

W.P.No.1703 of 2012

Agha Nadeem

Addl. Secretary Welfare Govt. of Punjab etc.

13.08.2012

Agha Abu ul Hassan Arif, Advocate for the petitioner.

Mr. Suqrat Mir Basit, Advocate for the applicant of C.M.Nos. 3 & 4/2012.

Muhammad Akmal, Law Officer.

Mr. Muhammad Arif Raja, Additional Advocate General.

Muhammad Masood Mukhtar, Additional Secretary Welfare, S&GAD.

Umar Farooq, Estate Officer.

This order will dispose of Writ Petitions No.1703/2012 and 20124/2012 which are instituted by the same petitioner against the respondents and involve common questions of law and facts

2. The petitioner Agha Nadeem is posted as an Additional Secretary, Ministry of Industries, Government of Pakistan, Islamabad. Previously the petitioner was Secretary Transport with the Government of the Punjab and was allotted by the Government of Punjab, residential accommodation 12-A Aikman Road, GOR-I, Lahore. The petitioner was relieved from job by the Government of the Punjab in June 2008 and he reported to the Federal Government. Through an order dated 31.12.2011 the Government of the Punjab cancelled the allotment of the accommodation 12-A Aikman Road, GOR-I, Lahore from the name of the petitioner and allotted it to one Asad Ullah Khan. The petitioner instituted Writ Petition No.1703/2012 against three respondents namely; 1. Additional Secretary Welfare, Government of the Punjab, Services and

General Administration Department, Lahore 2. Estate Officer, Government of the Punjab, Services and General Administration Department, Lahore 3. Province of Punjab through Chief Secretary Govt. of the Punjab, Lahore with the following prayer:-

“In view of the above it is most respectfully prayed that the instant petition be accepted and Allotment-cum-Vacation order dated 31.12.2011 for cancellation of petitioner’s allotment and asking him to vacate the said premises be declared illegal and without any legal effect.

It is also prayed that that during the pendency of the instant writ petition status quo be maintained regarding the situation of the house in question.”

3. This matter came up for preliminary hearing on 25.1.2012 before a learned single Judge of this Court. Reports and parawise comments were requisitioned from the respondents and the operation of the impugned vacation order dated 31.12.2011 was suspended.

4. Mr. Asad Ullah Khan in whose favour allotment of the accommodation has later been made by the respondents has moved C.M.No.3/2012 for his impleadment in the instant writ petition. C.M.No.4/2012 has been moved by the same person Asad Ullah Khan for vacation of the interim order. In the meantime the Estate Officer/respondent No.2 issued vacation notice dated 26.7.2012 against the petitioner on the ground that in view of Article 199(4A) of the Constitution of Islamic Republic of Pakistan 1973 the interim injunctive order issued by this Court dated 25.1.2012 have ceased to be operative thereafter, therefore the writ petitioner should vacate the accommodation in question immediately.

5. Another development which has taken place in this matter is that the writ petitioner has instituted a second Writ Petition No.20124 of 2012 on 09.8.2012 before this Court by impleading all the three official respondents of Writ Petition No.1703/2012 and he also added Asad Ullah Khan as respondent No.4 in the writ petition. This writ petition was instituted by the petitioner for assailing the vacation order dated 26.7.2012. The newly writ petition contains the following prayer:-

“It is therefore, respectfully prayed that accepting the instant petition, the impugned vacation Notice dated 26.7.2012 requiring the petitioner to vacate the house within 14 days, may very kindly be declared illegal, void and without lawful authority and of no legal effect.

It is further prayed that during the pendency of the instant petition, status quo be maintained regarding the official residential accommodation of the petitioner.

Any other relief, which this hon’ble court may deem fit, be also awarded.”

The matter came up for hearing before this Court on 10.8.2012 and the learned Additional Advocate General submitted that there was likelihood of an amicable solution of the matter between the parties and the writ petitions be listed for hearing on 13.8.2012.

6. The petitioner has come forward today with C.M.No.2969/2012 for seeking permission to amend the writ petition No.1703/2012 through which a prayer has been made to add the grounds for assailing the vacation order dated 26.7.2012 as well as of the letter dated 6.6.2011 whereby the earlier policy pertaining to the retention tenure of the allotment of government residence was amended and all those DMG

officers who were provided official residences were declared entitled to retain the official residence for two years only instead of five years from their respective dates of posting out from Punjab.

