

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE UMAR ATA BANDIAL

Civil Appeal No.654 of 2007

(On appeal from the judgment dated
25.07.2006 passed by the High Court of
Balochistan, Quetta in CP 788 of 2005)

Khushdil Khan Malik

...Appellant

VERSUS

Secretary, Ministry of Defence Rawalpindi Cantt. and others

..Respondents

Appellant: In person

For respondents No.1-2: Mr. Waqar Rana, Addl. A.G. Pakistan

For respondent No.3: Mr. Arshad Ali Chaudhry, ASC/AOR

Date of hearing: 29.5.2015

JUDGMENT

Dost Muhammad Khan, J.— Leave to appeal was granted to
the appellant on 14.02.2007 *inter alia* on the following grounds: -

*"After hearing the learned counsel for the
petitioner, we are inclined to grant leave inter alia on the
questions as to whether petitioner is an employee of the
attached department of the Defence under the direct
control of Ministry of Defence, Government of Pakistan,
and was entitled to become a Member of Defence Housing
Authority as noted in the order dated 18.08.2006."*

2. The grievance of the appellant is that, the Defence Housing
Authority, Islamabad decided to accommodate its Defence Employees
and those of the attached departments by allotting them residential

plots but through balloting. The appellant being a member of the attached department, serving in the Directorate of Education of the Garrison, under the direct control and management of the respondent, submitted an application to respondent No.3 when, by then he was posted as Regional Director, Human Rights in Balochistan, attached to Law, Justice & Human Rights Division but on deputation basis from the Ministry of Defence (Directorate of Education Garrison) and was falling within the category-J. On deposit of membership fee, he became the member of the Society/Authority.

3. Subsequently, amendment was made in the category-J, in which the appellant had applied, vide letter dated 18.05.2005 by respondent No.3 where the words, "**and officers of Defence Division**" were also added, making them all eligible for the allotment of the plots.

4. The balloting as was scheduled, took place and the appellant was found successful in the process. He also deposited the initial seed/advance installment of money with respondent No.3 however, without any show-cause notice to the appellant, the plot allotted to him on 10.06.2005 was cancelled on 24.10.2005 on fallacious ground/plea that the appellant was not paid emoluments from the Defence Estimates.

5. The appellant challenged the validity of this order in the High Court of Balochistan at Quetta through Constitution Petition No.788 of 2005, however, without applying judicial mind with deep thought to the legal issue, involved herein, his petition was dismissed.

In the instant case, the Ministry of Defence/Defence Department was represented by the learned ASC and also by Mr. Waqar Rana, Additional Attorney General.

6. The decisive queries made from the respondent's counsel were, as to whether the Directorate of Education of Garrison is not the attached department of the Ministry of Defence, however, on many occasions and hearings, the learned ASC representing the respondents could not furnish convincing and plausible explanation.

7. It is a fact, undeniable in nature that the appellant is serving in the attached department of the Ministry of Defence. The wholesome budget is allocated to the Ministry of Defence and is placed at the disposal of Military Accountant General (MAG) for further disbursement on defence expenditures and other emoluments of the Armed Forces of Pakistan and those civilian officials, who are serving in the departments attached to the Defence Services.

8. The department of the appellant is under the administrative control and management of the Ministry of Defence/Defence Directorate. In this regard, we have an ironclad proof on record in the shape of letter of the General Headquarters, IGT & E's Branch, PGEI (C/G)Dte, Sir Syed Road, Rawalpindi, issued to the Manager Press, Printing Corporation of Pakistan, University Road Karachi-5, copies of which were forwarded to all the relevant officers of the Defence. Through this letter, the appellant was promoted from BPS-18 to BPS-19 w.e.f. 30.03.2001 and was posted to FG Sapper Boys High School, Risalpur. On the foot of the letter, the issuing authority is Col. Hameed Sarwar. This letter clinches the entire

controversy with regard to the status of the appellant beyond any shadow of doubt that he is serving a department attached to the Defence Services and is not under the administrative control and management of the Education Ministry or Directorate of Education of Federal Government.

9. Learned Additional Attorney General and the learned ASC for respondent No.3 repeated their inapt arguments and made crude attempts to show that being a civilian officer, albeit serving in the Education Corp of the Garrison, the appellant was not at all belonging to the Defence Services and was not covered by that definition, entitling him to become member of the Defence Housing Authority, much less getting plot in the scheme.

10. It is an admitted fact that the Defence Services is allocated separate budget to meet the expenditures incurred directly on the Defence Services and allied/ancillary wings/attached department.

11. The letter, earlier referred to, is a clear manifestation of fact that the appellant, for all intents and purposes, belongs to Education Corp of the Garrison and is under the effective administrative control and management thereof, otherwise the order of his promotion, contained in the letter *ibid*, would have been issued by the Ministry of Education, Government of Pakistan and not by Col. Incharge in active service of the Defence Services. Therefore, it is held that the appellant is competently a member of the Defence Housing Authority and is covered by the definition given in the relevant provision of the Defence Housing Authority Ordinance and Public Advertisement Notice, issued in the Press on 21st April, 2005.

12. The plea of the appellant is getting further fortification from the letter of approval of the Establishment Division, communicated through the Ministry of Defence, Rawalpindi vide No.2496/D-18/96 dated October 8, 1996. The appellant is undisputedly paid from the Defence Estimates through internal arrangements of the Defence Services and in this way, he has no nexus or any connection with regard to his service and other emoluments and benefits with the Ministry of Education, Government of Pakistan.

13. The concise statement/synopsis filed by the respondents is of no help to the replying respondents in view of what we have held above on the basis of established facts and the law applicable to the same.

14. There is another aspect of the matter, which shall not go unnoticed. In this case, the appellant was successful in the balloting process and got a plot; he deposited the seed money/installment, therefore, a decisive step was taken in the matter and vested right had already accrued to the appellant, hence unilateral cancellation of plot from his name without any show-cause notice to him, clearly amounts to condemning him unheard against the principle of natural justice. By now, it is well embedded and well entrenched principle of justice that the principle of natural justice shall be construed to be a part and parcel of every Statute even if it does not contain it and shall apply to all proceedings, whether judicial or administrative in nature. In this regard, reliance may be placed on the case of Mrs. Anisa Rehman v. P.I.A.C and another (1994 SCMR 2232). Therefore, on this score too,

the impugned order being against the principle of natural justice is not sustainable in law.

15. For the afore-mentioned reasons, this appeal is allowed; the impugned order of the respondents, dis-allotting the plot from the name of the appellant vide order dated 24.10.2005 is held to be in disregard of law, principle of Justice and without lawful authority and the same is set at naught. It is further directed that the same plot shall be restored/allotted to the appellant or if that is not possible then some other plot of the same market value and of the same size be allotted to the appellant, of course, subject to payment of the dues.

Judge

Judge

Judge

Announced in open Court onat Islamabad

Judge

*Nisar/**

Not Approved For Reporting.