

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

W.P No.879-M/2023

**Shabeer Ahmad Vs. Assistant Commissioner Babuzai Swat
and others.**

Present: Mr. Salman Ahmad, Advocate for petitioner.
Khwaja Salah-ud-Din, A.A.G for official Respondents.

Date of hearing: 13.02.2024

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Shabeer Ahmad, the petitioner, being aggrieved from the order of respondent No.1 (Assistant Commissioner Babuzai, Swat) dated 27.06.2023 cancelling allotment of Bungalow No.B-48 College Colony, Saidu Sharif in his favour, has filed the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, on the ground that Bungalow No.B-48 was rightly allotted to him wherein he is residing, being eligible in accordance with the Khyber Pakhtunkhwa Residential Accommodation at Districts (Procedure for Allotment) Rules, 2018 (**the Rules of 2018**) whereas the final eviction notice dated 19.05.2023 is wrong, against the law and ineffective upon his rights and similarly cancellation of allotment in his favour is without jurisdiction, unjustified and unwarranted.

2. Learned counsel for the petitioner contended that the eligibility criteria have been provided in rule 3 Chapter-II of the Rules of 2018 and by considering the eligibility of the petitioner, the Bungalow in question was allotted to him by respondent No.1 in accordance with law, thus, the impugned

order pertaining to cancellation of the allotment and issuance of final eviction notice are inconsistent with each other. He, while referring to sub-rule 4 of rule 3 of the Rules of 2018, submitted at the bar that neither the petitioner is having his own house nor any accommodation of his spouse situated within the vicinity of District Swat, as such, respondent No.1 has violated the rules as well as law on the subject and has committed an illegality while passing the impugned order.

3. Contrarily, the learned A.A.G contended that the petitioner was not a '*public office holder*' as provided in the Rules of 2018 for eligibility of the allotment of official accommodation and on getting the knowledge, respondent No.1 has rectified the error, through which, the Bungalow in question was allotted to the petitioner. He added that there was no legal bar on the powers of respondent No.1 to correct an error or to rectify an illegality, which is otherwise inconsistent with law.

4. Arguments heard and record perused.

5. Since the parties were at hammer and tongs and the moot question was as to whether the petitioner was eligible to apply for official accommodation because the rules have defined the term *applicant* under section 2 (c) of the Khyber Pakhtunkhwa Residential Accommodation at Districts (Procedure for Allotment) Rules, 2018 that "applicant" means the public office holder, who applies for the residential accommodation under these rules. Under rule 3 of the rules *ibid* all public office holders may apply to the

Estate Officer but the term Public Office Holder has not been defined in these rules, which were framed by the Government of Khyber Pakhtunkhwa while exercising the powers conferred by section 21 of the Khyber Pakhtunkhwa Provincial Buildings (Management, Control and Allotment) Act, 2018 (Khyber Pakhtunkhwa Act No. II of 2018) wherein the *public office holder* has been defined u/s 2 (n), which reads as under:

(n) "public office holder" means-

(i) a civil servant, appointed under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), including such civil servants of the Federal Government, posted and working at Peshawar under the Government, as may be prescribed;

(ii) a Provincial Minister, an Advisor and Special Assistant to the Chief Minister;

(iii) Judges of the Peshawar High Court including its employees;

(iv) employees of the Provincial Assembly of the Khyber Pakhtunkhwa; and

(v) employees defined in clause (g-1) of section 2 of Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015 (Khyber Pakhtunkhwa Act No. IV of 2015).

Admittedly, the petitioner does not fall within any of the clause of section 2(n) of the rules because as per record the petitioner is Assistant Programmer (BPS-17) in the Board of Intermediate and Secondary Education Saidu Sharif, Swat, and in accordance with Khyber Pakhtunkhwa Boards of Intermediate and Secondary Education Act, 1990 [Khyber Pakhtunkhwa] Act No. V Of 1990 the employees of the board are not civil servant pursuant to section 30 of the Act. Thus, the petitioner was not eligible to submit the application for official accommodation.