C.M.Nos.3,4,5 & 2969/2012

7. I would first of all dispose of the C.M.Nos.3, 4, 5 & 2969/2012. The writ petitioner has instituted a separate Writ Petition No.20124/2012 against the order dated 26.7.2012 and all the grounds which the writ petitioner has raised against the order dated 26.7.2012 and the order dated 31.12.2011 have been added in this new writ petition No.20124/2012. The new allottee Asad Ullah Khan of the official residence has also been impleaded in the second Writ Petition No.20124/2012 as respondent No.4. The first Writ Petition No.1703/2012 which is pending since January 2012, is at the final stage of its disposal, therefore, the C.M.No.3/2012 moved by Asad Ullah Khan for impleadment in the Writ Petition No.1703/2012 is accordingly dismissed. C.M. No.4 moved by him for vacation of the order dated 25.1.2012 is not legally entertainable as unless and until Asad Ullah Khan is impleaded in the Writ Petition No.1703/2012 he does not have any locus standi to seek vacation of the interim order dated 25.1.2012. C.M.No.5/2012 has been moved for declaring the newly issued vacation order dated 26.7.2012 as without lawful authority. Since the writ petitioner has assailed the order dated 26.7.2012 through a separate writ petition instituted on 09.8.2012 therefore this C.M. is not entertainable and is dismissed. C.M.No.2969/2012 for amendment of the Writ Petition No.1703/2012 for adding the grounds for assailing the order dated 26.7.2012 cannot be entertained as the petitioner has instituted a separate Writ Petition No.20124/2012 against the order dated 26.7.2012 with the prayer which has been reproduced above, therefore this

amendment in the writ petition is not permissible as this C.M. is aimed at delaying the disposal of writ petition No.1703 of 2012 with a design to prolong the continuation of the interim stay order which was granted by this Court on 9.8.2012 in order to enable the private parties to resolve the matter amicably as both of them are senior CSP officers. Admittedly the ground for assailing the policy letter dated 6.6.2011 through the amendment in the writ petition No.1703/2012 has also been raised in the subsequent Writ Petition No.20124/2012 in its ground (b) therefore this ground cannot be allowed to be added in the Writ Petition No.1703/2012 All the grounds of attack which are available to the petitioner against the order dated 31.12.2011 are based upon amendment of policy letter dated 6.6.2011 and have been raised in the subsequent writ petition therefore C.M.No.2969 moved by the writ petitioner for amendment of the writ petition No.1703 of 2012 is accordingly **dismissed**.

8. The petitioner Agha Nadeem who is a DMG Officer was previously posted as Secretary Transport with Government of the Punjab and was allotted official residence 12-Aikman Road, GOR-I, Lahore vide letter dated 14.9.2004. The petitioner remained posted at Lahore till June 2008 and was posted out of Punjab on 13.8.2008 and his services were placed with the Federal Government where he immediately joined and is presently serving as an Additional Secretary Ministry of Industries Government of Pakistan, Islamabad. The petitioner is retaining the official accommodation 12-A Aikman Road, GOR-I, Lahore allotted to him by the Provincial government of Punjab at the time when the services of the petitioner were being utilized as Secretary Transport by the Provincial government. The Provincial government who is admittedly the owner of accommodation 12-Aikman Road GOR-I, Lahore through a

policy letter dated 6.6.2011 modified the period of retention/entitlement of official accommodation of such officers after their posting out from Provincial government to the Federal government from five years to two years. Accordingly the respondent No.1 allotted the house No.12-A Aikman Road, GOR-I, Lahore to Asad Ullah Khan/respondent No.4 vide order dated 31.12.2011 and simultaneously cancelled the allotment of the petitioner dated 14.9.2004. The petitioner assailed the order dated 31.12.2011 through Writ Petition No.1703/2012 which earlier writ petition came up for hearing before a learned single Judge of this Court and an interim injunctive order was issued suspending the order dated 31.12.2011. The respondent No.2 Estate Officer relying upon the Constitutional provisions of Article 199(4A) of the Constitution of Islamic Republic of Pakistan 1973 issued a fresh notice dated 26.7.2012 against the petitioner for vacation of the official accommodation. The petitioner has instituted the second Writ Petition No.20124/2012 assailing the order dated 26.7.2012.

