on by any authority, then the constitutional petition is not maintainable.

7. According to the rules, the list has been prepared with the date of demand/requisition and allotment has been made accordingly but if any of officer avails the chance of deputation and he has been allotted accommodation accordingly, then after releasing that place of posting, he can again apply for allotment but this requisition would be computed afresh because the moment he obtained the accommodation under his posting (whether on deputation), he lost the right of second accommodation. Even if the rules are not applicable, no officer can be permitted to apply for accommodation and at the same time retain the other allotment intact. In the case in hand, the petitioner applied for accommodation in the year 1998 and his name was at serial number 1 but thereafter, he joined the other department on deputation and possessed other accommodation in the year 1999 and remained there till 2009. So till 2009, he had accommodation so he could not be considered for preferential allotment of any accommodation and by that time, he could not be allotted another accommodation. Logically, his name could not be considered on the basis of earlier requisition as it loses its validity the moment he obtained another accommodation under his new posting. His name should have been deleted from the list of applicants after obtaining the accommodation under new posting. The rules even if not applicable, but natural justice demands that he could not be considered after availing choice of one accommodation as one officer is entitled to and can retain single accommodation at a time.

8. It is not disputed that the petitioner availed the accommodation during his posting at Islamabad so after relieving from that post, he has to apply afresh and his requisition can only be considered after providing the chance to others, who had applied before him. Viewed in this perspective, after his posting/accommodation on deputation, the petitioner lost his 1st place in the array (seniority list) and his right of accommodation stood consequentially vitiated, thus leaving the other officers in the list entitled to preferential allotment of accommodation in sequential order.

9. The authorities while passing any order for allotment of any accommodation, although performing their duties according to the guidelines provided in the rules, but violation of rules or passing any order on the basis of their own settled principle cannot be challenged through a writ petition, as a disputed question of facts cannot be resolved through the constitutional petition, as apparently some disputed questions of facts are involved as to what was the intention of the authority and it was according to their principle or not, need recording of evidence and this Constitutional Court always avoided to exercise the power where the disputed question of facts are involved and needed recording of evidence.

10. So far the CM. No. 1905/2011 filed by Ms. Rukhsana Yasmin, Collector is concerned, it is not maintainable on the ground that accommodations are meant only for families and not for singles. Being a single, her case is not worth consideration. Even otherwise, this application has been moved by the applicant after an inordinate delay of six months during pendency of this writ petition and she has not challenged the orders of allotment. Hence she has neither a cause of action or locus standi to be impleaded as a party.

11. What has been discussed above, this petition has no merits, dismissed accordingly. No order as to costs.

(R.A.) Petition dismissed.