6. Next, since the official accommodation was allotted to the petitioner and in pursuance thereof the possession of the house was allotted to him, now the question is as to whether a public functionary could undo/ recall its order earlier passed by it, if it was inconsistent with law. Section 21 of General Clauses Act, 1897 empowers the public functionary to revive the order or to undo the same if violative to the rules, regulations or any enactment, therefore, the submission of learned counsel for the petitioner that once an order was passed by the authority could not be overturned by it, is misconceived. It is settled law that when an order itself is violative to the law, rules or regulation then by the mere facts that the decisive step has been taken could not provide any justification to remain in field because one wrong cannot justify the other as held by the apex Court in the case of **"Punjab Textbook Board, Lahore and another vs. Muhammad Akhtar Sherani and others"** (PLD 2001 SC 1032) wherein, their lordships have enunciated the principle that one wrong cannot justify another. This principle is based upon a simple phrase that two wrongs do not make a right, i.e., someone has done something unjust or dishonest is no justification for acting in a similar way. In the case of **Nazir Ahmad Panhwar vs. Government of Sindh through Chief Secretary, Sindh and others** (2005 SCMR 1814), it was observed by the Hon'ble Supreme Court that:

"The concept of locus poenitentiae is the power to recede till a decisive step is taken but it is not a principle of law that order once passed become irrevocable and a past and closed transaction. It was also laid down that if the order was illegal then perpetual right could

not be gained on the basis of such an illegal order. Principle of locus poenitentiae would be applicable in respect of an order passed by an authority who was competent to pass an order in accordance with law and that the order so passed was not in violation or contravention of any law and/or rules made thereunder.

Reliance may be placed on the case of "Muhammad Sidiq through L.Rs vs. Punjab Service Tribunal, Lahore and others" (2007 SCMR 318).

7. Likewise, in the case of S"ahid Masood Nadeem v. DY. C.A.A.F., Lahore Cantt." (2003 PLC (C.S.) 1262), it was held that:

"It is settled proposition of law that no right can be claimed on the basis of an illegal order and such an order despite having taken effect, neither would change its status nor create any right enforceable in law and in the light of principle that the authority which possesses the power of passing an order is also empowered to vary, amend or rescind, the said order can be undone with no legal bar."

Ref: Chief Settlement Commissioner, Lahore vs. Raja Muhammad Fazil Khan and others (PLD 1975 SC 331), Muhammad Baran and others vs. Member (Settlement and Rehabilitation) Board of Revenue Punjab and others (PLD 1991 SC 691), Shamrooz Khan v. Muhabbat Khan and another (1989 SCMR 819).

8. At this juncture, learned counsel for the petitioner submitted at the bar that the case of the petitioner is covered under section 2 (e) of the Rules of 2018, however, this contention is of no help to the petitioner because *field officer* has been defined as *public officer holder* belonging to the cadres of Pakistan Administration Service (PAS), Police Services of Pakistan (PSP), Provincial Management Services of Khyber Pakhtunkhwa (PMS) and Provincial Civil Service, as such, the petitioner is not a *field officer* as provided in

referred to above section 2 (e) of the Rules of 2018. Hence, the official accommodation at district could only be allotted if a person is eligible either provided under the Rules of 2018 or the Act of 2018, which is not the case before this Court. When confronted, learned counsel for the petitioner and petitioner himself requested that he may be provided 15-day time to vacate the premises of official accommodation and hand over the vacant possession to respondent No.1. This submission of learned counsel for the petitioner was not objected to by the learned A.A.G rather he submitted at the bar that the petitioner may retain the possession of the house in question but for 20 days within which he shall hand over the possession of the official accommodation i.e., Bungalow No. B-48 to respondent No.1 and till then, no coercive measure shall be adopted against the petitioner for vacation of the official accommodation.

9. Therefore, for the reasons discussed above, this petition, being devoid of merits, is dismissed with the above observations.

Announced
13.02.2024.



JUDGE



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