9. The learned counsel for the petitioner contends that the petitioner was posted out from the government of Punjab vide order dated 13.8.2008 and his services were assigned to the Federal government and he has been posted at Islamabad and presently he is posted as an Additional Secretary Ministry of Industries Islamabad. In the instant writ petitions the learned counsel for the petitioner has argued that the petitioner according to clause(g) of the allotment policy dated 19.1.2009 was entitled to retain the official accommodation for a period of five years from the date of his posting out from government of Punjab. It is further argued that the amendment in the policy through letter dated 6.6.2011 by the Provincial government is arbitrary, illegal and without lawful authority. The learned counsel for the petitioner further contended that

notwithstanding the above legal position, the official respondents are giving effect to the letter dated 6.6.2011 retrospectively to the disadvantage of the petitioner. The learned counsel for the petitioner contends that a vested right has been created in favour of the petitioner through the policy of 2009 clause(g) which cannot be taken away retrospectively. It is next contended that retrospective effect cannot be given to a piece of legislation against a vested right earlier created. The learned counsel for the petitioner relied upon the judgments reported as **SENIOR MEMBER BOR AND OTHERS VS. SARDAR BAKHSH BHUTTA AND ANOTHER (2012 SCMR 864), GOVERNMENT OF THE PUNJAB, FOOD DEPARTMENT THROUGH SECRETARY FOOD AND ANOTHER VS. MESSRS UNITED SUGAR MILLS LTD. AND ANOTHER (2008 SCMR 1148)** and **IMTIAZ AHMED AND OTHERS VS. PUNJAB PUBLIC SERVICE COMMISSION THROUGH SECRETARY, LAHORE AND OTHERS (PLD 2006 SC 472)** in support of his contentions. It is next contended that the letter dated 6.6.2011 is not published in the official gazette therefore the petitioner cannot be deprived of the right to retain the official accommodation for a period of five years from 13.8.2008 which period according to the learned counsel for the petitioner expires in June 2013.

10. The learned Additional Advocate General has contended that the petitioner has been posted out in the year 2008 from the Punjab Government and is admittedly stationed at Islamabad. The learned Additional Advocate General contends that the previous allotment policy amended upto 19.1.2009 providing for a right to retain the official accommodation for five years has been duly amended through amended policy letter dated 6.6.2011. The learned Additional Advocate General contends that no writ petition is competent to

assail the policy of the government and in this respect the learned Additional Advocate General relied upon the judgments reported as **MRS. NASEEM KHAN VS. PROVINCE OF PUNJAB THROUGH CHIEF SECRETARY AND 3 OTHERS (PLD 1992 LAHORE 359)**, and **SYED ALI AZHAR NAQVI VS. THE GOVERNMENT OF PAKISTAN THROUGH SECRETARY, MINISTRY OF FINANCE, ISLAMABAD AND 3 OTHERS (PLD 1994 KARACHI 67)**. It is next contended that admittedly the official accommodation is owned by the Provincial government and the petitioner does not have any vested right to retain the same in violation of the amended allotment policy. It is next contended that the petitioner did not place any documentary proof of the fact that he ever submitted any application for allotment of the official accommodation to the Federal government since he was posted in Islamabad in the year 2008 and that such an application has been turned down. The learned Additional Advocate General has stated that the accommodation in question has been allotted to the respondent No.4 who is being deprived of the official accommodation because of the illegal occupation by the petitioner. It is next contended that the petitioner obtained an interim order dated 25.1.2012 for suspension of the order dated 31.12.2011 and the said interim order has expired after lapse of six months as per Constitution of Pakistan. A prayer has been made by the learned Additional Advocate General for dismissal of the writ petitions.

11. I have considered the arguments of the learned counsel for the parties and have perused the record.

12. The official accommodation 12-A Aikman Road, GOR-I, Lahore is admittedly owned by the Provincial government and it was allotted to the petitioner when he was posted in the Punjab Government. It is also an admitted fact

that the petitioner was posted out from the Government of Punjab and his services are being utilized by the Federal government at Islamabad. In none of the writ petitions instituted the petitioner stated that he has ever applied to the Federal government for getting any accommodation on account of his posting out from Government of Punjab and that such a request has been declined by the Federal government. The policy on the basis of which the petitioner is seeking the relief from this Court was issued through allotment policy dated 12.1.2009 which was also not claimed to be published in the official Gazette. It is not the case of the petitioner that such a policy was in existence in the year 2004 when the allotment was made in his favour. The government of Punjab who is owner of the house has full power to formulate its policy in order to accommodate its officials in the official accommodation owned by the Provincial government. The change in the tenure of the retention from five years to two years through letter dated 6.6.2011 does not suffer from any illegality. In that respect no writ petition is competent to assail such government policy which is universally applied to all its officials. The petitioner was posted out from the Punjab government in June 2008 and is living himself in Islamabad whereas the official accommodation is situated in Lahore which was allotted to the petitioner on the basis of his job with the Punjab government. The very basis of the occupation of official accommodation was the posting of the petitioner with the Provincial government and this foundation faded away in the year 2008 when the petitioner was posted out to Islamabad with the Federal Government. The petitioner does not have any vested right or locus standi to retain the official accommodation allotted to him by his ex-employer i.e. the Government of Punjab. The contention of the learned counsel for the petitioner that the

amended policy through the letter dated 6.6.2011 is being applied retrospectively against the petitioner does not create any vested right in the petitioner to retain the official accommodation which he otherwise does not have any absolute right to occupy after the expiry of the two years grace period allowed by the Provincial government. There is no requirement that the policy announced by any Government is to be notified in the official gazette and the case law cited by the learned counsel for the petitioner that a notification cannot be given retrospective effect has no relevance to the instant policy decisions.

13. The honourable Supreme Court of Pakistan in the judgment reported as **ZAHOOR TEXTILE MILLS LTD. VS. FEDERATION OF PAKISTAN AND OTHERS (PLD 1999 SC 880)** laid down that the interim order issued Article 199(4A), of the Constitution of Islamic Republic of Pakistan will stand expired on the lapse of period of six months by operation of the Constitutional provisions. The following extract from the reported judgment is very relevant and is reproduced:-

“Since clause (4-A) of Article 199 expressly provides for the expiry of an interim order on the expiry of six months period, the above provision cannot be rendered ineffective or redundant by passing a fresh interim order on a fresh application. This was so held by this Court in the case of Federation of Pakistan through Secretary, Ministry of Finance, Islamabad v. United Sugar Mills Ltd. (supra)”

Again at page 936 it was observed as follows:-

“It may be observed that if we were to refer to sub-paragraph (ii) of paragraph (b) of

clause (4) of Article 199, it becomes evident that the view found favour with the Lahore High Court seems to be in consonance with the above provision of the Constitution. It may again be pointed out that under paragraph (b) of clause (4) the Court is prohibited from making an interim order which would have the effect of prejudicing or interfering with the carrying out of a public work or otherwise being harmful to public interest or State property or impeding the assessment or collection of public revenues. To the above prohibition there are two exceptions provided in the above subparagraphs (i) and (ii) of paragraph (b) of clause (4) of Article 199, namely for the reasons to be recorded in writing the Court is satisfied that the interim order –

- (i) would not have such effect as aforesaid, or*
- (ii) would have the effect of suspending an order or proceedings on the face of the record is without jurisdiction.*

In other words, an interim order is to be passed when the Court is, inter alia, satisfied that it would have the effect of suspending an order or proceedings which, on the face of record, is without jurisdiction, such an order is covered by clause (4-A) of Article 199. Since the Constitution-makers have expressly proved that even in respect of an order or proceeding which, on the face of the record, is without jurisdiction, an interim order is to operate only for a period of six months in terms of clause (4-A) of Article 199 of the Constitution, the above clear and unambiguous intention of the constitution-

makers cannot be defeated by invoking in aid interpretive process or any other legal doctrine. The above contention, therefore, also fails.”

14. The learned counsel for the petitioner could not point out any illegality in the order dated 26.7.2012 passed by the Estate Officer on the basis of the above constitutional provisions. The writ petitions instituted by the petitioner for assailing the order dated 31.12.2011 and the order dated 26.7.2012 are therefore liable **to be dismissed and are dismissed.**

15. As the writ petitioner is a senior CSP officer he is expected to honour the policy of the government from which Government he was allotted the accommodation and hand over its vacant possession back to the Estate Officer. In the peculiar circumstances of the case the petitioner is granted a period of 15 (fifteen) days from today to vacate the official accommodation 12-A Aikman Road, GOR-I, Lahore on or before the 25th of August, 2012 and hand over its vacant possession to the Estate Officer/respondent No.2 for dealing with the same in accordance with law. If the petitioner fails to do so, the respondent shall adopt all the lawful means for the implementation of his order dated 26.7.2012.

**(NASIR SAEED SHEIKH)
JUDGE.**

Approved for Reporting